
CANADA / JUDGMENT

Haroon v. Basran

2015 BCSC 794

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 794 Haroon v. Basran

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Haroon v. Basran,

2015 BCSC 794

Date: 20150513

Docket: M152021

Registry: New Westminster

Between:

Mahnaaz Haroon

Plaintiff

And

Manjit Basran and Manpreet Kaur Basran

Defendants

Before: The Honourable Mr. Justice Crawford

Reasons for Judgment

Counsel for the Plaintiff:

H.S. Nirwan

Counsel for the Defendants:

L. Sandhu and

H.A. Blair

Place and Date of Trial:

New Westminster, B.C.

October 29 - 31, 2014

Place and Date of Judgment:

New Westminster, B.C.

May 13, 2015

Introduction

- [1] Mrs. Haroon was injured in a motor vehicle accident that occurred on June 11, 2011 in the Wal-Mart parking lot on 88th Avenue in Surrey.
- [2] Mrs. Haroon was then age 27. She had been married some seven years and living in Canada since 2004. In the rear-seat of her Corolla motor vehicle was her son, Zaeen, who was then some two years, nine months, and who was seated in his car seat.
- [3] The defendant's Lincoln pick-up truck went through a stop sign and struck Mrs. Haroon's Corolla motor vehicle in the right rear quarter panel, and she said it diverted her path into the oncoming lane and she came to a stop.
- [4] She said she was shaken up. Calls were made to ICBC and to her husband who was on the scene shortly thereafter. Their family friend drove her home as she was too shaken up to drive, while Mr. Haroon drove the Corolla back to their basement suite.
- [5] Liability is not in issue.

Mrs. Haroon's Work Place

- [6] Mrs. Haroon was working at a Tim Horton's outlet. She was scheduled to work that afternoon and so she went in to see her manager, Ms. Rickard, following the accident. She said she had been in a motor vehicle accident and Ms. Rickard recalled Mrs. Haroon saying although she was not injured she was shaken up as her child had been in the car at the time of the accident.
- [7] Ms. Rickard gave her the day off and suggested she see a doctor.
- [8] On June 13th Mrs. Haroon came in to work saying she was not feeling well and Ms. Rickard asked her to bring in a doctor's note. Mrs. Haroon went to see the family doctor, Dr. Sianchar.
- [9] Dr. Sianchar provided a note which read "advised isolation and time off work for two to four days for flu like illness".

- [10] Dr. Sianchar's medical record noted the complaint of a motor vehicle accident a few days ago, and observed Mrs. Haroon was complaining of back pain, appeared well, was able to get up easily and walk normally, had a non-tender back, no bruise, and no swelling.
- [11] As well, Mrs. Haroon had complained of fever and coughing for two days.
- [12] Dr. Sianchar did not want to follow up on the motor vehicle accident, and the following day Mrs. Haroon saw Dr. Towill.
- [13] Dr. Towill noted complaints of neck, shoulder and back pain and diagnosed cervical, thoracic, and lumbar strain. He prescribed Tylenol and Flexeril, and provided a note which read: "off work until 6/20/2011 due to MVA injuries: upon return to work light duties until further notice".
- [14] By the time Mrs. Haroon took Dr. Towill's note into work, the following week's schedule had been set and Mrs. Haroon started work on June 28, 2011 on full time shifts.
- [15] She worked until November 20th when her employment was terminated.

Evidence

Mr. Haroon

- [16] Mr. Haroon married his wife in Fiji in September 2003 and sponsored her to Canada the following year.
- [17] He described his wife as being outgoing, fitting in well with his family, and hardworking, both in the home and on her job sites.
- [18] Their son was born in September 2008 and he described her as a very sincere mother, scheduling him into playdates, and having a close relationship to all family members.
- [19] By the time of the accident they had moved from his parents' house to a basement suite, and prior to the accident he said his wife did all the house work and he did none.
- [20] Post-accident he said his wife complained of pain and could not bend over or move things around. He started to take over her chores, including cooking and cleaning, and at the time of trial he said he was working around the house 45 minutes to 90 minutes per day washing dishes, laundry, and caring for their son, who was six at the time of the trial.
- [21] He said at the time of trial Mrs. Haroon was still having pain spasms and he would massage her neck and back. She said she was in pain and irritable and would snap at small things. He described her personality as being insular, that she no longer attended his Saturday soccer games and did not leave the house as she was in pain. He did not want to be around her and they do not go out much. He said he sees the effects of the accident on her and tries to accommodate her and let her rest.

- [22] In cross-examination he said the arrival of their son in 2008 made little impact on their lifestyle. He did not describe himself as a hands-on father as his own mother, two sisters and his wife would care for Zaeen.
- [23] He agreed at the time of the accident he was working part-time so he helped care for his son.
- [24] He said the change from his parents' house to the basement suite made little change as his parents still provided care for Zaeen. He said there had been no impact on their time together.

