

CANADA / JUDGMENT

Gill v. Bhullar

2015 BCSC 851

COURT

Supreme Court of British Columbia

DECIDED

1 May 2015

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

2015 BCSC 851 Gill v. Bhuller

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gill v. Bhuller,

2015 BCSC 851

Date: 20150501

Docket: M127347

Registry: Vancouver

Between:

Raghbir Kaur Gill

Plaintiff

And

Gursewak Singh Bhuller

Ranjit Singh Khangura

Defendants

Before: The Honourable Mr. Justice Macintosh

Oral Reasons for Judgment

Counsel for the Plaintiff:

T.F. Braidwood

Z.J.D. Vilvang

Counsel for the Defendants:

P.A. Mazzone

L. Gullett

Place and Date of Trial:

Vancouver, B.C.

April 13-17 and 20, 2015

Place and Date of Judgment:

Vancouver, B.C.

May 1, 2015

Introduction and Overview

- [1] The defendants admit their liability to Ms. Ronnie Gill for her injuries from a motor vehicle accident on December 23, 2010. The defendants' vehicle struck the passenger's side of the vehicle Ms. Gill was driving. After the accident, Ms. Gill carried on with her day, much as she would have without the accident. She experienced her first symptoms on the following day. These reasons are confined to assessing Ms. Gill's damages.
- [2] At least three factors are helpful for Ms. Gill in her claim.
- [3] All her life, she has been a hard, capable and enthusiastic worker. At times when she was growing up, where other young people might have had one job outside of school hours, she would find two or even three. She is still that way about working, insofar as her health permits. Her work ethic gives her credibility here. When she says that she would work harder if her pain did not get in the way, her exceptional work history serves to corroborate that.
- [4] Second, Ms. Gill's claim for past loss of earning capacity can be measured with unusual accuracy. She had a written employment agreement setting out what she was to earn from 2011 to 2015. As a result of the accident in December 2010, her employer reduced her earnings to reflect her diminished working capacity. Ms. Gill thus brings to the Court a template for measuring her past wage loss.
- [5] Third, there is a substantial degree of common ground in the medical evidence to support the conclusion that Ms. Gill indeed suffers pain, even though it is largely self-reported, and that her pain is likely to be permanent. The well-known caution of McEachern C.J. in *Price v. Kostyba*, 1982 CanLII 36 (B.C.S.C.), calling for vigilance in accepting subjective reports of pain as a basis for compensation, does not lead to a finding against Ms. Gill on the facts of this case. She was believable as a witness and, as I have said, the medical evidence is largely supportive of her position.

Further Facts

[6] Mr. Rana Khalik has operated BC Currency Exchange Inc., and other businesses, from 2000 to the present. He met Ms. Gill in 2005 and he retained her from time to time as an accountant and business advisor between 2007 and 2010. Ms. Gill had earned her Certified Management Accounting certificate in 2005. Before then, she had completed all but one course required for her BA at UBC, and had worked in several businesses performing bookkeeping, accounting and management tasks. She has an aptitude for accounting and for business management and planning. Today, she is 46.

[7] Mr. Khalik, on behalf of BC Currency Exchange, entered an employment contract with Ms. Gill dated September 24, 2010. She was to work for the company and other businesses of Mr. Khalik from 2011 to 2015 at set monthly salaries as follows:

2011 - \$10,000

2012 - \$11,000

2013 - \$13,000

2014 - \$15,000

2015 - \$15,000

[8] However, early in 2011, Ms. Gill began to suffer symptoms from the accident in December 2010. She felt and complained of pain which eventually centered in her left shoulder area and the left side of her neck. She is left-handed. Her work calls for significant hours at a keyboard, whether the particular function is data entry, accounting, or management and business planning. I gather the keyboard work is most directly required for data entry and accounting, but it is needed for her other tasks as well. The keyboard work can be painful for her, but Ms. Gill's pain has not confined itself to when she is on the keyboard. The pain also visits her at other times in her work. She consumes Advil for the pain, often in large quantities, and she has worked through serious pain from time to time when BC Currency Exchange has had particular projects which needed to be done on deadline. Her perseverance on those occasions does not weaken her claim for lost wages. It instead demonstrates her stoicism and dedication.

