

CANADA / JUDGMENT

Nahanee v. Davidson

2025 BCSC 851

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 851 Nahanee v. Davidson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nahanee v. Davidson,

2025 BCSC 851

Date: 20250505

Docket: S241538

Registry: Vancouver

Between:

Michael Benjamin Nahanee

Plaintiff

And

Jonathan Davidson, also known as John Davidson and also

known as Jonathan Marcus Davidson

Defendant

Before: The Honourable Justice Hoffman

Oral Reasons for Judgment

Counsel for the Plaintiff:

C.B. Doll, K.C.

Place and Date of Trial:

Vancouver, B.C.

April 3, 2025

Place and Date of Judgment:

Vancouver, B.C.

May 5, 2025

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- [1] These are my oral reasons following a one-day trial to assess the plaintiff's damages further to a default judgment obtained against the defendant who, despite being personally served with the notice of civil claim, failed to file and serve a response to civil claim.
- [2] If a transcript of these reasons is ordered, I reserve the right to edit the reasons and add citations, but the substantive content and result will not change.

Overview

- [3] The plaintiff, Michael Nahanee, seeks damages for personal injuries arising from a serious assault perpetrated against him by the defendant, Mr. Davidson.
- [4] The assault occurred in the late evening hours of March 8, 2022 in a shop owned by Mr. Nahanee which is located within the Mosquito Creek marina in North Vancouver.

- [5] While Mr. Davidson was initially charged with assault, the Crown did not proceed with charges. However, they obtained an order restraining Mr. Davidson from having any contact with Mr. Nahanee.
- [6] Mr. Nahanee claims damages under the following heads:
- a) Non-pecuniary loss;
 - b) Past wage loss;
 - c) Loss of income earning capacity;
 - d) Aggravated damages;
 - e) Punitive damages.
- [7] The trial proceeded efficiently and the court heard from three witnesses. Mr. Nahanee testified as to the assault, his injuries and the impact of those injuries on his ability to work and the social aspects of his life. The court also heard from two of Mr. Nahanee's co-workers, Mr. Gerald Nahanee and Mr. Jamie Barnes. The court also received in evidence the expert report of Dr. Stephen Helper, an expert in physical medicine and rehabilitation, who saw Mr. Nahanee for the purposes of an independent medical examination.
- [8] Based on the evidence tendered, Mr. Nahanee asks for a damage award in the range of \$189,000 to \$244,100.

Procedural History of this Action

- [9] The notice of civil claim was filed on March 6, 2024. An amended notice of civil claim was filed on March 8, 2024.
- [10] As already noted, on March 12, 2024, Mr. Davidson was personally served with the notice of civil claim and the amended notice of civil claim. Mr. Davidson did not file a response, and a default judgment with damages to be assessed was obtained.
- [11] Although Mr. Nahanee had no obligation under the Supreme Court Civil Rules to serve Mr. Davidson with the default judgment, service was attempted on four separate occasions at the address where Mr. Davidson was personally served with the notice of civil claim. Mr. Davidson is the registered owner of the property at the service address. On each occasion, contact information was left for Mr. Davidson to contact the process server.
- [12] In this case, Mr. Nahanee has chosen to proceed to trial in order to assess his claim for damages. Mr. Nahanee was not required serve the notice of trial on Mr. Davidson because by operation of Rule 12-1(6) of the Rules, Mr. Davidson is not a party of record. Where the circumstances warrant such a step, the court retains residual discretion to order that a defendant in default be given notice of the trial so that they may have a right to be heard in respect of the damages assessment: *XY LLC v. Canadian Topsires Selection Inc.*, 2015 BCSC 1840. However, I am satisfied, in this case, that given the efforts of Mr. Nahanee's counsel to

ensure that Mr. Davidson was aware of the default judgment, the circumstances do not warrant that notice be given to Mr. Davidson.

- [13] As a result of the default judgment, Mr. Davidson is deemed to have admitted the factual assertions in the notice of civil claim. However, the onus remains on the Mr. Nahanee to prove his claim for damages: *McIsaac v. Healthy Body Services Inc.*, 2009 BCSC 1716 at para. 44; *Wearne v. Rosbergen*, 2019 BCSC 1783 at para. 6.

