
CANADA / JUDGMENT

Ohri v. Aminie

2020 BCSC 270

COURT

Supreme Court of British Columbia

DECIDED

28 February 2020

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2020 BCSC 270 Ohri v. Aminie

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ohri v. Aminie,

2020 BCSC 270

Date: 20200228

Docket: M171316

Registry: Vancouver

Between:

Ram Gopal Ohri

Plaintiff

And

Jamshead Aminie and Black Top Cabs Ltd.

Defendants

Before: The Honourable Madam Justice Iyer

Reasons for Judgment

Counsel for Plaintiff:

M. Murphy

Counsel for Defendants:

K. So

Place and Date of Trial:

Vancouver, B.C.

February 18-21, 2020

Place and Date of Judgment:

Vancouver, B.C.

February 28, 2020

OVERVIEW

- [1] Ram Ohri was driving west on Dunsmuir Street in downtown Vancouver between 4:30 and 4:45 am on Sunday, February 7, 2016. As he drove through the intersection with Seymour Street, his Nissan truck was t-boned by a Blacktop Prius taxi driven by Jamshead Aminie ("Collision"). Both vehicles were write-offs.
- [2] The two issues in this case are first, who is at fault for the collision? As both drivers claimed that the light was green for them, either Mr. Ohri is completely at fault or Mr. Aminie is completely at fault. There is no middle ground. Second, if Mr. Aminie is at fault, to what damages is Mr. Ohri entitled? The two heads of damage he claims are non-pecuniary damages and costs of future care. Mr. Aminie agrees that if he was at fault, Mr. Ohri would be entitled to non-pecuniary damages, but in a lesser amount than claimed. In addition, he says Mr. Ohri has not proved any costs of future care.
- [3] For the reasons that follow, I find that Mr. Aminie is liable for the Collision. I award Mr. Ohri \$65,000 in non-pecuniary damages. I find that the evidence is insufficient to establish that Mr. Ohri is entitled to an award for costs of future care.

WHO IS RESPONSIBLE FOR THE COLLISION?

- [4] Both Mr. Ohri and Mr. Aminie testified about the Collision. As no other witnesses were called and there was no other evidence about how the Collision occurred (for example, an accident reconstruction report), I must decide liability based on my assessment of the credibility and reliability of the evidence given by each of the parties.
- [5] The credibility of a person's evidence relates to whether they are telling the truth. By contrast, the reliability of their evidence relates to its accuracy. I do not believe that either Mr. Ohri or Mr. Aminie was deliberately lying. However, I find Mr. Ohri's evidence more reliable than Mr. Aminie's evidence and I prefer it for that reason.
- [6] Mr. Ohri testified that he was travelling westbound in the left curb lane of Dunsmuir, heading to his office to pick up his reading glasses. There was virtually no traffic and the roads were dry. He drove through a series of green lights on Dunsmuir before approaching its intersection with Seymour. He estimated that he was travelling at a steady speed of 40-45 km/h. As he neared the intersection, he saw the pedestrian signal for those crossing

Seymour count down from 7 to 6. He maintained his speed as he entered the intersection. His vehicle was immediately struck on the driver's side door by Mr. Aminie's taxi. Mr. Ohri said he saw the taxi only a fraction of a second before the Collision and had no time to avoid it. He said that his vehicle slid, came off of two of its wheels and then hit the ground. As it landed, he struck the side of his head and noticed that the light in his direction of travel had turned from green to amber.

