

CANADA / JUDGMENT

Sidhu v. Hiebert

2024 BCSC 12

COURT

Supreme Court of British Columbia

DECIDED

3 January 2024

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

2024 BCSC 12 Sidhu v. Hiebert

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sidhu v. Hiebert,

2024 BCSC 12

Date: 20240103

Docket: M082472

Registry: Vancouver

Between:

Arshdeep Singh Sidhu

Plaintiff

And:

Jan Abram Hiebert, Balwinder Kaur Sidhu, Rajvinder Singh Sidhu,

Surinder Singh Rattan, Nissan Canada Inc., Nissan Motor Co., Ltd.,

Nissan North America, Inc., Abbotsford Nissan Ltd.

Defendants

And:

Insurance Corporation of British Columbia, Jan Abram Hiebert,

Balwinder Kaur Sidhu, Rajvinder Singh Sidhu, Surinder Singh Rattan,

Nissan Canada Inc., Nissan Motor Co., Ltd.,

Nissan North America, Inc. and Abbotsford Nissan Ltd.

Third Parties

Corrected Judgment: The text of the judgment was corrected at para. 52
on April 12, 2024

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

M. Slater, K.C.

R. Matheuszik

Counsel for the Defendants and Third Parties, Balwinder Kaur Sidhu and Rajvinder Singh Sidhu
(the "Sidhu defendants"):

S.M. Katalinic

Counsel for the Third Party, Insurance Corporation of British Columbia ("ICBC"):

D. Nugent

S. Sidhu

Counsel for the Defendant Surinder Singh Rattan (the "Rattan defendant"):

P. Miller

Place and Dates of Trial:

Vancouver, B.C.

November 15, 2023

Place and Date of Judgment:

Vancouver, B.C.

January 3, 2024

Introduction.. 2

Issue 1: Variation of the In-Trust Award.. 3

Issue 2: The Ongoing PROP, CSIL, and PWD Benefits. 6

PROP Benefits. 6

CSIL and PWD Benefits. 7

Issue 3: Variation in The Costs Award.. 11

Conclusion.. 14

Introduction

- [1] This matter involves a motor vehicle accident that occurred on March 20, 2008, where the plaintiff, while a passenger in his parents' vehicle, was struck by a drunk driver, Jan Hiebert, and rendered a quadriplegic.
- [2] The following reasons were issued:
1. The trial took place throughout the summer and early fall of 2021 and the trial reasons were pronounced on June 17, 2022, indexed as 2022 BCSC 1024 (the "First Reasons");
 2. In the First Reasons, a number of deferred issues were identified and the parties returned to argue them in March and May 2023. Reasons were pronounced on May 12, 2023, indexed as 2023 BCSC 813 (the "Second Reasons");
 3. Further submissions were on the issues of tax gross-up and management fees were heard in May 2023, with reasons being pronounced on June 13, 2023, indexed as 2023 BCSC 1021 (the "Third Reasons"); and
 4. The parties were back in May and June 2023 to argue the issue of costs and cost reasons were pronounced on August 9, 2023, indexed as 2023 BCSC 1367 (the "Fourth Reasons").
- [3] The parties were back before me on November 15, 2023, to address three issues raised by ICBC and the Sidhu defendants, being:
1. Whether the in-trust award made to the plaintiff's father should be varied from the amount of \$950,000 to \$850,000;
 2. What should be the appropriate date to account for the continued payments of Persons with Disability ("PWD"), the Choice in Supports for Independent Leaving ("CSIL"), and Provincial Respiratory Outreach Program ("PROP") benefits to the plaintiff; and
 3. Whether the costs awards made in the Fourth Reasons should be varied by substituting Mr. Hiebert for ICBC at paras. 5, 118(a) and (e) of the Fourth Reasons.
- [4] No order has been entered arising from any of the reasons.

Issue 1: Variation of the In-Trust Award

- [5] The Sidhu defendants seek to vary the in-trust award made to Rajvinder Sidhu ("Mr. Sidhu Sr.") but not the in-trust award made to the plaintiff's brother. The rationale for the in-trust award to Mr. Sidhu Sr. was for the extraordinary support he has provided to the plaintiff since January 2008. I found that he devoted his life to ensuring that the plaintiff gets the best possible care: First Reasons at para. 1090.

