IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20080222
Docket: M062030
Registry: Vancouver

Between:

Sakina Jah

Plaintiff

And:

Sik L. Cheung

Defendant

Before: The Honourable Madam Justice Bennett

Oral Reasons for Judgment

In Chambers
February 22, 2008

Counsel for the Plaintiff	I. Kordic
Counsel for the Defendant	K. Dhaliwal
Place of Hearing:	Vancouver, B.C.

[1] **THE COURT:** On June 22nd, 2004 at around 5:30 p.m. Ms. Jah was driving along 33rd Avenue in Vancouver, British Columbia. She was on her way home from work at the Vancouver International Airport. She was eastbound approaching Knight Street. There was a red light and she slowed to stop. Within seconds, the defendant's vehicle struck her vehicle in a rear-end collision. Ms. Jah was thrown forward and back. She said she was quite shaken up as a result of the accident. She believes her left knee hit the dash because it was painful. There was little damage to the two vehicles. Liability is admitted.

[2] The defendant acknowledges that the plaintiff was injured as a result of the accident and the issue therefore is quantum of damages.

[3] The drivers exchanged information and both went on their way. Neither the police nor ambulance was required to attend. Ms. Jah did not feel any pain until later that night. She awoke in the middle of the night with a headache and feeling nauseous. She took Advil and went back to sleep.

[4] The next day she went to work, but at around 1:00 p.m. felt unwell. The headache had returned, she was nauseous and she was starting to feel pain in her neck and back. Her left kneecap was also sore. She attended her doctor that day and complained of pain in her neck, upper back and left knee.

[5] She was diagnosed with a mild to moderate soft-tissue injury as a result of the car accident. She had decreased ability to move her neck and had pain. She was off work for one more day. She also had pain in her left wrist and this has interfered with her doing a home weight-lifting program. In the evenings while

watching television, Ms. Jah liked to lift five-pound weights for exercise. She could not do this for a period of time due to her wrist injury.

[6] Ms. Jah attended physiotherapy as recommended by her doctor. However, she waited a few weeks until her summer vacation started as she did not want to miss more work. She also got her car fixed during this time.

[7] She had a planned trip to Toronto for her vacation, but cancelled it because of the need to take physiotherapy. She also went to see a chiropractor on two occasions.

[8] She completed the physiotherapy by the end of July 2004, and said she was feeling much better but still had some pain. She saw a chiropractor on June 26th, 2004 and July 15th. She saw the physiotherapist on July 15, 2004, July 19th, July 21st and July 23rd. The physiotherapist testified and confirmed that Ms. Jah had been referred to physiotherapy for her neck, back and knee in June 2004. However, the physiotherapist appears to have overlooked the treatment for her knee. Ms. Jah mentioned her knee pain on the first visit to the physiotherapist but she was not treated by the physiotherapist. She did not mention it again.

[9] Ms. Jah was able to do her cleaning but with less vigour. She lives by herself and was able to do her shopping and take care of herself.

[10] Ms. Jah is now 65 years old. She retired from Air Canada in October of 2004. Her retirement is unrelated to her accident.

[11] She had initially testified that she had recovered from her neck and back pain within eight to 12 twelve months. However, her evidence is clear, as is that of her doctor, that her neck, back and wrist pain were completely resolved by the end of October 2004. I should add that her doctor had opined in a medical/legal letter that her recovery time was longer. However, that was based on what Ms. Jah had told her. The evidence at the trial does not support that and supports a much shorter recovery period.

[12] The doctor confirmed that when she saw Ms. Jah on October 29th, 2004 her only complaint was her knee pain. Her knee pain appears to have become more significant as she began to walk more often after the accident. Her knee pain only bothers her when she is climbing up stairs or walking uphill. She did not have knee pain before the accident. She said that the Advil helps this pain. Ms. Jah testified that her knee pain was a nagging injury that still affects her when she climbs stairs or hills. She lives in West Vancouver so when she does any kind of walking, which is her main form of exercise, she does have to walk uphill.

[13] On October 29th, her doctor diagnosed a traumatic patellofemoral syndrome. She was given exercises by her doctor and advised to take physiotherapy if she needed help with her exercises. Ms. Jah has taken no further treatment for her knee, except Advil and ice as needed.

[14] The plaintiff submits that Ms. Jah's injuries were resolved within four months except her knee injury. The defendant submits that the injuries were resolved within six to eight weeks, as Ms. Jah was feeling much better when she completed

physiotherapy in July. However, she was not pain free in July. Ms. Jah did not return to her physician until the end of October and then only complained about her knee.

