

CANADA / JUDGMENT

Gamesaee v. Priest

2020 BCSC 1763

COURT

Supreme Court of British Columbia

DECIDED

19 November 2020

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

2020 BCSC 1763 Gamesaee v. Priest IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Gamesaee v. Priest, 2020 BCSC 1763 Date: 20201119 Docket: M161635 Registry: Vancouver Between: Prakit Tony Gamesaee Plaintiff And Cara Georgina Priest Defendant Before: The Honourable Mr. Justice E. Myers Reasons for Judgment Counsel for the Plaintiff: David N. Osborne Counsel for the Defendant: John Noble Kaitlin Green Place and Date of Trial: Vancouver, B.C. October 5 to 9 and 13 to 15, 2020 Place and Date of Judgment: Vancouver, B.C. November 19, 2020

- [1] The plaintiff, Mr. Gamesaee, claims damages arising from soft tissue injuries suffered in a motor vehicle accident on March 13, 2014.
- [2] The defendant has admitted liability. The defendant also acknowledges that the accident caused soft tissue injuries to Mr. Gamesaee's neck and low back, which are ongoing. There is no serious contest that Mr. Gamesaee's condition has plateaued.
- [3] The major dispute is over past and future income loss. The plaintiff was and remains employed as a motor vehicle salesperson. At the time of the accident he sold cars; he has since moved to selling recreation vehicles (RV's). The defendant says that Mr. Gamesaee's income has not decreased and therefore he has suffered no loss of earning capacity, whether past or future. The plaintiff argues that he would have made more but for the accident and that he has suffered a decrease in earning capacity, which should be valued on the capital asset approach. I. Facts A. Plaintiff's background
- [4] Mr. Gamesaee was born in Thailand in 1968. He is now 52. After completing high school in 1984 when he was 16, his parents sent him to Canada to live with his uncle in Vancouver. He took English classes at the YMCA and started work as a waiter at a Thai restaurant, where he later became assistant manager. Near the end of his three years working there he took a full-time day job at a blueprinting company which allowed him to work evenings and weekends at the Thai restaurant and at a Japanese restaurant in downtown Vancouver. He then worked on outside sales for Mario's Gelati Ice Cream for two years. He left that position to start a business importing and exporting chocolates and food products and, later, golf-related products.

- [5] In 2000, the businesses failed and Mr. Gamesaee found work as a car salesman. He has worked in that capacity since then.
- [6] Mr. Gamesaee married in 1988. He and his wife have two daughters who are in college and university, respectively. The family live together in a home in Delta. B. The accident and its aftermath
- [7] As I stated, the accident occurred on March 13, 2014. The defendant was driving his car on the way to work when the defendant backed out of her driveway hitting the front of the plaintiff's vehicle.
- [8] The plaintiff's car was driveable and he carried on to work. At work, he started to feel neck, back and calf pain so he left work to see his family doctor.
- [9] Mr. Gamesaee says he still suffers from shoulder stiffness and pain and general discomfort. It is particularly bothersome when doing driving shoulder checks and sitting for a long time.
- [10] Mr. Gamesaee says his back begins to bother him after sitting for a half hour after which he has to get up. It also bothers him when walking so that he has to press his hand against his back to get relief. It interferes with his driving.
- [11] Mr. Gamesaee said he has had headaches since the accident. He gets them once or twice per day. Mr. Gamesaee says he has no pain- free days.
- [12] The injuries have interfered with Mr. Gamesaee's golfing. He now is unable to play as often as before the accident and is not able to swing as well. He has only skied twice since the accident, whereas before he used to ski several times per season.
- [13] With respect to housework, Mrs. Gamesaee described the division of labour as a "gender role split", with Mr. Gamesaee primarily looking after the outdoor work. Mr. Gamesaee said his condition interferes with that work and in particular the gardening, which he took pride in, saying his house looked like Butchart Gardens.
- [14] Mr. Gamesaee finds his condition depressing, is worried about finances and says he is "not the same guy now".
- [15] Several friends testified to seeing Mr. Gamesaee having difficulty with some of his activities. His daughter and wife testified to Mr. Gamesaee expressing and showing pain, not being able to engage in his prior activities and not being able to do as much around the house as he did prior to the accident. They also testified to his subsequent low mood. C. Effect on work
- [16] As I said above, at the time of the accident (March 2014) Mr. Gamesaee was working at Langley Chrysler, where he had started 6 weeks earlier.

