

**BLADES v. CHANDLER**

**[High Court. Civil Suit No. 1086 of 1992**

**(Waterman, J.) September 30, October 1, 1993; October 5, 1994]**

**(1994) 30 Barb. L.R. 372**

**Damages - Personal injury - Whiplash injury to neck aggravating cervical spondylosis.**

Facts: An accident occurred on Spooner's Hill, St. Michael on May 20, 1990 a car driven by the plaintiffs husband, GB, and two motor cycles. One motor cycle was owned and driven by the defendant. The plaintiff, a 47 year old was a passenger in the car. She sustained a whiplash injury to the neck aggravated an existing condition of cervical spondylosis. The plaintiff claims damages.

Held: (i) The plaintiff would be awarded a total of \$59,000 as general damages :he following heads: \$20,000 for pain and suffering; \$31,000 for loss of amenities and \$8,000 for future medical expenses. General damages to bear interest at the rate of 8% per annum until payment; (ii) with regard to the plaintiffs pre-existing condition, the defendant could not t liable.

D. Mottley Q.C. in association with Miss K. Parris for the plaintiff.

Mr. I.CA. Bishop for the Defendant.

WATERMAN, J.: On May 20, 1990 an accident occurred on Spooners' Hill, St. Michael between motor car MC 250 driven by the plaintiff's husband Godwin and two motor cycles. One of the motor cycles was MG 950 owned and by the defendant. The plaintiff, a passenger in motor car MC 250, sustained injuries. In this action for negligence she is claiming damages against the defendant personal injuries she suffered ....

I find that the defendant was responsible for the collision which was caused by negligent manner in which he drove his motor cycle along Spooners Hill on the day in question. Medical reports on the plaintiff were received in evidence. Dr. Coppin's report dated the 4th March 1992 states:

"This 47 year old female was seen in the Accident Department on 90-05-21 at 1.15 a.m. She was a passenger of a car which was struck by two motor cycles. Complained back of the neck.

On examination:

Fully conscious and alert. Mucous membranes pink.

Neck - full but painful range of movement. Pain along muscle on lateral rotation of neck.

Upper limbs - No neurological or sensory deficit.

Central Nervous System - Nothing abnormal detected.

Investigation: Xray - Cervical spine: No bony fracture or subluxation present. Moderate degenerative changes of vertebrae and discs with spondylosis seen. Large anterior and posterior osteophytes also seen.

Assessment: Whiplash injury to neck aggravating cervical spondylosis.

Management: Cervical collar was applied. Discharge on analgsics - Rengasil.

Progress: Was reviewed on 90-05-23 when she complained of pain radiating down the back with At this stage she was referred for physiotherapy and p' review on 90-06-20 she complained of pain radiating c numbness and weakness of the (L) arm. This was assessed as a combination of cervical spondylosis aggravated by her cervical injury to continue physiotherapy along with analgesics. On r after completing the course of physiotherapy she showed but complained of a mild degree of numbness and pain (L) upper limbs. She was discharged on advice physiotherapy.

Prognosis: Due to the fact that Cynthia Blades had und of her cervical spine which was aggravated by her will: continue to experience some pain in her upper intermittently."

In his report of December 29, 1990 Mr. Hadley Clarke states that he first saw ~tiff on July 5, 1990. Her complaints were:

Severe neck pain that is aggravated by neck movements. Swollen and ainful neck muscles radiating pain involving the left upper extremity. Pins nd needles in the left upper extremity low back pain (dull ache)."

The report continues thus:

Examination of the cervical spine revealed swollen and painful muscles. 4eck movements were restricted to a marked degree. Xrays were requested ;nd reported as follows:

Instability of C3 - 4 apophysial joints on flexion but without compromise )f the spinal canal. Mrs. Blades was seen on 3/9/90, 10/9/90, 13/10/90

and )n these visits she appeared to be in severe distress.

In summary, Mrs. Blades sustained a moderately severe soft tissue injury manifested by the following: reported findings on her X-rays; hematoma in the muscle; severe pain on examination. The recovery has been slow but positive. The plan is to repeat flexion - extension views of her cervical spine before submitting a final report."

In his report of February 7, 1992 Mr. Clarke indicates that he reviewed the Ws condition again on January 30, 1992 and her complaints then were:

"intermittent neck pain; painful lump over the lower cervical region; severe neck pain during flexion movements; problems performing household chores, cleaning and performing needle point (such activities involve flexion movements), occipital headache, recurrent neck stiffness.