Mrs. Haroon

- [25] Mrs. Haroon described her life in 2011 as busy and rewarding. To a certain degree their routine revolved around caring for their son, working, spending time with relatives, attending her husband's soccer games on the weekends and playdates and the like with their son. She had a good and happy relationship with her husband.
- [26] The accident was unexpected and drove her car into the oncoming lane of traffic. She pulled over and said she was shaking.
- [27] After the authorities were called, her husband was called and was soon there with a friend and he took her home.
- [28] After that she went to work but said she was crying and her manager said to go home and come back after two days.
- [29] The next day she felt the onset of back pain and dizziness.
- [30] I have to note I cannot find any mention of the initial doctor or chiropractic reports of any headaches or dizziness.
- [31] She said that she saw Dr. Sianchar on June 14, 2011 and told her she was dizzy, having headaches and back pain, but the doctor gave her a note making no mention of the motor vehicle accident.
- [32] As Dr. Sianchar "didn't do motor vehicle accidents", she then went to see Dr. Towill on June 15, 2011 and he listened to her and gave her a note saying she could be off work for a week. She took the note to her manager at Tim Horton's.
- [33] She said she was ready to return to work on June 21st and saw Dr. Towill on June 20th. Dr. Towill's clinical note reads "RTW - full days" and suggested she "go to massage asap".
- [34] Dr. Towill's note to the employer of June 20, 2011 reads "May return to work tomorrow. Limit lifting to 50 lbs. May work full days".
- [35] The manager said the schedule had been set and Mrs. Haroon returned to work June 28th.

- [36] Mrs. Haroon was then asked why after having seen Dr. Towill and Dr. Sianchar she then saw Dr. Shah in 2014, to which she replied Dr. Towill had left the Scott Road clinic and she had a bad experience with another doctor at the same clinic. As well, another doctor made "no suggestions" but had sent her to x-ray and massage. She said the doctors did not pay attention to her or her pain.
- [37] In contrast she said Dr. Towill understood and sent her to chiropractic and massage therapy and provided medications, whereas when she met Dr. Sianchar he was not listening and she stopped going to see him as he was no help.
- [38] She said one doctor listened but told her the pain was going to be with her and would not send her for x-rays, and that with the pain "she would have to suffer", which she found very upsetting. She said after that she said the doctors were not helping and she did not see any doctors in 2013.
- [39] Then in June 2014 she found Dr. Shah, and then she started seeing him.
- [40] With respect to her work at Tim Horton's she said she was in pain, had headaches and nausea and asked for time off, and sometimes worked short days and took a few days off, but after a few weeks she got back to regular duties. However, she said she did get help with baking and cleanup when heavy things had to be lifted.
- [41] She said she did as she was asked at work.
- [42] On November 20th, Mrs. Haroon said she went into work and her supervisor called her into the office and said she was being terminated. The supervisor said that on November 18th she had not taken product out of the freezer for baking for the next day and because of that she was being terminated. Mrs. Haroon complained no one told her to move the box from the freezer on the Friday.
- [43] She said she was very upset but happy that she was off because she found the job too much.
- [44] In January 2012 she obtained work at Shoppers Drug Mart (who had been a previous employer) working as a cashier on probation work 20 - 25 hours per week. That became full time in April 2012. She said although she was in pain, the family needed the financial help.
- [45] In October 2012 she said she went back to part-time work because while she still liked to work, she was still in pain. She said her low back would cause her pain when she was standing, she still had shoulder and neck pain, and standing for eight hours was too much.
- [46] She said she told her employer it was a "personal matter" and she wanted to go part-time, and she got weekend work.
- [47] She said she was getting \$10.50 per hour from January to April for 20 - 25 hours a week, working as a cashier and if not busy she was stocking shelves. Then from April until October she worked full time 35 - 37 hours per week, until October 20, 2012.

