

CANADA / JUDGMENT

Bhatti v. Jones

2020 BCSC 1935

COURT

Supreme Court of British Columbia

DECIDED

8 December 2020

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

2020 BCSC 1935 Bhatti v. Jones IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Bhatti v. Jones, 2020 BCSC 1935 Date: 20201208 Docket: M179384 Registry: Vancouver Between: Amandeep Bhatti Plaintiff And Ian Paul Jones Defendant Corrected Judgment: The text of the judgment was corrected at paragraph 36, bullet point 1 on December 9, 2020. Corrected Judgment: The text of the judgment was corrected on the first page on August 11, 2025. Before: The Honourable Mr. Justice E.M. Myers Reasons for Judgment Counsel for the Plaintiff: Jacqueline A. Small Vic S. Maan Counsel for Defendant: Dafydd C. Pritchett David A. Busch Place and Date of Trial: Vancouver, B.C. October 19-23 and 30, 2020 Place and Date of Judgment: Vancouver, B.C. December 8, 2020 Table of Contents Paragraph I. INTRODUCTION [1] II. FACTS [3] A. Background [3] B. The accident and its aftermath [8] C. Medical and functional capacity evidence [27]

1. Prior back injury [27]
 2. Dr. Tony Giantomaso (physiatrist) [28]
 3. Dr. Mark Abbey (family physician) [37]
 4. Dr. Robin Rickards (orthopaedic surgeon) [40]
 5. Andrew Hosking (functional capacity evaluator) [42] III. CREDIBILITY [45] IV. THE ISSUES OF SURGERY & MITIGATION [49] V. GENERAL DAMAGES [56] VI. INCOME LOSS [60] Past income loss [60] Future Income loss [65] VII. SPECIAL DAMAGES [77] VIII. COST OF FUTURE CARE [78] IX. HOUSEKEEPING CAPACITY [80] X. SUMMARY [87] I. Introduction
- [1] Mr. Bhatti claims for injuries suffered in an August 19, 2016 motor vehicle accident. He was rear-ended by the defendant.
- [2] Liability has been admitted and there is no dispute on the major facts, or that the most significant injury caused by the accident was a disc extrusion. II. Facts A. Background
- [3] Mr. Bhatti is 36-years-old. He was 32 at the time of the accident. He has been married to his wife, Arcelia Manjarrez, since 2008. They have a one-year old son. They reside in a rental apartment in the West End of Vancouver.

- [4] Mr. Bhatti was born in India and moved to Canada in 2004. He completed the Business Administration program at Royal Canadian College. He then completed the Business Management at Surrey Business Technical College. He was interested in starting his own business and planned on applying to BCIT, but he met his wife and felt he should enter the work force.
- [5] In 2011 Mr. Bhatti started work at Handi Cuisine in West Vancouver. In 2013, he took a second job as a Starbucks barista.
- [6] In 2015, Mr. Bhatti left Starbucks to join Tommy Hilfiger as a Full-Time Lead Associate in retail sales. He was working at Tommy Hilfiger at the time of the accident.
- [7] Mr. Bhatti said he was active. He did cycling, rollerblading, jogging, swimming, motorcycle riding and walking. He and his wife frequently socialised with friends and he liked to cook for the get-togethers. B. The accident and its aftermath
- [8] As noted above, Mr. Bhatti was rear-ended by the defendant on August 19, 2016.
- [9] At the scene of the accident, Mr. Bhatti felt severe pain in his low back, right leg, head and right shoulder. He was taken to the hospital by ambulance and discharged a few hours later. At home that evening, he had a headache, was nauseous to the point of vomiting and had significant pain throughout most of his body. The next day he felt worse, especially in his low back, right leg, neck and right shoulder.
- [10] The day after the accident, Mr. Bhatti saw his family physician, Dr. Abbey. Within a week of the accident, he commenced physiotherapy treatments, which he continued several times per week until the end of 2016. In total, he attended 41 physiotherapy treatments in 2016 following the collision.
- [11] On September 23, 2016, he had a CT scan of his lumbar spine, which revealed a L5-S1 disc extrusion resulting in contact and mild deviation of the bilateral transversing S1 nerve roots.
- [12] At the end of 2016 his symptoms were: · constant low back pain that felt like a shooting sharp pain; · constant right leg pain; · limping due to right leg pain; · fluctuation of low back pain and right leg pain with activity; · limited tolerance for prolonged standing, sitting and walking due to low back and right leg pain; · difficulty sleeping; and · constant neck and right shoulder pain, as well as headaches;
- [13] In 2017, Mr. Bhatti continued to see Dr. Abbey and attended 36 physiotherapy sessions. The physiotherapy treatments only reduced his symptoms temporarily for a day. He also preformed home exercises provided to him by his physiotherapist every day or every other day, which helped him manage his symptoms especially in his right leg. He briefly attended massage therapy but stopped because he thought it aggravated his pain.

