

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Madam Justice Huddart
Pronounced in Chambers
January 12, 1996

BETWEEN:

FAHRAH MAWANI

PLAINTIFF

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

DEFENDANT

L. Lee
P. Kent-Snowsell

Appearing for the Plaintiff
Appearing for the Defendant

1 THE COURT: About 10 p.m. on February 6, 1994, the car which Fahrah Mawani was driving across the Alex Fraser bridge was clipped in the rear at least once as that other car merged onto the highway off the Annacis Island road. An engineer fixed the exchange of velocity at between 3 to 5 kilometers per hour. Both vehicles were travelling at about 70 kilometers per hour.

2 The plaintiff who is a school teacher took down what she thought was the correct licence number. The next day she reported the incident to the police. Their investigation revealed that the

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number was incorrect. In the circumstances of that evening, I yesterday advised counsel that I was of the view that she had done what could reasonably be expected of a person in her position that evening, and that she was entitled to benefits under s. 23 of the *Motor Vehicle Act* as a person who had been in an accident, the responsibility for which was that of an unknown driver, someone whose identity could not be ascertained.

3 As a result of the quite minor but upsetting collision, Ms. Mawani suffered what her doctor described as mild soft tissue injuries. Anti-inflammatory medication and physiotherapy were prescribed and over the next few days Ms. Mawani's pain increased and headaches developed. These rather common consequences of the type of collision in which she was involved were largely resolved by June 16, 1994, when her general physician, Dr. Wasswa-Kintu, reported to her counsel as follows:

In summary we have a 27 year old female who was involved in a motor vehicle accident on February 6, 1994, four what [sic] months and one week today. She sustained multiple soft tissue injuries to her left neck area, upper and lower back, and left shoulder. Neck muscles and left shoulder improved well to normal functional level and her back symptoms gradually improved to normal functional level. She required some physiotherapy, had some time off work as mentioned above and adjusted her job to a certain extent. She also required the help of analgesics and anti-inflammatories. The last time I saw her, one week ago, she was back to a fairly normal functional level. I don't anticipate any permanent disability and she has carried on as expected with good prognosis.

4

On March 15th, Dr. Hugh S. Miller examined Ms. Mawani at the request of I.C.B.C. and he reported as follows:

There is a history that 11 years ago she was in an accident and this involved the left side which has continued to bother her under stress conditions since then.

On p.3 of his report in his concluding paragraph:

This girl has had a relatively minor impact from the rear when in motion and the situation was upsetting. She has a history of an old accident and I would think from this that she may well have injured her acromioclavicular joint then, with a partial separation and this has been protected on this occasion by her seat belt but appears to have become symptomatic. There is some prominence of the left upper costochondral junction and again this area is tender, and whether or not the appearance could suggest a disturbance of the costochondral junction. I am uncertain. Once again, the mechanics of the injuries she suffered, would make it difficult to explain the pathogenesis and I feel it is more likely that this too was part of the old injury and became symptomatic in relation to the seat belt. I can find no evidence of any definite spinal injury and she may have had some mild soft tissue strain. I think much of her difficulty in continuing work has been in relation to fatigue and depression rather than actual physical injury and from my examination I would think that she is at a point where she can carry on working full time and most important of all, continue exercising on her own. There is no indication that she will have any permanent effects from this accident.

5

Ms. Mawani complains today of occasional headaches that flow from neck pain. Ms. Mawani is able to control that pain with Tylenol. She has not required medical attention for her neck or shoulder since June, 1994. Her recovery is probably complicated by

another minor collision on March 25, 1994, which is when her complaints to her doctor about a lower back problem seemed to increase. That conclusion is consistent with the evidence of Ms. Taylor on behalf of I.C.B.C. about statements Ms. Mawani made to her after that affidavit.

6 The plaintiff is claiming \$60 for special damages, a not unreasonable amount for the proportion of the physiotherapy costs that she incurred, and general damages for pain and suffering based on soft tissue injuries that lasted one to two months with some residual symptoms. In my view, in these circumstances, fair compensation would be \$3,000, plus \$60 for a total judgment of \$3,060.00. Mr. Snowsell, you wanted to address the issue of costs.

(SUBMISSIONS)

7 **THE COURT:** In my view this is not a case for costs. This matter has always been within the Small Claims Court's jurisdiction. I agree that the *Small Claims Act* was amended to give the public an opportunity to bring claims in that court on an informal basis, even without counsel if they wished. I think we should encourage the public to take advantage of that procedure in matters involving less than \$10,000.00. This writ was issued relatively quickly after the accident. The medical report that was available just two weeks later clearly established that this claim was not going to be over \$10,000. At that time it was within the

plaintiff's power to move the action to the Provincial Court had she wished to do so. She chose not to do so and she ran the risk of not obtaining an order for costs. I think she is entitled only to her disbursements.

8 As to the defendant's application for its recovery of its disbursements because this application was brought on so late in the day, it ran certain risks when it issued a jury notice. It is going to have to take the consequences of them. I do not think that this being brought on late in the day has prejudiced I.C.B.C. in any way.

Madam Justice Huddart