

CANADA / JUDGMENT

Ramchuk v. Wagar

2016 BCSC 2342

COURT

Supreme Court of British Columbia

DECIDED

14 December 2016

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

2016 BCSC 2342 Ramchuk v. Wagar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ramchuk v. Wagar,

2016 BCSC 2342

Date: 20161214

Docket: M70065

Registry: Nanaimo

Between:

John Ramchuk

Plaintiff

And

Lance Wagar

G.W. Lindberg Land Surveying Inc.

Defendants

Before: The Honourable Mr. Justice Grist

Reasons for Judgment

Counsel for the Plaintiff:

B.J. Falkenberg

Counsel for the Defendants:

G.G. Ridgway, Q.C.

Place and Dates of Trial/Hearing:

Nanaimo, B.C.

May 9-13, 2016

June 20-21, 2016

Place and Date of Judgment:

Nanaimo, B.C.

December 14, 2016

- [1] This personal injury quantum assessment relates to injuries sustained by the plaintiff, Mr. John Ramchuk, on August 16, 2011, when another driver rear-ended his vehicle on the Island Highway near Nanoose Bay, British Columbia (the "Collision").
- [2] Mr. Ramchuk was 51 years old at the time of the Collision. At that point he had been on an Alberta Workers' Compensation Board ("WCB") pension for approximately 11 years. He started receiving the pension after sustaining significant back injuries (the "Workplace Injury") after a fall from a roof while working as a sheet metal worker in September 1996. This case raises issues regarding how much further ongoing loss of function Mr. Ramchuk sustained due to the Collision in addition to the disability attributable to the Workplace Injury, and the impact the injuries resulting from the Collision had on Mr. Ramchuk's quality of life. This will also lead to an assessment of his additional need for additional future care and assistance with daily living.

THE WORKPLACE INJURY

- [3] Mr. Ramchuk sustained low back injuries on September 12, 1996, after falling from a carport roof. On September 25, 1996, he underwent surgery to the lower level of his lumbar spine, a procedure which the medical records describe as a 'discectomy' or a 'discectomy and laminectomy'. The surgery apparently was not markedly successful in restoring function or relieving pain. After surgery Mr. Ramchuk experienced chronic low back pain with chronic sciatica, more pronounced in his left leg, and periodic bowel and bladder control problems.
- [4] Mr. Ramchuk entered a pain clinic and took training in work hardening and pain management in Alberta in 1998. However, he was ultimately assessed as disabled from all available employment and awarded a full pension. Medical treatment, beginning in Alberta and continuing after his move to British Columbia, included medications prescribed to manage pain so he could maintain a largely self-sufficient lifestyle. His pension entitlement included six hours of housekeeping help per week and some seasonal yard help.

- [5] Mr. Ramchuk's prescription medication consistently included opioids, at times prescribed at levels now recognized as inappropriate and even dangerous. Medical professional associations have reconsidered the prescribing of opioids over the last few years and have recommended that physicians significantly cut back on the use of opioids to manage chronic pain. Studies have recognized that continuing high dosages have little long-term beneficial effect and can lead to addiction and other health risks. From the evidence heard in this case, it appears an ongoing debate exists as to what dosage is potentially beneficial and yet safe for treatment.
- [6] In Mr. Ramchuk's case, physicians prescribed a high level of opioids to manage pain while he was still in Alberta. At one point during an early stage of treatment, he was prescribed a dosage expressed as a morphine equivalent dose of 750 mg per day. The current dosage limit recommended in British Columbia is 200 mg per day, and this dosage may be further revised downward, perhaps to 120 mg per day. Medical professionals considered that Mr. Ramchuk was addicted to opioids while he attended the Alberta pain clinic. His GP also expressed this concern shortly before the Collision, after a discussion with a WCB specialist who was instituting a policy to refuse to fund opioid prescriptions in cases of chronic pain.
- [7] Subsequent to the motor vehicle Collision, Mr. Ramchuk's use of these drugs has been significantly cut back. For roughly three years prior to trial, he was treated with methadone. While methadone is an opioid, it has less pernicious effects than other opioids and is successfully used to treat chronic pain. Mr. Ramchuk suffered heart problems as a side effect from the methadone treatment and he is again taking prescription opioids, but at dosages within the present recommended level in British Columbia. His present GP has treated him since the spring of 2013. He has training and experience in the use of these drugs and gave evidence that Mr. Ramchuk has cooperated with recommended treatment and has been able to manage with lower doses than have previously been prescribed.
- [8] Mr. Ramchuk moved to a rural community north of Nanaimo in 2007. With financial assistance from his son, he bought a house on seven acres of land. The house needed fairly extensive renovation to be habitable. The property was largely in a natural state, with overgrown areas that needed to be cut back.