[15] It is clear that her injuries resolved some time after the end of July and prior to the end of October. While not precisely proven, I am satisfied that the plaintiff's soft-tissue injuries resolved within three months of the accident.

[16] I conclude that Ms. Jah experienced soft-tissue injuries to her neck and her back as a result of the car accident on June 22nd, 2004. She also suffered an injury to her left wrist. She attended for treatment and these injuries were resolved within three months of the accident.

[17] She also suffered injury to her left knee. She gave somewhat conflicting evidence in terms of when she first noticed the knee pain. However, on balance, the evidence demonstrates that she suffered knee pain in the accident and she complained about it the next day. She may have struck her knee on the dashboard, but in any event the knee injury occurred during the accident. She did not have the injury before the accident and her knee was sore the next day. Her knee pain is not completely resolved, it still irritates her on occasion when she walks.

[18] Ms. Jah is therefore entitled to non-pecuniary damages. I have been provided a number of cases by both counsel.

[19] The plaintiff has submitted ***Boag v. Berna***, 2003 BCSC 779; ***Dass v. Salmond***, 2002 BCSC 1758; ***Goertzen v. Ryan***, 2000 BCSC 1170; ***Holt v. Von***

Hertzberg, 6 BCPC 228; ***Pardanyi v. Wilson***, 2004 BCSC 1804; ***Rubino v. Lerfold et al.***, 2004 BCSC 282.

[20] The defendant relies on the decisions in ***Bingham v. Palmanier***, 2003 BCSC 1927; ***Ludu v. Coca-Cola Bottling Ltd.***, 2003 BCPC 332; ***King v. Buccini***, 2006 BCSC 1587; and ***Ton v. Daimlerchrysler Services Canada***, 2007 BCSC 665.

[21] The range submitted by the plaintiff for non-pecuniary damages is between $10,000 to $20,000 and she submits that this is a $15,000 claim. The defendant submits the range is more appropriately between $3,000 to $6,000 on the basis that the injuries would have resolved between six to eight weeks.

[22] I have concluded that the plaintiff suffered soft-tissue injuries in her neck, back and wrist, which were resolved within three months. She continued to work during that time except for a day and a half; was able to do her normal chores with some slight reduction; and was able to do her activities, except her walking for exercise. She returned to walking for exercise a few months after the accident. She missed her summer vacation because she had to attend for treatment and have her car repaired during that time. She also has a knee injury, which has not resolved completely and causes her some irritation which she treats with Advil and ice.

[23] Based on the cases cited and the findings of fact summarized above, I conclude that an appropriate sum for non-pecuniary damages is $12,000.

[24] Further, Ms. Jah suffered a wage loss directly connected to the injury of $258.57. She is entitled to that sum, less taxes as she is entitled to her net wages. I

have done a very rough figure of approximately $30 in taxes, as I have no evidence and did not receive submissions on that point. So I would deduct $30 from the $258.57. She is entitled to interest at the court interest rate on the sum of $228.57.

[25] She also has a special damage claim in the amount of $185 for which she is also entitled to reimbursement for for physiotherapy and chiropractor, along with interest on that sum.

[26] On the issue of costs, the defendant submits that this is a case that reasonably could have been brought in the Small Claims Court and therefore submits that costs should be limited to disbursements.

[27] The plaintiff has referred me to the decision of ***Silver v. Kohut***, 2008 BCSC 120, where the court in considering this issue discussed the question of liability and where liability had been a live issue in that case. At para. 16, Justice Smith said, and I quote:

> I agree that, in order for counsel to know whether the plaintiff had any claim at all, it was necessary to fully assess the credibility of the defendant and determine if there was any additional evidence. That could only be done through an examination for discovery. The desire for discovery was not merely a tactical consideration. It was fundamental to establishing a case and determining whether the action could proceed.

[28] In this particular case, although the plaintiff filed in Supreme Court under Rule 66, the fast-track litigation rule, the defendant immediately denied liability and did not admit liability in a rear-end collision until two days prior to trial. Indeed, both parties performed discoveries, I assume, on that issue. Had liability been admitted at a much earlier date, then the plaintiff would have had the opportunity to transfer the

case to Small Claims Court prior to discoveries being conducted. That did not happen.

[29] Therefore, in my view, this is a case where it is appropriate that the costs under Rule 66 apply. Therefore the costs are $6,600 for a two-day trial, plus disbursements.

E Bennett

The Honourable Madam Justice Bennett