

PLAINTIFF RECEIVES \$40,000.00 FOR LOSS OF DOMESTIC CAPACITY.

L vs. B

2021 BCSC 586

The Reasons for Judgment of The Honourable Mr. Justice Marchand were given at Kamloops on March 31, 2021.

The Plaintiff, Ms. L was injured in two rear-end motor vehicle collisions on January 16, 2016 and June 17, 2017, in Kamloops, B.C. The Defendants have admitted liability.

At the time of the first accident, Ms. L was 42 years old. She was working as a care aide and leading a happy and active life. Since the accidents she has suffered injuries to her neck, back and ankle; ongoing ringing in her ears; headaches; low mood; and mild driving anxiety. She seeks damages for her pain and suffering, loss of earning capacity, loss of domestic (housekeeping and handyman) capacity, cost of future care and special expenses.

The Defendants acknowledge that Ms. L was injured in the accidents, however they submit that she is entitled to modest awards for pain and suffering and cost of future care. They deny that she has suffered any loss of earning or domestic capacity.

At the time of trial Ms. L was 46 years old. She had been with her common-law partner, Mark Reid, since she was 20 years old and they had a son, Matthew, a few years later. She studied business administration in college. The family moved to Kamloops for Mr. Reid's employment in 1999. For approximately the next 15 years Ms. L worked at the Big Boot Inn shoe store in Kamloops and subsequently Fastenal Canada (an industrial supply company). She also took some upgrading courses at Thompson Rivers University. She was laid off from Fastenal in 2014 due to a slow down in business.

Ms. L then enrolled in and successfully completed the Healthcare Assistant Program at Thompson Rivers University in August 2015. She found employment as a casual community care aide for High Country Health Care. Mr. Justice Marchand notes that all of Ms. L's previous jobs had physically demanding elements. He found that "Prior to the first accident, Ms. L was generally in good health."



JANUARY 16, 2016 – Ms. L was driving a Chevrolet Cavalier. She was stopped, waiting to make a left turn at the intersection of Columbia Street and Summit Drive in Kamloops, when a Chevrolet pickup truck rear-ended the Honda CRV that was behind her, causing the Honda to collide with the rear of Ms. L’s vehicle. At the moment of impact Ms. L was twisted to her right, reaching for a cup of coffee in the console between the front seats. She felt stunned, shocked and dizzy. She attended at Kamloops Urgent Care Clinic where she reported neck, back and shoulder soreness. The doctor at the clinic recommended she attend for chiropractic treatments.

The following day Ms. L’s pain had increased. She attended her regular family doctor who placed her on light duties for a few weeks and referred her for physiotherapy and massage therapy. On February 10, 2016 Ms. L’s doctor declared her fit for regular duties. However, Ms. L struggled at work for several months and continued to have regular flare-ups of her symptoms thereafter.

In the summer of 2016, she decided to retrain to work in the recreation field. This area had always been of interest of her, and she thought that the lighter physical demands would be more manageable. She enrolled in the Activity Assistant Program with the College of the Rockies and completed the online program between October 2016 and September 2017. She reduced her availability with High Country to two evenings per week during that time. She continued with chiropractic treatments and achieved some improvement, though she was still symptomatic at the time of the second accident.

JUNE 17, 2017 – Ms. L was driving her 2002 Saturn. She was stopped behind a vehicle waiting to turn left when she was rear-ended by a Dodge Ram pickup truck. She described the impact as a “hard hit”. She went to the hospital and, she believes, the emergency room physician recommended physiotherapy, chiropractic and massage therapy. She recalls that for the rest of the day she felt dizzy with a headache and pain in her neck, shoulders and back. Her ears were ringing and within days she felt numbness down her left side and pain in her left ankle. She continued her studies in the Activity Assistant program but found the extensive computer work exacerbated her neck, upper back, shoulder pain and headaches. She also continued to work at High Country two evenings a week, mostly on light duties.

After completing her Activity Assistant Program Ms. L secured another casual care aide position and a casual recreational assistant position, before ultimately securing a position as a Recreational Assistant at the Ridgeview Lodge nursing home in February 2018. She found the work to be much less physically demanding and she appreciated being able to plan activities around her physical limitations. Nevertheless, she was still exhausted and sore by the end of her workday. She had no energy to keep up with household duties or yard work. Incomplete projects were abandoned, and she stopped socializing with her friends.



When the COVID-19 public health emergency was declared in March 2020 Ms. L was asked to screen visitors and others at Ridgeview. She was uncomfortable with the lack of appropriate personal protective equipment and she was also concerned about what else she might be asked to do, specifically, more physically demanding duties normally discharged by care aides. On March 31, 2020 Ms. L resigned from her position at Ridgeview. Since then, she has been self-employed, providing recreational activities to clients in their homes.

In the three months prior to the trial Ms. L was doing regular physiotherapy and working with a kinesiologist. She acknowledges improved range of motion but does not feel any improvement in her pain. She has consistent neck and upper back pain and headaches. She continues to have light numbness in her hands and ringing in her ears. She does far less work around the house and yard and Mr. Reid has taken on more of the cooking, cleaning and heavier tasks. Renovations she started in the basement before the accidents remain incomplete. She is resentful that she is unable to do the pruning and other landscaping work or paint the fence, all of which she did without restriction before the accidents. She is sore and “cranky”, and she does not want to go out or host friends and family.

