
CANADA / JUDGMENT

Workmen's Compensation Board et al. v. Greer

[1975] 1 SCR 347

COURT

Supreme Court of Canada

DECIDED

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Workmen's Compensation Board et al. v. Greer

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Report

[1975] 1 SCR 347

Judges

Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Laskin, Bora; Dickson, Robert George Brian

On appeal from

New Brunswick

Subjects

Appeal

Decision Content

Supreme Court of Canada

Workmen's Compensation Board et al. v. Greer, [1975] 1 S.C.R. 347

Date: 1973-12-21

Workmen's Compensation Board, a body corporate, and John Edward Hodgson (Plaintiffs)
Appellants;

and

James Allen Greer (Defendant) Respondent.

1973: November 7, 8; 1973: December 21.

Present: Ritchie, Spence, Pigeon, Laskin and Dickson JJ.

ON APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK, APPEAL DIVISION

Appeal—Supreme Court of Canada—Concurrent findings of fact in two provincial courts—less reluctance to interfere where “facts” are inferences from conflicting expert evidence.

The appellant John Edward Hodgson was injured as a result of a head-on collision between the truck driven by himself and a truck driven by the respondent. He applied to the appellant Workmen’s Compensation Board for compensation for the injuries suffered. His claim was accepted and the Board subrogated to the right of action against the respondent. The sole question was the extent of the injuries suffered as a result of the accident. The medical evidence was conflicting as to the origin of seizures experienced by the appellant who to the time of the accident was a very robust and healthy man who had not previously had seizures or dizzy spells of any kind. The judge at trial awarded damages in the amount of \$3,539 but dismissed the claim made in respect of deterioration of health and cerebral injury, while making a provisional assessment of damages in respect of it in the amount of \$45,298.55. The decision at trial was affirmed in the Appeal Division.

Held: The appeal should be allowed.

It was apparent that the plaintiff appellant Hodgson who before the accident was a healthy 55-year old truck driver had, within 13 months, become totally unemployable and dependant upon medication to prevent him from having seizures. The evidence indicated that it was likely that these seizures were attributable to the head injury and there was no suggestion of any alternative cause. The inference to which the circumstances and other medical opinions gave rise was not neutralized by testimony of one doctor as to the “syncope of unknown ideology”. The practice of this Court reflects a reluctance to interfere with concurrent findings of fact in two provincial courts but this does not apply with the same force to inferences drawn from conflicting professional opinions as it does to findings based on direct factual evidence.

Montgomery & Co. Ltd. v. Wallace-James, [1904] A.C. 73; Dominion Trust Co. v. New York Life Insurance Co., [1919] A.C. 254 applied.

APPEAL from a judgment of the Supreme Court of New Brunswick, Appeal Division[1], affirming a judgment of Barry J. at trial. Appeal allowed with costs.

Levi E. Clain, for the plaintiffs, appellants.

John W. Turnbull, for the defendant, respondent.

The judgment of the Court was delivered by

RITCHIE J.—This is an appeal from a judgment of the Appeal Division of the Supreme Court of New Brunswick (Bugold J.A. dissenting) which affirmed the judgment rendered at trial whereby Mr. Justice Barry had awarded total damages of \$3,539 in respect of injuries sustained by the appellant Hodgson in a motor vehicle accident, but dismissed the claim made in respect of the deterioration of Hodgson's health which he had sought to attribute to a head injury sustained in the same accident.

Notwithstanding his dismissal of the claim in respect of the cerebral injury complained of, the learned trial judge made a provisional assessment of damages in this regard in the amount of \$15,298.55 for special damages and \$30,000 for general damages.

The plaintiff-appellant, John Edward Hodgson, while driving a truck in the course of his employment in the early evening of December 29, 1967, was injured in a head-on collision involving the truck he was driving and a truck driven by James Greer, the defendant-respondent. Hodgson applied to the New Brunswick Workmen's Compensation Board for compensation for the injuries he suffered in the collision; his claim was accepted, and the Board, under the provisions of s. 9(3) of The Workmen's Compensation Act, became subrogated to Hodgson's rights of action against the respondent for personal injuries. The respondent Greer has admitted liability, and the sole question before this Court is the extent of the injuries suffered by Hodgson as a result of the accident.

It is not disputed that as a result of the accident Hodgson sustained a cut on his forehead requiring four stitches, a fractured rib and dislocated shoulder resulting in a weakened right arm, and an arthritic condition of the chest wall, and that as a result of these injuries he was forced to remain at home for the four weeks following the accident. These are the injuries with respect to which judgment was awarded in the courts below, but both courts expressly excluded the claim based on the headaches, dizzy spells and seizures which Hodgson stated that he suffered from the time of the accident.