- [14] Mr. Bhatti remained off work due to his injuries until he returned to work on February 19, 2017 on a graduated basis as directed by Dr. Abbey. He worked a reduced part-time schedule until the end of the year and his employer modified his job duties. I discuss this further below.
- [15] After returning to work, Mr. Bhatti described being in constant pain and feeling exhausted "like a zombie" at the end of a workday.
- [16] At the end of 2017, Mr. Bhatti traveled to India for his younger brother's wedding. He purposely booked different flights from his wife so that he would have rest layovers. He described the flights as very difficult due to his pain.
- [17] Without providing a precise chronology, Mr. Bhatti's symptoms and difficulties persisted through to the time of trial and show little, if any chance, of improving. He has had several flare-ups of intense pain in his back and right leg.
- [18] In early 2019, Mr. Bhatti's wife became pregnant with their first child. While he was happy for this, he was also concerned about how he was going to deal with a child given his pain and functional limitations.
- [19] Mr. Bhatti has not been able to return to any of his recreational activities.
- [20] Regarding housework, Mr. Bhatti's wife has had to take over all but the lightest functions.
- [21] Mr. Bhatti has not been able to fully function at work and, at the urging of his doctor, has been on combinations of reduced hours and reduced job functions. In 2019, Mr. Bhatti asked Dr. Abbey to allow an increase in his work hours, because he was concerned about his finances. Mr. Bhatti eventually reached a schedule of 35 hours per week but was not able to sustain it.
- [22] Mr. Bhatti's physical symptoms and consequent difficulties have affected his mental health. He feels guilty about not being able to contribute more financially or with housework and cooking.
- [23] Prior to the accident, Mr. Bhatti had ambitions of opening his own restaurant and wanted to take the professional cook programme at Vancouver Community College. He deferred this three times in 2017 and eventually gave up on it. He felt that he would not be able to stand for several hours and use heavy utensils due to his symptoms.
- [24] As the first-born son in his family, Mr. Bhatti described that he felt of shame for not being to support his siblings and parents, which was a family and Indian cultural tradition. Instead, that obligation now falls on his younger brother.
- [25] Mr. Bhatti has been on and off anti-depressants since the accident. He and his wife have had to go to marital counselling and then individual counselling in order to cope.

