

CANADA / JUDGMENT

Garcia v. Gill

2024 BCSC 108

COURT

Supreme Court of British Columbia

DECIDED

24 January 2024

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

2024 BCSC 108 Garcia v. Gill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Garcia v. Gill,

2024 BCSC 108

Date: 20240124

Docket: M207092

Registry: Vancouver

Between:

Amara Garcia

Plaintiff

And

Jaspreet Singh Gill and Bel-Air Taxi (1982) Limited

Defendants

Before: Associate Judge Hughes

Reasons for Judgment

Counsel for Plaintiff:

M. Liu

Counsel for Defendants:

T. Weinstein

Place and Date of Hearing:

Vancouver, B.C.

January 16, 2024

Place and Date of Judgment:

Vancouver, B.C.

January 24, 2024

- [1] The plaintiff applies, pursuant to s. 5(6) of the Disbursements and Expert Evidence Regulation, B.C. Reg. 210/2020 and amendments thereto (the "Regulation") for an order that disbursements relating to the cost of two medical assessments, including reports, trial preparation and trial attendance of the two doctors, be "excluded disbursements" as that term is defined in the Regulation.
- [2] The portions of the Regulation at issue are relatively new, having come into force on November 27, 2023. As at the date of this hearing, counsel advised that there were only two reported decisions since the recent amendments came into force, those being *Nagra v. Prasad*, 2023 BCSC 2297 and *Kundan v. Hoogstra*, 2024 BCSC 57.
- [3] The defendants oppose the application. Both parties seek further guidance from the court as to the evidence required on such applications, and whether the time frame for bringing such applications can be modified by consent of the parties.
- [4] The Regulation is one in a series of measures taken by the Legislature to reduce the costs of the "litigation-based" insurance system that governs motor vehicle claims in BC. The background and rationale for those measures is set out in *British Columbia (Attorney General) v. Le*, 2023 BCCA 200.
- [5] The Regulation, as amended, caps disbursements at six percent of a plaintiff's total damages following trial or settlement, and requires plaintiffs to bring applications to have disbursements excluded from the cap before the disbursement is incurred: *Nagra*, para. 1. The requirement to make an application before the disbursement is incurred has resulted in a recent flurry of short notice applications, the consequences being that neither party has sufficient time to prepare fulsome materials, both the evidence and submissions are often inadequate, and judicial resources are expended on the additional step of hearing a short leave application. This application is no exception.
- [6] Section 5 of the Regulation, as amended, provides as follows:

Limits on amount of disbursements

5 (1) In this section:

"disbursement limit" means, in relation to a vehicle injury proceeding,

- (a) the amount that is 6% of the total award of damages assessed by the court in the vehicle injury proceeding or, if an offer to settle the vehicle injury proceeding is accepted, 6% of the amount offered, or
- (b) if the court dismisses the vehicle injury proceeding or, at the conclusion of the vehicle injury proceeding, does not make an award of damages, the amount determined by the court;

"excluded disbursements" means the following:

- (a) fees payable to the Crown under the Supreme Court Civil Rules;
 - (b) fees payable to the sheriff for non-refundable deposits in civil jury trials under the Supreme Court Civil Rules;
 - (c) disbursements incurred by a party if the court ordered the costs of the vehicle injury proceeding to be paid as special costs;
 - (d) disbursements for expert evidence, or an expert report, on the issue of liability;
 - (e) disbursements that all parties to the vehicle injury proceeding have consented to allow as excluded disbursements;
 - (f) disbursements that the court has ordered to be excluded disbursements on application made under subsection (6).
- (2) Only the following may be allowed or awarded to a party in a vehicle injury proceeding as disbursements:
- (a) disbursements up to the disbursement limit;
 - (b) excluded disbursements.
- (3) Repealed. [B.C. Reg. 241/2023, Sched., s. (c), effective November 27, 2023 (B.C. Regs. Bull. 42/2023).]
- (4) The limits set out in subsection (2) do not apply to a vehicle injury proceeding if the trial date set out in the notice of trial filed in relation to the vehicle injury proceeding is no more than 3 months after the coming into force of this subsection.
- (5) If the trial date set out in the notice of trial filed in relation to a vehicle injury proceeding is more than 3 months after the coming into force of subsection (4), the limits set out in subsection (2) do not apply to disbursements incurred by a party if the court is satisfied that the party necessarily or properly incurred those disbursements before the coming into force of subsection (4).
- (6) On application by a party to a vehicle injury proceeding, the court may, if satisfied that the conditions set out in subsection (8) are met, order that the disbursements itemized in the order are excluded disbursements.

