

CANADA / JUDGMENT

Singh v. Storey

2022 BCSC 1338

COURT

Supreme Court of British Columbia

DECIDED

8 August 2022

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

2022 BCSC 1338 Singh v. Storey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Singh v. Storey,

2022 BCSC 1338

Date: 20220808

Docket: M214298

Registry: New Westminster

Between:

Ravinder Kaur Singh

Plaintiff

And

John Charles Storey

Defendant

Before: The Honourable Justice Basran

Reasons for Judgment

Counsel for the Plaintiff:

B.J. Yu

S. Birdie, Article Student

Counsel for the Defendant:

K.A. Dotten

Place and Date of Hearing:

New Westminster, B.C.

March 11, 2022

Place and Date of Judgment:

New Westminster, B.C.

August 8, 2022

Introduction

- [1] On September 17, 2021, I awarded the plaintiff, Ms. Singh, damages for injuries she sustained in two motor vehicle accidents for a total of \$601,621, including \$80,176 for cost of future care. The reasons for judgment are indexed as 2021 BCSC 1825 (the "Judgment").
- [2] On March 11, 2022, the parties appeared before me on the defendant's application for orders that the plaintiff's award at trial be reduced by:
 - i. the entire award for cost of future care, \$80,176; and
 - ii. the award for past wage loss in the amount of \$4,832.
- [3] The defendant's application is pursuant to s. 83 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231 [Act] in respect of benefits paid under Part 7 of the Insurance (Vehicle) Regulation, B.C. Reg. 447/83 [Regulation].
- [4] The plaintiff consents to the deduction of \$4,832 for past wage loss but submits that the deduction for cost of future care should be significantly less than \$80,176.

Background

- [5] In the Judgment, amongst other things, I awarded the plaintiff \$80,176 for cost of future care, which comprised of the following:
 - a) \$45,880 for psychological counselling, based on nine sessions per year at \$200 per session to age 65;
 - b) \$10,196 for physiotherapy and massage therapy, based on five sessions per year at \$80 per session for the duration of Ms. Singh's working life;
 - c) \$7,000 for medications;
 - d) \$13,800 for attendance at a chronic pain clinic; and
 - e) \$3,500 for vocational counselling.

- [6] David Forster is the Claims Review Advisor with the Insurance Corporation of British Columbia ("ICBC") who oversees Ms. Singh's tort and Part 7 claims. On November 17, 2021, he swore an affidavit in support of the defendant's application.
- [7] On December 7, 2021, Ms. Singh deposed that the counsellor she was seeing, Dr. LePage, charged \$200 per hour of which ICBC reimbursed \$145 per hour. The difference was invoiced to her counsel. She also noted that Dr. LePage's current fee for a 50-minute counselling session is \$225.

Relevant Legal Principles

- [8] Sections 83(2), (4), (5), and (5.1) of the Act provide:

Liability reduced

83 []

- (2) A person who has a claim for damages and who receives or is entitled to receive benefits respecting the loss on which the claim is based, is deemed to have released the claim to the extent of the benefits.

[]

- (4) In an action in respect of bodily injury or death caused by a vehicle or the use or operation of a vehicle, the amount of benefits paid or provided, or to which the person referred to in subsection (2) is or would have been entitled, must not be referred to or disclosed to the court or jury until the court has assessed the award of damages.
- (5) After assessing the award of damages under subsection (4), the amount of benefits referred to in that subsection must be disclosed to the court, and taken into account, or, if the amount of benefits has not been ascertained, the court must estimate it and take the estimate into account, and the person referred to in subsection (2) is entitled to enter judgment for the balance only.

(5.1) In estimating, under subsection (5), an amount of benefits that has not been ascertained, the court may not consider the likelihood that the benefits will be paid or provided.

- [9] The principles governing the determination of whether and, if so, to what extent awards for cost of future care should be deducted under s. 83 of the Act and Part 7 of the Regulation are discussed in *Boparai v. Dhami*, 2020 BCSC 1813 where the court held:
- [30] Although the facts of those cases and the awards made were different than those now before me, my review of the legislation and consideration of applicable jurisprudence leads me to conclude that the following principles govern the determination of whether, and if so to what extent, awards for the cost of future care made in tort proceedings should be deducted under s. 83 of the Act and Part 7 of the Regulation:

- 1) Two purposes are served by the deductibility of benefits that a plaintiff in a tort action is entitled to receive from ICBC. The first determines the sum that the plaintiff receives when her tort claims are adjudicated. The second is to prevent the plaintiff from being compensated twice. See: *Quigley v. Jonsen*, 2020 BCSC 216 [Quigley] at para. 3; *Luck v. Shack*, 2020 BCSC 1074 at para. 19 [Luck].
- 2) A defendant who seeks a deduction under s. 83 of the Act has the burden of establishing that a deduction should be made. See: *Lynn v. Pearson*, (1998), 55 B.C.L.R. (3d) 401 (C.A.) at para. 18.
- 3) There must be strict compliance with the statute in determining what deductions, if any, should be made. Any "uncertainty as to whether a Part 7 benefit will be paid must be resolved in favor of the plaintiff". Any uncertainty created by the Regulation may lead the court to conclude that only a nominal deduction is appropriate: See: *Li. v. Newson*, 2012 BCSC 675 at paras. 14(c) and (i); *Luck* at para. 28.
- 4) Although there are substantive differences in ICBC's obligations to provide non-discretionary benefits under s. 88(1) of the Regulation and discretionary benefits under s. (2) both are liable to deduction from a tort award. See: *Quigley* at para. 10 citing *Ayles v. Talastasi*, 2000 BCCA 87 at para. 32; *Luck* at para. 29.
- 5) The filing of the affidavit of an adjuster authorized to "irrevocably, unequivocally and unconditionally" agree to pay for any treatment referenced in the reports of the medical experts who testified at trial up to the amount awarded by the jury may fully resolve uncertainty as to whether a benefit will be paid as Part 7 benefits. See: *Wark v. Kang*, 2020 BCSC 196 at para. 44; *Aarts-Chinyanta v. Harmony Premium Motors Ltd.*, 2020 BCSC 953 at paras. 80 and 81 [Justice Davies' Emphasis.].
- 6) Although the filing of such an affidavit may carry considerable weight it does not, however, relieve the court of its obligation to independently analyse the evidence and then determine to the extent that it is able to do so the Part 7 benefits which the plaintiff is likely to receive in the future: See: *Sangha v. Inverter Technologies Ltd.*, 2019 BCSC 1174 [Sangha] at paras. 15 and 16.
- 7) Judges must be cautious when assessing a suitable amount to deduct from a cost of care award. Examples of uncertainties a judge should consider includes: how long the plaintiff will need the service; and, the possibility of legislative changes that may take away (or alter) a plaintiff's eligibility for Part 7 benefits. See: *Cikojevic v. Timm*, 2012 BCSC 574 at para. 14; *Sangha* at para. 9.

- 8) Deductibility under s. 83(5) of the Act of entitlement to Part 7 benefits is not to be determined based upon a plaintiff 'making' or 'advancing' a claim. Section 83(5) only reduces a defendant's liability to the amount of the Part 7 benefits to which a plaintiff is entitled that correlate to the claim as determined and assessed by the court. The defendants have the burden of establishing such correlation as to both the claim and the quantum of the award made. See: *Siverston v. Griffin*, 2020 BCSC 528 [Siverston] at paras. 46 and 47.
- 9) Although such correlation may be readily ascertainable by factual findings when liability for and the quantum of entitlement for cost of future care are reduced to judgment by a trial judge sitting without a jury, when a lump sum award is made by a jury determining correlation of the award to the services and treatments available under Part 7 and the degree of correlation may not be possible. See: *Siverston* at para. 48 and 49; *Elliot v. McCliggot*, 2020 BCSC 1129 [Elliot] at para. 13.
- [10] Pursuant to s. 88(1) of the Regulation, the mandatory components of the future care award must be deducted to avoid double recovery: *Aarts-Chinyanta v. Harmony Premium Motors Ltd.*, 2020 BCSC 953 at para. 35.
- [11] Section 88(2) rehabilitation benefits are discretionary because they are not listed in Schedule 3.1 so ICBC is not required to provide them. However, it may provide these benefits if in the opinion of their medical advisor, the treatment is likely to promote the rehabilitation of the insured: *Aarts-Chinyanta* at para 35.

Positions of the Parties

The Defendant's Position

- [12] The defendant submits that the cost of future care awards for psychological treatment, physiotherapy, massage therapy, and medications are deductible as mandatory medical benefits pursuant to ss. 88(1) and 83 of the Regulation.
- [13] They further submit that cost of future care award for vocational counselling ought to be deducted as a reasonable and medically necessary expense pursuant to ss. 88(2) and 83 of the Regulation.
- [14] On the issue of the cost of future care award for attendance at a pain clinic, the defendant asserts that this amount ought to be deducted pursuant to s. 83 either as a mandatory benefit pursuant to s. 88(1) or a discretionary benefit under s. 88(2).
- [15] In total, the defendant submits that the entire cost of future care award of \$80,176 ought to be deducted.