Background

- [14] Mr. Nahanee was born in 1970 and is 54 years old. He completed some grade 10 courses but did not graduate from high school. Mr. Nahanee is a marine travel lift operator at the Mosquito Creek marina. He operates a lift that removes power and sail boats from the water and moves them into the grounds of the marina for maintenance, repairs and cleaning. The lift is operated by remote control. Using the lift requires two people, one to operate the lift and a "swamper" who puts in place the slings that are used to lift the boat. The travel lift is then used to transport the boat to its assigned spot in the marina. Once placed, the lift is used to lower the boat onto steel pipe boat stands and wooden blocks that are put in place by the lift operator and swamper. The stands and blocks ensure that the boat stays secure while on land. This is physical work as the blocks and stands are substantial and need to be moved around the boat yard and manually put in place for each boat.
- [15] Mr. Nahanee is employed by the Nch'Kay Development Corporation that owns and operates the Mosquito Creek marina which is located on reserve land. Mr. Nahanee is a member of the Squamish Nation.
- [16] Mr. Nahanee has been working as a marine travel lift operator for 35 years. Prior to the assault, he worked 8 hours a day with occasional overtime. Following the completion of his regular work day, Mr. Nahanee worked with Jamie Barnes doing boat maintenance and repair jobs for private clients from his shop premises in the marina. Mr. Nahanee testified that after his regular shift at the marina ended, he would usually work for another two to three hours in his shop. During the longer summer days, they worked longer hours. He also would frequently work on weekends when he and Mr. Barnes had repair jobs to do.
- [17] Mr. Nahanee testified that he and Mr. Barnes are long time friends and that he first started working with Mr. Barnes 30 years ago. For a time, Mr. Nahanee travelled to Mission to work with Mr. Barnes. According to Mr. Nahanee, for the past seven years, Mr. Barnes has been back at the Mosquito Creek marina operating his boat repair business out of Mr. Nahanee's shop.
- [18] In 1995, Mr. Nahanee sustained serious injuries in motor vehicle accident as a result of being thrown a significant distance from his car. He broke his back and his leg and was left with ongoing pain as a result of his injuries. He testified that this pain was something that he managed through stretching but that it did not prevent him from doing his work.

- [19] Mr. Nahanee testified that prior to the assault, he spent his time outside of work golfing, hiking and riding his jet skis.

The Assault

- [20] As already noted, Mr. Davidson failed to file a Response and is therefore deemed to have admitted the factual allegations set out in the notice of civil claim. Those facts are as follows.
- [21] On the night of the assault, Mr. Davidson, suddenly and without any warning, violently attacked, assaulted and battered Mr. Nahanee and caused him injury.
- [22] During the assault, Mr. Davidson came up to Mr. Nahanee from behind and battered Mr. Nahanee to the ground, after which Mr. Davidson kicked Mr. Nahanee while he was lying on the ground and defenceless.
- [23] After the assault, and while the Mr. Nahanee was lying injured on the ground, Mr. Davidson made a video of Mr. Nahanee with a mobile telephone, and has subsequently shown that video to other people.
- [24] At trial, the plaintiff testified as to the circumstances of the assault. After completing his shift at the marina on March 9, 2022, Mr. Nahanee hosted some friends in his shop to celebrate a friend's birthday. Those in attendance included Mr. Barnes, who was the last to leave. The gathering wrapped up sometime around 10 pm. Mr. Nahanee was alone in the shop cleaning up when Mr. Davidson came in looking for Mr. Barnes. Mr. Nahanee initially left the shop to locate Mr. Barnes but then changed his mind and came back to tell Mr. Davidson to leave. Without warning, Mr. Davidson physically assaulted Mr. Nahanee by punching him in the right side of his head. The force of the punch caused Mr. Nahanee to fall to the floor. He attempted to defend himself by blocking his face. He felt Mr. Davidson kick him and then he lost consciousness. Mr. Nahanee testified that when he woke up, he was in the hospital. He had no memory of being transported to the hospital.
- [25] A short time before the assault, Mr. Davidson established a welding business at the Mosquito Creek marina. Mr. Nahanee knew Mr. Davidson but did not socialize with him.
- [26] The records of the ambulance crew indicate that they found Mr. Nahanee alone in his shop, with his face covered in blood. The records suggest that the 911 call was received at 2:00 am on March 9, 2022. They took him to Lions' Gate Hospital by ambulance.
- [27] Mr. Nahanee testified that when he woke up in hospital, he was in a lot of pain. He had pain in his ribs, face and head. This pain worsened over the time that he was in hospital, and he suffered from headaches and dizziness. His lip was split open and had wounds on the back of his head and on his back.