- [48] She said she never complained to her bosses at Shoppers Drug Mart of any health issues. She says that was because of the "bad experience" she had at Tim Horton's, where she had been obliged to lift heavy materials.
- [49] In 2014 she obtained employment at Children's Hospital, initially casual work doing mail sorting and delivering mail to the doctor's offices. That soon turned into full time work, Monday - Friday, 8:00 a.m. to 4:00 p.m. at \$17.50 per hour. As well she continued the part-time weekend work at Shoppers Drug Mart.
- [50] In terms of medical treatment, she saw Dr. Towill who referred her to massage therapy at Legacy Sports and Massage and that was where the chiropractor, Dr. Dhaliwal, also provided treatment.
- [51] In 2011 she also had one physiotherapy treatment at Sungod.
- [52] She said after 2012 she could not afford any treatment.
- [53] At Dr. Shah's office in 2014 she saw a chiropractor, Dr. Jang, and had eight treatments. She agreed the treatments helped her but only for a day or so and the pain would return.
- [54] She then listed various expenses she had been put to for painkillers, massage, physiotherapy, and medical notes totalling \$605.78.
- [55] Mrs. Haroon stated the effect of her injuries took away her active and social life. The pain was such that she had no energy for six months, especially due to pain on her low back and right side into her right leg, and it could move to her left side. She said some days are okay and some days are not. Some days there was foot pain and the pain would be more than 10 plus, and very severe. But she had to work because of her family responsibilities.
- [56] She said she is still in pain although on some days she can feel good but on other days she can have back pain just lying in bed.
- [57] As well she complains of headache pain, cannot look down, and that lights affect her.
- [58] She says she still cannot stand for more than 15 minutes.
- [59] She said Advil will help for six to eight hours.
- [60] She says she is not happy because she is not enjoying her husband's sports or going to movies. She does not treat her son the same way and would push him away which caused him to say he is being rejected. If she fails to go to a soccer game he says she should have been there and he tells her she is always complaining.
- [61] She is hoping to get a job in the hospital on payroll but says she cannot sit or stand for more than 15 minutes at a time and does not want to depend on medication. She complains of a stabbing pain in her low back.

- [62] She said cannot go to work but she does not feel strong within herself and her future does not appear as happy as she expected.

Cross-Examination

- [63] Mrs. Haroon agreed she complains of pain of nine on a ten point scale, ten days a month, and sometimes it is more than ten. She says it interferes with her sleep and that she cannot stand or sit more than 15 minutes. She said these symptoms have never improved and only got worse and that she can only take Advil, exercise, apply heat, and have chiropractic treatment.
- [64] She agreed she did not miss any work after returning to Tim Horton's on June 28, 2011.
- [65] She was unable to point to any documentation showing a loss in work.
- [66] The discipline records of Tim Horton's were produced. She agreed there were a series of records beginning April 27, 2011 for failure to move expired product; on October 22, 2011 for over production issues (which put her on notice for termination); on November 17, 2011 for failure to discard expired product; and on November 18, 2011 for failure to move food for the next shift.
- [67] Mrs. Haroon agreed those events had led to her termination.
- [68] She agreed none was related to her physical ability to do the job.
- [69] She had started work January 3, 2012 at Shoppers Drug Mart and passed probation in April. She agreed she was being described at Shoppers Drug Mart as "a great worker" who had good reviews, described as a team player, performance exceeding the standard, and able to help co-workers.
- [70] She agreed she told the Court she went part-time in October 2012 due to injuries but had not told her employer that. She agreed what she told her employer was that she did not have a babysitter to care for her son. She agreed on examination for discovery on September 22, 2014 that she had said the main reason for going part-time in 2012 was to provide care for her son: see transcript 37:181 - 38:185.
- [71] She agreed that since May 2014 she had been working weekends at Shoppers Drug Mart and full time in the mail room at the hospital for a total of 51 hours per week. She agreed she had not told her employers that she had injuries or limitations.
- [72] She agreed when she initially reported the car accident to Dr. Sianchar she also had flu symptoms for two days.
- [73] She agreed Dr. Towill had provided Flexeril and Naprosyn but on other occasions she had not filled prescriptions nor purchased the back brace he had suggested.

- [74] She agreed that the pharmacy records showed nothing in July and September 2011, though medications had been prescribed by Dr. Towill.
- [75] She agreed that although the Legacy Massage Group suggested lumbar support, that had not been obtained.
- [76] She agreed the massage therapy plan had been two times a week for seven weeks, but she had not gone for all the treatments.
- [77] With respect to Dr. Dhaliwal, although Dr. Dhaliwal's note provided for treatments two times per week for eight to ten weeks, she claimed she was not told that and only attended when she was told to. She disagreed there were two no-shows with Dr. Dhaliwal, saying she would have called in.
- [78] With respect to the IMS treatment dated September 26, 2012 she only attended once, but then claimed she had been told to go to Ladner for any further treatments. There was no clinical note to that effect.
- [79] She agreed Dr. Dhaliwal's notes referenced difficulties walking, sharp pain, and difficulties sleeping.
- [80] She said she did not go back to seeing Dr. Dhaliwal after the one IMS treatment because Dr. Dhaliwal did not tell her to come back, nor did she have any more money to pay for therapy.
- [81] She claimed she did not know Dr. Dhaliwal was to continue treatments until she was better. She agreed she did not have to pay Dr. Dhaliwal but did pay for massage therapy. She agreed there were 20 visits prescribed and she went to 11. She agreed she signed a consent form September 2, 2011 that provided she could continue until she was recovered from her injuries.
- [82] She read the consent form slowly in court and then said it was not explained to her, but it was her signature on the document.
- [83] She agreed Dr. Dhaliwal's discharge document said continuing rehabilitation was required but she did not remember that being said.
- [84] She agreed the symptoms reported related only to joint pain in the low back and piriformis.
- [85] She agreed she saw Dr. Dhaliwal five times in 2012 and then said she had paid for them but did not recall if Dr. Dhaliwal had told her to pay.
- [86] She did not recall stopping seeing Dr. Dhaliwal.
- [87] She agreed there was a report that her leg pain had improved but said that after a few hours the pain would return.
- [88] She had made no mention of an exercise rehabilitation program at Fit Body Athletics and Rehabilitation which began August 1, 2012 and ended October 12, 2012.