The Plaintiff's Position

- [16] On psychological treatment, Ms. Singh asserts that she will suffer a shortfall if a deduction is permitted for this item because Dr. LePage charges \$225 per 50 minute session but ICBC will only pay \$201 per session for "psychological services" and \$120 per session for "counselling". Accordingly, if she undertakes counselling services, she may not receive \$45,880 in Part 7 benefits.
- [17] Ms. Singh submits that limiting the deduction will account for contingencies such as her relative youth, and the correspondingly high number of years over which these amounts will be paid to her, and the likelihood that the cost of these services may increase. In her view, these contingencies justify either a three year limit or a global 40% reduction in the amount of the deduction from the damage award.
- [18] On medications, Ms. Singh notes that the Judgment does not distinguish between prescription and non-prescription medications so no deduction is warranted.
- [19] Turning next to vocational counselling, Ms. Singh asserts that this is not a mandatory benefit and ICBC does not have discretion to waive the requirement that discretionary benefits have a rehabilitative benefit so a deduction for this amount should be denied.
- [20] Finally, on the cost of attending a pain clinic, Ms. Singh notes that the cost of this item is not prescribed in Schedule 3.1, which was amended effective April 1, 2019. On this basis, she argues that the legislature did not intend for the cost of a privately funded pain clinic to be included in s. 88(1) of the Regulation and it is, therefore, a discretionary benefit for which ICBC can not waive the requirement that this expense have a rehabilitative benefit. She suggests that no deduction ought to be made in respect of the cost of attending a pain clinic.

Findings of Fact

- [21] On behalf of the defendant, Mr. Forster deposes that ICBC accepts each item and treatment described in the Judgment as reasonable, necessary, and arising from the accidents. He also confirms that ICBC waives:
- a) the need for continued certification under s. 98 of the Regulation;
 - b) the power to require that Ms. Singh undergo treatment under s. 90 of the Regulation; and
 - c) the power to require that Ms. Singh submit to a medical examination under s. 99 of the Regulation.
- [22] Mr. Forster confirms that ICBC will honour the new rates set on April 1 of each year for the treatments that apply to Ms. Singh and he waives the need for continued certification under s. 88(1.01) of the Regulations with respect to the treatments.
- [23] Furthermore, he irrevocably, unequivocally, and unconditionally agrees that ICBC will pay:

- a) up to \$7,000 for Ms. Singh's medications; and
 - b) up to \$3,500 for vocational counselling and that this will promote Ms. Singh's rehabilitation. On behalf of ICBC, he waives the need for the opinion of its medical advisor as required by s. 88(2).
- [24] On behalf of ICBC, Mr. Forster commits to paying up to \$13,600 for Ms. Singh's attendance at a pain clinic either as a mandatory benefit under s.88(1) or a discretionary benefit, with all of the aforementioned and required waivers and commitments, pursuant to s. 88(2).

Analysis

- [25] With respect to psychological treatment, Ms. Singh's position that I ought to reduce the deduction to account for lower fee limits paid for counselling is valid. If she pursues treatment by a counsellor instead of a psychologist, the fee limits will be considerably lower. Accordingly, she may not receive Part 7 benefits in the amount of \$45,880 for this treatment. For this reason, I am satisfied that it is reasonable to reduce the deduction for psychological treatment by 25% from \$45,880 to \$34,410.
- [26] I am not convinced that Ms. Singh's young age justifies a three-year limitation or global reduction of 40% to account for contingencies such as the cost of her treatments increasing. This risk is offset by the annual indexing of the fee limits provided for in ss. 88(1.3) to (1.6) of the Regulation. I am also not convinced that there is a risk that ICBC will fail to abide by its clear and unequivocal commitment to pay the amounts described by Mr. Forster.
- [27] In my view, the defendant is entitled to deductions in respect of physiotherapy and massage treatments because they are mandatory benefits under s. 88(1) of the Regulation. On behalf of ICBC, Mr. Forster waived the various rights and requirements set out in ss. 90, 98, and 99 and he "irrevocably, unequivocally, and unconditionally" agreed to pay \$10,196 for physiotherapy and massage therapy, under Part 7.
- [28] Turning to discretionary benefits, I am satisfied that ICBC will fulfill its commitment to Ms. Singh to pay up to \$7,000 for prescription and non-prescription medications and \$3,500 for vocational counselling. Similarly, I am satisfied that ICBC will pay for Ms. Singh's attendance at a pain clinic. In my view, this is a mandatory benefit and therefore deductible under s. 88(1). If I am incorrect and it is instead a discretionary benefit, I am satisfied, on the strength of the commitments made by Mr. Forster on behalf of ICBC, and the therapeutic and rehabilitative nature of this treatment, that it is deductible pursuant to s. 88(2).

Disposition

- [29] I am satisfied that the defendant established that Ms. Singh will receive the aforementioned benefits and that it is, therefore, appropriate to reduce the damage award by:

Psychological counselling:

\$34,410

Physiotherapy and massage therapy:

\$10,196

Medications:

\$7,000

Attendance at a chronic pain clinic:

\$13,800

Vocational counselling:

\$3,500

Total deductions:

\$68,906

Costs

[30] Ms. Singh was partially successful on psychological counselling, the item of future care that comprised the largest portion of the total cost of future care award. Therefore, success was divided on this application and each party shall bear their own costs.

"Basran 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/22/13/2022BCSC1338.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/singh-v-storey-2022>

Prepared on 29 October 2026 · Esheria