- [26] Mr. Bhatti's wife and other witnesses corroborated his evidence and said he was not the same person as he was before the accident. C. Medical and functional capacity evidence
1. Prior back injury
- [27] In 2013, Mr. Bhatti suffered a L5/S1 disc protrusion, documented by a CT scan. By the middle of 2014, after completing a course of chiropractic treatments, the lower back pain and right leg pain fully resolved. It is not argued that this prior disc injury caused Mr. Bhatti's disc extrusion suffered after the accident or made it inevitable or likely. There is no issue of causation with respect to the extrusion.
2. Dr. Tony Giantomaso (physiatrist)
- [28] Dr. Giantomaso prepared two independent medical reports on behalf of Mr. Bhatti, one in January 2018 and the other in June 2020. He also testified at trial.
- [29] As I mentioned above, Mr. Bhatti had a CT scan done prior to the accident in August 2013 and post-accident in 2016. Dr. Giantomaso noted that it was rare to have the benefit of before and after imaging.
- [30] Mr. Bhatti's diagnosis in 2018 was:
1. Exacerbation and aggravation of a prior L5-S1 disc injury;
 2. Disc extrusion causing a WAD-III injury to the right S1 nerve root. Ongoing mild S1 weakness and significant loss of calf strength and calf muscle bulk and ongoing positive radicular features;
 3. Lumbar sprain-strain injury, grade 1-2, chronic; and
 4. Post-traumatic cervical and thoracic pain, resolved.
- [31] In his testimony, Dr. Giantomaso explained the difference between a disc protrusion and a disc extrusion. An extrusion is a more serious condition than a protrusion because the disc material breaks through the tough centre coming completely out of the disc. He stated that a disc extrusion "is as bad as it gets". The high percentage of patients who suffer a disc protrusion will recover naturally without surgical intervention. The majority of patients who suffer a disc extrusion are left with ongoing problems such as pain and numbness.
- [32] Dr. Giantomaso attributed the injuries to the accident and said they should not be considered pre-existing issues.
- [33] In his 2020 report, Dr. Giantomaso added that Mr. Bhatti had ongoing right S1 radiculopathy with permanent weakness.
- [34] Dr. Giantomaso testified that the results of the physical examination tests at the 2020 IME indicated a worsening of Mr. Bhatti's condition from the 2018 examination. In particular, he noted atrophy of the right calf.

[35] Dr. Giantomaso's view was that Mr. Bhatti's condition is severe, his prognosis is poor and that he will permanently experience chronic pain and significant impairment into the future. He is likely to get worse. Mr. Bhatti is "non-competitively employable in any field requiring frequent or continuous standing, walking, lifting and/or bending" and that he should not be expected to work more than part time. In fact, he said he was surprised that Mr. Bhatti was working at all.

[36] Dr. Giantomaso's recommendations in the 2020 report were:

- a further MRI of the lumbar spine to determine any extent of the L5-S1 disc protrusion or extrusion that could be managed by a discectomy;
- referral to a neurosurgeon or spinal surgeon for discectomy;
- transforaminal epidural of the left S1 nerve root;
- L4-5 and L5-S1 facet injections;
- medication management such as Lyrica and Cymbalta and follow up with a psychologist for further medication management due to the risk of interaction;
- analgesics such as Tramacet, Vimovo and similar medications should only be used on occasion;
- vocational evaluation;
- functional capacity evaluation;
- ongoing follow up through counseling and psychology, as well as psychiatry;
- EMG study; and
- active rehabilitation program with 16-24 chaperoned sessions with a certified personal trainer or kinesiologist.

3. Dr. Mark Abbey (family physician)

[37] As mentioned above, Dr. Abbey was Mr. Bhatti's family physician from February 2013 until October 2019 when he departed the medical clinic. He prepared a report on behalf of Mr. Bhatti and testified at trial.

[38] Before the accident, Dr. Abbey and other family physicians at the same clinic treated Mr. Bhatti for his prior lower back and right leg pain in 2013 and 2014. Dr. Abbey confirmed that Mr. Bhatti's last visit before the accident regarding this pre-existing low back and right leg pain was on June 12, 2014.

[39] Dr. Abbey diagnosed Mr. Bhatti with having suffered a lumbar strain, right sided sciatica and a major depressive disorder or depression due to the accident. He prescribed anti-depressants approximately two months following the accident.

4. Dr. Robin Rickards (orthopaedic surgeon)

[40] Dr. Rickards performed an independent medical assessment of Mr. Bhatti at the request of the defendant and testified at the trial.

[41] To the extent his opinion varied from Dr. Giantomaso's, it was severely undercut in cross-examination. In argument, the defendant relied on Dr. Rickard's report for one thing only: a recommendation for surgery. This was something raised by Dr. Giantomaso as a possible treatment. I will therefore not set out the difficulties with Dr. Rickard's report and simply state that I prefer Dr. Giantomaso's opinion. I will deal the issue of surgery later.

5. Andrew Hosking (functional capacity evaluator)

[42] At Mr. Bhatti's request, Mr. Hosking performed a functional capacity evaluation, prepared a report and testified at trial. Because his evidence was largely in line with Dr. Giantomaso's opinion regarding capacity to work, I will not detail it in full.