- [28] The hospital records establish that Mr. Nahanee suffered lacerations to his cheek and mouth and a rib fracture. Some of these injuries are plainly visible in a photo of Mr. Nahanee's face taken while in hospital which was entered into evidence. There were also concerns that Mr. Nahanee may have suffered internal injuries that would require surgical intervention. Fortunately, this was not required. Mr. Nahanee remained in hospital for three days.
- [29] After leaving the hospital, Mr. Nahanee stayed with his mother while he recovered from his injuries. She cooked for him and did his laundry. Mr. Nahanee testified that he stayed with his mother for 52 days until he could recover sufficiently to return to work. He initially and briefly took some powerful pain killers. He saw his family doctor on a few occasions but received no other treatment.

Expert Evidence Regarding Injuries

- [30] Dr. Helper saw Mr. Nahanee in 2025 for the purpose of providing opinion evidence to the court. Dr. Helper is of the opinion that Mr. Nahanee suffered a mild concussion, a lip contusion, a possible rib fracture or, in the alternative, a soft tissue injury to a previously injured area as well as an aggravation of pre-existing thoracic and neck pain.
- [31] Mr. Nahanee reported to Dr. Helper that after a period of modified duties to avoid the most strenuous lifting, he returned to his full duties at work; however, doing so caused him a greater amount of pain than he experienced prior to the assault. Mr. Nahanee also reported to Dr. Helper that he is carrying out all of his activities of daily living but with greater caution and greater pain.
- [32] Dr. Helper's opinion is that Mr. Nahanee recovered from his mild concussion and lip contusion. However, in his opinion, Mr. Nahanee is likely to experience the aggravation of his pre-existing thoracic and neck pain for the foreseeable future.

Assessment of Damages

Non-Pecuniary Loss

- [33] I turn now to the assessment of damages.
- [34] Non-pecuniary damages compensate the plaintiff for pain, suffering, disability, and loss of enjoyment of life. Non-pecuniary damages encompass losses suffered to the date of trial and those suffered into the future: *Tisalona v. Easton*, 2017 BCCA 272 at para. 39.
- [35] It is not the gravity of the injury, in and of itself, that determines the value of the award. The impact of the injury must be considered in the context of the plaintiff's specific circumstances: *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, leave to appeal ref'd 2006 CanLII 35804 (S.C.C.). The Court in *Stapley* identified these circumstances as including: the plaintiff's age; the nature of the injury; the severity and duration of pain; level of disability; emotional suffering; loss or impairment of life; impairment of family, marital and social relationships; impairment of physical and mental abilities; and loss of lifestyle. Stoicism can

also be a factor, but care must be taken not to penalize a plaintiff when taking it into account.

- [36] Although focused on compensating plaintiffs, an award of non-pecuniary damages must be fair and reasonable to each party. Fairness is achieved, in part, through considering awards in comparable cases. Comparable cases, however, serve only as a rough guide. Each case must be decided on its own facts: *Trites v. Penner*, 2010 BCSC 882 at para. 189.
- [37] Based on Dr. Helper's opinion, Mr. Nahanee's evidence and the hospital records, I accept that Mr. Nahanee suffered a mild concussion, a facial laceration, either a rib fracture or soft tissue injury to his thoracic region as well as aggravation of pre-existing neck and thoracic region pain as a result of the Incident. Based on the evidence of Mr. Nahanee and the employment records in evidence, I also accept that these injuries prevented him from returning to his position as a marine travel lift operator for 6 weeks. I also accept that these injuries prevented him from doing side boat repair jobs with Mr. Barnes for at least six months.
- [38] I find that Mr. Nahanee has fully recovered from his concussion and his laceration but that the aggravation of his pre-existing injuries to his neck and thoracic region is unlikely to completely resolve. It is notable that Mr. Nahanee did not receive any treatments for his injuries aside from pain medications which were taken for a short period of time after his discharge from hospital.
- [39] I also accept that Mr. Nahanee's injuries had an impact on his social life which became non-existent due to his discomfort being in public for fear of running into Mr. Davidson. I also accept that this isolation resulted in significant distress and a low mood which negatively impacted his enjoyment of life. This lasted for a significant period of time as it was not until Mr. Nahanee learned that Mr. Davidson had relocated to Prince George, approximately a year after the Incident, that he felt safe to be out in public. The fact that Mr. Nahanee had become more withdrawn, socially reclusive and cautious after the assault was corroborated by the evidence of Gerald Nahanee and Mr. Barnes.
- [40] The plaintiff relies on several authorities as establishing non-pecuniary damages in the range of \$75,000 to 80,000: *Siu v. Clapper*, 2020 BCSC 944; *Abdalle v. British Columbia (Public Safety and Solicitor General)*, 2012 BCSC 128; *Andrews v. Shelemey*, 2021 BCSC 2221; *Barr v. Accurate Transmission and Driveline*, 2016 BCSC 2432.
- [41] Having considered these comparable cases, I am of the view that the injuries and recovery of the plaintiffs in the *Siu* and *Barr* decisions are the most comparable. In *Siu*, the court awarded \$80,000 for non-pecuniary damages for a concussion, soft tissue injuries to the neck and torso as well as bruising and abrasion suffered in a motorcycle accident. In that case, the plaintiff experienced ongoing but improving concentration difficulties.