- [89] The intake form Mrs. Haroon completed noted household responsibilities shows "unable to perform" where she listed vacuuming, sweeping, mopping, and caring for the children, but did not reference washing dishes, cooking, grocery shopping, and lifting light/heavy weight objects.
- [90] She did complain of back pain and lower back pain. She noted her job as cashier involved bending, lifting, walking, reaching, and standing, but there were no functions she was unable to perform.
- [91] There were attendances for eight days in August and then seven days in September to September 26, 2012 but then two no-shows occurred.
- [92] The notes show a steady progress from stretches to mild exercises with focus on strengthening core muscles and leg muscles with variations and steady improvement. For instance, August 10, 2012 Mrs. Haroon said she was only feeling a little sore on the lower back but otherwise feeling okay.
- [93] On August 13 she complained of a bad lower back and on August 15 she was feeling better. By August 22 she said she was doing the stretches twice a week and was able to do more stretches. At the same time there is a steady increase in the exercise program at the facility, both in volume and variety, with repeated emphasis on the importance of stretching out and to continue to develop her strength by extension of her thoracic spine.
- [94] By September 10 she was reporting no pain; by September 12 much less pain. The kinesiologist noted steady progress and being able to take on more challenging work.
- [95] September 17 only showed neck and shoulder complaints.
- [96] On September 24 there was complaint of sharp pain on her right side and on the 26th there was complaint of pain into the buttock and thigh, with a note that she would still need to continue to improve her balance and strengthen her gluteus muscles.
- [97] After the steady progress listed, the attendances for October 1 and 2 were cancelled but an assessment was then done on October 12, 2012. It was noted all pain levels had decreased and the frequency and onset was much less. She described her pain level as four out of ten. The overall assessment was 70%.
- [98] When it was put to her that her pain assessments were "four out of ten" she immediately explained that she had "never scaled like that, I didn't say four out of ten".
- [99] She agreed that she had no further treatments until she saw a chiropractor in June 2014.
- [100] She did agree she saw a Dr. Hu. She saw him on April 4, 2013 and said that Dr. Towill had suggested him because of her trouble with the other Scott Road doctors.

- [101] Dr. Hu's note refers to a "rear-end" accident. She did not remember that. The note does mention ongoing low back pain with pain radiating to bilateral buttocks in both legs and was worse.
- [102] On examination the doctor noted tender paraspinal muscles in the low back but on straight leg raising, mild pain in the right buttock, but no pain radiating down the legs. The assessment was "mechanical back pain".
- [103] Mrs. Haroon was encouraged to stay active with swimming and yoga.
- [104] An x-ray of the lumbar spine April 10, 2013 showed no disc narrowing or other abnormality noted.
- [105] She reiterated the bad experiences she had had with the Scott Road doctors.
- [106] It was then drawn to her attention that she had seen Dr. Towill on April 11, 2014.
- [107] She was referred to Dr. Towill's note which was contrary to her evidence that she had complained he had not listened or made notes. Mrs. Haroon said "he talked harshly and told her to put up, that she will have to suffer". She said he was rude regarding the motor vehicle accident. She agreed that she had also seen him regarding ongoing abdominal pains.
- [108] She agreed she started seeing Dr. Shah in June 2014 and he reiterated the need for her to stretch and do her exercises in July and August.
- [109] Mrs. Haroon had started seeing Dr. Jang the chiropractor in July 2014. Pain in her jaw, knee, and foot was noted. She agreed it was the first time her jaw had been mentioned and she then said that her jaw pain came with migraines.
- [110] However, she agreed the first time she ever mentioned migraines was six months post-accident.
- [111] She agreed she saw Dr. Jang on July 17, 24, 29, and August 5, 2014.
- [112] She then went on a trip to Fiji with her husband from August 5 to September, 2014.
- [113] She agreed Dr. Jang's treatments helped her but only for the one day of therapy.
- [114] She agreed she told Dr. Shah and Dr. Jang that she got bumps on her neck but with treatment they went away, though they came back with headaches and migraines. With respect to her son saying he wanted to do something with her, it was suggested that she was now working two jobs and had less time for him. Mrs. Haroon said she told him that she needed to work to make more money and her son stated she should go to work.

