
CANADA / JUDGMENT

Olson v. Ironside

2012 BCSC 546

COURT

Supreme Court of British Columbia

DECIDED

16 April 2012

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

2012 BCSC 546 Olson v. Ironside

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Olson v. Ironside,

2012 BCSC 546

Date: 20120416

Docket: M130518

Registry: New Westminster

Between:

Kelsey Lee Olson

Plaintiff

And

Eric James Ironside

Defendant

And

Insurance Corporation of British Columbia

Third Party

Before: The Honourable Mr. Justice Josephson

Reasons for Judgment

Counsel for Plaintiff:

B. R. Findlay

M. A. Sandor

Counsel for Defendant and Third Party:

T. A. Hulley

Place and Date of Trial:

New Westminster, B.C.

February 27 - 29, 2012

March 1, 2, 5, 6, 8 and 9, 2012

Place and Date of Judgment:

New Westminster, B.C.

April 16, 2012

- [1] Then 19 years old, Ms. Olson was injured on October 24, 2008 when the vehicle in which she was a passenger was rear ended by another vehicle in a significant collision that pushed her stopped vehicle into the vehicle ahead. Liability is admitted. With the exception of special damages, all heads of damages are in issue. While the evidence of the plaintiff and her lay witnesses was not significantly challenged, experts for the plaintiff and the defendant have markedly different opinions regarding the cause, nature, severity and duration of her symptoms.
- [2] Prior to the accident, all the evidence reveals the plaintiff was happy, active, energetic, outgoing, athletic and highly socially active - to the point that her grades suffered. She was a highly valued full time employee at Red Robin, a chain restaurant, and readily capable to meet the significant physical demands associated with her job as a cook. That all changed after the collision. She suffers ongoing pain in the back and neck, headaches, migraine headaches, anxiety, depression and became socially isolated and inactive. She has been terminated from two different restaurants since the accident because of her inability to perform the physical tasks associated with her employment and her frequent absences due to her symptoms. She now works part time with accommodation for her symptoms.
- [3] The following is a list of injuries that the plaintiff claims were caused by the collision:
1. Chronic soft tissue injuries with daily myofascial pain in her neck and upper back.
 2. Chronic soft tissue injuries with intermittent myofascial pain in her lower back.
 3. Chronic daily cervicogenic headaches.
 4. Significant and debilitating exacerbation of pre-existing migraine headaches, occurring 2 or 3 times a week.

5. Post-traumatic thoracic outlet syndrome, bilaterally.
 6. Chronic sleep disruption.
 7. Major depression, presently in partial remission.
 8. Post-traumatic stress disorder with nightmares, in partial remission.
 9. Permanent right temporomandibular joint ("TMJ") dysfunction.
- [4] Prior the collision, she rarely suffered from headaches and would have migraines only one or two times per year. She suffered from bruxism or teeth grinding, for which she wore a mouth guard until 2007, but had no history of pain or TMJ dysfunction. She had full attendance at her work and her competitive soft ball games and practises.
- [5] The plaintiff found the collision a most frightening experience, one in which she feared she would die. She was left distraught and in tears. This experience was exacerbated by the death of a friend in a motor vehicle accident not long before the collision. Ambulance attendants advised her to attend a medical clinic as there were four to five hour waits at the emergency department of the nearest hospital.
- [6] She was diagnosed with a grade two whiplash injury and prescribed medications. She then briefly attended a pre-planned birthday party for her close friend, but her condition gradually deteriorated. The next day, she testified that she could hardly move and suffered pain in the front and back of her neck and her back. She has suffered from headaches daily since the collision. She developed sleep problems with associated nightmares, sometimes awakening in tears. She suffered migraines once or twice weekly, sometimes accompanied by nausea and vomiting. Prescribed physiotherapy worsened her headaches to the point she could not continue. Light, smell and sound could trigger the onset of a migraine.

Employment

- [7] The plaintiff had been a model employee in various positions at Red Robin and was likely to move up to positions of increasing responsibility and income. Her manager, Mr. Ishkanian, whose evidence was unchallenged, described her as a "fantastic" employee, hardworking, reliable, always on time and one who performed her duties at a high level. She enjoyed her work. He would have encouraged her to move up in the management ladder as she had the demeanour and work ethic for success at that level. He testified however that, at present, he likely would not even hire her now because of her inability to perform her duties to a satisfactory level.
- [8] The plaintiff was off work for about three months after the collision. When she returned to work at the restaurant in January of 2009, she was assigned lighter hostess duties and then returned to the line cook position, but others had to do the lifting and other more strenuous duties for her. She often had to miss work or leave work early due to her symptoms. This caused much conflict with her supervisor, who happened to be her older sister, Stephanie

Olson, to the point that the plaintiff was told to quit or she would be fired. She left the restaurant in June of 2009.