MR. RAMCHUK'S LEVEL OF ACTIVITY PRIOR TO THE COLLISION

- [9] Mr. Ramchuk managed the renovations to the home and did much of the work, but he also hired others for jobs he could not do. For example, he did basic repairs to the subfloor, but contracted out the finish flooring, as well as much of the interior painting. He could not do work requiring that he climb a ladder, but he did the refinishing and carpentry work that he could access. Clearing the grounds included cutting back the brambles and other brush. At times, he rented a Bobcat and an excavator to do this work. He planted grass and shrubs, and established walking paths through the property. Mr. Ramchuk cut the lawn with a ride-on lawnmower he adapted by way of a softer seat. He heated the house in the winter with wood he split with an axe and transported the split wood to the house in a trailer affixed to

his lawnmower or a small ATV.

- [10] As a young man, Mr. Ramchuk was involved with motorcycles and played baseball at a fairly high level. He continued to own a motorcycle after the Workplace Injury and regularly rode it on short trips near his home after he moved to British Columbia. Mr. Carter gave evidence that Mr. Ramchuk was a regular visitor to his motorcycle shop in a neighbouring town where he assisted with repairs and worked on his own machine. Ms. Kroftka and others gave evidence that Mr. Ramchuk was reasonably active socially, and attended local dances and holiday events with friends. I found that these lay witnesses were careful with their testimony and I accept that they reliably reported their observations.
- [11] Mr. Ramchuk said he could manage the pain from the Workplace Injury by employing postures and strategies he adopted when the pain became disabling. His sleep pattern developed into periods of three to four hours' sleep, following which he would wake to change his posture. Mr. Ramchuk kept a cane with him throughout his daily activities, but only used it occasionally.
- [12] For several years prior to the collision Mr. Ramchuk spent a number of months each year in Mexico. Two or three years prior to the collision he and a friend owned a vacation house there. While staying in Mexico he participated as an umpire in a local baseball league, earning a small amount of money per game but participating mostly because he enjoyed being involved in the game again.

THE MOTOR VEHICLE COLLISION

DR. EL KARSH'S FINDINGS

- [13] Dr. El Karsh has been Mr. Ramchuk's general practitioner since May 2013. Dr. El Karsh continues to treat him and provided a Report dated January 18, 2016. His comments on the effects of the injuries sustained in the Collision are at p. 6 of his Report:

Overall impression of impact of MVA:

On reviewing Mr. Ramchuk['s] documents, investigations and previous examinations and comparing them to his current symptoms and findings it is obvious that these changes happened after the collision.

1-increased level of pain and discomfort.

2-neck, right shoulder, right elbow pain and right hand par aesthesia.

3-right sciatic pain[.]

4-worsening of lower back injuries to a point of possible cauda equina syndrome.

5-fecal incontinence and weakness of anal sphincter[.]

6-patient suffering. Not finding the comfort zone and lost pain free days even with high dose of pain meds.

7-significant decline in overall functionality and his need for more support for basic life needs and duties.

DR. ARNEJA'S FINDINGS

[14] The rear-end collision on the Island Highway heavily damaged both vehicles. The report of Dr. S. Arneja, an orthopaedic surgeon instructed by the defendant but whose report the plaintiff introduced in evidence, listed these facts drawn from an examination of Mr. Ramchuk and a review of medical records:

FACTS AND ASSUMPTIONS

1. Mr. Ramchuk was 51 years old at the time of the motor vehicle accident, which occurred on August 16, 2011.
2. Mr. Ramchuk's vehicle, a F150 Ford, was travelling at low speed and was hit from the rear-end by another vehicle travelling at approximately 100 km/h. Mr. Ramchuk was seat belted. There were no air bags in the vehicle to deploy. His vehicle was damaged beyond repair. He was sitting in the front right driver's seat. He did not lose consciousness. He experienced symptoms of pain in the right neck and right arm and shoulder.
3. He presented to hospital and was diagnosed with "marked DDD" of the neck and spine and prescribed Arthrotec and Flexeril. He was discharged from the emergency department from the Nanaimo Regional Hospital on the same day with recommendation to follow up with his family doctor.
4. X-rays were obtained on August 16, 2011 of his cervical spine that showed significant midcervical disc space and facet spondylosis, increased on the left. There was no fracture identified.
5. He attended Dr. C. Balfour the following day, family physician. At the time of the consultation, he reported having neck and upper back pain and had limited motion in the cervical spine without any neurologic deficit. He was diagnosed with cervicgia and prescribed Flexeril and an anti-inflammatory.
6. He saw his family physician approximately nine days later. He reported having headaches at that time and was walking without any walking aids required.
7. He was assessed by Dr. Balfour several times over the ensuing several months with complaints of primarily neck and lower back pain for which he was prescribed oral medications to treat symptoms. His primary care physicians titrated over several months the use of his opioid medications after the motor vehicle accident to decrease his overall dependence of opioids.

