

CANADA / JUDGMENT

Morales v. Neilsen

2009 BCSC 1890

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Supreme Court of British Columbia

DECIDED

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2009 BCSC 1890 Morales v. Neilsen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Morales v. Neilsen,

2009 BCSC 1890

Date: 20091110

Docket: M083200

Registry: Vancouver

Between:

Jose Morales

Plaintiff

And

Paul Francis Neilsen and Natalie J. Wong

Defendants

Before: The Honourable Mr. Justice Verhoeven

Oral Reasons for Judgment

Counsel for Plaintiff:

Z.P. Wiseman

Counsel for Defendants:

R.K. Buchanan and G.A. McEachran

Place and Date of Trial:

Vancouver, B.C.

November 5 and 6, 2009

Place and Date of Judgment:

Vancouver, B.C.

November 10, 2009

Introduction

- [1] The plaintiff Mr. Morales claims damages for injuries that he contends were suffered by him in a motor-vehicle accident that took place September 15th, 2006. Liability is admitted by the defendants. However, the defendants say that the plaintiff suffered no injury or loss arising out of the motor-vehicle accident, and so the action should be dismissed. Alternatively, they say the injury or loss was minor.
- [2] Therefore the issues in the case are whether the plaintiff was injured in the accident, and if so, the amount of damages to be awarded for the injury and loss sustained.
- [3] The Statement of Defence alleges contributory negligence on the part of the plaintiff in relation to the failure to properly utilize the vehicle seatbelt and headrest, but there was no evidence presented at the trial in support of these allegations, which were not mentioned in argument by the defendants, and so these allegations are taken to have been abandoned by the defence.
- [4] The Statement of Defence also includes customary defence pleas relating to receipt of benefits under the Insurance (Motor Vehicle) Act, failure to mitigate, and a reference to Sections 52 and 54 of the Insurance (Motor Vehicle) Act relating to income loss claims. These defences too were not pursued at trial.
- [5] The plaintiff seeks an award of general damages for non-pecuniary loss, that is pain, suffering, loss of enjoyment of life, and also claims special damages for out-of-pocket expense incurred for chiropractic and physiotherapy treatments. The plaintiff makes no other claims.
- [6] More particularly, the plaintiff lost no time from work as a result of the accident, and therefore claims no past loss of income or pay, and makes no claim for future loss of income or earnings capacity or future loss of any kind.

Background

- [7] The plaintiff was 57 years of age at the time of the accident. He is now 61. He was born and educated in the Philippines. He came to Canada in 1973, when he was about 25 years of age. He has two sons. He resides with one son who is 34 years of age. He was divorced in the late 1990s. He remarried in 2008. His new spouse remains in the Philippines, awaiting immigration permission to come to Canada.
- [8] Although he was raised in the Philippines, the plaintiff's English language ability is quite good. He testified without the aid of an interpreter. In giving his evidence he had no appreciable difficulty understanding English, except in the case of more difficult words which were then explained in terms which he could comprehend without apparent problems.
- [9] The accident occurred early in the morning on Friday, September 15, 2006. Mr. Morales was a right front-seat passenger in a 1992 four-door Toyota Camry sedan, being driven by the vehicle's owner, a co-worker of Mr. Morales, who he knew as "Ken". A female co-worker was sitting in the backseat. Mr. Morales and the other vehicle occupants were all on their way to work at Able Office Equipment in North Vancouver. Mr. Morales was employed there as a truck driver and office equipment delivery person.
- [10] The Toyota Camry in which Mr. Morales was a passenger was on 29th Avenue in Vancouver, where it was stopped for a red light at the intersection of Boundary Road. It was raining, and the streets were wet. The plaintiff was wearing his seatbelt with attached shoulder harness. He testified that he was speaking with the driver, and had his head turned to his left when the vehicle was struck from behind. He testified that the road has a mild downhill gradient at the location of the accident. He says the vehicle was moved somewhat by the collision, but he did not know by how much. There was no warning to him of the impact. He believes his head hit the headrest. No other part of his body struck anything inside the vehicle.
- [11] He gave no other details concerning the impact itself. He believes he exited the vehicle at the scene, but is unsure about that.
- [12] The drivers of the two vehicles exchanged information, and the parties were soon on their way. No police attended and no emergency assistance was sought at the scene.
- [13] The car that the plaintiff was in was struck by a 1993 Honda Accord four-door sedan owned by the defendant Mr. Neilsen, and driven on that occasion by the defendant Ms. Wong. Both defendants testified at the trial.
- [14] Mr. Neilsen's Honda was undamaged in the collision. Neither of the defendants were injured in any way. Ms. Wong, the driver, failed to slow down in time to avoid the collision, and skidded into the Toyota. Both defendants were aware of the impending impact, and were able to brace themselves somewhat.

