

CANADA / JUDGMENT

Wagar v. Lefebvre

2020 BCSC 470

COURT

Supreme Court of British Columbia

DECIDED

30 March 2020

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2020 BCSC 470 Wagar v. Lefebvre IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wagar v. Lefebvre, 2020 BCSC 470 Date: 20200330 Docket: M08919 Registry: Courtenay Between: Michael Wagar Plaintiff And Marc Lefebvre Defendant Before: The Honourable Mr. Justice Thompson Reasons for Judgment on Costs Counsel for the Plaintiff: R. Bush Counsel for the Defendant: H. Urdahl Written Submissions Received: March 26, 2020 Place and Date of Judgment: Courtenay, B.C. March 30, 2020

- [1] The liability issue was severed and came on for trial in October 2017. The plaintiff was a pedestrian. He noticed a wallet lying on the Trans-Canada Highway between Lantzville and Nanoose Bay. In the course of gathering up the wallet, the plaintiff was struck by the defendant's vehicle. I found that the plaintiff failed to yield the right-of-way to the defendant, and that the defendant failed to keep a proper lookout and thus was unable to take effective avoidance measures. I apportioned 75% of fault for this accident to the plaintiff; my reasons are indexed at 2017 BCSC 1954.
- [2] Following the liability trial, the plaintiff set about acquiring medical legal evidence. The parties then settled the action on the basis of the plaintiff recovering \$47,000 (i.e., 25% of \$188,000). The amount of costs (\$14,660.80) and disbursements (\$45,587.90) is agreed upon. What remains is to determine the plaintiff's proportionate entitlement to these costs and disbursements. He seeks 100%. The defendant submits that the plaintiff ought to receive 25%, in accordance with the liability apportionment.
- [3] Section 3(1) of the Negligence Act, R.S.B.C. 1996, c. 333, provides that unless the Court otherwise orders, the liability for costs is in the same proportion as their respective liability to make good the damage or loss. Thus, there is a discretion to depart from the general rule. When contemplating departure from the general rule, the overarching question is whether an injustice will otherwise result: *Forsyth v. Sikorsky Aircraft Corp.*, 2002 BCCA 231 at para. 32. In the present case, it is readily apparent that unless there is a departure from the general rule, the plaintiff will be left with very little -- despite having suffered serious injuries and achieving some success in establishing a degree of liability on the part of the defendant. The defendant maintained a denial of any liability through the trial after offering the plaintiff only a waiver of costs (after withdrawing an earlier nominal offer of \$7500). In

these circumstances, the plaintiff was required to proceed to trial on liability. I conclude without hesitation that determining costs and disbursements in accordance with the liability apportionment would produce an unjust result.

- [4] The more difficult question is the appropriate degree of departure from the general rule in the circumstances of this case. The defendant achieved a significant degree of success on the liability trial, and I think this must be accorded due weight in the balance. On the other hand, the plaintiff had little choice but to proceed in the way he did: going to trial on the liability issue, and then assembling the medical legal evidence required to obtain a reasonable settlement. Considering the proceeding as a whole, the plaintiff achieved a significant degree of success. I have considered each of the cases cited by the parties as appropriate comparators, but their usefulness is necessarily limited by their different facts.
- [5] In all of the circumstances, I think the plaintiff receiving 70% of the agreed-upon costs and disbursements achieves a fair result. Order accordingly. "Thompson J."
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Prepared on 26 October 2026 · Esheria