[Pp. 2-3 of Dr. Arneja's Nov. 25, 2015 Report.]

[15] At p. 5 of her Report, Dr. Arneja diagnosed:

DIAGNOSES

1. Aggravation of chronic lumbar spine pain related to an injury sustained in 1996.
2. Chronic whiplash pain cervical spine[.]
3. Aggravation of cervical spondylosis.

Mr. Ramchuk's current overall symptoms are likely related to an aggravation of pre-existing conditions involving the cervical and lumbar spine, in addition to development of chronic whiplash pain. Pre-existing conditions that he had were cervical spondylosis (pre-existing osteoarthritis of the cervical spine) and post-traumatic lumbar spine pain. These two conditions likely made Mr. Ramchuk at increased risk for injury and predisposed him to aggravation of these conditions at the time of the motor vehicle [collision]. In addition, Mr. Ramchuk likely has developed chronic whiplash pain related to injuries he sustained to his cervical spine and neck region at the time of the high-speed motor vehicle collision.

DR. MacKEAN'S FINDINGS

[16] Dr. L.C. MacKean is a physiatrist who, saw Mr. Ramchuk at the request of his counsel. She gave a somewhat similar record of the injuries sustained and the effects on Mr. Ramchuk. She says at pp. 3-4 of her February 6, 2014 Report:

He states right away he had a headache in the back and sides of the head, as well as neck pain and pain going down the right arm with numbness into the right hand.

He states following the motor vehicle accident he had increased lower back pain and increased pain going into the lower extremities.

He went to the Emergency Room at the Nanaimo Regional General Hospital where he was assessed and he had x-rays of the cervical spine done that showed significant disc degeneration and facet degenerative changes involving cervical spine with left sided foraminal encroachment.

He states he did some massage therapy treatment and acupuncture treatment following the motor vehicle accident but he has not gone recently. It does not sound like the therapy provided him with significant pain relief.

He states he saw Dr. Kemble recently for nerve testing in January 2014 but I did not have the opportunity to review Dr. Kemble's report.

He states since the motor vehicle accident occurred he has had more difficulty sleeping due to higher pain levels in his back and lower extremities but also due to the neck pain and headaches which wake him up in the morning. He states he might sleep for an hour or two at the most compared to three to four hours before the motor vehicle accident occurred.

He was taking narcotic medication prior to the motor vehicle accident occurring and he has been on Methadone for six months. He still uses Oxycodone for breakthrough pain but not as often. He also takes Gabapentin which he does not find helpful at all for pain relief.

He complains of ongoing neck pain with decreased mobility following the motor vehicle accident with headaches that go in behind the ears and up into the top of the head that seem to be worse in the morning.

He states he is not able to stand or sit for longer than about 15 minutes and he is not able to walk as far and he has to use his cane more as compared to before the motor vehicle accident where he states he was able to stand and sit for 20 to 30 minutes at a time.

He also describes problems with pain in his right arm down to the elbow and weakness and numbness in his right hand. He states the numbness involves the inside of the right middle finger but mostly the third and fourth fingers in the right hand.

[17] She says at pp. 7 of her February 6, 2014 Report:

IMPRESSION:

1. Chronic severe mechanical low back pain with neuropathic pain into the lower extremities which was worse following the motor vehicle accident.
2. Grade 2 whiplash associated disorder cervical spine and upper back with severe degenerative changes involving the cervical spine on x-rays that were done in 2014.

He is probably close to the point of maximal medical improvement following injuries sustained in the motor vehicle accident as it has been over four years following the date of the motor vehicle accident.

He had a severe chronic lower back pain condition with symptoms of pain and numbness affecting mostly the left lower extremity following his previous work injury and subsequent surgery that occurred in 1996.

He had worsening of his chronic low back pain with worsening of the pain symptoms in the lower extremities with more pain involving the right lower extremity following the motor vehicle accident that occurred on August 16th, 2011.

I cannot give an opinion regarding how much more disabled he has been following the motor vehicle accident as I did not have the opportunity to assess him prior to that. However, I do think he [has] probably had worsening of his chronic pain symptoms and also a new onset of neck and upper back pain and headaches as well as right arm pain and numbness following the motor vehicle accident.

I know that he required help for home maintenance and cooking and those types of activities before the motor vehicle accident occurred and that he was not able to return to work following the injury that occurred in 1996.

I do think he will continue to require help at home for cleaning, cooking, laundry, and also yard work and chopping firewood. I cannot be specific in terms of how much of a difference in care he will require as a result of the injuries sustained in the motor vehicle accident except to say that he probably will require more help now than he did before but I cannot specifically say how many hours he will require.