- [42] In Barr, the court awarded \$65,000 for a mild concussion with ongoing headaches and resolved soft tissue injuries sustained by the plaintiff who was struck by a car while crossing a street. The ongoing effects of her injuries were found to have negatively impacted her relationship and led her to retire from her job as a nurse earlier than she otherwise would have.
- [43] In Andrews, the court awarded \$100,000 in damages for injuries suffered in an assault. The injuries suffered there were more serious with multiple fractures and major depression and soft tissue injuries which were treated with extensive physiotherapy and massage. Further, the court accepted that the plaintiff was no longer able to work as a mechanic and going forward was only capable of part-time light seasonal work.
- [44] Taking into account my findings regarding the nature of Mr. Nahanee's injuries and the persistence of ongoing pain and emotional difficulties are the overall impact on his enjoyment of life, I find that an award of \$80,000 is fair and reasonable in the circumstances of this case.

Assessment of Income Loss

- [45] Damages for loss of earnings from the date of the assault to trial are to be based on what Mr. Nahanee would have, not could have, earned but for the injuries sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30.
- [46] Employment records entered into evidence establish that Mr. Nahanee remained off work until April 19, 2022. When he first returned, Mr. Nahanee was only able to do lighter duties. He confined himself to operating the remote control and got extra help from other employees who placed the boat blocks and stands. After about a month, Mr. Nahanee was able to take on more of the physical work, but he has continued to need extra assistance.
- [47] Mr. Nahanee did not return to his work with Mr. Barnes for at least 6 months. Mr. Nahanee explained that because of his paranoia following the assault, he did not like to stay at the marina after the end of his regular shift. After about 6 months, he started again to work with Mr. Barnes, but this was limited to running the forklift to lift engines up and down.
- [48] Gerald Nahanee, who was Mr. Nahanee's swamper both before and after the assault, testified that before the assault, they split the lifting of the blocks and boat stands equally. When Mr. Nahanee returned to work following the assault, Gerald Nahanee took on all of the heavy lifting. Gerald Nahanee testified that gradually, Mr. Nahanee has taken on more of the heavy lifting so that now he is doing 25 percent. Gerald Nahanee also testified that prior to the assault, they were able to move up to 13 boats a day. They are currently only able to move seven or eight boats a day.