- [6] In paras. 1097-1101 of the Fourth Reasons, the assessment of the in-trust award to Mr. Sidhu Sr. was divided into two time periods, as follows:
- a. between November 2007, which should read November 2008, to November 2017, funding based on six hours per day;
 - b. from November 2017 to November 2021, funding based on ten hours per day;
 - c. funding at a rate of \$26 per hour.
- [7] The calculation for the first period, being November 2008 to November 2017, amounted to \$512,772: First Reasons at para. 1101. The calculation for the second time period, being November 2017 to November 2021, amounted to \$379,860: First Reasons at para. 1102.
- [8] I further held that there should be some additional compensation provided from November 2021 to the date the First Reasons were pronounced, in June 2022, which amounted to \$60,000: First Reasons at para. 1103.
- [9] The award to Mr. Sidhu Sr. for the in-trust claim was assessed at \$950,000: First Reasons at paras. 1004 and 1007.
- [10] One of the purposes of the costs of future care award was to remove the need for the plaintiff's family to act as caregivers: First Reasons at para. 835(d). I found that the plaintiff was entitled to receive funding for 34 hours of care for each 24-hour period: First Reasons at para. 939(a). There should always be an attendant present with an LPN level of training and a second attendant can be at a care aide level: First Reasons at para. 939(b). In addition, case management services funding was provided to replace Mr. Sidhu Sr.'s services by a qualified external case manager: First Reasons at para. 941.
- [11] I found that allowing for an agency care model would remove the burden of hiring and coordinating care attendants from the plaintiff's family: First Reasons at para. 950.
- [12] In the First Reasons, there were a number of deferred items that the parties agreed had to be heard after the pronouncement of the trial reasons. The deferred issues were described at para. 560:
- a. future pecuniary damages - the parties will present fresh economic evidence, if necessary, regarding the net value of a future cost of care award taking into account the Court's assessment of those damages and the Court's finding with respect to the plaintiff's life expectancy;
 - b. Choice in Supports for Independent Living ("[CSIL]") and Provincial Respiratory Outreach Programs ("PROP") payments - the deductibility of [CSIL] and PROP funding from the plaintiff's future care award;
 - c. personal living expense deductions in the "lost years" - the amount of any "lost years" deduction from an award of lost future earning capacity;

- d. entitlement to and quantum of tax gross-up and fund management fees - including any application for a structured judgment; and
- e. costs.

(the "Deferred Items")

- [13] At the hearing of the Deferred Items (or issues), the parties agreed that the correct valuation date for all heads of damages should be June 14, 2021, being the date of the commencement of the trial: Second Reasons at para. 5(1). The economists who testified used that date as the valuation date to calculate the present value of the costs of future care. The parties agreed that the present value of the cost of future care of the items provided for in the First Reasons totalled \$13,098,885: Second Reasons at para. 5(2).
- [14] At the hearing of the Deferred Items, there was no discussion on whether there should be an adjustment to the past in-trust award made to Mr. Sidhu Sr. There was no future in-trust award made.
- [15] As noted above, one of the purposes of the award of future costs of care was to relieve the family, including Mr. Sidhu Sr. from having to provide care to the plaintiff. The award of future care costs was to allow for the plaintiff to be cared for without the need for the unpaid services of Mr. Sidhu Sr.
- [16] I accept that with the adjustment of the commencement date for the award of future care costs to June 14, 2021 it makes sense that the in-trust award for the past services should end on the same date. If not, the award for the in-trust is duplicative of the costs of future care award for care provided from June 14, 2021.
- [17] In my view, in order to prevent a miscarriage of justice it is appropriate for me to exercise my discretion and adjust the in-trust award that was made. In my First Reasons, the date used for ending the in-trust award was June 2022. If the issue of the past in-trust award was raised at the hearing of the Deferred Items when the agreement on the commencement date for the calculation of damages was made, I would have addressed the variance at that time. It was not raised and, in my view, it is appropriate to make the variation at this time.
- [18] I accept that the calculations set out in the submissions of the Sidhu defendants are appropriate:
1. First period remains the same: 6 hours/day x \$26.00/hour x 9 years (up to November 2017) = \$512,460 (NB.: the court calculated \$512,722)
 2. Second period: 10 hours/day x \$26.00/hour x 3 years and 7 months (from November 2017 to June 2021, as opposed to November 2021) = \$340,080
 3. Total: \$852,540
- [19] As such, I vary the in-trust award for Mr. Sidhu Sr. from \$950,000 to \$850,000.

Issue 2: The Ongoing PROP, CSIL, and PWD Benefits

[20] The deductibility of the PWD, CSIL, and PROP benefits was one of the Deferred Items.

PROP Benefits

[21] I see no basis to vary the award made respecting the PROP benefits.