- (7) If disbursements to be incurred for expert evidence or expert reports are the subject of an application under subsection (6) and the applicant is also making an application under section 12.1 (5) of the Act, the applicant must make both applications at the same time.
- (8) The following are the conditions for the purposes of subsection (6):
- (a) the application is made before the disbursements are incurred;
 - (b) were the disbursements not excluded, the party making the application would suffer prejudice disproportionate to the benefit of not increasing the complexity and cost of the vehicle injury proceeding.
- (9) In an application under subsection (6), a party must include the following:
- (a) the nature and the evidentiary value of each disbursement that is the subject of the application;
 - (b) evidence of the prejudice the party would suffer were the disbursements that are the subject of the application not excluded, which must include
 - (i) evidence that there is a reasonable risk that the total amount of disbursements the party intends to incur to resolve the vehicle injury proceeding will exceed the disbursement limit,
 - (ii) evidence that the disbursements that are the subject of the application are necessary to justly resolve the vehicle injury proceeding in light of the complexity of the vehicle injury proceeding or the importance of the issues in dispute, and
 - (iii) evidence that the party would be unable, without undue hardship, to incur the disbursements that are the subject of the application were those disbursements not excluded.
- (10) For certainty, this section applies to all vehicle injury proceedings, whether or not the proceeding was commenced before the coming into force of this subsection.
- [7] The court may only exercise its discretion to order that disbursements be excluded if the conditions in subsection (8) are met. Further, the application materials must include the items set out in subsection (9).
- [8] Turning now to the case at bar, the plaintiff was injured in a motor vehicle accident on July 15, 2018, which is the subject of this action (the "First Action"). She was also involved in a subsequent motor vehicle accident on October 29, 2018, which is the subject of action no. M20101098 (the "Second Action"). Liability is denied by the defendants in both actions. The trial of this action is set for June 17, 2024, and the parties have signed a consent order joining the First Action and the Second Action for trial. The plaintiff has not yet served any expert reports in either action, and the 84-day deadline to do so is March 22, 2024.

- [9] The plaintiff is currently 54 years old and is self-employed, part time, providing services in bookkeeping, invoicing and general administrative support. She is married with three children, ages 12, 15 and 18. The middle child has ASD, sensory and mental health issues, and the plaintiff deposes that she needs to provide daily personal care support for that child. The plaintiff's evidence is that her income is less than \$15,000 per year.
- [10] The plaintiff claims to have suffered multiple physical injuries, including to her neck, shoulders, back, hips and leg, as well as headaches. She has also developed psychological injuries following the accidents, including driving anxiety, generalized anxiety and depression. Her family doctor has prescribed Escitalopram, which is a mood medication for treatment of depressive and anxiety symptoms. The plaintiff deposes that her injuries have affected all aspects of her life, including her ability to work.
- [11] The plaintiff intends to obtain reports from two experts, being a physiatrist and a psychiatrist. The physiatrist appointment was scheduled for January 17, 2024, being the day after the hearing of this application. That appointment was confirmed on December 18, 2023. The psychiatrist appointment was scheduled for February 6, 2024, and was confirmed on January 11, 2024. Counsel advised that both appointments would proceed regardless of the outcome of this application.
- [12] There is no evidence before me of the cost of the two expert assessments of the plaintiff, nor of the anticipated costs of their reports, trial preparation or trial attendance. Plaintiff's counsel advises that they have asked each of the doctors, who were not identified in the application materials, whether the costs of assessment and report will exceed \$7,000. Counsel has not provided the answers to those inquiries.
- [13] The plaintiff invites this court to take judicial notice that the cost of a typical medical report exceeds \$5,000, and that expert medical evidence including trial attendance exceeds \$7,000. Given that both appointments were confirmed before this application was filed, I see no reason that counsel could not have provided some evidence as to the anticipated cost of obtaining the expert evidence. Medical experts retained in motor vehicle injury cases will have a fee schedule setting out their anticipated fees for assessment, report-writing, trial preparation and attendance, or could at least provide a written estimate of those fees in advance of the fees being incurred. A prudent person would not make a significant financial commitment, such as buying a car, without knowing what the purchase price of that car will be. Similarly, engaging a medical professional to provide an independent assessment of the plaintiff, without knowing in advance what that is likely to cost, is not reasonable.
- [14] The Supreme Court of Canada adopted a stringent test for judicial notice in *R. v. Find*, 2001 SCC 32 at para. 48, per McLachlin C.J.:

Judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy

- [15] I am not satisfied that it is appropriate for the court to take judicial notice of the typical cost of an expert report for the purpose of this application, as it does not meet the threshold set out in Find. In any event, the cost of a typical report is not particularly helpful for the analysis required. The task at hand is the determination of whether the particular expert reports to be obtained by the plaintiff in this case ought to be excluded from the cap on disbursements.
- [16] Turning to the conditions set out in subsection (8) of the Regulation, this application was made before the disbursements were incurred, as required in subsection (8)(a). I note that, due to the lateness of the application, the plaintiff would likely have faced a cancellation fee if the physiatrist appointment had been cancelled.
- [17] Subsection (8)(b) requires that, were the disbursements not excluded, the plaintiff would suffer prejudice disproportionate to the benefit of not increasing the complexity and cost of the vehicle injury proceeding. In order to assess whether the test in subsection (8)(b) is met, the court needs to consider the evidence provided pursuant to subsection (9).
- [18] Subsection (9)(a) requires that the applicant include the nature and evidentiary value of each disbursement that is the subject of the application. The nature of the disbursements has been clearly set out, being the assessment, expert report, and trial preparation and attendance by each of a physiatrist and a psychiatrist. The evidentiary value is set out in the notice of application as follows:

The physical medicine and psychiatric expert evidence sought will be germane to all major heads of damages, will likely critically assist the court on the issues of causation, diagnosis, prognosis, as well as the assessment of general damages, earning capacity, housekeeping capacity and future care assessment.

- [19] As recognized by the Court of Appeal in Le at para. 128:

personal injury litigation typically cannot be advanced without expert evidence. Several medical experts may be required to address a plaintiff's injuries and explain their prognosis for recovery. The substantive law for various categories of loss (for example, the cost of future care) requires some medical justification. Trial judges can attest to the frequency with which defendants argue that some aspect of a plaintiff's claim is not supported by medical evidence or ask the judge to draw an adverse inference because a plaintiff's personal physician or other caregivers, whose evidence may require an expert report, have not been called to give evidence. The reality is that, in personal injury litigation, plaintiffs typically carry the burden of proof to make out their

claims.

[20] Subsection (9)(b) requires evidence of the prejudice the party would suffer were the disbursements that are the subject of the application not excluded. That evidence must include three factors set out in subsections (i) through (iii).

[21] I am satisfied, in light of the evidentiary value of the disbursements and the Court of Appeal's comments in *Le*, that the plaintiff has provided sufficient evidence that the disbursements are necessary to justly resolve the vehicle injury proceeding, as required by subsection (9)(b)(ii). As noted in *Nagra* at para. 14:

The plaintiff has the onus of proof with respect to his injuries and their alleged effects. There is the allegation in the notice of civil claim that he suffered a loss of future income and a cost of future care, and in my view the report of the occupational therapist is necessary in order to prove that - the necessary causation, the causal link between his alleged injuries and his ability to earn an income, and medical costs, into the future.

Similarly, in the case at bar, the notice of civil claim alleges that the plaintiff has suffered a loss of income, loss of earning capacity, future income loss, and inability to perform household tasks. She has the burden of proving the causal link between her alleged injuries and her claimed losses.

[22] I am also satisfied that this plaintiff would be unable, without undue hardship, to incur the disbursements that are the subject of this application were those disbursements not excluded, as required by subsection (9)(b)(iii). The plaintiff earns less than that of someone working full time at minimum wage. Her income is such that she would not be able to incur even modest expenses without undue hardship.

[23] Where the plaintiff faces greater difficulty is with respect to subsection (9)(b)(i), which requires evidence that there is a reasonable risk that the total amount of disbursements the party intends to incur to resolve the vehicle injury proceeding will exceed the disbursements limit. There is a complete lack of evidence with respect to the total amount of disbursements that the plaintiff intends to incur. As noted previously, there is no evidence of the anticipated amount of the disbursements that are the subject of this application, nor is there any evidence of the disbursements incurred to date or other disbursements that the plaintiff expects to incur in the future.

[24] Likewise, there is a dearth of evidence with respect to what the disbursement limit may be. The plaintiff has not attempted to quantify her losses or potential damages award for the purpose of this application. The only evidence relied on by the plaintiff is contained in the hearsay evidence from a legal assistant who says that defendant's counsel made an informal settlement offer on January 9, 2024.

[25] Without disclosing the specifics of that without prejudice offer, plaintiff's counsel submits that if the six percent cap is applied to that offer, the cost of a single medical assessment would exceed the cap. As the defendant rightly points out, a settlement offer made for the

purpose of avoiding a trial, and particularly at this stage of the litigation being prior to the deadline for the exchange of expert reports, is likely lower than the damages that may be awarded to the plaintiff following a trial. In addition, plaintiff would not need to incur the disbursements at issue if she accepted the offer.

[26] Given the lack of evidence before me on this point, I cannot find that there is a reasonable risk that the total amount of disbursements the plaintiff intends to incur will exceed the disbursement limit. The plaintiff has simply not provided the evidence that she is required to provide pursuant to subsection (9)(b)(i).

[27] Returning to subsection (8)(b), without evidence of the risk that the plaintiff faces, I am unable to undertake the balancing exercise required to determine whether the plaintiff would suffer disproportionate prejudice.

[28] Accordingly, based on insufficient evidence being provided, the plaintiff's application is dismissed.

[29] Cost will follow the event.

"Associate Judge Hughes"

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/24/01/2024BCSC0108.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/garcia-v-gill-2024-bcsc-108>

Prepared on 25 October 2026 · Esheria