[43] When Mr. Hosking performed the assessment, Mr. Bhatti was working 35 hours per week. Mr. Hosking testified that based on Mr. Bhatti's decline and fatigue throughout the assessment, he could not keep that schedule up. Rather, staying on a reduced schedule would increase the probability of remaining employable into the future.

[44] Mr. Hosking recommended the following:

- a course of 20-24 sessions of kinesiology followed by periodic review sessions over the next two years;
- access to a fitness facility to continue with an independently administered exercise program after completing the course of active rehabilitation; and
- assistance with regular housecleaning, heavier and seasonal cleaning and home repairs and maintenance. III. Credibility

[45] Mr. Bhatti's evidence was credible. Apart from time spent on housekeeping, which I discuss below, I do not find he exaggerated. Other witnesses - all credible - corroborated Mr. Bhatti's evidence regarding the effects of the accident on him.

[46] The defendant says that Mr. Bhatti having worked full-time for a period after the accident detracts from his credibility and he must be exaggerating his pain. I do not agree. If anything, the fact that he tried to work longer hours is to his credit.

[47] The evidence of Mr. Bhatti with respect to his symptoms is directly in line with what is expected from a disc extrusion (something he did not have before the accident.) The injury is verified by imaging. The right calf muscle atrophy observed by Dr. Giantomaso is also in line with the injury.

- [48] The defendant also argues that Mr. Bhatti's failure to undergo physiotherapy or massage therapy for approximately one-and-a-half years and abide by some other recommendations affect his credibility. Again, I do not agree. People often do not follow all recommendations but that does not mean they are not experiencing symptoms. This might go to the defendant's argument on failure to mitigate, but I do not find it affects Mr. Bhatti's credibility regarding his symptoms or their effect. IV. The issues of surgery & mitigation
- [49] The defendant argues that Mr. Bhatti failed to mitigate his damages by not having had back surgery. The onus is on the defendant to prove failure to mitigate. Apart from mitigation, the possibility of back surgery in the future and its success may also be factored as a contingency in assessing damages.
- [50] Surgery was mentioned as a possibility by Dr. Giantomaso in his 2020 report. At trial he stressed that surgery would not alleviate Mr. Bhatti's back pain; it would only deal with the pain in his leg.
- [51] However, as testified to by Dr. Abbey, surgery was never recommended to Mr. Bhatti and, in fact, Dr. Abbey said that he would recommend against it because he has seen too many bad results with his patients. In the face of that, I do not see how it can be said that Mr. Bhatti failed to mitigate his damages by not having had the surgery.
- [52] With respect to the possibility of back surgery in the future, I will deal this as I assess the individual heads of damage.
- [53] The defendant further argues that Mr. Bhatti also failed to mitigate his damages because he stopped manual therapy treatments in April 2018 until October 2019.
- [54] One of the reasons Mr. Bhatti ceased massage therapy was because he found it aggravated his condition. Another reason for that and stopping physiotherapy was that he was doing exercise at home along with swimming. I do not find that to have been unreasonable.
- [55] Moreover, while massage therapy and physiotherapy may have somewhat alleviated his symptoms, there is no evidence that it was a cure or even a medium-lasting solution. I do not find that the defendant has established that this would have or will make a material difference. It is certainly not a relevant factor for past income loss because that has been agreed to. V. General Damages
- [56] I start by repeating the observation of Dr. Giantomaso I already referred to: a disc extrusion "is as bad as it gets".
- [57] Mr. Bhatti is in constant pain. He walks with a limp. His pain and limitations have prevented him from returning to any of his recreational activities since the accident. His depression has significantly impacted his enjoyment of life and acts as a barrier to a return to his social activities. His marriage has suffered and has consistently been a struggle since the collision. The plan to have a large family with multiple children has been shattered. He is no longer capable of caring for or supporting his parents or his mother-in-law as they age which

causes him shame. His dream of pursuing ownership and operation of a restaurant has ended. He is permanently disabled from all forms of employment and he is restricted to part-time work, which increases his depression.

