

CANADA / JUDGMENT

Yuen v. Han

2025 BCSC 1481

COURT

Supreme Court of British Columbia

DECIDED

13 March 2025

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2025 BCSC 1481 Yuen v. Han IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Yuen v. Han, 2025 BCSC 1481 Date: 20250313 Docket: M191744 Registry: Vancouver Between: Yick Sum Yuen Plaintiff And Jia Han and Nissan Canada Financial Services Inc. Services Financiers Nissan Canada Inc. Defendants Before: The Honourable Madame Justice Burke Oral Reasons for Judgment re Successive Events Counsel for the Plaintiff: C.J. Chak E.S. Lee Counsel for the Defendants: S. Katalinic K. Fountain Place and Date of Hearing: Vancouver, B.C. March 13, 2025 Place and Date of Judgment: Vancouver, B.C. March 13, 2025

- [1] THE COURT: These are my oral reasons for judgment in the matter argued this morning. I reserve the right to edit or add to these reasons, but the substance will not change.
- [2] This matter involves two successive motor vehicle accidents; the second of which has arisen after s. 115 of the Insurance (Vehicle) Act, RSBC 1996, c 231 [Insurance (Vehicle) Act] came into effect. That provision reads: Despite any other law or enactment but subject to this Part,
- (a) a person has no right of action and must not commence or maintain proceedings respecting bodily injury caused by a vehicle arising out of an accident, and
 - (b) no action or proceeding may be commenced or maintained respecting bodily injury caused by a vehicle arising out of an accident.
- [3] The parties essentially disagree as to whether the jury can be charged on divisible or indivisible injury as the defendants say the Supreme Court of Canada in *Blackwater v. Flint*, 2005 SCC 58, requires judges to "untangle multiple interlocking factors" and "confine damages to only those arising from actionable torts" and "not allow damages as a result of statute-barred wrongs "(at para. 82).
- [4] The defendants argue s. 115 means the second motor vehicle accident is by virtue of s. 115 of the Insurance (Vehicle) Act a non-tortious event. No damages can be awarded for that event and therefore the only injury at issue arises from the March 4, 2017, accident. These injuries must, therefore, be considered divisible. The defendants also rely on jurisprudence such as in *Sandhu v. Vuong*, 2016 BCSC 1490, to argue that "indivisibility" may be qualified and damages may be made in effect "divisible", by the action of law where one claim is statute barred (at para. 27).

- [5] In my view, however, the question of divisible or indivisible injury and the charge to the jury about that issue, must be provided in the jury charge as it would be premature to preclude that deliberation. As noted in *Stang v. Dhaliwal*, 2023 BCSC 2248, the law is unsettled on this point (at para. 115), and the jury should be given the opportunity to consider the question of divisibility; indivisibility of injury and causation. (See also the case of *Kallstrom v. Yip*, 2016 BCSC 829)
- [6] I note the remarks by the Supreme Court of Canada in *Parkland (County of) v. Stetar et al.*, 1974 CanLII 198 (SCC), [1975] 2 SCR 884, at 899, that: even in those cases in which for some reason the right to contribution does not exist, the victim retains the right of full recovery from the tort-feasor whom he has sued . (See also the case of *Morrell v. Lippucci*, 2022 BCSC 977).
- [7] While s. 115 of the Insurance (Vehicle) Act precludes an action with respect to bodily injury - it does not deal with a situation of an indivisible injury arising at a time that a person had a right of action and the subsequent accident occurring after the Act came into effect, worsens an earlier injury which has not yet been compensated for. As noted in *Bradley v. Groves*, 2010 BCCA 361:
- [37] It may be that in some cases, an earlier injury and later injury to the same region of the body are divisible. While it [is up to] the trial judge to decide in the circumstances of each case, it is difficult to see how the worsening of a single injury could be divided up.
- [8] In this case therefore, it will be up to the jury to decide if the injuries are divisible or indivisible and the questions as phrased allow that deliberation to take place - with the consequences of a finding of a divisible or indivisible injury established by the nature of those questions. "Burke J."

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