- [15] In her statement to ICBC, Ms. Wong estimated the vehicle's speed at impact at about 15 kilometres per hour. At trial, she suggested 10 to 15 kilometres per hour.
- [16] She thought she was about 5 to 6 metres away from the other car when she began braking, and 2.5 metres away when she realized that she would collide with it.
- [17] Mr. Neilsen, the owner of the Honda accord, was in the right front passenger seat. In chief he suggested that the speed at impact would be a "quick walk or light jog" speed. In cross-examination he was asked about Ms. Wong's estimate of 10 to 15 kilometres per hour and suggested that it seemed a little fast.
- [18] I observe that a quick walk or light jog speed would be much less than 10 to 15 kilometres per hour.
- [19] I have no confidence in the speed of impact estimates of the defendants. Like most people, they have difficulty estimating distance and speed accurately in terms of numerical values.
- [20] Both defendants thought that the other car was moved slightly by the impact, and suggested that it was propelled by a foot or two. Ms. Wong's purse was placed on the backseat of the Honda, and she noted that it did not fall off the seat in the collision.
- [21] The Toyota was examined by an ICBC estimator for vehicle damage. The estimator found a small round indentation on the plastic cover of the vehicle's rear bumper that the estimator suggested was likely caused by a licence plate screw from the front of the Honda, and he also noted some minor scuff marks. There was no other damage of any kind to the Toyota.
- [22] The defendants characterized the impact as being of very low velocity and force, and I have no difficulty so finding.
- [23] The minor nature of the collision does not mean that there can be no injury resulting from it, or even that the injury must also be of a minor nature. It is just one factor for me to be mindful of, as I assess the claims made by the plaintiff.
- [24] Mr. Morales was not aware of any injury at the scene. He carried on and went to work that day.
- [25] He did not notice any injury on the next day either. He testified that he first noticed an injury after a "couple of days", by which I took it he meant after two full days. He said that when he felt that he had suffered an injury, he promptly went to see his general practitioner, Dr. Peter Yong, "right away". There was some inconsistency in this, as Dr. Yong's report in evidence shows that Mr. Morales saw him for the first time on September 19, 2006, four days post-accident.
- [26] At the time of the accident, the plaintiff worked seven days a week. From Monday to Friday, he worked in his driving and delivery job, and on the weekends, he worked as a "mechanic", as he described it, at a bowling alley. He continues to work seven days per week currently. He took no time off of work as a result of the accident injuries.

- [27] What is clear is that Mr. Morales did not notice any injury for an unusually long period of time following the accident.
- [28] In general, any complaints of various injuries resulting from the accident were of the type that are often described as soft-tissue injuries. The plaintiff's major complaint of injury is to his left shoulder and lower shoulder blade area, with associated pain in the neck and left-side lower back. He has also complained of intermittent headaches. At trial, he said that his injuries have improved over the period of time following the accident, which was over three years ago. However, on his examination for discovery on May 19, 2009, about five months pre-trial, he maintained that his injuries had not improved since the accident.

Issues

- [29] The issues are to what extent if at all the plaintiff was injured in the MVA, and if he was injured, the assessment of loss and damage arising, and the appropriate quantum of damages that should be awarded. The major underlying issue is the plaintiff's credibility.

Analysis

- [30] The matter was heard under the provisions of Rule 66, the fast-track procedure for simple matters that can be tried within two days.
- [31] The case for the plaintiff consisted of his testimony and that of his GP, Dr. Peter Yong, who provided a report and testified. The plaintiff also provided clinical records of Dr. Yong, and clinical billing records of the chiropractor, Dr. Mann, and a physiotherapist.
- [32] The defence has directed me to the very familiar remarks of Chief Justice McEachern in *Price v. Kostryba* (1982), 70 B.C.L.R. 397 (S.C.), as quoted quite recently by Justice Sigurdson in *Jezdic v. Danielisz*, 2008 BCSC 1863, at para. 22:
- [33] I think that it is fair to say that if the plaintiff was injured in this accident the injuries have persisted much longer than one would normally expect. In those circumstances the comments of Chief Justice McEachern, as he then was, in *Price v. Kostryba* (1982), 70 B.C.L.R. 397 (S.C.), are appropriate to keep in mind. There, he said:
- [4] Perhaps no injury has been the subject of so much judicial consideration as the whiplash. Human experience tells us that these injuries normally resolve themselves within six months to a year or so. Yet every physician knows some patients whose complaint continues for years, and some apparently never recover. For this reason, it is necessary for a court to exercise caution and to examine all the evidence carefully so as to arrive at fair and reasonable compensation. ...