- [17] Mr. Gamesaee came to Langley Chrysler from Dueck on Marine where he had worked from 2008, except for a brief stint at Brian Jessel BMW. At Dueck, Mr. Gamesaee said he made it into the top 5 out of 18-20 salespeople for about 4-5 months out of every year. He said at Dueck he worked from 40 to 60 hours per week.
- [18] Mr. Gamesaeee followed several other employees from Dueck to Langley Chrysler because of its better commission structure which was recognised to be one of the best in the business.
- [19] Apart from the plaintiff, a number of witnesses gave evidence about the job of a car salesperson.
- [20] The remuneration is based strictly on sales. Although minimum hourly wage is required to be paid by the employing dealer, any salesperson who only earns the minimum wage is asked to leave.
- [21] The job involves a lot of walking: · A salesperson is required to know what is on the car lot. A good salesperson will walk the lot daily to check on the inventory. However, the current dealership Mr. Gamesaee works at has golf carts the salespeople can use. · Most dealerships do not have a system to allocate walk-in customers to salespeople. As described by Mr. Bradner, the manager of Langley, a dealer manager "whoever greets the customer gets the customer" and it is hoped this takes place before the customer even gets in the showroom. · The salesperson has to take customers around the lot to see the cars they are interested in, because they are often not in the showroom.
- [22] Generally, salespeople are expected to work 6 hour shifts 6 days a week. They can work more than that but are not allowed to take new walk-in customers. However, this means they are there when follow-ups come in; if another salesperson deals with follow-ups and makes the sale, the commission has to be split. All this is to say that the more hours a person is on the job, the more their income will be, all other things being equal.
- [23] Mr. Gamesaee says that before the accident he was able to work longer hours. Now, walking the lot is difficult. Test drives are challenging because of the frequent getting in and out of vehicles and having to do shoulder checks when driving. He cannot rush to greet customers as they arrive. He says he is in pain for half the day.
- [24] In 2018, Mr. Gamsaee left Langley Chrysler along with several other employees to work at TravelHome RV in Abbotsford. He explained the reason for the move as a change in bonus structure at Langley Chrysler so there was "not as much chance to make money". Further, he felt the job was easier to handle physically. TravelHome had a system to allocate walk-in customers so there was not the rush to greet them in the parking lot or when they walked in the door. The company supplies a golf cart for travelling the lot and the salespeople are not required to do test drives if they do not want to.

- [25] In January 2020, Mr. Gamesaee moved to Traveland in Langley, once again with at least one other employee. One reason for the move was it was an easier commute.
- [26] Mr. Gamesaee says he is working 40 hours per week. He would like to work more, but his pain and fatigue does not allow him to do that. He comes home tired from work with neck and back pain. D. Medical evidence
- [27] Dr. Giantomaso, a physiatrist, provided an opinion for the plaintiff. He diagnosed the following conditions as being caused by the accident:
1. Posttraumatic cervical sprain-strain injury consistent with a WAD-II injury. Chronic.
 2. Posttraumatic thoracic sprain-strain injury grade 1 to 2. Chronic.
 3. Posttraumatic occipital headaches. Chronic.
 4. Posttraumatic left SI joint dysfunction. Chronic.
- [28] He opined that Mr. Gamesaee had plateaued and would continue to suffer chronic pain. He recommended active rehabilitation. Passive therapies would help the pain when it flared up, but would not alleviate the underlying conditions. With respect to medication, he said that: Medication management such as the use of Lyrica, gabapentin, or Cymbalta could be considered for chronic myofascial pain. Other options include a topical lidocaine, diclofenac, or Flexeril transdermal cream. Intermittent pain medications such as tramadol or anti-inflammatories could be considered on an occasional basis however, in general, these medications should be avoided long term and can cause significant side effects or rebound phenomena.
- [29] Dr. Giantomaso was not called for cross-examination by the defendant.
- [30] Louise Craig provided a functional capacity evaluation. She found that car sales was a good functional match for Mr. Gamesaee because it allowed for the frequent changes from sitting to standing and opportunities to stretch that he requires.
- [31] Ms. Craig noted that sedentary to low range of medium physical activity results in a decline in function and increased pain for Mr. Gamesaee. She observed that he showed measurable functional decline over the course of her assessment, indicating reduced capacity for test activities similar to those he encounters at work.
- [32] While Ms. Craig did not think Mr. Gamesaee needed help with general housework, which he would be able to perform more slowly than before the accident, she opined that he would require assistance for heavier outdoor activities.
- [33] Ms. Craig recommended active rehabilitation.
- [34] Neither Ms. Craig nor Dr. Giantomaso felt that Mr. Gamesaee had exaggerated his condition. Both of them felt that Mr. Gamesaee provided full testing effort.