[22] At the initial hearing of the Deferred Items there was a lack of evidence to determine the PROP issue. As a result, a half-day continuation was scheduled for May 8, 2023: Second Reasons at paras. 81-82. At para. 99, I stated:

As discussed above in regards to CSIL, to uphold the rule against double recovery, the Court should reduce the award for future cost of care by the value of the PROP Benefits the plaintiff has received since the start of trial, and will receive going forward. To make this deduction, I must first determine the value of the PROP Benefits. Second, I must determine whether it is appropriate to apply a contingency award based on the possibility of the plaintiff's PROP benefits being eliminated or substantially reduced.

[23] The evidence supported that the PROP benefits would not cease upon the plaintiff receiving the proceeds of the judgment as the eligibility to continue to receive PROP services was not dependent on financial status: Second Reasons at para. 85.

[24] As a result of this evidence, I agreed that the future PROP benefits should be deducted from the costs of future care award subject to any contingency reduction for the possibility of PROP funding being eliminated or drastically restricted in the future. I concluded that a 20% contingency award should be applied when reducing the present value of the plaintiff's future PROP award: Second Reasons at paras. 105-111. As such, I see no basis to adjust any award for the ongoing receipt of PROP benefits. The adjustment has already been made.

CSIL and PWD Benefits

[25] At the time of the hearing of the Deferred Items, the defendants sought to have the present value of the future CSIL benefits, being \$4,789,560, deducted from the costs of future care award, I was not prepared to deduct that amount: Second Reasons at para. 78.

[26] A key issue was when or if the plaintiff would be cut off from funding by the Fraser Health Authority. I found:

[75] As the plaintiff states at paras. 85 and 87 of his closing submissions:

85. Further, the discretionary trust was only contemplated as a stop-gap measure until the trial on liability could be concluded. The mutual understanding of the plaintiff and the Ministry is that a settlement could be placed into a discretionary trust and the cessation of CSIL funding would be deferred to the conclusion of the litigation rather than at the time of the settlement.

87. The plaintiff has a good faith obligation to declare an award for damages to CSIL, and that if the plaintiff receives an award for damages CSIL policy will result in the termination of any portion of the award attributable to future cost of care until such time as that portion of the award is exhausted.
- [76] I accept that these statements, along with the emails that have been produced at the continuation of the trial, support that it is not the intention of the plaintiff to attempt to achieve double recovery by receiving the award of future care costs and seeking to arrange his affairs to deprive himself of control of the monies he receives from the judgment. If the plaintiff follows through on his declared intentions, then no question of double recovery arises in the circumstances.
- [27] As a result, I made the following deduction for CSIL benefits:
- [79] The parties have agreed that the amount of \$436,990, for CSIL benefits paid from the commencement of the trial to March 22, 2023, should be deducted. As discussed with the parties, if there are further payments made by CSIL pending the final resolution of this matter, then those amounts should also be deducted. This is to ensure that the plaintiff does not receive any double recovery.
- [28] I note my use of the phrase, "pending the final resolution of this matter". It was my understanding that when the plaintiff's lawyer received the judgment funds, the plaintiff would be immediately cut off from CSIL benefits. However, at this time, the plaintiff has not received the judgment funds and it is not clear to me that he will ever receive them. Mr. Slater, counsel for the plaintiff, confirmed that the only payment received was \$200,000 which is sitting in his trust account. I note that since the plaintiff has not received the judgment amount, he continues to need to rely on the CSIL payment in order to pay for a portion of his care needs. He has no other means of paying for his care.
- [29] The Sidhu defendants seek an order that the amount of the ongoing CSIL benefits received by the plaintiff should be deducted from the costs of future care in order to avoid double recovery. They argue that it is uncertain when the CSIL benefits will cease and as such, there should be some order made that accounts for any future receipts of CSIL.
- [30] It is my view that in order to achieve finality in the proceeding there must be an end date. It is not appropriate to leave the matter open ended. A key principle of any proceeding is the goal of finality in litigation: *Weintz v. Weintz*, 2014 BCCA 118 at para. 52.
- [31] The Sidhu defendant argue that the Second Reasons create some ambiguity. In para. 124, I state:

As such, I find that there is no deduction made for the future PWD benefits from the award of loss of future earnings. There will be deductions made for the past PWD benefits paid of \$31,820. As with CSIL and PROP, any further PWD payments made, until the date of receipt of the judgment amount, should also be deducted so as to ensure that the plaintiff does not receive double recovery.

[32] They compare para. 124 to paras. 210-211 of the Second Reasons, which read:

[210] If the plaintiff receives further PWD payments up to the conclusion of this matter, those payments should be deducted from the loss of future earning capacity award.

[211] The costs of future care award may need to be adjusted depending on whether any further CSIL payments or PROP benefits have been received up to the conclusion of the proceeding.