[5] In *Butler v. Blaylock*, [1981] B.C.J. No. 31, decided 7th October 1981, Vancouver No. B781505, I referred to counsel's argument that a defendant is often at the mercy of a plaintiff in actions for damages for personal injuries because complaints of pain cannot easily be disproved. I then said:

I am not stating any new principle when I say that the court should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery.

An injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence - which could be just his own evidence if the surrounding circumstances are consistent - that his complaints of pain are true reflections of a continuing injury.

[34] Sigurdson J. went on to note, in para. 30, that he was mindful, as I am, that persistent injuries can arise from a low-velocity collision. Many other judges have made the same observation.

[35] He also notes at para. 39 that, as stated by McEachern C.J.S.C. in *Butler v. Blaylock*, the plaintiff may satisfy the burden of proof on him just by his own evidence if the surrounding circumstances are consistent with that evidence.

[36] I am mindful of these principles as I consider the evidence in the case before me.

[37] The plaintiff was treated by his GP, Dr. Yong, for many years.

[38] Prior to the accident, the plaintiff had been quite healthy. He had been injured on the job in 1999, and lost three weeks from work. In 2001, he was involved in a significant motor-vehicle accident. His car was a total loss. He was off work for four months.

[39] According to Dr. Yong, the plaintiff recovered completely from the effects of that accident within 16 months of its occurrence.

[40] The plaintiff suffered from insomnia for several years pre-accident. Dr. Yong prescribed sleep medication, which the plaintiff used as needed.

[41] He suffered from chest-wall pain on occasion.

[42] He was last seen prior to the accident on November 26, 2005, about 10 months pre-accident, as a result of an injury to his left arm and elbow suffered while at work. Dr. Yong diagnosed left-arm tendonitis and insomnia.

- [43] The plaintiff first saw Dr. Yong four days post-accident on September 19, 2006. Dr. Yong has seen him a total of 17 times for treatment arising out of the accident, and prior to Dr. Yong's report of June 11, 2009, which was introduced into evidence. On each occasion Dr. Yong recorded the complaints Mr. Morales made, and Mr. Morales was physically examined by Dr. Yong, who has described his findings on each occasion in the report.
- [44] On his first visit to Dr. Yong, his complaints were of headaches, left cervical pain, that is neck pain on the left side, and pain radiated down the left shoulder. Dr. Yong noted a somewhat reduced range of motion in the neck. He noted tenderness in the left scapular area. He made a diagnosis of soft-tissue injuries and recommended physiotherapy and prescribed an anti-inflammatory, Naproxen, to be taken daily.
- [45] Mr. Morales saw the chiropractor, Dr. Mann, the following day for treatment. It appears that Dr. Yong considered the treatment provided by Dr. Mann as being equivalent to physiotherapy. The description of Dr. Mann's treatment as given by the plaintiff at the trial accords with that view. He attended with Dr. Mann for treatment on a total of 36 occasions over the period of about 12 months post-accident, to September 4, 2007.
- [46] He discontinued the treatment with Dr. Mann for reasons that were not made clear in the evidence.
- [47] He received three further physiotherapy treatments in late January and early February of 2009, with Navarro Physiotherapy, on a prescription from Dr. Yong.
- [48] Both Dr. Mann and the physiotherapist recommended exercises that the plaintiff could perform on his own, and he says that he has done so. These exercises provide some relief from his persistent pain complaints.
- [49] He saw Dr. Yong again on September 27, 2006. He said the neck pain was getting worse, and he said he was experiencing pain in both shoulders. He made a further new complaint, of insomnia. Dr. Yong diagnosed cervical, shoulder, and interscapular strain.
- [50] On subsequent visits over the months that followed, the plaintiff also complained of back pain.
- [51] On December 13, 2006, Dr. Yong noted the plaintiff's complaint of pain in the neck, back and left shoulder, which were described as "intermittent". He was advised to continue to be physically active, including activities such as bowling, which the plaintiff had engaged in for many years.
- [52] On February 7, 2007, the plaintiff complained of chest-wall pain which he told Dr. Yong happened "after the accident". Dr. Yong seems to have accepted this uncritically, despite the pre-accident complaints from the plaintiff of chest-wall pain, and the fact that this complaint was made for the first time about five months post-accident.