[9] Ms. Gill's sister is also trained in bookkeeping. Mr. Khalik has had to hire her to do some of the work Ms. Gill herself was expected to perform under her contract with BC Currency Exchange, but which she could not do because of her ongoing pain.

[10] Ms. Gill's sister testified. Ms. Gill's husband testified. Another employer of Ms. Gill, Richard Langfield, testified as well. They all said the same things. Ms. Gill, before the accident, was extremely dedicated to every job she undertook. She worked long hours with enthusiasm and untiring energy. At home, she was an active mother and homemaker. After the accident, beginning in 2011, lasting until now, Ms. Gill's work capacity has diminished markedly. As she said in her testimony, and as these other witnesses said, she endures pain since the

accident which makes it impossible for her to perform in the workplace as she did before.

Past Loss of Earning Capacity

- [11] Mr. Khalik, in the course of 2011, soon came to discover that Ms. Gill's work performance was not what he had bargained for and was not what it had been when he retained her in 2007-2010. In the result, he negotiated with her to amend her employment contract by reducing her pay to reflect the reduced hours she was able to work. In March of 2011, he wanted to reduce her pay to \$4,500 a month, down from \$10,000. After negotiation with her, the two settled on \$4,800 per month. As a result, from then until the time of trial, Ms. Gill has continued to work at BC Currency Exchange, but has continued to do so at reduced monthly salaries compared with those listed above from the written employment agreement for 2011 to 2015.
- [12] She and Mr. Khalik have negotiated periodic increases, but never to the levels Ms. Gill would have earned from the salaries agreed to in the written employment agreement.
- [13] Ms. Gill's claim for past loss of earning capacity, from 2011 to April 15, 2015, is \$300,000. That figure appears on its face to be rounded, but it is not. Instead, it is the precise difference between what Ms. Gill was to receive from 2011 to April 15, 2015, under her written employment agreement, and the reduced amounts she was paid in fact for her employment with BC Currency Exchange over the same period.
- [14] Although, as will be seen below in these reasons, the defendants acknowledge that Ms. Gill is entitled to somewhere between \$45,000 and \$65,000 for pain and suffering, they submit she is entitled to nothing for past wage loss. Yet on all the evidence, she has been a virtual workaholic for most of her life. It would be incongruous, in my view, that someone devoted to hard work and entitled to significant compensation for pain and suffering would not be suffering so as to affect her earnings as well. Although it would be possible, at least in theory, for Ms. Gill to be enduring pain and suffering without that burden affecting her ability to earn, it would be most unlikely in her case.
- [15] I accept Ms. Gill's claim of \$300,000 as her gross claim under this head of damages, and ask counsel to determine the applicable income tax deduction.
- [16] Ms. Gill had other employment ongoing, from 2011 onward, through other businesses she operated on her own or in her family. However, she planned to and did reduce her output and earnings in those other businesses when she began with BC Currency Exchange in 2011. It cannot be reasonably suggested, in my view, that she should have ramped up those other ventures to offset her diminished earnings at BC Currency Exchange. She was no more capable of working harder in those other businesses than she was at BC Currency Exchange.
- [17] Nor would it be reasonable to conclude that Mr. Khalik and Ms. Gill in some manner colluded to reduce her compensation at BC Currency Exchange in order to increase her claim in this action. Mr. Khalik appeared to be an honest witness and his integrity was not

challenged in cross-examination. Equally, Ms. Gill would not voluntarily endure a pay reduction in her employment on the assumption she could recover that lost income through damages from this trial. I did not sense any dishonesty which would be a necessary element to support that thesis, and the risk of such a strategy would be too great to employ, in any event.

- [18] There was no dispute before me about the legal principles for determining past loss of earning capacity. I merely cite here *Adamson v. Charity*, 2007 BCSC 671 at paras. 251-254, for the applicable principles, but conclude this part of these reasons simply by saying that the dispute was factual and not legal.

Medical Evidence, Functional Capacity Evidence and Ms. Gill's Credibility

- [19] Dr. Mark Adrian and Louise Craig were called by Ms. Gill. The defence called Dr. Eric Calvert.