[33] I note that in most litigation, upon the conclusion of any outstanding issues arising from the trial, the judgment amount should be paid. In the circumstances of this case, the judgment amount has not been paid and it appears that the full judgment amount is unlikely to ever be paid. I make this observation based on the evidence that was before me as part of the costs hearing. The evidence was that the only funds available to be paid on behalf of Mr. Hiebert is \$200,000, being his insurance policy limits, and nothing further since he is a discharged bankrupt. The only insurance funds available to be paid on behalf of the Sidhu defendants is \$2 million, being their insurance policy limits.

[34] If the plaintiff ever does receive the judgment amount, the evidence supports that the CSIL and PWD benefits would cease.

[35] The Sidhu defendants suggest that leave be granted to the defendants to apply to amend the order made after trial to reflect further future deductions. However, with the uncertainty of when or if the final judgment will ever be paid, this potentially leaves this as an ongoing issue throughout the plaintiff's life. I am not prepared to leave this as open ended, such that at some future time, the defendants could come back and seek to vary the final order and substitute a different net final damages award.

[36] I am of the view that the accounting for the CSIL payments must have an end date. I already ordered that the end date be the final resolution of this matter. I am not prepared to vary the order I already made. In my view, the only question is what date can be considered the final resolution of this matter. The plaintiff argues that the final resolution of the matter should be when the Third Reasons were issued being June 13, 2023. I disagree. In my view, these reasons will result in the final resolution of the matter, at least at the Supreme Court level.

[37] I am of the view that the amount the plaintiff received from CSIL from March 22, 2023 to the date these reasons are pronounced should be deducted from the future costs of care. I see little risk of double recovery for this plaintiff in the circumstances of this case.

- [38] The plaintiff was receiving \$1,450.50 per month in PWD benefits. I found that the \$31,820 received from June 14, 2021 to March 22, 2023 should be deducted from the plaintiff's loss of future earnings award: Second Reasons at paras. 5(5)- 5(6).
- [39] I already noted that "[i]f the plaintiff receives further PWD payments up to the conclusion of this matter, those payments should be deducted from the loss of future earning capacity award": Second Reasons at para. 210.
- [40] I see no basis for varying that decision and the only outstanding issue is when can it be said that the "conclusion of this matter" has arrived. I see no reason to differ from my finding respecting the CSIL benefits. As such, the amounts received from PWD from March 22, 2023 to the date of these reasons are pronounced, shall be deduced from the award of the loss of future earning capacity award.

Issue 3: Variation in The Costs Award

- [41] ICBC seeks to vary the costs order against it on the basis that the costs should have been awarded against Mr. Hiebert, as the negligent defendant, and not against ICBC as the statutory third party.
- [42] ICBC submits that that Fourth Reasons should be varied on the basis it "inadvertently misstated or alternatively, contain[s] an error because they overlook or misapply the law".
- [43] For two reasons, I find that no such adjustment should be made.
- [44] The first reason is that the costs submissions were made on the basis that the plaintiff was seeking costs against ICBC and not Mr. Hiebert. The overwhelming evidence supports that:
- The plaintiff's cost submissions sought an order that the plaintiff be awarded costs against ICBC and the Sidhu defendants at Scale C;
 - ICBC's costs submissions did not seek that any award of costs be against Mr. Hiebert. Further, the submissions state that one of the issues is the plaintiff's entitlement to "a Sanderson or Bullock Order as against ICBC and the Sidhu Defendants to have them pay for costs awarded to Rattan as against the Plaintiff";
 - Throughout the ICBC cost submissions, the references are to ICBC's position made on its own behalf and setting out its position on why it should not be responsible for uplift costs nor paying for Rattan's costs; and
 - The plaintiff's reply submissions on costs specifically sought that: "costs are payable by the third party ICBC".

[45] Although in the plaintiff's submissions in support of the Sanderson or Bullock order there is a reference to Mr. Hiebert in the introductory and conclusory paragraphs, counsel for the plaintiff says that this was by inadvertence and a review of the rest of the submissions support that the costs claim was being advanced against ICBC. I accept that the remainder of the submissions relate to costs as against ICBC particularly in light of the exchange that I had at the end of the cost submissions.

[46] On June 2, 2023, at the close of the costs submissions, I wanted to ensure that I understood ICBC's position. The following exchange took place:

CNSL D. NUGENT: That term's been bandied about a fair bit, but ICBC's standing as a third party is a creature of statute. It is a corporation. It is an insurance company. Its role here is a creature of statute under the law, so I say that's a distinction. My friend keeps dragging it in, oh, behind them are the insurance companies. It is a distinction to be made.