DR. FARNAN'S REPORT

[18] The defence introduced the January 22, 2016 Report of Dr. P.A. Farnan, an expert in addiction medicine. Dr. Farnan reviewed the PharmaNet records and medical documentation relating to the opioids prescribed for Mr. Ramchuk following the Workplace Injury and after the Collision. Dr. Farnan highlighted that just prior to the Collision medical professionals attempted to substantially reduce Mr. Ramchuk's prescribed dosages of these drugs. The Alberta WCB's policy change relating to opioids was the main impetus for this attempt. The WCB was funding his prescriptions and the WCB's new policy was based on evidence that heavy opioid dosages were medically not advisable and could be counterproductive in combating the effects of chronic pain.

[19] Mr. Ramchuk resisted these changes and wanted to continue with the same medications or ones similar to those he had been prescribed for over a decade.

[20] This caused conflict between Mr. Ramchuk and Dr. Balfour, his GP at the time, and Dr. Balfour recommended he find another physician. In the spring of 2013, Mr. Ramchuk began to see Dr. El Karsh, who has taken training for general practitioners in the prescription of opioids. Dr. El Karsh treated Mr. Ramchuk for the next three years with methadone as the primary source of chronic pain relief. This continued until this drug caused cardiac problems for Mr. Ramchuk and opioids were reintroduced at lowered dosages.

[21] Dr. Farnan's report states at p. 16:

As far as I could see from records available, Mr. Ramchuk's use of opioid medications did not really change dramatically after his motor vehicle accident but (as would be expected) it seems to have gradually increased, in the form of methadone and other morphine preparations. In the first half of last year (based on PharmaNet records available to June 2015) Mr. Ramchuk was prescribed several other opioids as well as methadone (hydromorphone, morphine as Statex, MS Contin and M-Eslon). I was unable to determine the exact dose of methadone being dispensed for Mr. Ramchuk.

If the only history I had available on this man was: a 55-year-old male individual with; a) a past history of untreated opioid addiction and b) ongoing chronic pain symptoms with poor function since a work related accident and surgery in the mid-1990s; and c) the PharmaNet information provided to me; I would really not be surprised at the PharmaNet profile that I reviewed. In fact, I would not be able to confidently identify a date where Mr. Ramchuk's circumstances changed dramatically, i.e. his accident date. He has continued to use different opioid preparations and he was commenced on methadone in 2013. As well as methadone, he still uses other opioids as well.

In my opinion Mr. Ramchuk's accident has probably had little impact on the overall trajectory that he was on and I expect that there will be no significant improvement in his overall status while he continues with his current treatment regimen.

[22] In cross-examination, Dr. Farnan conceded that the restricted role he was given in commenting on the records he reviewed did not allow a comprehensive assessment of the effects of the Collision. For example, defence counsel did not instruct him to examine and take a history from Mr. Ramchuk. Dr. Farnan also lacked information relating to the treatment given by Dr. El Karsh and was unaware that cardiac symptoms required a change from the initial methadone treatment.

[23] Dr. Farnan's report was one dimensional in focusing on concerns about the history of the opioid medications prescribed for Mr. Ramchuk. The report was helpful in underlining how Mr. Ramchuk could benefit from adopting strategies that he might learn by attending another pain clinic. Beyond this, however, I find that Dr. Farnan was not able to usefully comment on how the injuries Mr. Ramchuk sustained in the Collision might have further affected his ability to function.

MR. RAMCHUK'S ABILITY TO FUNCTION FOLLOWING THE COLLISION

[24] The defendant submits that the injuries Mr. Ramchuk sustained in the Collision "were modest and did not have a significant impact on the plaintiff's existing condition of chronic pain." The argument references Mr. Ramchuk's self-assessments of pain levels at 9 of 10, and 10 of 10, and level of function at 1 of 10, in pre-Collision medical records. These self-assessments, however, lacked a scoring guide that would give more meaning to the results.

[25] When given a scoring guide by Mair Edwards, who provided an occupational therapy and rehabilitation report dated December 15, 2015, Mr. Ramchuk reported he would have lumbar pain that would go from 5 to 8 of 10, from time to time prior to the Collision, with pain radiating into his legs periodically. Following the Collision, he said his lumbar pain was consistently 8 of 10, and constantly radiated down into his legs. On the parameters of this pain scale, these numbers corresponded to:

5. Moderate physical activities such as walking increases pain, more frequent episodes of pain.
8. Constantly preoccupied by pain affecting emotional stability and cognitive function.

[26] Without such a listing, the earlier scores have little to no meaning and I accept Ms. Edwards' report as reflecting a more reliable self-assessment.

[27] From the medical evidence provided by the physicians who have actually seen Mr. Ramchuk or treated him on an ongoing basis, there are ongoing residual effects from the injuries sustained in the Collision. Some of these are classified as aggravations of his Workplace Injury. Others are new complaints.