- [35] The defendant provided an opinion of Dr. Joseph Wong, a physiatrist who was called for cross-examination. In argument, the defence only relied on the report for Dr. Wong's opinion that Mr. Gamesaee's condition will not deteriorate further, and for his recommendation for cortisone injections for the neck, and a trigger point injection for the low back/gluteal muscles. He did not opine on botox. Given that, the challenges made to his report in cross-examination and the fact that the defendant does not dispute the injuries. I will not provide any further detail of Dr. Wong's evidence. II. General Damages
- [36] Mr. Gamesaee argues that he should be awarded between \$90,000 to \$120,000 for general damages. Because he has not hired anyone to assist with the housework, Mr. Gamesaee says that loss of housekeeping should be included in the general damage claim. The defendant advocates for \$60,000.
- [37] I earlier set out the medical diagnosis. As stated, Mr. Gamesaee's injuries and his symptoms from them are chronic. They have had and will continue to have an impact on his life, albeit not debilitating.
- [38] In *Tsonis v. Mizuguchi*, 2020 BCSC 643, Crerar J. reviewed the authorities for injuries similar to those here. He concluded that the range was from \$100,000 to \$115,000. He awarded the plaintiff \$65,000 after applying a 60% contingency for the likelihood that the plaintiff's condition would substantially improve. There is no medical evidence before me to allow for such a reduction here.
- [39] Another similar case is *Willett v. Rose*, 2017 BCSC 627 in which the plaintiff was awarded \$90,000.
- [40] I award the plaintiff \$100,00 for general, or non-pecuniary damages. III. Income loss
- [41] As I noted, the plaintiff seeks to have his income loss claim assessed using the capital asset approach, rather than an earnings calculation. I agree that the capital asset approach is more appropriate here, because, in part, the loss here is not susceptible to a calculation.
- [42] Even if the plaintiff made as much after the accident as before, he has suffered a loss of income earning capacity. As Ms. Craig's evidence supports, he cannot perform the same hours work that he would have been able to perform but for the accident, and even if he could, it would be with pain that he did not have before. He has lost the opportunity to work more hours than he has since the accident. That translates into a real and substantial possibility of income loss.
- [43] Moreover, it is well established that a plaintiff who makes the same after an accident, but endures pain or difficulty and "toughs it out" in order to do so, has still suffered a loss of capacity: see for example, *Ibbitson v Cooper*, 2012 BCCA 249. This is another reason to assess the income loss claim on the capital asset approach.
- [44] The plaintiff meets all of the often-cited characteristics set out in *Brown v Golaiy*, 1985 CarswellBC 830; 26 B.C.L.R. (3d) 353 (BCSC) at para. 8 (which I will not set out here).

- [45] In appropriate circumstances, the capital asset approach may be applicable to past income loss as well as to future income loss: Ibbotson. Here, except for the possibility of future contingencies, there is no meaningful difference in the evidence or the facts between past and future loss here and I find the capital asset approach to be the preferred one. In fact, the defendant approached the claim on that basis.
- [46] The difficult question here, as in most cases, is the valuation of the claim. Although Mr. Gamesaee provided an actuarial report dealing with the multipliers to reduce the future loss claim to a present value, he did not provide an economic analysis or any statistics dealing with the average earnings of auto salespeople.
- [47] Beyond Mr. Gamesaee's earnings, there are 2 potential data points to assist in assessing the loss. A salesman from Langley Chrysler, Mr. Zbediak, was asked in cross-examination what his income was for 2012 to 2018. He did not have any documentation with him and appeared to be guessing for most of the years in question. I do not see how I can place substantial reliance on that. That is not a negative comment on his credibility; rather he was not asked to bring the information in advance.
- [48] More helpful or at least more accurate was the evidence of Mr. Bradner who was the sales manager at Langley Chrysler. He came to court with the average income for salespeople who worked for the dealership for 6 months or more. Both sides accepted the accuracy of his evidence. The following sets out these averages along with the income of Mr. Gamesaee.
- | YEAR | Plaintiff T4 INCOME | Langley Chrysler Average | Plaintiff's employer |
|------|---------------------|--------------------------|---|
| 2012 | 67,452 | Not provided | Dueck (\$38,310) / Brian Jessel (\$29,141) |
| 2013 | 66,705 | 104,569 | Brian Jessel (\$12,190) / Dueck (\$54,515) |
| 2014 | 112,259 | 124,909 | Dueck (\$13,174) / Langley Chrysler from Feb 2014 (\$99,084) - accident March 13 2014 |
| 2015 | 98,859 | 106,982 | Langley Chrysler |
| 2016 | 68,311 | 87,808 | Langley Chrysler |
| 2017 | 107,976 | 94,457 | Langley Chrysler |
| 2018 | 65,477 | 70,492 | Langley Chrysler |
| 2019 | 73,816 | 82,825 | Travelhome (\$15,199) |
- [49] Even this information is of limited use given that Mr. Gamesaee was only at Langley Chrysler for 3 months before the accident and in 2019 moved to Travelhome. Nevertheless, both parties relied on the above figures, and there must be some tethering of the plaintiff's claim to evidence.
- [50] The plaintiff says that his past income impairment ought to be assessed at between \$75,000 to \$110,000 and future income loss, after taking contingencies into account, at \$215,000 to \$358,000. He argues that but for the accident he would have been able to stay at Langley Chrysler which has a more rewarding commission structure. That is somewhat contradicted by his evidence that one of the reasons for his move to TravelHome was Langley Chrysler's change in bonus structure.
- [51] For his part, the defendant argues that past income loss, if any, ought to be assessed at \$36,000 and future income loss at \$50,000.