- [9] In early 2009 the plaintiff took part-time employment doing inventory for Sears, where her mother was also employed. There she was accommodated with frequent breaks, allowed to lie on the floor, and given a push cart as she couldn't carry the device used for inventory gathering.
- [10] In June of 2009, the plaintiff obtained full time employment with another restaurant where she encountered similar problems, but again was accommodated by co-workers and worked through the pain. After the arrival of a less accommodating new manager, she was terminated in June of 2011 for absenteeism and inability to perform her duties.
- [11] Her sister Stephanie was transferred to another Red Robin restaurant in order to close it down. Desperate for assistance in that process, she hired the plaintiff on a short term basis, although the plaintiff's performance there was similar to that witnessed prior to her leaving the other Red Robin restaurant.
- [12] The plaintiff then secured part-time employment, again with Sears, in July of 2011. Recently, she transferred to the cosmetics department. As that position involves much standing, she has been given a special mat to reduce her symptoms.
- [13] The plaintiff made enquiries regarding employment as a dental hygienist. Her education would likely have required much upgrading to gain entry into such a program. The symptoms she now suffers due to the collision have foreclosed what remained a somewhat remote career possibility.

Symptoms

- [14] The plaintiff was an entirely credible witness in describing the impact of the post-accident symptoms on her life. Her evidence was corroborated by family, co-workers and a close friend. Her mother describes the plaintiff as "a completely different person" since the accident, i.e. a socially isolated couch potato. There was no serious challenge in the cross-examination of these witnesses. I accept their evidence. She suffers from sleeplessness, constant headaches, frequent migraine headaches, ongoing back and neck pain, depression and anxiety.
- [15] In addition, she developed a painful TMJ disorder in December of 2009 and would awake with a locked jaw, requiring extremely painful treatment. Jaw locking and clicking could occur throughout the day. The problem continues and she will require splints to reduce symptoms. She can only eat soft food to this day.

- [16] By 2010, the plaintiff was experiencing panic attacks and nightmares. She had little energy and ruminated on her accident and that of her deceased friend. She became socially isolated and disconnected from all her friends but one. Her doctor diagnosed depression in the spring of 2010 and prescribed anti-depressants.
- [17] She was referred to a psychiatrist, Dr. Gopinath, who prescribed medication and counselling. The plaintiff returned to playing soft ball, but only on a recreational level far below her previous competitive level, on the recommendation of Dr. Gopinath. She missed nearly half her games, but playing again improved her mood, though not her physical condition.
- [18] She also returned to the gym on medical advice and that also improved her mood intermittently. Fatigue and painful migraines did not permit as much gym attendance as she would have preferred. Stress related to this upcoming trial also played a role in that regard.
- [19] She testified that she awakes with a headache every day that is mild at first but which gradually worsens as the day progresses. She remains anxious, sad and worries much of the time.

Other Alleged Intervening Causes

- [20] Shortly before the collision, a close friend of the plaintiff died in a motor vehicle accident. After the collision, the boyfriend of the plaintiff left her after he became intimate with another woman. Also after the collision, the plaintiff became ensnared in a close internet friendship with a person she believed was a young man. In fact, as she eventually discovered, it was a woman. This caused the plaintiff much upset, to the point that she complained to police.
- [21] The defendant asserts that these events were, to some degree, causative of her symptoms after the collision. I reject that submission. The evidence is that the plaintiff and her friends went through a normal grieving process after the fatal motor vehicle accident by supporting each other and visiting the scene of the accident. With respect to the boyfriend, the evidence is that they quarreled as the plaintiff no longer wanted to go out or socialize due to her symptoms. Their breakup may have worsened her emotional condition, but it did so only for a brief period of time.
- [22] The internet incident was a betrayal and most upsetting, but its impact on the plaintiff, again, was only temporary. I accept the evidence that she then moved on and I find the incident played no role in her emotional condition or any other symptoms thereafter.