- [20] Dr. Adrian is a physiatrist. He practises in physical medicine and rehabilitation. He assessed Ms. Gill in December of last year. Ms. Gill's complaints to him about her symptoms and the results of physical testing matched known medical conditions. There was nothing in Dr. Adrian's evidence or in any of the medical testimony to indicate that Ms. Gill malingered in any way. That accords with the impression she made during her own testimony. She is not a complainer, by which I mean that she never gave the impression she was overstating in any way her symptoms or her problems from the accident.

- [21] As Dr. Adrian expressed in his written report:

In Ms. Gill's situation, her description of her neck pain symptoms are consistent with suffering an injury to the spinal tissues of the neck as described above. The physical examination findings are consistent with the symptoms that Ms. Gill experiences; diagnosis of mechanical neck pain; and injuries suffered in the accident.

- [22] Dr. Adrian diagnosed Ms. Gill as having mechanical neck pain and soft-tissue pain in the left shoulder area. Regarding the mechanical neck pain, he opined that the neck injury is likely the source of Ms. Gill's headaches and shoulder pain as referred pain. He attributed the neck pain to the accident. He testified also that the degeneration Ms. Gill had in her spine was common for someone of her age and that her degenerative changes were not the cause of her pain or symptoms.

- [23] Dr. Adrian's prognosis for Ms. Gill, contained in his report, is as follows:

... She experiences persistent, regularly occurring disabling pain involving the neck and left shoulder girdle. The prognosis for further recovery of injuries suffered in the accident over time is poor. It is likely that the injuries suffered in the accident will undergo progressive deterioration over time. Due to Ms. Gill's neck and left shoulder girdle injuries, her neck and left shoulder girdle are vulnerable to injuries in the future.

- [24] Louise Craig is a physiotherapist who evaluated Ms. Gill's functional capacity. She saw Ms. Gill in July of 2014. Ms. Craig found that Ms. Gill's reports of pain and dysfunction were consistent with Ms. Craig's findings, and Ms. Craig considered Ms. Gill's self-reporting to be reliable. Ms. Craig concluded from her testing that Ms. Gill's pain and diminished function reduce her endurance for tasks essential to her work as an accountant and as a chief financial officer.
- [25] I was impressed by the testimony of Dr. Calvert called by the defence, because he was notably candid in his assessment of Ms. Gill, in keeping with the ethical responsibilities of an expert witness. He accepted that she suffers ongoing pain. He formed no impression that she malingers and he believed that she is genuine in searching for the cause of her problems. He accepts that it is unlikely Ms. Gill's symptoms will go away, and he can only speculate that she may see improvement.
- [26] The subheading for this part of these reasons includes Ms. Gill's credibility. The defence, in its skilful and measured cross-examination of Ms. Gill, established that her income tax treatment of her own or her accounting clients' expenses is sometimes aggressive, to a point at least bordering on evasion. As I understood the submissions, the defence invited me to proceed from reaching that conclusion about Ms. Gill's tax avoidance strategies to a determination that she is untruthful or evasive as a witness in this case. I cannot accept that invitation. Ms. Gill was forthright in stating her position on tax planning. While those positions may eventually be found by the tax authorities to be offside, they do not, in my view, translate to a conclusion of Ms. Gill being dishonest in describing her problems stemming from the accident.
- [27] The same conclusion follows in my view regarding the fact that Ms. Gill sometimes sought to hide assets from her husband over several years when their marriage was vulnerable and might have ended. Ms. Gill was forthright in her testimony about her strategies with her husband, such that I inferred no dishonesty in what she said about her pain and suffering and reduced ability to work.
- [28] The final point the defence made in addressing Ms. Gill's credibility was an apparent discrepancy between her work hours, as stated at trial, and her work hours as reported to a kinesiologist in March of this year or to Dr. Calvert in April of last year. I do not see stark inconsistencies there. As noted above, Ms. Gill has worked relatively long hours at some times after the accident, despite her pain, when it was essential that she perform a particular task.
- [29] The question of credibility in the context of clinical records was discussed in *Edmondson v. Payer*, 2011 BCSC 118 at paras. 34-37, and 2012 BCCA 114. I adopt observations expressed in those decisions about seeming inconsistencies between clinical records and evidence at trial, and I do not reach any adverse credibility finding against Ms. Gill under that analysis.