It's not ICBC, the insurance company, that's acting as third -

THE COURT: So you're saying that the costs should be made against Hiebert, because he's a defendant.

CNSL D. NUGENT: No.

THE COURT: And against Sidhus.

CNSL D. NUGENT: No, it's ICBC's role as statutory -

THE COURT: Right.

CNST D. NUGENT: --third parties, standing in Hiebert's shoes.

THE COURT: Shoes. Okay, so -

CNSL D. NUGENT: That's my submission on that.

THE COURT: So costs should be awarded against ICBC as well.

CNSL. M. SLATER: Yes.

CNSL. D. NUGENT: As third parties, yes.

[47] This exchange made it clear that ICBC was agreeing to costs being made against it as the third party. Based on the submissions of the parties, it was my understanding that costs were being sought against ICBC, as I stated at para. 5 of the Fourth Reasons:

No party disputes that the plaintiff is entitled to his costs against ICBC and the Sidhu defendants and that those costs be at Scale C.

[48] I disagree with ICBC's submissions that it disputed it was liable for costs during the cost submissions. ICBC's counsel admitted that during my exchange with him on June 2, 2023. There was no inadvertence and misunderstanding by counsel nor by the Court. It appears to me that ICBC, with the benefit of knowing the costs reasons, would like to reargue the

matter in light of the significant cost implications that s. 69(c) of the Insurance (Vehicle) Regulation, B.C. Reg. 447/83 would have. I am not persuaded that it would be in the interest of justice to allow ICBC to do so.

[49] The second reason is that it was clear that ICBC did not take a back-seat role but actively participated in the trial to advance the claims of contributory negligence against the plaintiff, as well as the claims against Nissan and the Rattan defendant.

[50] I make no finding as to why ICBC took this strategy in light of the fact that Mr. Hiebert was a discharged bankrupt whose insurance policy was \$200,000. The fact is that ICBC took steps which prolonged the trial, as I noted at para. 107 of the Fourth Reasons:

It is my view it would be just and fair to have the unsuccessful Sidhu defendants and ICBC pay the successful Rattan defendant's costs. It is clear that ICBC and the Sidhu defendants asserted that the Rattan defendant was one of the culprits in the case throughout the long history of this proceeding. ICBC and the Sidhu defendants both pleaded that the Rattan defendant caused or contributed to the plaintiff's injuries. The Sidhu defendants also filed a third party notice against the Rattan defendant. Both ICBC and the Sidhu defendants opposed the Rattan defendant's application for summary trial on the social host issue: *Sidhu v. Hiebert*, 2011 BCSC 1364 at para. 19. At trial, they continued their attempt to shift the blame onto the Rattan defendant in their various submissions. They both asserted in their opening statements that the Rattan defendant was liable and was negligent. During the trial, ICBC and the Sidhu defendants called evidence from two witnesses, Baljinder Bhushan, Mr. Rattan's niece, and Cst. Paul Sovio, an Abbotsford police officer, and submitted the toxicology report of Carolyn Kirkwood, who also testified, in support of the social host liability claim. In their closing submissions, they both argued Rattan's liability and sought an apportionment of fault against him. They further sought a finding of contributory negligence against the plaintiff which if found, would have severed joint liability.

[51] As such, I find that there is justification to make the award of costs against ICBC and there is no basis for ICBC to now seek to relitigate the issue of costs.

Conclusion

[52] The following orders are made:

1. The in-trust claim awarded to Rajvinder Singh Sidhu is varied from \$950,000 to \$850,000;
2. The future cost of care award will be reduced to account for payments made by CSIL from March 22, 2023 to the date these reasons are pronounced;
3. The loss of future earning capacity award will be reduced to account for payments made by PWD from March 22, 2023 to the date these reasons are pronounced;
4. There will be no variation to the PROP order; and
5. ICBC's application to vary the costs award is dismissed.

- [53] It is my view that the orders arising from my four reasons should be entered. If there are any further disputes or delays, the parties can forward to me the orders for my signature and not appear before the Registrar to settle the orders. If the parties cannot agree on the form of the orders, I ask that they set down a 9:00 a.m. appearance before me to address this issue.
- [54] In light of the results of the applications, I would not vary the costs awarded in the Fourth Reasons. In all of the circumstances, the plaintiff is entitled to their costs against ICBC and the Sidhu defendants, even with the variation in the in-trust claim, and Rattan is entitled to his costs as against the same parties for the hearing on November 15, 2023.

"The Honourable Justice C. Forth"

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/24/00/2024BCSC0012cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sidhu-v-hiebert-2024>

Prepared on 25 October 2026 · Esheria