EXPERT EVIDENCE

Ms. L submitted two independent medical assessment reports; Dr. Giantomaso, Physiatrist and Jordon Sernaggia, Kinesiologist, who provided a functional capacity evaluation and a cost of future care report. The defendants submitted an expert report critiquing Ms. L’s functional capacity evaluation.

DR. TONY GIANTOMASO

Dr. Giantomaso assessed Ms. L via Zoom on April 17, 2020. When the original August 2020 trial date was adjourned due to lack of court time, he was able to personally examine her on September 24, 2020. Following a thorough cross-examination, the defendants essentially conceded that Dr. Giantomaso’s opinions were well-founded and not controversial. Dr. Giantomaso diagnosed Ms. L as follows:

“Diagnoses Likely Causally Related to the Motor Vehicle Collision of January 16, 2016:

1. Post-traumatic cervical sprain/strain injury consistent with a WAD-II injury. Chronic.
2. Post-traumatic thoracic sprain/strain injury grade 1-2. Chronic.

Diagnoses Likely Causally Related to the Motor Vehicle Collision of June 17, 2017:

1. Exacerbation and aggravation of previously existing cervical sprain/strain injury consistent with a WAD-II injury. Chronic.
2. Exacerbation and aggravation of previously existing thoracic sprain/strain injury grade 1-2. Chronic.
3. Left ankle injury. Resolved.”



Dr. Giantomaso made several recommendations regarding treatment and offered the following prognosis:

“It is now well over two years since each accident in question. The vast majority of improvement through natural history and rehabilitation would have been expected to occur in the first 6 to 12 months post trauma or earlier. The prognosis after multiple whiplash injuries is worse than from a singular motor vehicle collision... Thus, in my opinion on a balance of probabilities, she will likely continue to experience chronic pain to some degree long term in the future. By following my recommendations she may experience decreased pain and increased function in the future, however this should be considered part of a long-term pain management strategy and should not necessarily be considered curative.”

JORDON SERNAGGIA – KINESIOLOGIST

Mr. Sernaggia opined that given the physical demands of a community health worker, Ms. L’s current limitations would preclude her from work in that field. She would, however, be physically capable of working as a recreational therapy assistant. Mr. Sernaggia’s findings supported Ms. L’s reports of difficulties and limitations with self-care, driving tolerance and aspects of her homemaking, home maintenance and yard work. He also made recommendations regarding treatment.

Mr. Justice Marchand found Mr. Sernaggia’s findings “entirely consistent with Dr. Giantomaso’s findings...”. After considering the defendants’ report of kinesiologist, Mr. Matt Cole, he found Mr. Sernaggia’s opinions to be credible and reliable.

CREDIBILITY AND RELIABILITY

Mr. Justice Marchand found:

[66] With respect to the expert witnesses, as mentioned, the defendants largely accept Dr. Giantomaso’s findings. There were, of course, differences of opinion between Mr. Sernaggia and Mr. Cole. In my view, Mr. Sernaggia more than adequately addressed the concerns raised by Mr. Cole during his testimony.

He found that Ms. L’s family members, friend and former supervisors presented as attentive, responsive and respectful witnesses who provided an appropriate level of detail and were not prone to exaggeration.

Overall, Mr. Justice Marchand found Ms. L to be a credible and reliable witness. He states that he observed her carefully over her three days of testimony, and he commented that she “displayed a certain level of toughness on the witness stand. Despite her obvious pain, she generally preferred to press ahead rather than take breaks. My observations were consistent with Ms. L’s history of continuing to work during her recovery despite the high cost to her personal life. Ms. L is no malingerer.”



In assessing non-pecuniary damages, Mr. Justice Marchand found:

[89] Prior to the accident, Ms. L was an active, fun-loving, effervescent and energetic wife, mother, friend and worker. She was primarily responsible for running an active household, maintaining, repairing and renovating her home, and maintaining a beautiful garden. She enjoyed spending time, travelling, and going on adventures with her family and socializing with many friends. She was a great cook and wonderful host. She loved her work and brought joy to her workplace.

He accepted the evidence concerning her ongoing chronic pain symptoms, low mood, ringing in her ears and mild driving anxiety as well as her functional limitations and the profound effect the collision has had on her life. His findings are consistent with Dr. Giantomaso's opinion, in that he does not expect her to make a full recovery.

He went on to discuss her past and future wage loss and the many factors that affect her employment in the future. Loss of domestic capacity is a significant issue for Ms. L as she was responsible for the majority of housekeeping and homemaking as well as all of the yardwork and handyman and house maintenance work. That involved drywall repairs, painting and a full renovation to the main bathroom, including flooring and plumbing. Mr. Reid has a taxing job and lacks the time, skills and interest to replace all of the work that Ms. L has historically done around the home.



CONCLUSION

[148] For all of these reasons, I award Ms. L the following:

- Non-pecuniary damages – \$100,000
- Past loss of earning capacity – \$2,500
- Future loss of earning capacity – \$85,000
- Loss of domestic capacity - \$40,000
- Cost of future care – \$11,865
- Special expenses – \$3,511.87

[149] My award totals \$242,876.87.

[150] Unless there are issues relating to offers to settle, I award Ms. L costs.

**THE FULL REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE
MARCHAND [CAN BE FOUND HERE](#)**

**IF YOU WOULD LIKE TO BOOK AN ASSESSMENT WITH DR. GIANTOMASO, PHYSIATRIST;
PLEASE CONTACT US AT INTEGRA [HTTPS://INTEGRACONNECTS.COM/](https://integraconnects.com/)**