- [115] Mrs. Haroon agreed her husband had been helping around the house but that she does like to "do it my way". However, "he had been there for me and given me a break". Asked if she still did the household chores, she said she did most of them and while he helps, she does it "my way".
- [116] She agreed Dr. Dhaliwal, the kinesiologist, Dr. Hu, Dr. Shah, and Dr. Jang had all told her to keep active and to keep stretching.
- [117] Questions were put as to cancelled appointments in 2011 and 2012. She agreed the note of Dr. Hu that she was going to massage and chiropractor was not true at that time in 2013.
- [118] A review of the work records at Tim Horton's did not show any diminishment in hours worked.
- [119] She was hopeful of obtaining a full time permanent position at Children's Hospital but there was no guarantee.
- [120] With respect to the trip to Fiji, she saw Dr. Jang two days before she went. She said she found the flight difficult. She said she was exhausted and in pain, so when she returned she did not go see Dr. Jang.
- [121] It was put to her that in 2012 at Fit Body she had put effort into the program and that had improved her symptoms. She agreed but said that the pain came back.
- [122] It was put to her that the deterioration was due to her not doing her stretches and exercises and she responded saying that if she had back pain she could not exercise, though she would keep trying.
- [123] In re-examination she described what she does in terms of stretches. With respect to the treatment document of September 2011 she agreed she signed the document, but she claimed she was not told that ICBC was paying. She claimed there was no review of the document with her, though she did agree she was told there would be 11 weeks of therapy. No one mentioned what degree of recovery.
- [124] With respect to the Sungod IMS therapy, she said the physiotherapist was relocating and she was not going to follow the physiotherapist to Ladner.
- [125] With respect to the Fit Body kinesiology reports she claimed that the reports were not reviewed with her.
- [126] She said she does stretches while she is at work and daily if she is not working.

Dr. Dhaliwal

- [127] Dr. Dhaliwal is a chiropractor. She initially saw Mrs. Haroon on July 27, 2011 and noted decreased lumbar and cervical spine, tightness in the lumbar muscles, and constriction in her spinal movement.

- [128] She mobilized and adjusted her spine noting Mrs. Haroon was in pain more in the lumbar area.
- [129] Her treatments continued until August 10th with the pain in the same areas. She started a treatment plan for treatments twice a week over two months. She noted complaints of only being able to stand for half an hour at a time. She agreed ICBC was paying for treatments.
- [130] She agreed there were visits on August 10, 17, 22 and 29, 2011, some no shows, and then attendances on September 2, 6, 9, 12, 19, 23, 2011 and October 12, 2011.
- [131] A referral was then made for intramuscular stimulation at Sungod Therapy.
- [132] The Sungod records simply show Mrs. Haroon attending once on September 29, 2011, but no follow up.
- [133] The initial report to ICBC by Dr. Dhaliwal of August 20, 2011 noted Mrs. Haroon was able to maintain usual activities but with pain, and was taking regular breaks. The treatment was chiropractic manipulation and mobilization with strengthening and stretching. The discharge summary of January 14, 2011 noted the ongoing complaint of left "sacroiliac joint pain with reference into left leg, possible piriformis syndrome causing referred pain," and that the patient would need continued rehabilitation.
- [134] The discharge status was "discharge due to non-compliance and non-attendance".
- [135] However, Mrs. Haroon returned to see Dr. Dhaliwal in July 2012, seeing her on July 9, 12, 16, and 23, and August 3, but then did not show up for subsequent appointments. The complaints were the same but on the right side, namely, continuing pain in the sacroiliac and right leg area.
- [136] Dr. Dhaliwal agreed she discussed the treatment plan with Mrs. Haroon and Mrs. Haroon did not complete the treatment plan, and she did not see her after August 2012.
- [137] In cross-examination she agreed there had been no report of headaches or nausea.
- [138] She agreed the plaintiff complained of pain in the left thigh upon palpitation.
- [139] She agreed the piriformis syndrome was consistent with the complaints of pain into the back of the leg and is due to the irritation of the sciatic nerve.

Dr. Sachit Shah

- [140] Dr. Shah provided the only medical legal report which is dated July 28, 2014.
- [141] Dr. Shah obtained his primary medical degree in 1985 at the University of Manchester and has been in a family practice since that time, in particular, from 1997 in Surrey.
- [142] He first saw Mrs. Haroon on June 14, 2014. He said he had reviewed the multiple records from previous treating physicians.