- [58] The following cases submitted by Mr. Bhatti provide a range of between \$175,000-\$190,000 for an injury and negative prognosis of similar magnitude: *Pike v. Kasiri*, 2016 BCSC 555; *Ali v. Padam*, 2017 BCSC 1849; and, *Flomo v. Hanna*, 2019 BCSC 2024
- [59] In my view, Mr. Bhatti is entitled to general damages of \$190,000. I do not make a reduction for the contingency of successful back surgery here because it would only alleviate his leg pain and not his back pain. I do not think that should make a material difference to damages for pain and suffering. VI. Income Loss Past income loss
- [60] Past income loss has been agreed but it is necessary to set out the facts here in order to understand Mr. Bhatti's future income loss claim.
- [61] As I noted, at the time of the accident Mr. Bhatti was employed by Tommy Hilfiger. He had been hired as a lead sales associate at the Robson store in October 2015.
- [62] In April 2016 he was promoted to floor supervisor, which was considered a management position. Shortly after the promotion, the store closed and Mr. Bhatti was moved to the Richmond location. However, the floor supervisor positions were filled, so he performed the duties of a lead sales associate, but without a reduction in salary. The prospect was for him to take on the role of floor supervisor once a position became vacant. Four months later the accident occurred.
- [63] Before the accident, Mr. Bhatti's main duties as lead sales associate involved receiving stock and putting it on display for sale. Following his return to work his job duties were modified to overseeing floor operations in order to avoid lifting and standing. As I said above, his doctor recommended that he work reduced hours. In spite of that, for a period of time he worked full-time hours because he was nervous about his financial situation. He was unable to maintain that and is currently working reduced hours with the modified duties.
- [64] Past income loss has been agreed to at \$22,063.19. Future Income loss
- [65] With respect to future income loss, there is no doubt that the accident has impacted Mr. Bhatti's ability to earn income and that it will continue to do so. The medical evidence is that it is likely he will only be able to work half time at any available employment.
- [66] Mr. Bhatti seeks to have his damages assessed using the earnings approach rather than the capital asset approach. I think that is appropriate here. Amongst other things, his loss is measurable because it is based on his carrying on at Tommy Hilfiger and normal promotion routes, but for the accident.

- [67] Mr. East is Mr. Bhatti's store manager and supervisor at Tommy Hilfiger. He stated that the hierarchy of positions is: · Sales Associate · Team Lead · Floor Supervisor · Assistant Store Manager · Store Manager
- [68] Floor Supervisors, Assistant Store Managers and Store Managers are considered management that are full-time at 40 hours per week. Rates of pay are: · Floor Supervisor: \$17.00 to \$18.00 per hour; · Assistant Store Manager: \$20.00 to \$22.00 per hour; and · Store Manager: \$60,000.00 annually and up.
- [69] Mr. East considered Mr. Bhatti one of his best employees. He described how Mr. Bhatti is very knowledgeable, passionate, reliable and flexible. He always tries his best and tries to get things done in a timely manner.
- [70] Mr. East stated that Mr. Bhatti would be the "perfect candidate" for promotion, were it not for his inability to do the physical duties of an assistant store manager or store manager and his part-time schedule. Because of those factors, it will be very difficult for him to be promoted.
- [71] I conclude that but for the accident, Mr. Bhatti would have been promoted by now to assistant store manager or store manager
- [72] In line with the medical and capacity opinions, Mr. Bhatti calculates his wage claim based on only being able to work part-time, extended to a presumed retirement age of 67 and using the wage statistics for BC males working full-time as retail sales managers. I find those to be reasonable assumptions.
- [73] Mr. Benning, an economist, calculated the net present value of the claim (rounded to the nearest \$1,000) as \$612,000. This includes economic contingencies such as early retirement.
- [74] I find this to be a reasonable assessment and it has not been challenged by the defendant.
- [75] Mr. Bhatti also argues that there should be "further consideration" given to the fact that he may have been promoted earlier had it not been for the accident. That cannot affect past wage loss, since that has been agreed to. Insofar as it affects future wage loss, Mr. Benning's calculations are - as I have said - based on retail sales managers. That would appear to take into account the fact Mr. Bhatti would have been a store manager by now (an assumption I agree with). There is therefore no need for further adjustment and if there were it ought to have been addressed specifically by Mr. Benning or other evidence and detailed argument, including a proposed calculation.
- [76] I apply a 15% reduction for the contingency of possible future successful back surgery, resulting in a future wage loss assessment of \$520,000. VII. Special Damages
- [77] Special damages have been agreed at \$5,233. VIII. Cost of Future Care