Expert Evidence

- [23] There is a conflict in the expert opinion evidence of psychiatrist Dr. Koo, called by the plaintiff, and that of neurologist Dr. Eisen, who conducted an independent medical examination for the third party. While both have outstanding credentials and experience,

Dr. Eisen's experience and credentials are particularly noteworthy and that is the primary basis on which the third party asks me to prefer his opinion evidence. The plaintiff asks me to prefer that of Dr. Koo, primarily on the basis that Dr. Eisen's opinion was based on incorrect facts and assumptions.

Dr. Koo

[24] Physiatrist Dr. Koo was an impressive witness, one who was confident in his opinion and had a good ability to explain his conclusions. After a very thorough and lengthy interview and examination on September 25, 2010, he concluded at p. 6-7 in his report of September 25, 2010 that the following conditions resulted from the injuries the plaintiff suffered in the collision:

1. Chronic soft tissue injuries with myofascial pain arising from the cervical paraspinal muscles, trapezius, periscapular muscles (rhomboids, infra and supraspinatus) and lumbar paraspinal muscles;
2. Chronic cervicogenic headaches;
3. Exacerbation of migraines (pre-morbid condition);
4. Chronic sleep disruption; and
5. Post-traumatic thoracic outlet syndrome bilaterally.

He adds the following:

In addition, the aforementioned primary and secondary diagnoses that have led to the recurrence of daily pain, disruption of sleep, and interference with her work and daily activities, have likely contributed to the subsequent development of:

1. Major depression, multifactorial; and possibly
2. Right TMJ dysfunction in the context of a pre-injury history of bruxism (grinding teeth), and wisdom teeth extraction.

[25] He is of the opinion that her condition has reached a plateau and states at p. 10 of his report that "she remains at a significantly increased risk for future pain exacerbation and may require periods of activity limitation in the future in the event of re-injury or overuse."

Dr. Eisen

[26] The well qualified neurologist Dr. Eisen stated: "The natural history of a soft-tissue injury is to heal in about two to three months." He added that, especially in young people, soft-tissues have an excellent potential for healing.

[27] Finding no neurological deficits in the plaintiff, he states at p. 6 of his December 2, 2011 report:

However, Ms. Olson continues to complain of neck and shoulder pain, lower back pain and headache, now almost 3 years since the MVA. Chronic whiplash, continuing for 2 or more years is unusual (<10% of whiplash).

- [28] Dr. Eisen is of the opinion that the ongoing back pain suffered by the plaintiff is largely related to her scoliosis and not the collision. At p. 9 of his report, he expresses his opinion that her headaches are likely to respond to Botox injections, hypnosis, biofeedback, or similar treatments and that "stopping the contraceptive pill is an important issue".
- [29] Dr. Eisen stated that that plaintiff "went on to a good recovery and back to work. Things got worse, so something new had to happen." I pause to note that this is simply incorrect as the evidence is clear she did not go on to a good recovery at all and was fired from two jobs due to her inability to cope with the physical demands of a job she previously handled with ease.
- [30] With respect to depression, Dr. Eisen states his belief at p. 10 that "the depressive symptoms started sometime after the MVA of October 24, 2008" and that they "are not related to the accident." This is contrary to the evidence of psychiatrist Dr. Gopinath, to whom he defers, and the evidence of Dr. Koo.
- [31] He disagrees with Dr. Koo's diagnosis of thoracic outlet syndrome ("TOS"), stating at p. 8 that "[t]he Pathological data explaining "neurogenic TOS" is very limited and there is none to confirm the idea of whiplash-induced TOS, in the absence of severe injury to the thoracic outlet area."
- [32] While deferring to psychiatrist Dr. Gopinath, Dr. Eisen nonetheless disagreed with the finding of post traumatic stress disorder, believing that only a severe head injury can result in that diagnosis.
- [33] At p. 9 of his report, Dr. Eisen concludes that the plaintiff suffered a whiplash injury in the accident, which resulted in "a syndrome complex typical of this type of injury with significant improvement after about four months. The improvement was sufficient to enable her to start working, at first part time and within a few weeks full time." It is clear that Dr. Eisen was unaware of the evidence that the plaintiff continued with significant symptoms that altered all aspects of her life and prevented her from carrying out former employment duties in a satisfactory manner.
- [34] After agreeing in cross-examination that the accuracy of his facts and assumptions is important to his opinion, Dr. Eisen acknowledged that he didn't know the frequency of the plaintiff's pre-collision headaches nor that they were not accompanied by seeing purple dots and nausea to the point of vomiting as was the case post-accident. He wrongly believed that, prior to the accident, the plaintiff had attended the emergency ward with migraines. He did not note that pre-accident headaches did not interfere with the activities of the plaintiff, nor that the plaintiff had been an outgoing, happy and well-adjusted young person before the accident.