Neurologic examination revealed an alert and oriented patient. Speech was normal and memory intact. Her gait was careful. She sat in the chair and got up from the chair quite easily. She was wearing a cervical collar which limited all neck movements. There was no cranial vault deformity. Examination of the cranial nerves revealed normal visual acuity, fields and fundoscopy. The pupils were equal and reactive. Extra-ocular movements were intact and nystagmus was absent. The remainder of the cranial nerves were intact.

Examination of the cervical region revealed the following findings: painful region over the posterior aspect of the neck region. Swollen, diffuse mass over the posterior region with maximal swelling over the C5 - C7 region. Limitation of neck movements. Spasm of the neck muscles. X-ray of the cervical spine including flexion and extension views w study revealed the following findings: no evidence of inst. set out in the report reads as follows:

"It is my opinion that this patient suffered a severe injury of the cervical spine. This injury resulted in disruption of the interspinous ligaments, hematoma formation and evidence of swelling and spinal instability that was confirmed on X-rays including flexion/extension studies indicated no evidence of delay instability. Miss Cynthia Blades has been experiencing recurrent pain with periods of prolonged relief. During these painful periods she is unable to perform household chores, needle work which involves flexion movements and other activities of daily living. The muscles over the posterior aspect of her neck remain tender on palpation. I believe this patient will experience exacerbation and remission in the indefinite future."

On the July 20, 1992 Mr. Clarke reviewed the plaintiff: summary of his report of the July 28, 1992 reads as follows:

"There is no doubt that this patient sustained a severe softtissue as a result of her motor vehicle accident on May 20, 1990. This accident resulted in a hematone involving neck muscles and disruption of spine ligaments - this is confirmed on X-rays. The report of these X-rays are included in a previous medical report. This pain in her low back is related to the injury in her neck - upper back region. The recent study ruled out any disc herniation. It is my opinion that this lady will continue to experience neck pain for an indefinite period."

On September 9, 1993 Mr. Clarke reviewed the plaintiff's his final report of September 11, 1993 reads as follows:

Examination of the neck revealed a well defined swelling over the posterior aspect of the neck. This swelling appeared indurated and was non-tender. Marked reduction of spinal mobility muscular spasm. Examination of the lumbo-sacral spine revealed:

Moderate reduction of spinal mobility. Straight leg raising was reduced to 45 degrees bilaterally and resulted in pain in the low back. There is no doubt Mrs. Blades is experiencing pain in the neck and low back regions. These pains have resulted in an extended period of suffering and impacted her ability to work and perform some activities of daily living. She requires the use of Tylenol/Panadol because she reported allergic reactions to some anti-inflammatory agents.

It is my opinion that she will experience episodes of exacerbations and remissions in the indefinite future. She will also require about 8 physiotherapy sessions per year (\$400.00) and medication (\$400.00)."

From the medical evidence it appears that the plaintiff, prior to the accident, suffered from cervical spondylosis. It also appears that the whiplash injury to her neck which she suffered as a result of the accident aggravated her pre-existing

The plaintiff says that she has had to give up doing needlework for reward and also most of her household chores as a result of the injuries she sustained in the accident.

Mr. Bishop, counsel for the defendant, submitted that the court in making any damages for the pain and suffering and loss of amenities suffered by the plaintiff as a result of the accident must take into consideration the plaintiff's pre-existing condition. The defendant must take the plaintiff as he found her. The defendant cannot be held liable for the plaintiff's pre-existing condition.

Having regard to the medical reports, the plaintiff's evidence and counsel's submissions, I award the plaintiff \$20,000 for pain and suffering. The evidence showed that the plaintiff is partly disabled from doing housekeeping chores in her home for her family and herself and requires help for three days a week at \$25.00 a day. A multiplier of 10 has been suggested by Mr. Mottley and a multiplier of 4 by Mr. Bishop in light of the plaintiff's pre-existing condition. In all the circumstances in seeking to assess damages for loss of amenities I determine that the multiplier be 8, and the multiplicand being \$3,900 that should give a total figure of \$31,000.00. The sum of \$31,000 is awarded the plaintiff for loss of amenities.

Damages of \$8,000.00 is also awarded to the plaintiff for future medical expenses. The special damages of \$10,875.00 have been agreed and are allowed.

Accordingly, judgment is for the plaintiff for \$59,000.00 general damages and \$10,875.00 special damages. The special damages will bear

interest at 4 per cent per annum from the date of the accident until today and hereafter at 8 per cent per annum until payment. The general damages will bear interest at the rate of 8 per annum from today until payment.

The plaintiff will have her costs to be taxed or agreed. Certified fit for two.