

Publisher's Note

2016 — Release 3

Previous release was 2016-2

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Goldsmith

Damages for Personal Injury and Death — Digest Service

In addition to the newly added case digests, this release provides valuable updates to the Selected Legal Literature section which pinpoints articles and texts useful both for theoretical studies and as an aid to the practice of law. The Index entries have been arranged alphabetically by subject to make your research quick, easy and efficient. The subjects chosen are those most relevant to the law and practice relating to damages for personal injury.

Case Law Highlights

Motor vehicle accident - soft tissue injuries, herniated disc, tinnitus, vertigo, headaches - multiple ongoing symptoms: Plaintiff, a 47-year-old longshoreman, suffered injuries when defendant's vehicle turned left into his path, causing a largely head-on collision. After the accident plaintiff was anxious and upset, and later that evening he developed headache and pain in the left base of his skull and back shoulder blade. Within a few days of the accident he saw his physician with complaints of pain in his neck, shoulder, lower back, headache, tingling down his arm into his pinky finger, and said that a "whooshing" sensation had developed in his left ear. He underwent physiotherapy, massage, and

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took pain medication, and also took time off work. He did not find physiotherapy or massage helpful. While his lower back pain improved, his other symptoms remained. He did not return to work until eight months after the accident. His job aggravated his symptoms. An MRI revealed a disc protrusion in plaintiff's cervical spine. Plaintiff suffered soft tissue injuries to his neck, shoulder area, lower back, a disc herniation in his cervical spine, tinnitus, and vertigo. His lower back pain resolved over time, but he continued to suffer multiple symptoms including left neck pain, tingling in his left arm, tinnitus with a "swooshing" affect in his left ear, symptoms of vertigo, sleep interruption, and headaches. He was left with permanent pain in his neck and shoulder blade and numbness and tingling down his left arm and into his fingers. But for the accident it was likely that plaintiff would have continued in his pre-accident career path until he reached retirement at age 65. As a result of his injuries and in accordance with medical advice he had reduced his hours of work by 20%, and there was a risk that his symptoms and ability to work would get progressively worse over time. It was likely that plaintiff would continue working through his pain, but with work hours reduced by 20% in each year to the point of taking early retirement at age 60. As a result of his symptoms of vertigo, he would be unable to qualify for the more lucrative job of crane operator. Dillon J. awarded plaintiff general damages in the amount of \$110,000, as well as \$500,000 for loss of future earning capacity.

Arletto v. Kin

2016 CarswellBC 100 (B.C. S.C.)

Struck from behind - whiplash, dizziness - post-traumatic stress disorder, major depression, related cognitive symptoms - chronic headaches: Plaintiff, aged 37, suffered injuries when her vehicle was struck from behind. She went home after the accident, iced her neck, and went to bed. In the middle of the night, she woke up and the right side of her neck was swollen and stiff. She felt nauseated and dizzy and complained of pain in her neck and shoulder area, headaches, ringing in her ears, and feeling "foggy", complaining of difficulty getting words out. Approximately nine or ten months after the accident medical records noted complaints of jaw pain and tinnitus. Plaintiff was diagnosed as suffering soft tissue injuries to her neck and back, with related headaches. She suffered anxiety, and was diagnosed as suffering from PTSD, as well as major depression. Her neck and upper back symptoms improved over time but continued to cause her problems almost five years after the accident. Her headaches had become chronic in nature. It was not established that plaintiff suffered a mild traumatic brain injury as a result of the accident, but it was accepted that she suffered cognitive symptoms that were related to her ongoing symptoms of pain, anxiety, and depression. Plaintiff's tinnitus and facial pain were not

caused directly by the accident, but those symptoms were related to and exacerbated by the injuries suffered in the accident. Her injuries and symptoms significantly impacted plaintiff's enjoyment of life, but as of the time of trial plaintiff's level of activity and functioning had shown considerable improvement. Plaintiff's ongoing chronic pain continued to impact her earning capacity, and it was unlikely that plaintiff would return to her pre-accident function. Skolrood J. awarded plaintiff general damages in the amount of \$100,000, as well as \$170,000 for loss of future earning capacity, and \$15,000 for cost of future care.

Bricker v. Danyk

2015 CarswellBC 3763 (B.C. S.C.)

Motor vehicle accident - soft tissue injuries - depression, chronic pain, related cognitive difficulties - ongoing chronic symptoms - Court of Appeal affirming trial decision, dismissing defendant's appeal: Plaintiff, a licenced practical nurse, suffered injuries when the vehicle in which she was a passenger was involved in an accident. Her knees struck the dashboard, and she complained of immediate pain in her neck and knees, and later had pain in her upper and lower back. She had nausea and vomiting on the evening of the accident. Plaintiff also complained of symptoms of depression, difficulty sleeping, nausea, and tiredness, and said that at times she had slurred speech, poor memory, and dizziness. Her soft tissue injuries improved over time with treatment, but did not resolve. She attempted to return to work as a nurse one year after the accident, but after two weeks she concluded she was not ready to return due to her pain. Plaintiff also underwent psychological treatment. She complained of ongoing headaches, lower back pain, and symptoms of depression. Two years after the accident she was able to return to working as a nurse part-time. At the time of trial she was left suffering from ongoing chronic pain, depression, and sleep difficulties. There was a psychological component to plaintiff's chronic pain, and she would likely continue to suffer from the pain and psychological symptoms that arose from the accident into the future. It was not established that the accident caused a mild traumatic brain injury, and any cognitive complaints were likely related to her pain and the stress-related anxiety. It was not established that plaintiff failed to mitigate her damages. Had she not been injured it was likely that she would have obtained full-time work as a nurse and worked to age 65. As a result of her ongoing symptoms plaintiff was only able to work reduced hours as a nurse. Bracken (J.K.) J. awarded plaintiff general damages in the amount of \$95,000, as well as \$324,000 for loss of future earning capacity, and \$57,950 for cost of future care. [Originally digested in Goldsmith's Damages for Personal Injury and Death at §2015-26.33 and §2015-53A.6]. The Court of Appeal (Kirkpatrick J.A., Frankel J.A., and Savage J.A. concurring), dismissed defendant's appeal of the

assessment of plaintiff's loss of future earning capacity, and of the judge's findings on whether plaintiff failed to mitigate her damages, and findings with respect to whether an adverse inference from plaintiff's failure to call one of her medical practitioners. The judge's assessment of loss of future income was within the range of acceptability, and no errors were shown on the part of the trial judge.

Thomasson v. Moeller

2016 CarswellBC 59 (B.C. C.A.)