- [35] Dr. Eisen agreed he was unaware of the frequency or time frame of pre-accident back strains, nor that there had been no back problems for two years prior to the accident.
- [36] Regarding TMJ symptoms, while outside his area of expertise, he agreed he was wrong regarding pre-accident jaw clicking.
- [37] Saying that he was "totally muddled about time sequences", he was mistaken about the time of the death of the friend of the plaintiff when stating that he believed the death was shortly before 2010 rather than a month before the accident.

Reply of Dr. Koo to the Report of Dr. Eisen

- [38] Regarding the plaintiff's TMJ symptoms, Dr. Koo responded that, in his experience, this is a common phenomenon for persons with pre-existing vulnerabilities to the disorder, such as the plaintiff, as the symptoms can be exacerbated by the pain and muscular tension in the neck and shoulders, with associated stress and anxiety, flowing from a whiplash injury.
- [39] Dr. Koo disagreed with Dr. Eisen's opinion that Botox injections, hypnosis, and biofeedback would be viable treatment modes for the plaintiff's headaches, stating the following at p. 3 of his January 5, 2012 report:

Moreover, given the chronicity of her underlying myofascial pain and the cervicogenic nature of her chronic daily headaches, the treatments he has outlined are worth trying, as they may produce some degree of symptomatic temporary benefit, but are unlikely to be curative, given the chronicity and severity of her headache symptoms to date.

- [40] Dr. Koo also disagreed with Dr. Eisen's opinion that the low back pain was likely the result of pre-existing scoliosis, stating that the majority of cases of mild scoliosis are completely asymptomatic. If the cause was scoliosis, Dr. Koo would expect "more indolent, chronically recurring back pain" rather than the sporadic and isolated episodes related to sporting activities (see p. 4-5 of his report).
- [41] In disagreeing with Dr. Eisen's opinion that whiplash injuries cannot give rise to the plaintiff's disputed TOS, Dr. Koo produced three articles that demonstrate the opposite.
- [42] Regarding depression, Dr. Koo offers this strong opinion at p. 7:

It is my experience, having worked extensively with patients recovering from life-changing injury or illness, that reactive depression following a significant traumatic event is a common psychological reaction that often begins in a delayed fashion, as the chronicity of pain, impairment and disability start to take their toll, and hope for normalcy fades, requiring emotional adjustment and bereavement of loss. The secondary losses attributed to such traumatic events, including financial strain, loss of employment opportunities, reduced socialization, inactivity, limited leisure pursuits, and disrupted sleep arising from pain, can all contribute to the development of a delayed, reactive depression.

Dr. Koo concludes at p. 8 that:

In my opinion, Ms. Olson's recovery has been slow, protracted and incomplete, with persisting symptomatic and functional impairment.

Dr. Grypma

[43] Orthopaedic surgeon Dr. Grypma states in his January 25, 2012 report that "I found Ms. Olson's current subjective complaints indicate non-specific neck pain."

[44] He concluded that the plaintiff's lower back symptoms had recovered. This conclusion was based in part on his observation that the last notation of lower back pain was on the date of the accident and there was no further note of such pain in the medical legal report of her family doctor, Dr. Dugdale.

[45] He adds the following at p. 10-11:

Ms. Olson complains of enduring symptoms of burning, aching, dull aching symptoms although on physical examination her symptoms were described as pulling and stretching. I found her symptoms today more compatible with deconditioning rather than enduring injury from the subject motor vehicle accident.

No objective findings were noted on physical examination related to the motor vehicle accident and I could not find any signs suggesting any injury or pathology related to the subject motor vehicle accident. The natural history of a soft-tissue injury is to heal in about two to three months.

As far as disability is concerned, Ms. Olson likely had total disability for approximately two to three months. She likely had partial disability for two to four weeks. On examination today, I could not find any objective findings to support ongoing disability. In the absence of structural damage, disability is highly unlikely. Ms. Olson states today that she is able to do everything but has some limitations with lifting. Residual disability after two to three months is highly unlikely. There may be some discomfort which is unlikely to cause any limitations.