- [28] I include in the first category: (1) the worsening of pain and stiffness in his lumbar spine, with more frequent pain radiating into his legs and now including significant pain into his right leg; and (2) further loss of bowel and bladder function.
- [29] Complaints that arose following the Collision are:
1. neck, shoulder, and upper back pain and stiffness;
 2. loss of sensation extending into his right hand; and
 3. headaches, on a near daily basis.
- [30] The enhanced level of pain and discomfort resulting from the injuries sustained in the Collision has significantly affected Mr. Ramchuk's ability to live as he had before the Collision. He became less mobile and more dependent on his cane. The layout of the main floor of his home included a sunken living room with steps up to other parts of the house. These became an obstacle to mobility and he decided to move to the basement. The access to the basement was at ground level at the rear of the home and he had a functioning kitchen and bathroom built in what was otherwise a largely unimproved space. These facilities were close to a bedroom he built in the basement and the small living room area where he located his television and computer. The washer and dryer were also in the basement and he found this arrangement more suited to his reduced ability to move around. When he completed these improvements, he rented out the upstairs level of the house.
- [31] Mr. Ramchuk had a wood stove located in the basement and he continues to heat with wood; however, he was no longer able to use an axe to split the wood and he began to use a hammer and wedge for this task.
- [32] His ability and desire to get out and socialize diminished and he rarely met with friends or had people over following these injuries. He was described as a more irritable and harder to get along with. He could no longer walk the paths around his property as he had before and only rode his motorcycle infrequently.
- [33] Mr. Ramchuk became more dependent on his son, who would travel from his employment in Alberta to help with the home improvements and the yard work that Mr. Ramchuk could no longer perform. He could not, for example, participate as a baseball umpire and, on his return from Mexico in the spring of 2012, he arranged for a sale of his interest in the vacation home.
- [34] Mr. Ramchuk also developed increased difficulty with bladder control and in controlling his bowel movements. Prior to the Collision, these symptoms had been present but in a more controllable form. He now has to take care to be close to bathroom facilities.

- [35] Prior to the Collision Mr. Ramchuk coped with episodes of acute pain by adopting pain strategies such as comfort zone postures that offered him relief. Sleeping, for example, was broken into three to four hour segments, followed by changes in posture that allowed him to get the most rest he could through the night. These strategies became much less effective with his additional injuries and he lost much of his ability to cope. Sleep became even more difficult and his tolerances for standing, sitting and walking were significantly affected.

DAMAGES

- [36] Relevant heads of damages in this case are non-pecuniary damages, special damages, and future cost of care and support.

NON-PECUNIARY DAMAGES

- [37] The plaintiff argues that non-pecuniary damages should be in the range of \$110,000 to \$125,000. The defendant says the award should be modest, and suggests \$70,000, as awarded in *Schnurr v. Insurance Corporation of British Columbia*, 2015 BCSC 1630. But the defendant also refers to decisions in *McKay v. Raiwal*, 2015 BCSC 220, and *Dhaliwal v. Pillay*, 2015 BCSC 509, where non-pecuniary damages were set at \$30,000 and \$50,000, respectively.
- [38] Cases the plaintiff relies on included: *Delgiglio v. British Columbia (Public Safety and Solicitor General)*, 2012 BCSC 480; *Viner-Smith v. Kiing*, 2009 BCSC 1387; *Morgan v. Scott*, 2012 BCSC 1237 [Morgan]; *Heska v. Little*, [1999] B.C.J. No. 652 (S.C.), *aff'd* 2000 BCCA 255; *McAllister v. Sotelo*, [1999] B.C.J. No. 2132 (S.C.); *Monych v. Beacon Community Services Society*, 2009 BCSC 562; and *Agar v. Morgan*, 2005 BCCA 579 [Agar].
- [39] These cases reference injuries to individuals who had disabling previous conditions. The awards of non-pecuniary general damages cover a range extending from about \$80,000 to \$125,000.
- [40] In *Agar*, Mackenzie J.A. disagreed with the finding of the trial judge that the plaintiff's major medical problem, cystic fibrosis, was negatively affected on a long-term basis by the injury. In *Agar*, the plaintiff said his injuries impeded his ability to exercise and thus hastened the advance of his cystic fibrosis, to the point that he required a double lung transplant three years earlier than he otherwise would have. The court distinguished this complication of Mr. Agar's existing condition from cases involving aggravation of previous conditions. Mr. Agar's injuries sped up by three years an event that was already inevitable, while in other cases "the complications from the accident-related injuries to the pre-existing condition would extend over the whole of the remaining life expectancy of the plaintiff" (at para. 16).
- [41] Nonetheless, other features of the injuries sustained by Mr. Agar did qualify as a lifetime deficit in his prior ability to function. Justice Mackenzie said:
- [23] The difference between the present case and the others is that Mr. Agar's injuries, apart from the CF complications, are more serious. Mr. Agar's knee injury has resulted in a permanent disability which limits his activities, particularly his cycling exercise, and it

results in pain from prolonged periods of sitting and standing. These injuries should attract significant non-pecuniary damages apart from the CF complications. In my view, it should raise the amount of damages above the \$85,000 to \$95,000 amounts awarded in York and Haney. Nonetheless, I think that the award of \$175,000 inordinately over-weights those injuries. In my view, the upper limit of a reasonable award on non-pecuniary damages in this case is \$125,000.