- [143] He found Mrs. Haroon's low back, thighs, hips and surrounding muscles tender and sore. There were complaints of neck pain and headaches, and pain in the low back and groin.
- [144] He noted previous diagnosis of piriformis muscle pain in the groin that had not improved. He noted full movement in the cervical spine and the lower back, but specific tenderness in various related areas. He noted some lower leg movement more limited on right than the left.
- [145] He noted during the time he had seen her in June and July 2014 there had been no progression.
- [146] He diagnosed a Grade 2 strain of the neck and lower and upper back, or soft tissue injury, and damage to the piriformis muscles bilaterally which on balance he said were caused by the June 11, 2011 motor vehicle accident.
- [147] He reported her as moving from Tim Horton's to Shoppers Drug Mart and now to the hospital.
- [148] He believed she would need chiropractic or physiotherapy treatment on an ongoing basis.
- [149] He was not aware of Mrs. Haroon's ongoing abdominal issues and agreed abdominal pain can cause back pain.
- [150] He agreed he had been told it was a rear-end accident and not a T-bone accident.
- [151] I note in one place he reports Mrs. Haroon's car being repaired while in another place in his report he says ICBC offered to write it off.
- [152] He said that the failure of Dr. Sianchar to note any tenderness, or swelling would not change his opinion, nor would the failure to note any neck or back pain at that time.
- [153] He did not know the number of chiropractors she had attended though he stated he had "reviewed multiple records of previous treating physicians". Nor did he know what massage or chiropractic treatments had been undertaken or the 15 sessions of kinesiology in 2012.
- [154] Nor was he aware that there had been no further medical therapies from September 2012 until mid-2014.
- [155] He agreed tenderness is the patient's subjective report but he had no written reference to testing the subjective report of the patient.
- [156] He agreed he had not diagnosed piriformis syndrome but had noted it in the reports forwarded to him and believed her symptoms were consistent i.e. back pain, sciatic pain in the leg, reduced rotation of the femur, and problems with sitting. He said there was no objective definite test for piriformis syndrome.
- [157] He agreed there was no gluteal atrophy.
- [158] He agrees walking can help as can sitting, but that was not consistent.

- [159] He agreed recovery should progress over time.
- [160] He agreed she had a mild lumbar strain but would differentiate that from piriformis syndrome due to the complaint of pain on rotation of the hip.
- [161] He suggested that it would not be immediately apparent to Dr. Sianchar on June 14, 2011 but could evolve over time. Likewise he suggested that was how a "compression injury" to the facet joint could occur.
- [162] As to disability he agreed there was no contraindication to her exercising and in fact he was encouraging more activity.
- [163] He agreed that was key to management of Mrs. Haroon's injuries that had been diagnosed and he expected more exercise would improve her symptoms. He agreed diligent attendance and recommenced treatments would assist Mrs. Haroon and she would recover more quickly should she do so.
- [164] With respect to the suggestion of compression injury, it was put to him that no neck symptoms were presented until five months post-accident. He agreed that would change his opinion in that regard i.e. neck symptoms should present quicker than five months.
- [165] He agreed there was no recommendation she not work or that she was limited in working.
- [166] He was not aware Mrs. Haroon had been working 21 hours at Shoppers Drug Mart and 37 hours at Children's Hospital. He agreed that if she was working that much it was not limiting her ability to do that much work.
- [167] He agreed that in his discussion with Mrs. Haroon on July 10, 2014 he had advised her a stretching program and exercise would be her main issue and that she had said she was doing that. He has repeated his advice to her and expects that will improve her symptoms. He disagreed that saying improvement in symptoms would not mean she had plateaued as he was of the opinion her symptoms were "present and flat".

Bianca Osa

- [168] Ms. Osa is a kinesiologist and at trial had qualified as a physiotherapist.
- [169] Ms. Osa took over the stretch and strengthening program at Fit Body in August and September 2012. She gave Mrs. Haroon a home exercise program. She did the October 12 assessment writing down Mrs. Haroon's answers to her questions. The list of body movements is her objective assessment and 70% improvement is what Mrs. Haroon reported. She agreed that the reports showed steady improvement but also reported pain. She agreed that Mrs. Haroon did well with the time and would benefit from more of that kind of programing.

Jasmine Rickard

- [170] Ms. Rickard was the store manager of the Tim Horton's.