- [7] Mr. Ohri's account of the Collision was unshaken in cross-examination. His rejection of the suggestion that he was not fully awake when he was driving was persuasive, as he regularly wakes around 4-4:30 in the morning to do his daily exercise routine before starting work at 7:30 am. He acknowledged that he saw an ophthalmologist in 2014, but that was to address his potential for diabetic retinopathy, which is not a condition he has. He also acknowledged that he has 20-25 vision in one eye and 20-30 in the other. He has no vision restrictions on his driver's licence and there was no evidence at all to suggest that Mr. Ohri would have had any difficulty identifying a light as green or red.
- [8] Mr. Aminie's account of the Collision was that he was nearing the end of his shift when he picked up a passenger. He was travelling north on Seymour and saw that the light at the Dunsmuir intersection was red for him. He slowed and watched the pedestrian signal for those crossing Seymour count down. Seeing that the light was about to turn green for him, he increased his speed. He saw the light turn green before he entered the intersection. Mr. Ohri's vehicle suddenly appeared in front of his and he there was no way to avoid hitting it.
- [9] I find that Mr. Aminie's account of the Collision is less reliable than that of Mr. Ohri for the following reasons:
- In direct examination, Mr. Aminie stated that he started his shift at 5:00 or 6:00 pm on February 6, 2016 and that a shift is 12 hours. However, in his examination for discovery on August 20, 2018, he could not recall when he typically started his shift and he denied that he had been driving for about 11 hours at the time of the Collision.
 - At trial, Mr. Aminie was clear that he observed the pedestrian walk signal as he approached the intersection where the Collision occurred, but at his discovery, he said there were no signals other than the traffic lights themselves or, if there were, he could not recall them.
 - Mr. Aminie admitted that he made a mistake in his evidence at his discovery when he said that Mr. Ohri was travelling in the right curb lane of Dunsmuir and, in fact, it was travelling in the left curb lane.
 - Mr. Aminie made a number of estimates about his speed as he approached and entered the intersection, as well as about distances and time, in direct examination, on cross-examination and at his discovery. He acknowledged that these were guesses.

· In his direct evidence, Mr. Aminie said that Mr. Ohri's vehicle was travelling very fast, but in cross-examination he agreed that he did not see Mr. Ohri's vehicle before the Collision and had no idea how fast it was travelling.

[10] I accept that English is not Mr. Amanie's first language and that he may have misunderstood complex or multi-part questions. However, that is not a satisfactory explanation for all of the inconsistencies listed. Mr. Aminie also could not recall where he had picked up his passenger or where he was taking him. The trip sheet, which would have recorded such information, was never produced.

[11] I find that Mr. Ohri's account of the Collision is more reliable than that of Mr. Amanie. I find Mr. Amanie liable for the Collision.

TO WHAT DAMAGES IS MR. OHRI ENTITLED?

[12] Mr. Ohri seeks non-pecuniary damages and damages for the cost of future care.

Non-Pecuniary Damages

[13] The purposes and the relevant factors to consider in a non-pecuniary damages award are succinctly stated by Justice Dardi in *Carrillo v. Deschutter*, 2018 BCSC 2134 at paras. 90-92:

[90] Non-pecuniary damages are intended to compensate the plaintiff for the pain, suffering and loss of enjoyment of life and of amenities experienced as a result of the defendant's negligence. The award should compensate a plaintiff for such damages suffered to the date of trial and those that the plaintiff will suffer into the future.

[91] The award should be fair and reasonable for both parties, as those concepts are measured against the adverse impact of the particular injuries on an individual plaintiff: While fairness is assessed by reference to awards made in comparable cases, because each case is decided on its own unique facts and calls for an individualized assessment, it is neither possible nor desirable to develop a "tariff": *Lindal v. Lindal* (No. 2), [1981] 2 S.C.R. 629, at 637; *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25; *Hunt v. Ugre*, 2012 BCSC 1704 at para. 176-177; *Suthakar v. Humble*, 2016 BCSC 155 at para. 116 [Suthakar].

[92] In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, Kirkpatrick J.A. set out a non-exhaustive list of factors to be considered in awarding damages under this head. They include: the plaintiff's age; the nature of the injury; the severity and duration of the pain; disability; emotional suffering; loss or impairment of life; impairment of family, marital and social relationships; impairment of physical and mental abilities; loss of lifestyle; and the plaintiff's stoicism.

[14] I also bear in mind the potentially greater impact of a loss of function on someone at or nearing their retirement years: *Giles v. Canada (Attorney General)* [1994], BCJ No. 3212 (SC) rev'd on other grounds (1996), 21 BCLR (3d) 190 (CA).