[42] In *Stapley v. Hejslet*, 2006 BCCA 34 Kirkpatrick J.A. identified the following non-exhaustive list of factors that influence an award of non-pecuniary damages, at para. 46:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life.

[43] Justice Kirkpatrick then added the following four factors, while recognizing that they may be subsumed in the above list:

- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163, 2005 BCCA 54).

[44] *Stapley* was an appeal from a jury award for non-pecuniary damages that the appellant claimed was inordinately high. Writing for the majority, Kirkpatrick J.A. reduced the jury award of \$275,000 to \$175,000. While she recognized this was a significant reduction for damages awarded under this head of loss, the jury award was "clearly anomalous and a wholly erroneous estimate" of the plaintiff's loss (at para. 111). Justice Kirkpatrick observed:

[110] Mr. Stapley is able to work, support his family, and participate in recreational activities. The chronic pain he experiences has not and, according to the medical evidence, will not in the future preclude those activities. In ordinary circumstances, an award of non-pecuniary damages for those losses would not exceed \$100,000.

- [45] The majority in Stapley justified the additional \$75,000 by referring to the loss of lifestyle factor listed at paragraph (i). In Mr. Stapley's case, his injuries precluded him from continuing to work as an equipment mechanic and living and working on a large ranch property in circumstances that he and his family much enjoyed. Justice Kirkpatrick said the following:
- [111] What, then, is reasonable compensation for the additional potential loss of lifestyle? In my opinion, it cannot reasonably exceed an additional \$75,000. In saying this, I am mindful of the difficulty in ascribing to Mr. Stapley's loss an amount that will provide solace to him for that loss. However, I am driven to conclude that the jury award of \$275,000, which represents additional compensation of \$175,000 above the highest conventional award for a similarly situated plaintiff is clearly anomalous and a wholly erroneous estimate of Mr. Stapley's loss.
- [46] Stapley is perhaps less helpful in respect of quantum because it is an appeal from a jury verdict, which involves some deference to the jury's original assessment. However, in my view, the case highlights how significant a loss of lifestyle can be to an injured plaintiff. In Mr. Ramchuk's case, he has not lost his home, but his ability to enjoy what he had been able to incorporate into his life prior to the Collision is significantly diminished. His prior activities centred on his rural property and vacation home in Mexico. This provided an enjoyable lifestyle notwithstanding his previous level of disability and his ability to pursue the activities associated with this lifestyle has suffered a significant loss as a result of the Collision.
- [47] To look at the matter from a slightly different perspective: the increase in pain and disability as opposed to the loss of positive features of a person's life, courts have recognized that the loss of function for a disabled individual can have a magnified effect. In Morgan, Voith J. commented on the effect of injuries on an individual already suffering from a number of chronic conditions: chronic pain and respiratory failure. These conditions were aggravated in severity and frequency of onset as a result of the injury in that case.
- [38] Still further, I find that Mr. Morgan has been transformed from a generally positive, outgoing, and confident person into one who is reclusive, who suffers from consistent depression of significant severity, and who is without energy. I also consider that it is noteworthy that notwithstanding the significant challenges of various kinds that Mr. Morgan has faced since childhood, he has always persevered and by virtue of his determination improved his state. Since the Accident, that is no longer true.
- [40] In *Agar v. Morgan*, 2003 BCSC 630, Madam Justice Sinclair Prowse addressed the question of how the non-pecuniary losses of an already disabled individual whose circumstances and enjoyment of life are still further curtailed should be measured. In *Agar*, the plaintiff's need for a transplant, which would have been necessary in any event, was accelerated by an accident. Sinclair Prowse J. said:

[229] In determining and evaluating this loss, the Courts have recognized that an injury to an already disabled person can be devastating. That is, "[t]o rob a disabled person of what little she has left is a monstrous injury, for that little she has is, for her, the whole of her life. Not only is it an enormous physical injury but the emotional damage is, to most people, well nigh incomprehensible." See: *Bracey (Committee of) v. Jahnke*, [1995] B.C.J. No. 1850 (S.C.) varied on other grounds (1997), 34 B.C.L.R. (3d) 191 (C.A.) quoting with approval from the reasons of the trial judge. See also: *Boren v. Vancouver Resource Society for Physically Disabled*, 2002 BCSC 1134 (S.C.); *McAllister v. Sotelo*, 1999 Carswell BC 2077 (S.C.); and *Heska v. Little*, 1999 Carswell BC 596 (S.C.).