Reply of Dr. Koo to the Report of Dr. Grypma

[46] After reviewing updated medical information and re-examining the plaintiff, Dr. Koo states in his report of February 10, 2012 that:

[S]he continues to have ongoing nociceptive pain of myofascial origin of the neck and periscapular muscles, TMJ dysfunction and that of the mastication muscles of the right side. This does not conform to my understanding of "nonspecific" pain, in that underlying pain identifiers are easily identified.

In my opinion, she has ongoing partial disability related to her present and previous vocation and that her enjoyment in working is likely diminished on the basis of her activity-related pain.

She also reports activity restrictions at the gym with relative intolerance of heavier weight lifting as it relates to back strengthening exercises or those that involve shoulder muscles.

In my opinion, she continues to have partial disability as it relates to her work and recreational pursuits, and this disability is likely to be permanent on the basis of the duration and severity of her symptoms to date.

Overall, I agree with the work-related estimations which were evidenced in Ms. Olson's inability to continue working as a line cook, as predicted. I also anticipate that her pre-injury goal of a dental hygienist is precluded on the basis of her post-accident pain and activity restrictions.

In my opinion, she continues to have permanent partial disability on the basis of her motor vehicle accident conditions, as evidenced by her personal history of work intolerance, interference with gym and daily activity, and functional capacity limitations as reported by Ms. Hunt.

Dr. Gopinath

[47] The treating psychiatrist of the plaintiff provided a report dated December 13, 2010. After observing that the plaintiff had functioned well despite a family history of mood disorder and anxiety disorder, he concluded that the plaintiff had coped well with the death of her friend shortly before the accident.

[48] He adds at p. 5-6 of his report:

The impact of the accident has been many:

- 1) Whiplash injury causing soft tissue damage, chronic dull aching pain of the neck, upper back, shoulders, lower back which is continuing even now requiring some analgesics and muscle relaxants. This has considerably limited her level of activity and sleep.
- 2) Psychological problems. The accident has caused some Post Traumatic Stress Disorder with increasing anxiety, hypervigilance, poor attention and concentration, nightmares with re-experiencing of the trauma in her dreams as well as nightmares of seeing her deceased friend. It is known that current traumatic events can trigger memories and flashbacks of previous traumatic experiences. However her Post Traumatic Stress Disorder is in partial remission.
- 3) Major depression. Her Post Traumatic Stress Disorder as well as chronic pain with some limitation of movements, disruption of sleep and also loss of relationship has triggered an episode of major depression in the last 8 months which is typical of a mood disorder. Though she is at risk of developing a mood disorder due to the genetic risk unfortunately the accident has brought forward and precipitated the onset of mood disorder. Though she is likely to fully remit from the current episode unfortunately she is vulnerable to future relapses and remissions despite successful resolution of her chronic pain and Post Traumatic Stress Disorder.

- 4) Social disruption. In terms of loss of finances from inability to function due to the pain and loss of relationship with her boyfriend due to inability to be engaged in quality time on account of persistent pain, preoccupation of the accident and depression.

Ms. Olson in my opinion is suffering from Post Traumatic Stress Disorder, Generalized Anxiety Disorder, panic attacks as a consequence with a mild degree of agoraphobia. Though she had some chronic low-grade depression since the time of the accident on account of the pain and post traumatic symptoms as reminders this has culminated in a major episode of depression making her biological vulnerability for depression to manifest ahead of time. Unfortunately this is likely to recur in the future regardless of any stresses. The Post Traumatic Stress Disorder itself, though likely to improve, unfortunately is going to leave her with some degree of vulnerability to have further anxiety and also Post Traumatic Stress Disorder features with even unrelated stressors.

- [49] Dr. Gopinath revisited the issues in his report of November 25, 2011. He concluded that her depression was in remission and that she still suffered from symptoms of mild post traumatic stress disorder. The plaintiff, he concluded, is now vulnerable and fragile and at a much greater risk of suffering another major depressive disorder.