- [52] Mr. Gamesaee's former manager at several dealerships prior to Langley Chrysler said that he was a perfect fit for sales and loved the job. Customers liked him. However, there is no evidence that Mr. Gamsaee was regularly in the top tier of sales people at the dealers he worked at. His priority was his family life. He never worked nor is it likely he would have worked the hours of another salesperson who was the top earner at Langley Chrysler to whom Mr. Gamesaee referred several times. That person's income for several years was above \$200,000, reaching \$275,000 in 2014. Mr. Bradner testified that he "lived at the dealership, working every hour possible, except for Christmas". Any expectation Mr. Gamesaee had of reaching that level was unrealistic: it is not borne out by past history, performance or other evidence.
- [53] As the defendant has pointed out, the rough difference between the plaintiff's post-accident income and that of the Langley Chrysler average is approximately \$6,000.
- [54] Taking all of the circumstances into account as best I can, I assess Mr. Gamesaee's past income earning capacity claim at \$40,000. As suggested by counsel, they will make the necessary tax calculation.
- [55] With respect to future income loss, the defendants do not urge any major contingences (beyond those included in the present value tables, which allow for things such as the prospect of unemployment). I assess Mr. Gamesaee's future income loss capacity at \$65,000.
- IV. Cost of Future Care
- [56] Mr. Gamesaee claims the cost of future chiropractic treatments and botox injections.
- [57] A plaintiff is entitled to be compensated for future care that is reasonably necessary on the medical evidence.
- [58] Chiropractic treatments were recommended by Dr. Giantomaso. Mr. Gamesaee points out that he has taken 90 chiropractic treatments since the accident. He testified these treatments are what have allowed him to manage to keep working in car sales. He therefore seeks the present value of 15 chiropractic treatments per year, at \$50.00 per treatment, or \$750.00 per year. Allowing for the treatments to age 75 yields a present value of \$13,184.25. Given that is the only active treatment he is seeking, I find that to be reasonable.
- [59] I am not prepared to discount that for the possibility that Mr. Gamesaee would have required chiropractic treatment apart from the accident. The records of his chiropractor show that in the 12 years prior to the accident, he only had 6 treatments in October 2006, when upper back pain was caused by an acute pericardial effusion. (The references of one witness to having received visits by Mr. Gamsaee while on the way to his chiropractor in the period leading up to the accident is not sufficient to contradict the evidence of the Mr. Gamesaee and the records of his chiropractor.)

- [60] With respect to botox injections, Dr. Giantomasso said that this is an alternative therapy that Mr. Gamesaee might wish to try. The defendant points out that the plaintiff has not tried botox since the accident, nor has he shown any interest in injections. It is not known whether the treatment will be effective.
- [61] A year's Botox treatment (4 repeats) at \$670-\$1,500 per treatment would cost \$2,680 - \$6,000. I think it is reasonable for Mr. Gamesaee to try Botox. Given the uncertainties I award him \$2,500 for this. V. Special Damages
- [62] Special damages of \$5,291 have been agreed to. VI. Summary
- [63] In summary, I find Mr. Gamsaee's damages to be: General damages \$ 100,000.00 Past income earning capacity loss \$ 40,000.00 Future income earning capacity loss \$ 65,000.00 Future care \$ 16,184.25 Special damages (agreed) \$ 5,291.00 Total \$ 226,475.25 "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/20/17/2020BCSC1763.htm>

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

Prepared on 24 October 2026 · Esheria