- [49] The court also received evidence from Jamie Barnes regarding the work that he and the plaintiff did prior to the Incident. Mr. Barnes testified that prior to the Incident, he worked at another business within the marina, but after his shift, he and the plaintiff would do boat repair jobs for other clients. Mr. Barnes explained that due to his small stature, Mr. Nahanee was especially talented at accessing tight areas of boats and engines.
- [50] Mr. Barnes did not keep records of the amounts received for this repair work. Nor were they declared for income tax purposes. He estimates that during the busier summer months, this work would bring in \$5,000 to \$40,000 per month. Sometimes they were paid in kind with trips to Mexico. Mr. Nahanee assisted Mr. Barnes in these jobs and did about 25 percent of the work. On this basis, Mr. Barnes generally shared 25 percent of the income with Mr. Nahanee. He estimated that Mr. Nahanee received \$10,000 to 15,000 in busy months and at least \$2,500 in slow months.
- [51] According to Mr. Barnes, he and Mr. Nahanee did not get their boat repair business operating anywhere close to the same level as prior to the assault. Since the assault, Mr. Nahanee has assisted Mr. Barnes occasionally. Mr. Barnes estimates that he has paid Mr. Nahanee approximately \$2,000 for this work. Mr. Barnes testified that without assistance from Mr. Nahanee, he has to get his son to help him.
- [52] Both Mr. Barnes and Mr. Nahanee testified that due to changes at the marina and for reasons unrelated to the assault, the boat repair work has become less available in the past few years.
- [53] In terms of past wage loss, I am satisfied that Mr. Nahanee suffered a loss of employment income from his position at the marina in the amount of \$7,215.36. This is based on \$33.06 per hour, 8 hours per day, for 17 days from March 9, 2022, to March 31, 2022, and \$33.99 per hour for 10 days from April 1, 2022, until April 18, 2022.
- [54] The loss of overtime based on Mr. Nahanee's inability to work overtime in 2022 is claimed as \$1,150. I am satisfied based on the medical evidence and Mr. Nahanee's evidence that he did not have the capacity to work overtime in 2022 and award him \$1,150 for the loss of overtime.
- [55] Mr. Nahanee also seeks an award of \$40,000 to compensate him for the loss of income he incurred in 2022 as a result of being unable to do boat repair work with Mr. Barnes. He claims that he lost at least \$4,000 per month for the remaining 10 months of 2022. In light of the diminishing number of available side jobs, no claim is being made beyond 2022.
- [56] This claim depends entirely upon the oral testimony of Mr. Barnes and Mr. Nahanee as to the level of income they received from their boat repair work. No documentary evidence was admitted to corroborate the very substantial income claimed to be generated from this work. This appears to be, at least in part, because this income was not reported for tax purposes.

- [57] The Court of Appeal in *Iannone v. Hoogenraad*, 66 B.C.L.R. (2d) 106, 1992 CanLII 1630 (C.A.) held that there is no public policy reason not to include unreported income in assessing loss of earning capacity. However, the court emphasized that the plaintiff has the burden of leading evidence of wage loss and that "this will be a difficult burden to discharge where there is no corroborating evidence such as income tax returns".
- [58] Where there are no credibility concerns, a claim for the loss of undeclared cash income can be based on the evidence of the plaintiff alone: *Tougas v. Mostat*, 2020 BCSC 1281 at para. 174.
- [59] The oral evidence before me is that Mr. Nahanee's shop was generating substantial income. The shop was described in the evidence as being 20 feet by 30 feet with a separate yard with sufficient space to work on boats and engines and well outfitted with tools. As both Mr. Nahanee and Mr. Barnes worked within the marina, Mr. Barnes described how they were frequently approached by boat owners at the marina who needed to have repair work done and that, at least in 2022, there was no shortage of work. As noted above, Mr. Nahanee testified that in the summer months, he was usually spending two to three hours a day doing repair work after his regular shift.
- [60] I accept as credible the testimony of Mr. Barnes and Mr. Nahanee that they received substantial cash income from their side repair jobs. Taking Mr. Barnes's estimates at their highest would result in a potential income loss for Mr. Nahanee much higher than the \$40,000 claimed. However, the lack of any corroborating documents is somewhat concerning and justifies to apply caution in respect of these estimates. Taking this into account, I find that \$30,000 is a reasonable award to compensate for the loss of this work for the remaining 10 months in 2022.
- [61] The total for past income loss is \$38,365.36 which represents \$7,215.36 in employment income, \$1,150 in overtime and \$30,000 for lost repair work.
- [62] Mr. Nahanee also seeks an award for future income loss. Mr. Nahanee submits that there is a substantial possibility that he will suffer a future loss of income. This claim is premised on his inability to continue doing boat repair work at the same level as he did prior to the assault.
- [63] The purpose of compensation for future income loss is to address the loss of capacity, not the actual loss of income: *Ibbitson v. Cooper*, 2012 BCCA 249 at para. 19. As such, a plaintiff who has returned to their pre-accident level of income may nonetheless have suffered a loss of capacity if there is evidence that, for example, accommodations were required, such as an alteration in work hours, to achieve that level of income: *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.).

- [64] Future income loss for such a plaintiff can be appropriately assessed using the capital asset approach: *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 16. One method to assess future loss under this approach is to compensate the plaintiff for one or two years of income as appropriate in the circumstances: *Pallos v. Insurance Co. of British Columbia*, 100 B.C.L.R. (2d) 260 at para. 43, 1995 CanLII 2871 (C.A.).
- [65] Given that Mr. Nahanee continued to experience an aggravation of his pre-existing neck and thoracic region pain that he works through but caused him to be more cautious and take on fewer heavy tasks, there is a substantial possibility that he will suffer future income loss. As such, this is an appropriate case in which to make an award for loss of future earning capacity. Taking the capital asset approach, I award Mr. Nahanee \$36,000 which represents one year of income from his boat repair work.