Conclusion Regarding Conflicting Expert Opinion Evidence

- [50] I accept the opinion evidence of Dr. Koo where it differs from that of Dr. Eisen and Dr. Grypma. Firstly, Dr. Koo proceeded only after a very thorough review of the information and after a thorough interview and examination of the plaintiff. His opinion was based on an accurate version of the facts and assumptions. His evidence was convincing and best explains why the plaintiff clearly continues to suffer from symptoms, even though she only sustained a soft tissue injury in the motor vehicle accident.
- [51] Dr. Eisen, though a highly qualified neurologist, proceeded on the basis of some inaccurate facts and assumptions, which significantly weakens his opinion. In any event, his evidence is that over 90% of persons who suffer soft tissue injuries recover. If so, I would conclude that the plaintiff is in that 10% minority.
- [52] I accept the plaintiff's submission that the opinions of Dr. Grypma are weakened by the lack of a thorough and complete examination, his failure to acknowledge her headaches and TMJ dysfunction, and his failure to consider significant material facts.
- [53] I found the replies of Dr. Koo to the evidence of both Dr. Eisen and Dr. Grypma to be convincing and reliable.

Ms. Janet Hunt

- [54] Ms. Hunt did a work capacity evaluation of the plaintiff and estimated the cost of future care. Ms. Hunt found limitations to the plaintiff negatively affecting almost all but sedentary types of employment, including reaching, handling, fingering or feeling. The plaintiff is limited to sedentary and light strength demands with occasional medium strength work up to waist height and light-medium strength carrying over short distances. Even with sedentary types of employment, the plaintiff has sitting, standing and walking limitations.
- [55] She recommends care in the nature of physiotherapy, psychological counseling, vocational assessment and counseling, occupational therapy consultation and TMJ treatment.

TMJ Dysfunction

- [56] The plaintiff's longtime treating dentist, Dr. Pirani, is of the opinion that the accident is the cause of the TMJ dysfunction. The dentist retained by the third party, Dr. Mehta, expressed some difficulty linking this dysfunction "directly" to the accident, but he basically agrees with Dr. Pirani's assessment.

- [57] Dr. Pirani states the following in his March 15, 2011 report:

The most likely question that will be raised is to why she developed symptoms of the TM Joints almost fifteen months after the MVA.

The etiology of Temporomandibular Joint Disorder (TMD) is multi-factorial, with predisposing, initiating and perpetuating factors. When a patient can no longer compensate or adapt for these factors, the patient becomes symptomatic.

In Ms. Olson's case, she always had increased occlusal forces on the right, but she had been asymptomatic. The macrotrauma was the initiating factor and the perpetuating factors are increase in personal stress, antidepressants, chronic pain and increased parafunctional habit of clenching and grinding her teeth. This microtrauma is defined as prolonged, repeated adverse loading of the masticatory system, through postural imbalance and/or from oral parafunctional habit.

There is a direct relationship between forward head posture, loss of normal cervical curve and the Mandibular position. As the neck loses its normal cervical curve, it brings the Mandible further up and back, resulting in the condyle to posture further back in the fossa, and invading posterior joint space. This results in discal ligaments to elongate and cause disc displacement.

During the hyperflexion episode, teeth can come together with tremendous force, resulting in enamel and cervical fractures and hyperemic pulps. These symptoms may not become apparent for months or years later and therefore the dentition has to be monitored for a very long time.

Ms. Olson sustained a permanent injury to the right TM Joint when she was involved in a double impact MVA (rear and frontal end collision) on October 24, 2008.

[58] Dr. Mehta puts it this way in his February 14, 2012 report:

The significant history of pre-motor vehicle collision bruising history combined with the patient's and family history of depression, anxiety and panic attacks, post traumatic stress disorder coupled with chronic neck and shoulder pains as well as headaches is most likely related to the onset of jaw problems fourteen months following trauma history.

[59] Thus, I have no difficulty in concluding that, but for the motor vehicle accident in issue, the plaintiff would not have developed this TMJ dysfunction.

Summary of Injuries Caused by the Accident

[60] The plaintiff has proved that, but for the accident, she would have continued her healthy, active and outgoing life style. I accept the plaintiff's submission that the following injuries were caused by the accident:

1. chronic soft tissue injuries with myofascial pain in her neck and upper back present on a daily basis;
2. chronic soft tissue injuries with myofascial pain in her lower back present on an intermittent basis;
3. chronic cervicogenic headaches present on a daily basis;
4. exacerbation of her pre-existing migraines;
5. post-traumatic thoracic outlet syndrome bilaterally;
6. chronic sleep disruption;
7. major depressive disorder, presently in remission;
- 8 post-traumatic stress disorder, presently in partial remission; and
9. permanent right temporomandibular joint dysfunction.