- [171] She said Mrs. Haroon was a good worker with whom she enjoyed working.
- [172] She recalled the day of the accident she came in early for work but after being told she had been in a car accident and Mrs. Haroon saying she was shaken up and her son had been in the car, Ms. Rickard told her to take the next two days off.
- [173] She recalled Mrs. Haroon came back but went home with the flu and stomach upset. She asked her to get a doctor's note before she came back to work and took her off the schedule.
- [174] When the note came back, the week's schedule had been reset and Mrs. Haroon did not return to work until June 28.
- [175] She then reviewed the discipline record and explained the notes which are self-evident leading to the dismissal.
- [176] She said she would have put Mrs. Haroon on light duties on her return to work.
- [177] She then was asked to look at the doctor's notes on file and said she did not recall seeing them. She did say that if someone complained of stomach pains or flu symptoms she would let the employee go home.
- [178] She said she enjoyed working with Mrs. Haroon but she did not recall any complaints of pain to her or any of the others, nor lack of sleep or being nauseous post-accident.
- [179] In reviewing the documents it was noted that two of the incident reports were pre-accident and three post-accident and had nothing to do with Mrs. Haroon's ability to be at work.

Dr. Eric Jang, Chiropractor

- [180] Dr. Jang saw Mrs. Haroon initially on September 17, 2014 and had provided seven treatments, the last being on October 16, 2014.
- [181] He said the complaints were chronic pain but the focus on her neck and mid-back.
- [182] His treatments were with heat, inferential current, soft tissue therapy and stretches to improve range of movement.
- [183] Soft tissue therapy was done with massage machines and manual touching.
- [184] The charges for the first ten visits are paid by MSP at \$23 and after ten visits the charge is \$50 a session.
- [185] He agreed there was no treatment plan for hip or low back in his notes of June 24 and 30, 2014, or August 5, 2014.
- [186] Mrs. Haroon did not tell Dr. Jang that she was going to Fiji. He heard about it on October 9, 2014 when she complained of stiffness after prolonged sitting on the return flight. He noted those treatments were for the neck and thoracic area and not the low back and hips.

Discussion

- [187] While I am satisfied that Mrs. Haroon sustained soft tissue injuries in the accident on June 11, 2011, the assessment is made more complex due to a number of factors.
- [188] She was almost strident in asserting neck pain was ongoing at a very high rate, i.e. nine out of ten. When faced with her report in 2012 that she recorded a four out of ten after two months of Fit Body treatment, she denied such a scale report.
- [189] Mrs. Haroon's injury complaints are inconsistent with the hours she is able to work.
- [190] It is also apparent in looking at the records that after the Fit Body treatment in 2012 she continued to work full time at Shoppers Drug Mart until October and then reduced her work to care for her son.
- [191] Other than a single attendance in the whole of 2013 she did not see a doctor until mid-2014.
- [192] By that time she had then taken on two jobs working 51 hours a week.
- [193] It is no wonder then that her husband would say that he is doing much of the housework and chores at the time of trial if his wife was working 51 hours a week.
- [194] It is also some explanation for the reappearance of complaints of pain.
- [195] What is also of concern is complaints of pain and headaches that had not been reported over the first five months post-accident.
- [196] Also, in complaining to Dr. Shah she indicated that the accident had been the reason that she had lost her job at Tim Horton's when that was not the case.
- [197] I am satisfied that there is an ongoing chronic injury to the hip area but I am not satisfied regarding other ongoing complaints as being related to the motor vehicle accident.
- [198] As well, it is clear that a more rigorous stretching and exercise program as put forward by Fit Body had a very positive effect, so much so, there was no medical attendance for approximately 18 to 20 months, save on one occasion.
- [199] Thus, in my view, while there are ongoing chronic pain issues, they are substantially diminished when adequate medical treatment is provided and the medical recommendations are followed.

Plaintiff's Argument

- [200] It was submitted on behalf of the plaintiff that she could not pay for ongoing treatments, and could not follow the IMS therapist to Ladner. As well, she did not get along with the doctors, other than Dr. Towill at the Scott Road clinic, and felt that she did not want to see any more doctors, as in her view there was no progress.

- [201] Counsel noted Dr. Jang's notes did show improvement for 48 to 72 hours at a time after treatment, but that Dr. Shah opined Mrs. Haroon had plateaued.
- [202] Counsel noted there was no medical opinion as to treatment for the piriformis syndrome, save active stretching and exercise. It was conceded there were 16 sessions at Fit Body rehab but there had been a regression as soon as she stopped.
- [203] I do not recall this regression being the evidence of the plaintiff. In fact it would appear, save for the one visit to Dr. Hu in mid-2013 when there was a complaint of ongoing low back pain radiating into the buttocks and the legs, that no medical treatment or medication was sought from the fall of 2012 to mid-2014, when medical treatment was sought not long before the trial.
- [204] In the circumstances the plaintiff argued the defendants had failed to prove a failure to mitigate.
- [205] Counsel pointed to the substantial lifestyle change from being a fit and healthy 27 year old with a young child to one who could no longer sit long enough to go to movies or play with her child, swim or go to the park, or socialize. The previous upbeat and optimistic house wife was now vegetative and withdrawn.
- [206] Claims were then put forward for general damages of \$75,000 - \$90,000; lost housekeeping capacity at \$27,900 based on \$15 per hour for 1800 hours (I have no evidence of this); future housekeeping; lost wages \$65,000 - \$150,000; past wage loss of \$17,390, future lost capacity \$150,000, cost of future care \$70,000, and specials \$605.78.
- [207] Reference was made to a decision involving piriformis injury to a nurse: see *Hawkins v. Espiloy*, 2014 BCSC 1804. However, with respect that was an injury of far more severity, coupled with strongly supportive independent evidence. I found the decision of *Gray J in Bissonnette v. Horn*, 2012 BCSC 518 helpful. The court found the injuries resulted from a high impact collision, and the stoic plaintiff continued to suffer from the hip injury as well as disturbed sleep patterns, headaches anxiety and weight gain as well as taking daily medications. Her prognosis was guarded. The court awarded \$50,000 non-pecuniary damages.

