

CANADA / JUDGMENT

Bartucci v. Jormanainen

2001 BCCA 64

COURT

British Columbia Court of Appeal

DECIDED

15 January 2001

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2001BCCA0064 Citation: Bartucci v. Jormanainen Date: 20010115 2001 BCCA 64 Docket: CAO25353
Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR
JUDGMENT Before: The Honourable Chief Justice McEachern January 15, 2001 The Honourable
Mr. Justice Donald The Honourable Mr. Justice Low Vancouver, B.C. BETWEEN: ROSANNA
BARTUCCI PLAINTIFF (APPELLANT) AND: LEILA JORMANAINEN DEFENDANT (RESPONDENT)
F.R. Scordo appearing for the Appellant R.B. Lindsay and T. Bean appearing for the Respondent

- [1] LOW, J.A.: When the appellant was nineteen years old she sustained soft-tissue injuries in her neck and right shoulder in a motor vehicle collision which occurred on May 17, 1994 and for which the defendant was found liable.
- [2] Less than three months later she returned to her job at a fast-food restaurant in Kamloops, where she lived and where the collision occurred. She missed no work subsequently.
- [3] A jury awarded her non-pecuniary damages in the amount of \$1,500; past wage loss of \$2,043.85, the amount claimed; and special damages of \$700, almost \$1,300 below the amount claimed.
- [4] She appeals the award of non-pecuniary damages on the basis that it is inordinately low.
- [5] An appellate court cannot interfere with assessment at trial of damages in a personal injury case, whether made by a judge or by a jury, except in accordance with the oft-cited principle set out in *Nance v. British Columbia Railway Company* [1951] A.C. 601 as follows: The principles, which apply under this head, are not in doubt. Whether the assessment of damages be by a judge or a jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then, before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage...

- [6] In the case at bar, the defense position was that the impact was minor and the period of discomfort was relatively brief. Although, the plaintiff's problems with her shoulder and neck continued to trial several years after the collision, there were issues of causation and credibility that the jury had to contend with. The plaintiff started lifting weights a few months after the accident and in the fall of 1994 she changed jobs to work in a hairdressing establishment.
- [7] On the issue of credibility it was open to the jury to reject the plaintiff's evidence of ongoing complaints or find that those complaints were not as severe as contended
- [8] On the issue of causation, having regard to the expert evidence as to the minor nature of the collision - it was open to the jury to conclude that any ongoing complaints that did exist were the result of a cause or causes other than the collision for which the defendant was responsible.
- [9] Having regard to the factual issues before the jury and the totality of the evidence, it was open to the jury to make the limited award of damages it did.
- [10] In my opinion, it would be wrong in the principle for this court to interfere.
- [11] I would dismiss the appeal.
- [12] MCEACHERN, C.J.B.C.: I agree.
- [13] DONALD, J.A.: I agree.
- [14] McEACHERN, C.J.B.C.: The appeal is dismissed. "The Honourable Mr. Justice Low"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/01/00/2001bccca0064.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bartucci-v-jormanainen-2001>

Prepared on 28 October 2026 · Esheria