[48] As is always the case, assessments are individual to the particular circumstances of the individual involved. In this case, I accept that the loss of lifestyle factor is a significant one and set non-pecuniary general damages in the sum of \$100,000.

SPECIAL DAMAGES

[49] The plaintiff requests special damages to be set at \$1,920.52. This amount represents the mileage claim and deductible charges for Mr. Ramchuk to attend appointments for treatment from August 16, 2011 to December 15, 2011. I accept this amount as a reasonable expense for these purposes.

COST OF FUTURE CARE AND ASSISTANCE

[50] The services and aids claimed as part of the cost for future care must be medically justified, *Aberdeen v. Township of Langley, Zanatta, Cassels*, 2007 BCSC 993 at para. 198, rev'd on other grounds *Aberdeen v. Zanatta*, 2008 BCCA 420. Evidence from health care professionals, including physicians and occupational therapists, is relevant to assessing what is medically justified: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 38.

[51] The report received from Ms. Edwards, an occupational therapist, recommended the following services and aids to assist with daily living:

The following is an outline of services and assistive devices that are recommended for symptoms arising from injuries Mr. Ramchuk sustained in the motor vehicle accident. The recommendations are necessary to enable [him] to maintain a reasonable level of functioning now and in the future. These recommendations are based on this Therapist's findings, medical documentation reviewed and collateral information obtained from health care professionals involved.

Consideration is given to: normalizing independence; providing a humane level of care and safety; maintaining self-respect; maintaining mobility; preventing isolation; and preventing further disability.

MEDICAL/PROFESSIONAL SERVICES AND SUPPORT SERVICES:

Pain Clinic:

- * Two-day assessment
- * 25-day program
- * Two-day follow-up
- * Hotel and travel

Rehabilitation Services (following pain clinic):

- * Physiotherapy - orthopedic
- * Massage therapy
- * Pool program/gym pass

Psychological Support:

- * Individual pain, counseling

HOUSEHOLD SERVICES

Household/Yard Services:

- * Home support - weekly (additional)
- * Home support - spring/fall clean up
- * Household maintenance services
- * Yard service every other week in summer
- * Spring/fall yard clean up

ASSISTIVE DEVICES:

Positional Aids/Aids to Daily Living:

- * Queen mattress - differential cost
- * Cervical pillow
- * Backrest support and seat combo
- * Lift and recline chair
- * Blind spot mirror
- * Dressing stick/shoehorn
- * Reacher, telescoping
- * Sock aid

* Ergonomic sit/stand desk

* Ergonomic chair

Mobility Aids:

* Adjustable cane

* 4-Wheeled walker

* Flooring

Medications

[Mair Edwards Occupational Therapy Cost of Future Care Report, December 15, 2015 at pp. 34-35.]

- [52] All of the medical evidence heard by the court supports the recommendation that Mr. Ramchuk attend a pain clinic. His ability to function with minimal use of opioid medications requires him to adopt strategies and methods to deal with the effects of chronic pain. The defendant points to evidence that Mr. Ramchuk rejected attending a pain clinic offered by the WCB when it ceased to support opioid pain control shortly before the Collision. However, as Ballance J. recently noted in *Suthakar v. Humble*, 2016 BCSC 155:
- [129] The court should be cautious about reducing or eliminating altogether an award for the cost of future care simply on the basis that the plaintiff has not previously used the recommended type of treatment. This is because fairness requires that the court be alive to the prospect that an injured person's disposition may change, or that he or she may not have had the means or ability to follow certain courses of treatment in the past.
- [53] In the past, Mr. Ramchuk declined to attend the pain clinic because he had already been to such a facility and thought it would be repetitive. He now faces increased ongoing pain and treatment regimens that will not include the same reliance on opioid medications. He, himself, now acknowledges that new pain strategies may improve his functional abilities and he is now willing to follow up on the medical advice. I find this to be a medically justifiable item to include in the cost of future care and that Mr. Ramchuk is likely to follow the advice to attend at the clinic. The cost of this attendance, including the living out expenses, is \$18,900.
- [54] The next items are three forms of rehabilitation services: physiotherapy, massage therapy, and a pool program/gym pass. Mr. Ramchuk has had physiotherapy and massage therapy in the past and found they provided temporary relief, but not enough to continue with them. In my view, the effort Mr. Ramchuk would have to exert to utilize these would, as before, lead him to discontinue these services. I thus cannot say he would likely pursue them and I decline to award expenses related to them.