Non-Pecuniary Damages

[61] The accident had a dramatic effect on all aspects of this young plaintiff's life because of the symptoms listed in the previous paragraph. She has learned to cope as best she can with those symptoms, but is unlikely to fully recover.

[62] Of the several case authorities cited by the plaintiff to assist the Court in determining non-pecuniary damages in the case at bar, the most helpful are *Parfitt v. Mayes et al*, 2006 BCSC 125; *Houston v. Kine*, 2010 BCSC 1289; *Murphy v. Jagerhofer*, 2009 BCSC 335; *Prince-Wright v. Copeman*, 2005 BCSC 1306; and *Ashmore v. Banicevic*, 2009 BCSC 211. The non-pecuniary damages awards in these cases range from \$80,000 to \$120,000.

- [63] After reviewing the authorities cited to me and considering the impact of the proven injuries on the plaintiff's daily life, I award the plaintiff \$100,000 for non-pecuniary damages, which I consider to be a mid-range award for the circumstances of this case.

Past Wage Loss

- [64] The plaintiff was earning \$10 per hour plus tips as a restaurant employee at the time of the accident, earning about \$1,300 per month. She missed three months, returning in late January or early February of 2009, which approximates a loss of \$4,000. From then to the end of May of 2009, she lost approximately \$2,600. The plaintiff asks me to assume her income for 2009, but for the accident, would have increased by some \$4,000 to \$20,000 in seeking an additional \$3,375 from June to the end of 2009. A more reasonable assumption would be an increase of \$2,000 to \$18,000 and I award a total of \$13,000 from the time of the accident to the end of 2009.
- [65] It is reasonable to conclude that the plaintiff would have continued to earn modest increases in her salary over the years. In fact, she earned a taxable income of \$10,371 in 2010 and \$10,974 in 2011.
- [66] Assuming that her income would have increased to \$20,000 and \$25,000, the plaintiff seeks an award for total past loss of income of \$38,655. I find it more reasonable to assume increases to \$18,000 and \$20,000.
- [67] From the time of the accident to the time of trial, the plaintiff has proven a total past wage loss of \$32,000.

Loss of Earning Capacity

- [68] Given her ongoing symptoms, there is a real and substantial possibility to the point of it being a certainty that the plaintiff will continue to suffer income loss. Because of her limitations, many possible career avenues have been foreclosed. The career she enjoyed and excelled at was in the restaurant business. There is evidence that if she eventually worked her way up to the position of manager, her income could approach \$40,000 to \$55,000. This is a significant contingency.
- [69] There is also the contingency that, if the avenues are explored as recommended by Ms. Hunt, there will be some improvement in her condition or an increased ability to cope with her symptoms while employed.
- [70] I am to be guided by the principles set out in *Athey v. Leonati*, [1996] 3 S.C.R. 458.
- [71] The greatest likelihood, as earlier stated, is that the plaintiff would have continued in the restaurant business and achieved promotions over time. Less likely is that she would have become a dental assistant earning a similar income. An even more remote possibility is that she would have qualified as a dental hygienist.

[72] There is in evidence the report of Mr. Carson providing the present day value of future loss.

[73] After applying contingencies, the plaintiff submits that an award in the range of \$500,000 to \$800,000 is appropriate.

[74] I award the plaintiff \$450,000 for loss of earning capacity.

Cost of Future Care

[75] The present day value of following the recommendations of the experts and Ms. Hunt was not challenged. The present day value of those recommendations is \$67,625. It is reasonable to assume that there will be additional costs associated with matters such as housekeeping and yard work. I will award a total of \$75,000 under this heading.

Special Costs

[76] These have been proven at \$397.55.

Summary

1. Non-Pecuniary Damages \$100,000.00
2. Past Wage Loss \$32,000.00
3. Loss of Earning Capacity \$450,000.00
4. Cost of Future Care \$75,000.00
5. Special Costs \$397.55

TOTAL \$657,397.55

[77] The plaintiff will have her costs, with leave to apply in that regard.

"Josephson J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/12/05/2012BCSC0546.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/olson-v-ironside-2012>

Prepared on 26 October 2026 · Esheria