- [78] Mr. Bhatti bases his cost of future care claim on the treatment modalities recommended by Dr. Giantomaso and Mr. Hosking and the frequency of treatments he has taken for the past 12 months. These include: Chiropractic treatments \$ 10,459 Massage therapy \$ 25,034 Acupuncture \$ 24,895 Active Rehabilitation \$ 1,392 Counselling \$ 13,123 Fitness facility \$ 16,853 Vocational assessment \$ 2,625 OTC medication \$ 10,000 Total \$ 104,381
- [79] While all of these were recommended, in the past Mr. Bhatti had a long period where he did not seek active rehabilitation or other modalities in spite of being recommended. There is no evidence as to how long counselling will be of benefit to him. The cost of non-prescription medication is a guesstimate. There is also the contingency of Mr. Bhatti undertaking back surgery and it partially ameliorating his position. Taking all that into account, I award Mr. Bhatti \$50,000 for cost of future care. IX. Housekeeping capacity
- [80] The evidence of Mr. Bhatti, Ms. Manjarrez, Dr. Giantomaso and Mr. Hosking all establish that Mr. Bhatti is unable to perform anything other than light household duties. Further, he is unable to do anything heavy concerning childcare.
- [81] Mr. Bhatti is entitled to be compensated for loss of this capacity, and the loss may be treated as a pecuniary damage award: *Kim v. Lin*, 2018 BCCA 77
- [82] Mr. Bhatti bases the calculation of his claim, both past and future, on his evidence and that of his wife regarding time spent on housekeeping tasks before the accident. They say he used to spend approximately 13.8 hours per week before the accident on housekeeping duties. Ms. Manjarrez estimates that she spends three hours more on housekeeping tasks after the baby was born. Mr. Bhatti argues that the extra work would have been done by him but for the accident. Therefore, from the time of the accident to the time the baby was born, Mr. Bhatti claims for the value of 13.8 hours of lost capacity and after the baby, 16.8 hours per week. He calculates this claim at \$95,770 for past loss of capacity and \$282,265 for future loss of capacity, based on an hourly rate of \$25.00 per hour.
- [83] This is the one area where I find that Mr. Bhatti and his wife exaggerated, most likely not intentionally, but due to an overestimate of something that is difficult to track.
- [84] The Bhatti's' apartment is 700 square feet. Recognising that they were fastidious regarding neatness and cleanliness, and that they had a large tortoise whose pen had to be cleaned, the number of hours they said Mr. Bhatti spent on housework before the accident do not square with his work hours and time spent on recreational and social activities. The time estimate of 16.8 hours per week that he said he would have spent on housework after the baby was born but for the accident is equal to two full workdays. Once again that does not square with the assumption that he would be working full-time and conducting the activities he said he would be doing but for the accident.
- [85] Moreover, claiming the full number of hours spent on housekeeping does not allow for the light housekeeping duties he is still able to do.

[86] I conclude that the appropriate assessment for loss of past housekeeping is \$50,000. I assess future loss at \$175,000. In coming to this figure, I am allowing for a reduction due to the contingency of successful back surgery and an increase for the prospect of the family moving to a larger property, possibly a house, which would require more work than the current apartment. X. Summary

[87] In summary, Mr. Bhatti is entitled to: General damages \$ 190,000 Past income loss (agreed) \$ 22,063 Future income loss \$ 520,000 Special damages (agreed) \$ 5,233 Cost of future care \$ 50,000 Loss of past housekeeping capacity \$ 50,000 Loss of future housekeeping capacity \$ 175,000 Total \$ 1,012,296

[88] If necessary, the parties may submit written submissions on costs. "E.M. Myers J."

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/sc/20/19/2020BCSC1935cor2.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bhatti-v-jones-2020>

Prepared on 26 October 2026 · Esheria