- [53] Over the course of the many visits that followed, the plaintiff's complaints and Dr. Yong's assessments were quite similar to those that occurred in the first few months post-accident. On May 16, 2007, Dr. Yong noted that the plaintiff's pain was improving.
- [54] On September 13, 2007, Mr. Morales complained of pain in the right shoulder radiating down into the right hand and wrist. This was basically a new complaint, as the only other prior complaint of right shoulder injury was soon after the accident on September 27, 2006.
- [55] On November 18, 2008, Dr. Yong diagnosed left-shoulder tendonitis.
- [56] On January 16, 2009, Dr. Yong indicated that the plaintiff's complaints of neck and back pain had reached a plateau.
- [57] Most of the more recent complaints made by the plaintiff to Dr. Yong focused upon the left shoulder blade area. This was consistent with the plaintiff's complaints of ongoing pain at trial, which were primarily of pain in the area of the left lower shoulder blade, which he typically described, to use his word, as a "tightness".

[58] Dr. Yong summarized as follows in his report. I quote from page 4:

In summary, Mr. Morales was involved in an accident on September 15th, 2006. He suffered soft-tissue injuries of moderate severity involving the neck, back, left shoulder, and chest wall. There was no evidence of any neurological problems associated with the accident. He was treated conservatively with exercise and physiotherapy, and was taking medication for his pain.

[59] Dr. Yong went on to give this prognosis. I read from page 5 of his report:

In summary, Mr. Morales was involved in an accident on September 15th, 2006. He suffered soft-tissue injuries of moderate severity. His condition continued to improve. When he was assessed on June 5th, 2009, he was still experiencing neck, left shoulder blade pain, and back pain. He also suffered from intermittent headaches. There was no evidence of any neurological problems.

In my opinion, Mr. Morales' condition should continue to improve, and it is unlikely for him to suffer permanent disability as a result of this accident. He will continue to be assessed in the office, and if there is worsening of his problems, x-rays or other radiological examination will be ordered. If there is worsening of his problems, he will also be sent to be assessed by an orthopedic surgeon, or specialist dealing with physical medicine.

[60] I do not accept Dr. Yong's conclusion that the plaintiff's chest-wall pain has any relationship to the accident. As noted, Dr. Yong seemed to accept that complaint from the plaintiff uncritically and without being mindful of the previous problems the plaintiff had in that regard.

Credibility of the plaintiff and his complaints

[61] I turn now to assessing the credibility of the plaintiff and of his complaints.

- [62] The defendants argue that the plaintiff is not credible, and given the low velocity impact, and the lack of any objective signs of injury or of any other corroborating evidence of injury, the plaintiff's claim should be dismissed.
- [63] The plaintiff argues that his complaints are supported objectively by the examinations and findings of Dr. Yong, and that the plaintiff's own evidence was credible.
- [64] Dr. Yong conceded that his diagnosis of the plaintiff depended in part at least on the plaintiff's own description of his complaints and symptoms. However he said that he could objectively sense tenderness in the plaintiff's muscles through palpation, in that abnormal muscle tension or stiffness could be felt. He found such "tenderness", as he described it, on virtually all of the physical examinations he performed.
- [65] He testified that the limitations on range of motion, as he noted them, also had an objective aspect.
- [66] Nevertheless, I think it is fair to say that Dr. Yong's diagnosis and prognosis is heavily dependent on the credibility of the plaintiff's complaints and description of symptoms over the course of time.
- [67] I have some serious reservations concerning the plaintiff's credibility. My reservations stem from the following.
- [68] He clearly exaggerated his symptoms on his examination for discovery, which was conducted in May of this year, just a few months before trial.
- [69] I refer to some examples.
- [70] Firstly, questions 327 to 329.
- 327 Q Okay. How about the pain you describe in -- on the back of your shoulders, has that gotten any better since the accident?
- A No.
- 328 Q That stayed the --
- A The pain is there, still there.
- 329 Q Yeah. But what I'm asking you is has it gotten any less?
- A No. The pain, it's still the same.
- [71] The next questions, 453 to 454.
- 453 Q And just to reiterate, since the time of the accident, your symptoms haven't gotten any better at all, have they?
- A No.
- 454 Q And you experience pain in all of the areas mentioned on a daily basis?