Before embarking on a more detailed consideration of the medical evidence, I think it desirable to point out that a paramount consideration in this case is that before the accident Hodgson was a "very robust and healthy man who testified that he had never experienced seizures or dizzy spells of any kind" and that this evidence is supported by that of his employer and his wife. The following excerpt from the evidence of Mr. Hodgson is to be read against this background:

Q. Let's discuss the problem with the blow that you received on the head. You say a month after the accident you had headaches?

A. I have had headaches and I have had a dizzy head. I can't explain it. It's always felt since the accident like just a fuzzy feeling in your head. It feels as though it's a dizziness in your head. Q. And you felt this during the first month after the accident did you say?

A. I felt that and my head ached.

Q. How about during the 12 months after the accident? What happened?

A. I went back to work the last of January—

...

So I went back to work but my head always ached. If I would bend over and pick up cases I would have these momentary black outs—like everything is all going black and you hang on until you straighten out again. I worked like that.

Q. What were these spells like that you speak of, Mr. Hodgson?

A. Well just like all dizzy.

Q. What do you mean “dizzy”? What about the objects surrounding you? What did they appear like?

A. Well the object around you don’t move around but you just have this here feeling with your head—whatever it is. The doctor might be able to describe it. To me I would say my head feels like a bottle of pop fizzling.

COURT: How does that feel?

A. Well it’s just bad, and I took these momentary blackouts...

...

Q. How many of these spells you’re describing now, Mr. Hodgson, occurred during the 12 months after the accident?

A. These off balances—I have had three or four like off balances and these dizzy spells where everything would just take off—they happened two or three times a week. I still have them though. If I work a little too much I get it sometimes.

Hodgson appears to have consulted a Dr. A.D. Van Wart in January 23, 1969. This doctor was not available to give evidence but his medical report after his first examination of the patient begins as follows: Car accident Dec. 29/67 unconscious... Has been suffering from frontal headache and black outs since that time. One bad black out treated by me on Jan. 23/69.

On February 11, 1969, some 13 months after the accident, Hodgson suffered a more severe attack during which he lost consciousness and, as his wife describes it:

I said ‘John are you all right’ and he didn’t answer. Then I got up off the chesterfield and I ran over to him and he gave three twitches and then he stopped. I knew he was unconscious but he was just sort of limp. So I called my son... We worked with him but he was quite a while before he came to—around 10 or 15 minutes before he came to and when he did come my son had already called Dr. Van Wart and he said to leave him where he was on the floor.

Dr. Van Wart had the patient admitted to hospital for three days after this attack and then referred him to Dr. Keith Seamans, a neurologist, for investigation and the latter doctor placed him in hospital for a period of some two weeks during which extensive tests were carried out to determine the cause of the seizures.

In view of the findings of the Appeal Division, I think it is desirable to reproduce Dr. Seaman's evidence as to the nature of the tests which were carried out with the assistance of Dr. Joseph Arditti, a neurosurgeon. Dr. Seamans testified as follows:

Q. And do you know how long he spent in the hospital there?

A. If I might just refer to my notes. 26th of February to the 14th of March.

Q. Would you please describe to the Court your examination at that time that you performed on Mr. Hodgson, and the results?

A. I did a neurological examination and general physical examination and the results were entirely within normal limits.

Q. What symptoms were indicated at that time?

A. He gave a history of having a seizure as already described by the witness. I have nothing further to add to that. Q. What tests did you perform?

A. We did the usual base line neurology tests such as skull x-ray, brain scan, pneumoencephalogram and electroencephalogram.

Q. And what were the readings on the E.E.G. I believe you call it? Were they normal?

A. The first E.E.G. was normal. On the second one there was a slight abnormality, I believe, over the right frontal region. It was a very minimal abnormality.

Q. And did you do a pneumoencephalogram?

A. Yes. I did.

Q. What were the results of that test?

A. The results of this test showed there was no space occupying lesion such as subdural hematoma. May I be able to comment on the radiologists report?

COURT: Yes.

A. The report showed there was a degree of cerebro atrophy.

...

Q. As a result of the examinations that you performed, Dr. Seamans, what was your professional diagnosis of Mr. Hodgson's medical condition at that time?

A. The only conclusion that one could draw from the history, the absence of any positive neurological features, or in the absence of very minimal findings on the investigation, one would have to come down to the conclusion that he suffered from a syncope of unknown ideology.

It later appears that the doctor employed the term “syncope” as being descriptive of fainting spells.