Aggravated Damages

- [66] Mr. Nahanee seeks \$10,000 to \$20,000 in aggravated damages to compensate him for the stress and humiliation caused by the assault.
- [67] The purpose of aggravated damages is to compensate a plaintiff for intangible injuries such as distress and humiliation that result from a defendant's insulting behaviour. Such damages are measured by the extent to which a plaintiff suffered humiliation, grief, loss of confidence or self-esteem or other similar emotional effects: *Thomson v. Friedmann*, 2008 BCSC 703 at paras. 29-30, *aff'd* *Friedmann v. Thomson*, 2010 BCCA 277.
- [68] I accept that Mr. Nahanee suffered significant distress, loss of confidence and hyper vigilance as a result of the assault. Mr. Nahanee was on edge and paranoid when he went back to work as he was uncertain if Mr. Davidson was still in North Vancouver, even though the owners of the marina had evicted Mr. Davidson from the property. In addition, he was uncomfortable being out in public for fear of running into Mr. Davidson for a year following the assault.
- [69] The emotional and mental toll on the plaintiff was corroborated by the evidence of Gerald Nahanee and Jamie Barnes. Both testified to the unease they observed in the plaintiff when he returned to work at the marina. They described Mr. Nahanee as being particularly uneasy when anyone walked behind him.
- [70] The significant emotional impact of the Incident on Mr. Nahanee was apparent when he gave evidence. He became emotional when relating how his injuries and the assault made him quick to anger and made it more difficult for him to handle things and deal with stress.
- [71] Further, the allegations that Mr. Davidson circulated a video he took of Mr. Nahanee after the assault have been admitted. I accept Mr. Nahanee's evidence that he was very angry when he learned about the video and that he still experiences significant distress when he has to talk about it.

[72] Accordingly, I award Mr. Nahanee \$20,000 in aggravated damages to compensate him for this distress.

Punitive Damages

[73] Mr. Nahanee also seeks an award of punitive damages in the amount of \$10,000 to \$20,000.

[74] Unlike aggravated damages, punitive damages are not intended to compensate a plaintiff for a loss. Rather, the aim of punitive damages is to provide retribution and to deter and denunciate the defendant's conduct. The award is exceptional and is only justified where there is "misconduct that represents a marked departure from ordinary standards of decent behaviour": *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 at para. 94.

[75] As compensatory damages have a punitive element, punitive damages are awarded only when non-pecuniary, pecuniary and aggravated damages are insufficient to accomplish the objectives of punitive damages and where the conduct would otherwise go unpunished: *Whiten* at para. 94. When awarded, they should be given in an amount that is no greater than necessary to rationally accomplish their purpose: *Whiten* at para. 94.

[76] Mr. Davidson's vicious and entirely unprovoked assault on Mr. Nahanee is reprehensible conduct deserving of specific rebuke. Thus far, this conduct has gone unpunished as criminal charges against Mr. Davidson were not proceeded with. This type of violence must be deterred and denounced.

[77] The significant awards I have made under the other heads of damages are not sufficient to achieve the required general deterrence and denunciation. Keeping in mind the direction from *Whiten* that punitive damage awards are generally more modest as well as the award made in *Thomson v. Friedman*, 2008 BCSC 703, relied upon by Mr. Nahanee, I am of the view that an award of \$5,000 is appropriate for punitive damages.

Health Care Recovery Act

[78] The Ministry of Health is seeking recovery of medical expenses arising from the assault under the Health Care Costs Recovery Act, S.B.C. 2008, c. 27. The Certificate from the Ministry of Health filed pursuant to section 16 of the Health Care Costs Recovery Act indicates \$5,682.36 in health care services. I find that the defendant is liable for these costs.

Disposition

[79] For these reasons, I award Mr. Nahanee damages as follows:

- a) Non-pecuniary loss of \$80,000;
- b) Past wage loss of \$38,365.36;
- c) Loss of income earning capacity of \$36,000
- d) aggravated damages of \$20,000;

- e) punitive damages of \$5,000;
- f) health care services in the amount of \$5,682.36.

[80] The total is \$185,047.72.

[81] Does counsel wish to speak to costs?

[SUBMISSION ON COSTS]

[82] I award \$5,000 plus disbursements in costs.

"Hoffman J."

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