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CANADA / JUDGMENT

## W.B.J.H. v. Sangha

2021 BCSC 2574

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COURT

Supreme Court of British Columbia

DECIDED

21 June 2021

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2021 BCSC 2574 W.B.J.H. v. Sangha

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

W.B.J.H. v. Sangha,

2021 BCSC 2574

Date: 20210621

Docket: S87429

Registry: Nanaimo

Between:

W.B.J.H also known as W.B.

Plaintiff

And

Kehar Gary Sangha and Lori Doe

Defendants

Before: The Honourable Justice Thompson

Oral Reasons for Judgment

Counsel for the Plaintiff:

G.E. Beaubier

No other appearances:

Place and Dates of Trial:

Nanaimo, B.C.

June 15-17, 2021

Place and Date of Judgment:

Nanaimo, B.C.

### **June 21, 2021**

- [1] THE COURT: This is an assessment of the plaintiff's damages arising from battery, assault, and false imprisonment (collectively, the "assault") that occurred over the course of a few days and nights in April 2017. I was advised that following a joint sentencing submission the defendant Sangha was sentenced to serve five years and three months in prison plus two years' probation, after pleading guilty to aggravated assault and unlawful confinement of the plaintiff.
- [2] In this action, the plaintiff obtained judgment against the defendant Sangha in default of filing a response to civil claim, with damages and costs to be assessed. The defendant Doe was alleged in the notice of civil claim to have been a participating tortfeasor. She has not been identified or served and at the outset of the hearing I accepted the invitation to dismiss the action as against that defendant. In the course of these reasons when I refer to the defendant, I am referring to the defendant Sangha.
- [3] The plaintiff was 46 years old at the time of the assault. The circumstances of her confinement over several days, and what occurred during this period can justifiably be described as torture. The evidence supports her contention that the assault caused her serious and permanent physical and emotional injuries. She is left without residual employment capacity or the ability to enjoy an active lifestyle. She claims non-pecuniary damages including a measure of aggravated damages, damages for lost capacity to earn a future income, cost of future care, and special damages including healthcare costs certified under the Health Care Costs Recovery Act, S.B.C. 2008, c. 27 [HCCRA].

### **The Assault and Consequences of the Assault**

- [4] The defendant was the plaintiff's landlord. She lived in an outbuilding on the defendant's rural property in the Cowichan Valley. The defendant apparently believed that he had been victimized by theft, including of a quantity of heroin, and it seems he believed that the plaintiff had some knowledge about who might be responsible for the theft.
- [5] Without warning, the defendant struck the plaintiff with a baseball bat, and with the assistance of an accomplice, the defendant Doe, bound the plaintiff's hands and feet. Over the course of the next few days, she was subjected to cruel and sadistic violence. The defendant repeatedly beat her from head to toe with the baseball bat. She was subjected to a form of water torture. She was injected with drugs. She received electric shocks from a cattle prod. She made an escape attempt after the first day, but this resulted in recapture after the

defendant Sangha chased her down in a field using his pickup truck. After her recapture, the defendant made vile threats about what he would do to the plaintiff's children and grandchildren if she made another escape attempt.

- [6] Over the course of her captivity, the plaintiff was deprived of water. She was so thirsty that she resorted to drinking blood that was trickling down her face from the wounds in her skull. The beatings were of such persistence and severity that she repeatedly begged to be killed to put an end to her pain and terror. Remarkably, the plaintiff found the strength to make another -- this time successful -- escape attempt.
- [7] The plaintiff spent a month in a hospital after her ordeal. The evidence of an RCMP constable who accompanied her in the ambulance, and the graphic photographs of the plaintiff taken in hospital, corroborate the plaintiff's evidence about the assault. During her hospital stay, she had facial reconstruction surgery.
- [8] The plaintiff continues to suffer from an array of physical and psychological injuries. She was examined by Dr. Jonathan Hawkeswood, a physiatrist, in February 2021. His report outlines her injuries. The list of physical injuries is a long one: left orbital fracture with subconjunctival hematoma; deviation of the left medial rectus muscle; severe eye swelling; cranial nerve palsy; extensive burns and blistering; foot, ankle, and forearm swelling and pain; bilateral arm and hand paresthesia; extensive bruising and contusion to the face, neck, chest, and right hand; swelling and blood on both eardrums; breakdown of skeletal muscle fibres resulting in leaking of muscle contents into the circulation system (rhabdomyolysis); mechanical neck and low back pain; right knee pain and weakness; greater trochanter regional pain; headaches; and traumatic brain injury with mild to moderate cognitive limitations.
- [9] The plaintiff testified she lives in fear, that each and every night her sleep is interrupted by haunting nightmares. She can only walk for short distances and uses a walker or a cane. She can perform most of the activities of daily living, but does so in pain and with difficulty. She feels shattered and grieves what the defendant has taken from her. Dr. Hawkeswood's impression is that she is quite depressed, and is suffering from anxiety and post-traumatic stress disorder.
- [10] A functional capacity evaluation was conducted by an occupational therapist, Timothy Winter, in March 2021. Unsurprisingly, Mr. Winter's opinion is that the plaintiff is not capable of working. She is capable of performing some housekeeping tasks, but will require intermittent housekeeping support, some grocery shopping assistance, and other community support.
- [11] There is no doubt about the causal relationship between the assault and nearly all of the plaintiff's many ongoing functional deficits. She did have episodes of pre-assault neck and low back pain, and I accept Dr. Hawkeswood's assessment that she was at risk of similar issues occurring absent the assault. When assessing the plaintiff's damages, I take account of her pre-assault health in all its aspects -- especially her low back pain and addiction. I am