Defendant's Argument

- [208] The defendants agree Mrs. Haroon sustained soft tissue injuries which were largely recovered at 16 months, and there was a minimal wage loss.
- [209] The defendants noted the plaintiff's tendency to exaggerate in court as to the severity of her injuries, and to blame loss of employment at Tim Horton's on the accident and likewise the reduction in time at Shoppers Drug Mart when in fact she had agreed in discovery that she reduced her hours to spend more time with her son.

- [210] As well, it was noted that Ms. Haroon was critical of the doctors who were not supportive of her and complained of their care or failure to take x-rays and otherwise make notes, which was belied by the doctor's clinical notes.
- [211] It was noted that she failed to attend on various treating persons such as Dr. Dhaliwal. Mrs. Haroon suggested she had stopped going because she could not afford to when in fact there was a contract to provide for her care with no cost to her. No answer had been made as to the failure to take up pain medications that had been prescribed.
- [212] Also the exaggerated pain references were noted and the fact that the injuries had expanded to include headaches, migraine and lower body injury.
- [213] The defendant submitted general damages of \$25,000 was appropriate; that if there was any allowance for housekeeping it was on very little evidence and that might best be dealt with by including such aspect in general damages; that there were ten days of lost earnings from June 11 - 28, 2011 and no subsequent loss due to the accident.
- [214] The plaintiff's claim for future loss of earning capacity depended on the Court finding a real possibility that Mrs. Haroon was affected by the injuries and therefore would work less, whereas by trial Mrs. Haroon was working 51 hours and Dr. Shah said that in spite of her injuries she was not limited in her work. Without medical opinion of less work ability there was no basis for future loss of earning capacity.
- [215] With respect to costs of future care, there was no medical evidence. It was also submitted that Mrs. Haroon was not following doctor's recommendations. Objection was taken to the specials presented.

Conclusion

- [216] I find Mrs. Haroon's complaints of low back injury due to the car accident are proven on balance.
- [217] As well on her earlier presentations she did have cervical and mid back soft tissue injuries but those resolved. The upper body injuries were largely diminished by 2012 and the ongoing injury to the low back was evidenced in the piriformis syndrome which does on occasion cause sciatic pain into the legs.
- [218] On the other hand it is evident that when a regular supervised program of stretches and exercise was undertaken as it was in 2012 that problem is largely diminished.
- [219] I am further satisfied that there has been a failure to properly and consistently follow the exercise programs suggested. A recurrent theme through all of the medical practitioners was the need to stretch, exercise and be active. It does seem inconsistent that Mrs. Haroon enjoys non-impact activity (swimming and yoga) that if added to the suggested stretches and exercises, would lead to diminished pain on her part.

- [220] Equally with respect to her household, she indicated that in fact she does participate in the household chores save for lifting. As she put it, she likes to do it "my way". I therefore propose as counsel suggested to add that aspect of the claim into general damages which I fix, after having considered the many cases cited by counsel on both sides at \$45,000.
- [221] There is no past wage loss proven save for the two weeks from June 11 - 28, 2011.
- [222] With respect to future wage loss, there is no medical evidence that Mrs. Haroon has lessened work ability. That results in no award for future loss of work capacity.
- [223] However, I do see the need for ongoing allowance for future medical care as I am of the opinion that Mrs. Haroon needs someone such as Ms. Osa to provide her some discipline in exercise and stretching routines, so that when necessary Mrs. Haroon is able to go and get a trained kinesiologist/physiotherapist to direct her on strengthening her core, thoracic, gluteal, and related muscles. The evidence is that such programs would probably be in the nature of \$50 per hour and given Mrs. Haroon's need for repeated supervised instruction in these matters, an appropriate allowance is \$2,500.
- [224] Special damages are allowed at \$605.78.
- [225] The plaintiff is entitled to her costs.

"The Honourable Mr. Justice Crawford"

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