Dr. Arditti, who participated in the neurological examination, gave the following evidence:

Q. Tell us your judgment on the total examination, the history and the examination.

A. On the history I, and the other colleagues, thought the patient was having some sort of seizures which consisted of one major passing out spell which the patient described while he was on the chair, and subsequently smaller seizures which were not associated with the passing out spells, and there was no manifestations such as twitching of any of his extremities. We thought these were one sort of seizures.

Q. Did you agree with the medication prescribed by Dr. Seamans in 1969?

A. Yes.

Q. What type of medication was it, Doctor?

A. He was on dilantin—100 milligrams three times a day, and phenobarbital—60 milligrams at two times. These medications are given to prevent further seizures.

Q. Doctor, you're familiar with the condition post traumatic epilepsy?

A. Yes.

Q. Would you please describe in layman's terms what that is?

A. Post traumatic seizures—better word for epilepsy. Post traumatic seizures occur after the patient sustains head injury. This could be a closed or open head injury.

The italics are my own.

Approximately one month after the February seizure, Dr. Van Wart further examined Hodgson and his written report reads as follows:

Feb. 11, 1969. Grand Mal seizure. Has been investigated in detail by Dr. Keith Seamans, Saint John, N.B.

Cannot now be allowed to drive a car (works as a truck driver) therefore unemployable.

While some of the medical evidence is somewhat vague, it is nevertheless apparent from the medication prescribed and the opinions expressed that Hodgson, who before the accident was a healthy 55-year old truck driver, had, within 13 months, become totally unemployable and dependant upon medication to prevent him from having seizures of some kind.

Hodgson was also examined by Dr. Hector MacKinnon a specialist in internal medicine whose examination was chiefly devoted to determining the cause of his chest problems, but it is interesting to note that this doctor gave the following opinion: My opinion was that the spells which he described, starting with nausea and dizziness, were true epileptic form seizures. This is what was established on the basis of my examination, as I had known nothing of Dr. Seaman's examination. I had no evidence of this.

And he later was asked:

Q. What other of the findings that you made are compatible with the injury that he received in the motor vehicle accident on December 29, 1967?

A. The anxiety attacks and probably what I interpreted as being the epileptic form seizures.

On May 15, 1970, Hodgson was examined by a medical panel set up by the Workmen's Compensation Board and consisting of Dr. Arditti as Chairman and Doctors Seamans and Heuff (also a neurosurgeon). After a lengthy consideration this panel gave the unanimous opinion to the Board that it was likely that the post traumatic seizures of Hodgson were caused by the blow to his head in the accident and the panel agreed with the medication prescribed by Dr. Seamans and Dr. Arditti the year before to prevent further seizures and did not discontinue it. In this regard, Dr. Arditti was asked:

Q. And finally, Doctor, what is the connection between the blow on the head that he received in the accident on December 29, 1967, as described in Court today, and as you examined him previously—what is the connection between that blow and the post traumatic seizures that he is now having?

A. It is likely the seizures that he is having are due to the blow he sustained.

Q. Is that the opinion you confirmed as chairman of the medical review board?

A. This was the general opinion of the three doctors that were serving.

Mr. Turnbull: Well it's your opinion.

A. No.

Mr. Turnbull: Are you speaking for the others too?

A. Yes. I take this to mean that the general opinion of the doctors sitting on that Board was that it was likely that the seizures then being suffered by Hodgson were due to the blow he sustained in the accident.

In considering the reasons for judgment delivered by Limerick J.A. on behalf of the Appeal Division, I think it important to note that the opinion of this panel of doctors is described as follows:

Dr. Seamans, Dr. Arditti and Dr. Heuff, the last two being neurosurgeons, sat as a panel for the Workmen's Compensation Board and unanimously expressed to the Board an opinion that the seizures Hodgson was having were due to the blow he sustained in the car accident.

This opinion was given to the Board by the panel without benefit of clinical examination or tests.

It will be seen from the lengthy quotation which I have made from the evidence of Dr. Seamans that both he and Dr. Arditti had participated in the clinical examination of Hodgson commencing on February 14, 1969 and continuing for a period of some two weeks during which extensive tests were made and following which medication was prescribed and the patient was advised that he could no longer drive.

With the greatest respect for the views expressed by the Appeal Division, I am unable to escape the conclusion that due weight was not given to the joint opinion expressed in May 1970 by the three doctors who sat on the panel to advise the Workmen's Compensation Board, two of whom conducted the examination in February 1969.