mindful that my task is to do what I can through a damages award to return the plaintiff to her "original position."

- [12] The plaintiff's original position was not pristine, but it had very real strengths. She is a member of the Stz'uminus First Nation, by her maternal grandmother's status. The plaintiff has a complex family tree, and a large extended family. Many in the family have past and present battles with alcohol and drug addiction, and some have won these battles. The plaintiff and many of her siblings have endured sexual abuse as children. Notwithstanding a difficult childhood, the plaintiff had a sunny and optimistic disposition and was a joy for others to be around. She lived an active lifestyle, and particularly enjoyed outdoor activities.
- [13] The plaintiff has for many years been an opioid addict. But, like many addicts, she has had periods of time when she has enjoyed considerable stability. She has raised two children, completed hairdressing and healthcare aide programs, and has had some stretches of attachment to the workforce. She has worked as a hairdresser and healthcare aide, and as a server; however, in the six years leading up to the assault she was for the most part living on social assistance.
- [14] Since the assault she has not had stable housing, and only recently began receiving medical care. With the assistance of Allan and Gloria Waddy, who have gone out of their way to look out for the plaintiff, she expects to soon transition to "persons with disability benefits" and to move into the Ts'i'ts'uwatul' Lelum, a subsidized assisted-living facility in downtown Duncan.
- [15] I conclude that but for the assault the plaintiff would have continued with an active and fairly joyful life, albeit with challenges presented by her opioid addiction and bouts of low back pain. The assault has left her physically and emotionally broken and I accept Dr. Hawkeswood's prognosis that the prospect of significant recovery whereby she is able to function normally is a doubtful one, and there is a reasonable chance that her already significant pain will worsen in time.

## General Damages

- [16] In *Simpson v. Teichrieb*, 2021 BCSC 210, Justice Dley reviewed leading cases on the principles underlying general damages and aggravated damages:
- [18] The purpose of an award for general damages is to make life more bearable and to provide reasonable solace for intangible losses: *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229 at 262. The assessment of general damages must be specific to the circumstances of the particular plaintiff. The manner of assessment was set out in *Lindal v. Lindal*, [1981] 2 S.C.R. 629 at 637:

Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the

maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury". In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (Thornton at p. 284 of S.C.R.).

- [19] General damages may also include an amount for aggravated damages. Aggravated damages are awarded where a defendant's conduct was high-handed, malicious, insulting or oppressive: *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 at para. 183.
- [20] In *S.Y. v. F.G.C.* (1996), 26 B.C.L.R. (3d) 155 (C.A.), the Court indicated that generally, aggravating features are taken into account when non-pecuniary damages are assessed and cautioned that aggravated damages must not be conflated with punitive damages:
- [35] I begin by noting that general damages in most cases are assessed taking into account any aggravating features of the case. Those aggravating features may increase the amount awarded. Aggravated damages must be distinguished from punitive damages: *Norberg v. Wynrib* (1992), 68 B.C.L.R. (2d) 29 at 54 (S.C.C.).
- [36] In my opinion aggravated damages are not a separate head of damages. They are a part of general damages. Juries ought not to be instructed as if they are a separate category of damages, particularly in cases of sexual abuse where it is difficult to separate the physical harm, which is often of much less significance than the fright, misery and humiliation connected with it, and the continuing mental suffering from it.
- [17] The "cap" on non-pecuniary damages in personal injury cases arising out of the trilogy was discussed in *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 and *S.Y. v. F.G.C.*, 26 B.C.L.R. (3d) 155 (C.A.). In the latter case, the Court of Appeal held, citing *Hill*, that "[t]he policy considerations which arise from negligence causing catastrophic personal injuries, in the contexts of accident and medical malpractice, do not arise from intentional torts involving criminal behaviour" (para. 30). The instant matter is squarely in the category of a case with multiple intentional torts, each involving criminal behaviour.
- [18] The plaintiff seeks an award of \$350,000 including aggravated damages. This is a large award, but having regard to the purpose of non-pecuniary and aggravated damages, and the well-known factors summarized in *Stapley v. Hejslet*, 2006 BCCA 34, at paras. 45-46, leave to appeal refused, [2006] S.C.C.A. No. 100, I find the amount claimed is amply justified by the extent of the pain, physical and mental suffering, terror, humiliation, and degradation cruelly inflicted on the plaintiff, the ongoing very serious physical and psychological effects of her ordeal, and the consequent permanent functional effects of her injuries on her personality and lifestyle.

