

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
(SMALL CLAIMS DIVISION)

BETWEEN:) REASONS FOR JUDGMENT
)
SELENA ANNE FAIERS)
Claimant) OF THE HONOURABLE
)
AND:)
) JUDGE C.E. BAKONY
KYUNG AH KIM AND TAIHO KIM)
Defendants)

Kieron Grady: Appeared as Counsel for the Claimant

Paul Kent Snowsell: Appeared as Counsel for the Defendant

The Claimant claims damages as the result of a motor vehicle accident on September 20, 1992, when the car she was driving was struck from the rear while stopped. The only issue is whether she was injured.

The claimant and her passenger were stopped in a 1981 Datsun and the defendant was also stopped one metre behind in a 1990 Pontiac Grand Prix which was allowed to move forward to make contact with the claimant's vehicle. No damage was caused to either vehicle nor were the isolators on the claimant's rear bumper moved. Nothing in either vehicle was displaced and it is uncertain whether the claimant's vehicle was moved forward.

An engineering report of I.S. Leggett was presented by the defendant and he was cross-examined by the claimant's Counsel. He concluded the speed change of the Datsun was not greater than 3 kph and that a speed change of at least 5 kph would be required for the claimant's head to contact the headrest in her vehicle. He also concluded that the speed change in this case was less than that associated with predictable injury. If the speed of the defendant had been 15 mph, as indicated by the claimant, the vehicles, particularly the claimant's, considering its rusted condition, would have been substantially damaged.

The claimant's passenger required no medical treatment and did not receive any compensation as a result of the accident.

The claimant went home after the accident, then to Burnaby General Hospital where x-rays were taken (negative). She complained her neck was unstable, her head ached and her back and shoulder were sore. She saw Dr. Choi, her doctor, five days later and approximately six times through 1993. I have carefully reviewed Dr. Choi's report as well as that of Dr. McPherson, Orthopaedic Medicine, tendered by the defendant, and do not think it useful to set them out in detail. It should be noted that the claimant was and is a busy and active woman, age 27, who worked part-time both at London Drugs and as a lifeguard, swimming and aerobics instructor at several swimming pools, as well as pursuing her kinesiology studies. She continued these activities after the accident with some scheduling changes.

Dr. McPherson indicated no disability related to the accident and that the complainant's complaints were consistent with tension. The claimant indicated she had mild scoliosis as a child and chiropractic treatments since age 12 for back and neck problems. Medical records tendered by the defendant indicated she has been received chiropractic, massage and physiotherapy treatments regularly for many years prior to and shortly before this accident and continued the same regimen after the accident.

The complaints of the complainant and the medical evidence and treatment received are equally consistent with her pre-existing condition as with or resulting from this accident and considering this and the absence of any damage and the engineering evidence, I find the claimant has failed to establish that she suffered any injury in the accident. Her claim is dismissed.

Dated the 10th day of November, 1995.


C.E. Bakony, Judge
Provincial Court of British Columbia