The Appeal Division also made the finding that Dr. MacKinnon testified "...that all of Hodgson's dizzy spells except that on February 11, 1969 were due to this heart condition, which was not attributable to the accident. The other medical evidence concurs in this opinion or does not dispute it." It is difficult to understand this finding having regard to the opinion expressed by Dr. MacKinnon to which I have already made reference, that the spells which Hodgson described, starting with nausea and dizziness, were "true epileptic form seizures".

In the course of his reasons for judgment, Mr. Justice Limerick also makes the following observation:

None of the experts at trial expressed a firm opinion that the 'syncope' of February 11, 1969 was caused by the accident. The opinion of the panel as such was of necessity at that time based on the history of no such previous attack or syncope.

This is a clear reference to the fact that Dr. Seamans had made a memo in Hodgson's case history indicating a seizure of some sort at the age of one or two years. He was unable to confirm the source of this information and it can be taken to be unlikely that it emanated from Hodgson. This evidence was discounted in a later paragraph of Mr. Justice Limerick's judgment, but it nevertheless appears to have contributed to his mistrust of the report made by the panel of doctors to the Workmen's Compensation Board.

It is true that the evidence given by the doctors at trial, some of whom had been advisers to the Workmen's Compensation Board, can be said to have been vague and evasive in some areas, but there appears to be no doubt that they agreed that at least from February, 1969, Hodgson was suffering from "seizures".

At the trial Dr. Seamans retreated from the stand with which he appears to have concurred as a member of the panel to the position that the patient "suffered from a syncope of unknown ideology", but Dr. Arditti attributed the "likely" origin of the seizures to the trauma resulting from

the blow sustained in the accident. Dr. Heuff, considering Hodgson's condition before and after the accident, found a strong historical connection between the seizures and the blow, but felt that the tests made after Hodgson had been taking the prescribed medication tended to negative any finding of cerebral seizures. The evidence disclosed that Hodgson was in robust health until the accident in which he sustained a severe blow on the head and that he thereafter suffered from seizures of varying intensity culminating in a severe attack in February 1969. At least one doctor considered it "likely" that the seizures were attributable to the head injury and there was no suggestion whatever of any alternative cause. I do not think that Dr. Seamans' testimony as to the "syncope of unknown ideology" constituted any evidence to neutralize the inference to which the circumstances and other medical opinions give rise, namely, that the seizures were the result of a trauma caused by the blow on the head sustained in the accident. I am accordingly in agreement with the dissenting opinion of Mr. Justice Bugold in the course of which he says:

However, with respect to the question of damages raised by the appellants, it seems to me, with all due deference, that the probabilities of the plaintiff John Edward Hodgson suffering a seizure directly related to the trauma sustained in the collision outweigh the probabilities that the condition is attributable to another cause of which there is no evidence. I have carefully considered the conflicting medical evidence and, in my opinion the preponderance of evidence points to the conclusion that Hodgson's cerebral condition is directly related to the trauma sustained in the accident.

I appreciate that this conclusion differs from that reached by the trial judge and two of the three judges sitting in the Appeal Division, but no question arises as to the veracity of the witnesses and the judgment of the majority of the Appeal Division is based on inferences drawn from conflicting medical opinion so that this is a case which appears to me to be governed by the language used by Lord Halsbury in *Montgomery & Co. Ltd. v. Wallace-James*[2], at p. 75, which was affirmed by the Privy Council in *Dominion Trust Co. v. New York Life Insurance Co.*[3], at p. 257. Lord Halsbury said in part:

...where no question arises as to truthfulness, and where the question is as to the proper inferences to be drawn from truthful evidence, then the original tribunal is in no better position to decide than the judges of the Appellate Court.

In my opinion, the practice of this Court, which reflects a reluctance to interfere with concurrent findings of fact in two provincial courts, does not apply with the same force to inferences drawn from conflicting professional opinions as it does to findings based on direct factual evidence.

For all these reasons I would allow this appeal and direct that the appellants recover from the respondent damages in respect of the deterioration in Mr. Hodgson's health which I find to have been the result of the head injury which he received in the collision with the motor vehicle operated by the respondent. I adopt the assessment of damages made in this regard by the learned trial judge and in the result the judgment of the Appeal Division is varied by increasing the damage award to the appellants by \$45,298.55.

The appellants will have their costs throughout.

Appeal allowed with costs.

Solicitors for the appellants: McKelvey, Macaulay, Machum & Fairweather, Saint John.

Solicitors for the respondent: Palmer, O'Connell, Leger, Turnbull & Turnbull, Saint John.

[1] (1972), 5 N.B.R. (2d) 592.

[2] [1904] A.C. 73.

[3] [1919] A.C. 254.

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