## Loss of Earning Capacity

- [19] The plaintiff advances no claim for past loss in recognition of the fact that she had not been engaged in the workforce for some time prior to the assault, and she was in the midst of a bad patch in terms of her addiction.
- [20] She claims approximately \$175,000 for loss of future earning capacity. She is presently 50 years old, and she points to her educational certificates, her plan before the assault to further her healthcare certification, and the possibility of 15 years of employment that might have been ahead of her but for the assault. The claim is advanced on an earnings approach rooted in statistical average earnings of nurse aides, hairstylists, and bartenders, but deeply discounted for contingencies.
- [21] While I have no hesitation in making the threshold finding of a substantial possibility of future events resulting in loss, the plaintiff's challenge in mounting a significantly sized claim under this head of damages is created by the absence of evidence of past earnings. In fact, the only cogent evidence of past earnings that I have is declared income of \$8932 in 2010, \$4202 in 2012, and \$143 in 2015. In the years leading up to the assault, the plaintiff usually made ends meet by receiving social assistance benefits and taking some cash jobs. While I think that using past declared income and an earnings approach would undervalue her loss of capacity, it would, on the other hand, not be appropriate to use statistical average earnings -- even as a baseline -- to quantify her loss of capacity when her history is so divergent from statistical norms.
- [22] I think a fair way to assess the quantum of loss of the plaintiff's capacity to earn income is on the basis of the value of the lost opportunity to do what others in her family have done: the lost opportunity to overcome her addiction and develop a more enduring and regular attachment to the labour force. I think there was a real and substantial possibility that this would have happened but for the assault, although my impression is that this prospect was far from probable.
- [23] The assault has lengthened the odds of the plaintiff being able to overcome her addiction. She needs pain management, and her prescription regime currently includes Dilaudid. And now, given the effects of the assault, if she does overcome her opioid addiction she is without a realistic pathway to remunerative employment.
- [24] Assessing the value of this lost chance is very difficult. It would likely have taken some time for her to get to a state of recovery and some time to upgrade her healthcare aide credentials as she planned. If she made her way back to the workforce -- and she would have faced competitive disadvantages in the labour force given her age and history of addiction -- there is the possibility, and perhaps even a probability, of addiction relapses that must be considered. Taking account of all of the circumstances and substantial contingencies, I assess the loss of future earning capacity at \$50,000.

## Cost of Future Care

- [25] The plaintiff claims approximately \$138,000 for cost of care. Speaking generally, I find the claims are realistic, well supported by the medical evidence and treatment recommendations, and adequately account for contingencies and the plaintiff's original position by limiting the time and horizon of ongoing treatments and costs to ten years from the date of trial.
- [26] I allow the claims for physiotherapy and counselling, and for the costs of housekeeping support, the community support worker, and associated transportation costs. I also allow the claim for grocery shopping assistance. While the plaintiff testified that she might not make use of a gym membership, the amount claimed is a reasonable alternative allowance for home exercise equipment. I disallow the claims for Internet and computer costs. I am quite sure that the plaintiff would have incurred these expenses in any event.
- [27] Many of these care expenses will occur over time and the plaintiff is entitled to the present value of these costs. Making use of the CIVJI table to apply the 2% discount rate mandated by s. 56(2)(b) of the Law and Equity Act to the stream of future expenses, and recognizing that at bottom this exercise remains an assessment rather than a precise calculation, I award \$110,000 for cost of future care.

## Special Damages

- [28] The plaintiff is out-of-pocket \$80, but the special damages claim includes a claim for \$33,428 for healthcare services she received. A certificate in this amount was issued on behalf of the Minister of Health and is in evidence. I therefore award special damages of \$33,508, and, pursuant to s. 20 of the HCCRA, I designate \$33,428 as the amount of the judgment that is applicable to the healthcare services claim.

## Summary

- [29] The damages award is summarized as follows:

### General damages

(including aggravated damages)

\$ 350,000

### Loss of future earning capacity

50,000

### Cost of future care

110,000

### Special damages

(including the HCCRA claim)

33,508

Total

\$ 543,508

[30] The plaintiff is also entitled to her costs and disbursements to be assessed on Scale B.

"Thompson J."

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