A Yes.

[72] The next questions, 512 to 513.

512 Q Okay. So the headaches, the dizziness, the neck pain, upper back pain, the left shoulder pain, the right shoulder pain?

A It's there.

513 Q It's there and hasn't changed at all since the accident?

A Hasn't changed.

[73] By distinction, at trial, he testified that his condition had indeed improved over time. This was also his evidence as documented by Dr. Yong.

[74] He said at trial that, during 2007 and 2008, his pain was intermittent. His current complaint is limited to his left lower shoulder blade area.

[75] On his examination for discovery, he denied that he had suffered from any problem sleeping prior to the accident. At the trial, when confronted with the clinical records of Dr. Yong, he conceded that his testimony on the examination for discovery in that respect was not accurate.

[76] He denied that he was simply lying on the discovery. He said that he did not understand the questions, and that he was not feeling well that day. I do not accept that explanation, and conclude instead that Mr. Morales exaggerated his complaints on his examination for discovery, and that he was untruthful concerning his pre-accident insomnia.

[77] I also find that the plaintiff was misleading to Dr. Yong when, on his visit of February 7, 2007, he associated his chest-wall pain with the motor-vehicle accident.

[78] Troubling as well is the fact that Dr. Yong accepted this connection, and refers to it in his summary. As noted previously, I find that it is an unrelated complaint, which Dr. Yong ought to have appreciated.

[79] There are other circumstances which taken together must make me cautious concerning the complaints of the plaintiff. This was a very minor collision. The plaintiff did not make any complaints for two or more days afterwards. He advised no co-workers of his complaints.

[80] He has continued since the accident to work seven days per week. He agreed that his work delivering office equipment is physically strenuous, as is his weekend work in the bowling alley. He says that, in his equipment delivery work, he relies on his partner for the heavier tasks. There was no corroboration of this.

- [81] He was active in bowling prior to the accident. He testified that he did not bowl during the winter 2006-2007 season, due to his accident injuries. I note that Dr. Yong advised him in December 2006 to continue with his physical activities, including bowling. Mr. Morales says that he resumed bowling for the next season, 2007-2008, but has discontinued bowling after that season. He testified that he does not want to resume bowling until his condition improves. I do not accept that he has discontinued bowling due to accident injuries.
- [82] However, I do not conclude that that the plaintiff suffered no injury at all in the accident. Since the accident, he has consistently complained of injury centred upon the left shoulder and shoulder blade area. Dr. Yong has accepted these complaints as genuine and at least partially objectively based. While in my view Dr. Yong was insufficiently critical of his patient's complaints, I have difficulty rejecting Dr. Yong's testimony entirely.
- [83] There is of course no competing medical evidence, though I recognize the difficulty that any doctor faces in denying an injury of this type.
- [84] I conclude that the plaintiff suffered from a mild soft-tissue injury to the neck and left shoulder, which also caused him associated headaches. The injury resulted in a recurrence on at least some occasions of the plaintiff's previous well-established problems with sleep.
- [85] There was very little interference with the plaintiff's activities of daily living, leisure activities, and work.
- [86] I find that the plaintiff currently has few if any residual effects of the accident.
- [87] The plaintiff's complaints have persisted for far longer than one would normally expect, given the nature of the injuries.
- [88] Given the difficulties I have with the plaintiff's credibility, including especially his exaggeration of his complaints on his examination for discovery, it is difficult to assess when the injuries substantially resolved. I note that Dr. Yong noted improvement on May 16, 2007, about eight months post-accident. I note that the plaintiff discontinued his physiotherapy with Dr. Mann after about one year, although he resumed physiotherapy briefly earlier this year, in 2009.
- [89] The plaintiff's evidence was unspecific and unreliable concerning his improvement over the course of time.
- [90] Doing the best I can on the evidence, I find that the plaintiff's injuries were substantially resolved within one year of the accident at the latest, and any lingering complaints were minor. There is no concern about any ongoing future effects of the motor-vehicle accident injuries.