Non-Pecuniary Damages

- [30] Above I noted that the defence acknowledges Ms. Gill is entitled to non-pecuniary damages in a range between \$45,000 and \$65,000. The defence pointed to the relevant factors for this assessment as found in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, and cited the six following decisions which contained facts comparable to those at bar: *Redl v. Sellin*, 2013 BCSC 581; *MacDonald v. Kemp*, 2014 BCSC 1079; *Amini v. Mondragaon*, 2014 BCSC 1590; *Bulatovic v. Siebert*, 2013 BCSC 240; *Klim v. Purdy*, 2014 BCSC 578; and *Jorgensen v. Coonce*, 2013 BCSC 158.
- [31] When the facts in those decisions are examined, it appears to me that the upper limit of the range proposed by the defence, that is \$65,000, is the more reasonable end of the spectrum to consider for application to the facts at bar.
- [32] Ms. Gill asks for \$100,000 under this head. Her counsel also relies on *Stapley*, cited above, and on the two following cases addressing comparable facts: *Carroll v. Hunter*, 2014 BCSC 2193, and *Ahonen v. Thauli*, 2013 BCSC 1607, in each of which \$100,000 was awarded for non-pecuniary damages.
- [33] I do not intend to analyze here the cases cited above. The eight particular cases cited, six by the defence and two by the plaintiff, are instructive for determining the appropriate award here, by which I simply mean that the facts they addressed are readily comparable to those at bar. I consider *Carroll*, cited above, to provide particular assistance. There, the award of \$100,000 was reduced by 10 percent for a reason not present before me. I view *Carroll* as moving upward the appropriate award here, and I order non-pecuniary damages of \$75,000.

Future Loss of Earning Capacity

- [34] Under this head, as was the case with the claim for past lost earnings, Ms. Gill asks for \$300,000 and the defence says there should be no damages awarded.
- [35] Ms. Gill's counsel reminds us that she is likely to have pain symptoms permanently. As noted earlier, she is only 46. Given her intensive work history before the accident, her counsel submits \$300,000 to be a low number for diminished future earning capacity. He says that \$300,000 can be viewed as representing two years of lost earnings at \$150,000 per year. He relies on the majority judgment in *Pallos v. ICBC*, [1995] 3 W.W.R. 728 (B.C.C.A.), for authorizing that approach. He derives \$300,000 as being on the low side by presenting several analyses. Here again, the legal principles do not appear to be in issue. Counsel cited *Perren v. Lalari*, 2010 BCCA 140, and *Rajan v. Hudon*, 2014 BCSC 1678 at paras. 238-241. The factual question which the law requires to be asked here is whether there is a real and substantial possibility of a future event leading to an income loss. Counsel are agreed that what is called the capital asset approach to determining future lost earning capacity should be employed, because the loss is not readily measurable. It will be recalled that Ms. Gill's employment contract with BC Currency Exchange expires this year.

[36] With that in mind, Ms. Gill's counsel submits the following analyses, and I quote from his argument at paras. 129-135:

129. It is suggested that in measuring loss of earning capacity on the basis of the capital asset approach, as opposed to the loss of earnings approach, it is useful to consider present values of several types of earnings streams.
130. First, the plaintiff has off loaded the bookkeeping aspect of her occupation. That is replaced by Lucky, at about \$1,500-30000 per month, or 18,000 to 36,000. Ms. Gill is 47. The multiplier for the present value of this stream of money to age 55 and 65 is at Exhibit 6, Tab 4 and results in these amounts:

Annual off loaded booking @18,000

Annual off loaded booking @ 36,000

To age 65

$$18,000 \times 15,958/1000 = 287,244$$

$$36,000 \times 15,958/1000 = 574,488$$

To age 55

$$18,000 \times 8,112/1000 = 146,016$$

$$36,000 \times 8,112/1000 = 292,032$$

131. If her pre MVA earning capacity was \$150,000 - 200,000, and she lost 10% of that, the present value of that stream of money to age 55 and 65 is as follows:

10% of annual earnings of 150,000

10% of annual earnings of 200,000

To age 65

$$15,000 \times 15,958/1000 = 239,000$$

$$20,000 \times 15,958/1000 = 319,160$$

To age 55

$$15,000 \times 8,112/1000 = 121,680$$

$$20,000 \times 8,112/1000 = 162,000$$

132. If she lost 20% of her annual earnings, these numbers double. So the smallest number would be this. To age 55, assuming 150,000 annual earnings, the amount is $2 \times 121,680 = 243,000$. For 200,000 annual earnings to age 55 it is $162,000 \times 2 = 324,000$.

133. Thus the highest numbers to age 65 are about 440,000 to 640,000.

134. It is suggested that a multiple of years of annual earnings is the appropriate way to assess the loss of future earning capacity for Ms. Gill. Two years is the claim. The evidence supports actual annual earning capacity to be \$150,000 to \$200,000 per year. This results in \$300,000 - \$400,000. Taking into account any negative contingencies, ie. retiring early, becoming sick, her unrelated back issues, etc, the claim is \$300,000.
135. It suggested the present value of the various earning streams set out above serves as a good point of reference, or quality check, to justify the claim of \$300,000.
- [37] I accept that submission. Reasoning from the guidance provided by Perren cited above, there is, in my view, a real and substantial possibility that Ms. Gill's continuing pain will lead to a loss of income over the rest of her probable working life. The medical evidence tendered by both sides demonstrates that the pain probably will never disappear. Given Ms. Gill's lifelong focus on hard work, it follows, in my view, that the pain is bound to hamper her work performance in the future, as it has in the past.
- [38] Earlier I found that Ms. Gill's compensation for wage loss in the past four years should be \$300,000. The same measure for her loss of earning capacity in the future, probably extending for about 20 years, is, in my view, a realistic if not conservative assessment. The fact that this sum has been characterized as two years' loss times \$150,000 per year is neither here nor there. The hallmark of the law for determining future lost earning capacity is flexibility. That cannot be surprising. Determining what will happen, as opposed to what has happened, let alone measuring what will happen in compensation, is inherently difficult.
- [39] The only other point I include here is that Ms. Gill has tried to improve her condition. She has had chiropractic treatment, physiotherapy and massage therapy. Treatments have been often painful and generally unproductive. It is possible that future treatment, including better physical conditioning and ergonomic support at work, will help her, but I do not conclude from the evidence that Ms. Gill has failed to take reasonable steps to ameliorate her circumstances. (This point of course informs the awards of damages under the three heads I have addressed above, even though I have included it only here.)

Cost of Future Care and Special Damages

- [40] In keeping with this Court's decision in *Stull v. Cunningham*, 2013 BCSC 1140 at para. 176, the parties are in agreement that Ms. Gill receive \$1,750 toward the cost of future care. Ms. Gill seeks an additional \$7,588 to pay for physiotherapy treatment to age 80. I award her \$3,000 for physiotherapy, for a total of \$4,750 as costs of future care.
- [41] Ms. Gill filed Exhibit 17 in support of her claim of \$4,601 for special damages, after adjusting the exhibit with one \$400 addition and one deletion of \$2,292. The defence agrees to \$1,130 of her claim under this head and argues that the other claimed expenses are unsupported by medical opinion, direction, or prescription. I accept that submission and order special damages of \$1,130.

Summary

[42] I award damages as follows:

- (1) past loss of earning capacity, \$300,000, with pre-judgment interest to be determined, and the income tax deduction to be determined, with liberty to apply to address those issues if necessary;
- (2) non-pecuniary damages, \$75,000;
- (3) loss of future earning capacity, \$300,000;
- (4) cost of future care, \$4,750; and
- (5) special damages, \$1,130.

[43] Ms. Gill is entitled to her costs on the ordinary scale, unless there is any factor affecting costs I am not aware of.

[44] I wish to conclude by thanking counsel for presenting and defending the case well and for fully assisting the Court.

"Macintosh 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/15/08/2015BCSC0851.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/gill-v-bhullar-2015>

Prepared on 28 October 2026 · Esheria