- [55] The last item, psychological support, stands on a different footing. Mr. Ramchuk is more depressed and withdrawn than before the Collision, and his relationships with others are more difficult. The chronic pain takes a toll on his emotional functioning. Ongoing monthly therapy sessions designed to continue with the relief Mr. Ramchuk is likely to achieve by attending the pain clinic is a necessary support. I accept the expense of this for 10 years, \$18,468, as the cost of the future care in this regard.
- [56] Dealing with household services, Mr. Ramchuk has had help in the past with housekeeping services and has received some annual financial assistance to deal with yard care and home maintenance. Continuing support of this nature has faltered due to either a loss of funding or difficulty in securing the service itself. Mr. Ramchuk has not had household help since he has moved into the basement area of the house. Both the Workplace Injury and the injuries stemming from the Collision make these services necessary. Any additional award under this heading should reflect only the additional disability attributable to the Collision. Ms. Edwards recommended an additional eight hours of home support, yard services every other week during the summer months, annual household maintenance services, and Spring/Fall cleanup of the home and yard. The present value of these items is presented at \$17,855 per year. In my view, the additional amount required that is attributable to the Collision is an extra three hours per week, costing approximately \$100 per week. This amounts to \$5,200 per year. In my view, this should be extended for 10 years. Mr. Ramchuk will then be 65 years old and around the age he would have had to move to an assisted living facility. Accordingly, the extra amount for household services would not be appropriate after that time. Using the present value multiplier this feature of the award amounts to \$49,400.
- [57] Of the assistive devices listed, the extra cost of a therapeutic mattress is an appropriate item for an award. I also accept the cost of a lift and recline chair, and the cost of an ergonomic sit/stand desk and chair. Mr. Ramchuk has a hospital bed but requires an appropriate mattress and his lift chair is broken. He uses his computer on a regular basis but he cannot sit for long at his present desk and chair. The projected cost of these items (with needed replacements) is approximately \$16,500. Given that the original injury significantly contributed to the disability, and attributing 40% of the present disability to the injuries following the Collision, I award \$6,600 in respect of these items.
- [58] Many of the other assistive devices are already being used by Mr. Ramchuk or have not been acquired even though they are of moderate cost. This suggests they may not be of high priority.
- [59] As an addition to the list of mobility items, evidence was put forward relating to the cost of a motorized vehicle to allow the plaintiff to better access areas on his property. The cost of such an ATV if purchased new would be approximately \$10,000. Mr. Ramchuk's son said he thought an electric golf cart would be able to assist in this regard and that he could find one for approximately \$2,000. I think this would be a satisfactory option and award this sum for this purpose.

HOUSE IMPROVEMENTS

- [60] The plaintiff presented evidence and argument that an award of damages should include some renovation of Mr. Ramchuk's basement living area to make his accommodation more functional. The defence submitted that Mr. Ramchuk's move to the basement area likely stemmed from his desire to rent the upstairs area and not from limitations due to his injuries.
- [61] There is no evidence to support the defence position, which I first heard advanced during oral submissions. I accept the plaintiff's evidence that he moved to the basement because he was having difficulty navigating the layout of the upstairs area of the house.
- [62] The basement area is only marginally functional. Mr. Ramchuk and his son installed the kitchen and bathroom. The kitchen layout is not optimal; cabinets, for example, are at elevations he cannot access. Nonetheless, he makes the kitchen functional by using the lower cabinets and counter space to store items. The bathroom is a more serious consideration because Mr. Ramchuk cannot use standard bathroom fixtures safely.
- [63] The flooring on the basement level is bare concrete with some scatter rugs. Ms. Edwards includes a \$5,000 recommended item to improve the flooring. Mr. Richardson, a contractor experienced in renovations, puts a square foot cost of renovations at \$100 per square foot. He also detailed that improvement of the bathroom to standards appropriate for a person with disabilities would cost an extra \$10,000. Mr. Richardson also explained that the use of the downstairs as a separate living area required a door to allow an escape from the house should there be a fire. He identified a window in Mr. Ramchuk's bedroom area as being suitable for a conversion to an outside door at a cost of \$5,000.
- [64] I am of the view that a complete renovation of the basement to a finished standard goes beyond a reasonable accommodation of Mr. Ramchuk's injuries from the Collision. However, I recognize the following items as necessary to provide a reasonable standard to accommodate the move to the basement necessitated by the injuries from the Collision:
- a) renovation of the bathroom (calculated as being 100 sq. ft.) with the improvements necessary for a disabled resident (\$10,000 plus \$10,000 for the disability improvements);
 - b) improvement of the flooring (\$5,000); and
 - c) installation of an outside door (\$5,000).

SUMMARY

[65] In total, the assessment of damages is as follows:

Non-pecuniary Damages

\$100,000

Specials

\$1,920

Cost of Future Care

\$93,368.00

Used Golf Cart

\$2,000

House Improvements

\$30,000

Total:

\$227,288

"W.G. Grist 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/16/23/2016BCSC2342.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/ramchuk-v-wagar-2016>

Prepared on 28 October 2026 · Esheria