- [15] As a result of the Collision, Mr. Ohri sustained injuries to the left side of his head, his low back/left hip and his left shoulder. The first two injuries resolved a short time afterwards, but the shoulder injury persisted and continues to bother him. Although he did not take any time off after the Collision, he had pre-booked a week off for a holiday and spent the time at home.
- [16] Mr. Ohri had no pre-existing condition affecting his left shoulder.
- [17] While the two orthopedic experts differed as to the precise medical description of Mr. Ohri's left shoulder injury, the evidence of its impact on him is not seriously contested. The experts agree that his shoulder has plateaued at about 70% of its former functioning.
- [18] Mr. Ohri is 67 years old and a widower. He works as a maintenance manager for a property company in downtown Vancouver and he has a side contract to maintain a medium-sized office building. Mr. Ohri lives with his son, daughter-in-law and their children, as well as his daughter's two children. Prior to the Collision, he had a longstanding morning exercise regime of walking and swimming laps. He was a keen gardener and handyman who took pride in maintaining his own home and garden as well as his rental properties to a high standard. He enjoyed recreational activities with his grandchildren, such as biking, hiking and playing soccer.
- [19] The injury to Mr. Ohri's left shoulder does not interfere with his employment, and is tolerable unless aggravated. But it does affect his other activities. If he lies on his left side at night, the pain will wake him up. He has had to modify his swimming, as he can no longer perform a front crawl or backstroke, and has had to reduce the number of laps he does. Dr. Loch, the defendant's expert orthopaedic surgeon, opined that Mr. Ohri should not climb ladders to more than three or four steps, he should avoid any repetitive left shoulder arm elevation outside his restricted range of motion, and he should not lift weights heavier than 15 pounds with his left arm.
- [20] Mr. Ohri said that he has learned to live with his shoulder pain, avoiding activity that exacerbates it. This has meant that he has had to give up personally performing the building maintenance work for his side contract, which is now done by his son or hired help, and he has significantly reduced his gardening and home maintenance activities. He is less active with his grandchildren, and no longer does all the groceries because he cannot carry heavy bags. Mr. Ohri's inability to lift heavy objects has also affected his volunteer activities.
- [21] Mr. Ohri's son, Yogash Gopal, testified about the impact of these limitations on Mr. Ohri. He described his father as taking a lot of pride in his activities, especially maintaining his properties, and said that he is frustrated that his limitations prevent him from continuing to maintain his former level of activity. Mr. Ohri now sometimes withdraws from the family and goes to sit in his room rather than participating fully in family life.

- [22] When describing the impact the Collision has had on his life, Mr. Ohri struck me as a candid and forthright person. He did not exaggerate his symptoms. For example, he reported his pain as three on a scale of one to 10.
- [23] Against this background, my award of non-pecuniary damages should be consistent with awards in similar cases. The plaintiff cited three authorities: *Fata v. Heinonen*, 2010 BCSC 385; *Harris v. Teo*, 2019 BCSC 1631; and *Carrillo v. Deschutter*, 2018 BCSC 2134. The defendants cited *Demidas v. Poinen*, 2012 BCSC 416; *Eng v. Titov*, 2012 BCSC 300; and *Krohn v. Weidner*, 2013 BCSC 767.
- [24] Based on the cases, Mr. Ohri says the range for a non-pecuniary damages award should be \$85,000 to \$90,000. Mr. Aminie says it should be \$35,000 to \$45,000.
- [25] I have read these cases. Adjusting the older authorities for inflation, the cases suggest a range of \$50,000 to \$115,000. However, in both of the two cases in which awards of \$100,000 or over were made, the plaintiffs' injuries were more severe than Mr. Ohri's. In any event, cases provide general guidelines only.
- [26] Considering the whole of the evidence and the principles guiding non-pecuniary damages awards, I find that a just and fair award is \$65,000.

Cost of Future Care

- [27] In order to obtain an award for the costs of future care, a plaintiff must demonstrate what costs are reasonably necessary on the medical evidence to promote his mental and physical health going forward.
- [28] Here, Mr. Ohri seeks a "nominal" award of \$2,500 to \$3,000.
- [29] I agree with the defendants that the medical evidence does not justify such an award in this case.
- [30] Mr. Ohri has not received medical treatment for his left shoulder since 2016. His condition has plateaued, and he treats his shoulder pain with heat and occasional over-the-counter pain relief medication. The medical experts agree that no further treatment is necessary unless Mr. Ohri cannot tolerate the pain. If he cannot, the options are steroid injections that may or may not help, or surgery. Mr. Ohri said that he is not interested in surgery. He did not suggest that he intends to try the injections. The plaintiff's expert, Dr. Chin opined that Mr. Ohri's shoulder pain may resolve over time.

CONCLUSION

- [31] In conclusion, I award Mr. Ohri \$65,000 in non-pecuniary damages. I dismiss his claim for costs of future care.

[32] Costs are awarded to Mr. Ohri on Scale B. However, if either party wishes to apply for a different disposition of costs, they may file and serve written submissions within 30 days of this judgement, with the responding party to file and serve its submissions 15 days after receipt of the initiating party's submissions.

"Iyer J."

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