Assessment of damages

- [91] The plaintiff argues for an award of non-pecuniary damages of \$18,000 to \$25,000.

[92] He relies on *Lubick v. Mei and Ho*, 2008 BCSC 555, where Macaulay J. awarded \$18,000 for non-pecuniary loss. That was also a low-velocity impact claim. The plaintiff largely recovered within one year from his soft-tissue injury. He had no credibility problems. The plaintiff considered that he was somewhat stoical and not given to complaining. After the accident, he was away from work for unrelated reasons for a number of months, but when he returned to work seven months post-accident he continued to suffer from accident-related difficulties.

[93] The plaintiff also relies on *Goertz v. Kujala*, 2006 BCSC 667, a decision of Dillon J. Justice Dillon summarizes, at para. 26:

An appropriate award for non-pecuniary damages is within a range slightly less than suggested by the plaintiff. The plaintiff was extremely fit before the accident and very driven to accomplish her life goal of becoming a police officer. She worked through pain and attended her doctor only when absolutely required. She continues to suffer shoulder pain after regular blocks of work some three and a half years after the accident, but other symptoms were resolved within a year and a half. Her activities resumed shortly after the accident, albeit with some discomfort from time to time. Non-pecuniary damages are assessed at \$25,000.

[94] Clearly that case is much more serious than my findings here.

[95] The plaintiff also referred me to *Montes v. Lee*, 2007 BCSC 1238, where \$30,000 was awarded for non-pecuniary loss. The plaintiff conceded that that case was more serious.

[96] The defendants have submitted that, if I should find the plaintiff was in fact injured, as I have, the appropriate award of general damages would be from \$10,000 to \$12,000. The defence cites three decisions as support for that range: *Mohamadi v. Tremblay*, 2009 BCSC 898; *Vasilyev v. Fetigan*, 2007 BCSC 1759; *Bentrott v. Weich*, 2008 B.C.P.C. 50.

[97] All three of those decisions have similarities to the case at bar, and I find that they offer reasonable guidance to me in this case.

[98] In all of the circumstances, I therefore consider that the sum of \$11,000 is reasonable and appropriate compensation for general damages.

Special damages

[99] The plaintiff claims for \$1,420 for the cost of the physiotherapy treatment provided by Dr. Mann, which as I noted previously ended in early September 2007, about one year post-accident. Physiotherapy was prescribed by Dr. Yong. The claim is reasonable and will be allowed.

[100] The plaintiff claims \$45 for the cost of three further physiotherapy treatments in early 2009. I do not accept that the plaintiff's injuries justified further physiotherapy treatment after one year post-accident. The 36 treatments provided by Dr. Mann should have been sufficient. Accordingly, this claim is disallowed.

[101] During argument, the plaintiff abandoned the claim for \$49.11 for asthma medication.

Conclusions

[102] The plaintiff is awarded \$11,000 for non-pecuniary loss, and \$1,420 for special damages.

[submissions on costs]

[103] The plaintiff has recovered an amount within the monetary jurisdiction of the Provincial Court. The action was commenced July 24, 2008, fairly recently. The claim as presented was for non-pecuniary loss and special damages.

[104] On the face of it, the plaintiff was complaining that his condition and his injuries had lasted, as of that point in time, two years, and counsel acting for him would have had to consider the possibility that his complaints would continue in future, and thus there was at least some possibility that the claim would exceed the \$25,000 limit. As plaintiff's counsel points out, the examination for discovery to which I referred was fairly recent. It was obviously after the claim was filed.

[105] On the face of it again, Dr. Yong seems to have accepted, I found uncritically, that the plaintiff had a moderate whiplash injury. I found it to be less than moderate. The plaintiff had a fairly long course of physiotherapy.

[106] Although it is close to the line, I find that the plaintiff had a sufficient reason for bringing the matter in the Supreme Court of British Columbia, in order to guard against the possibility that the claim as it might be presented at trial would be for a sum that would be more than \$25,000, the maximum amount that could be awarded in the Provincial Court of British Columbia.

[107] And so I find that there is a sufficient reason to bring it in Supreme Court, and accordingly, the plaintiff will receive costs in accordance with the provisions of Rule 66, which sets out the applicable costs in a case such as this.

[108] I believe that deals with all matters. We are adjourned.

"F. Verhoeven J"

The Honourable Mr. Justice F. Verhoeven

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