

Publisher's Note

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Previous release was 2019-2

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Goldsmith

Damages for Personal Injury and Death — Digest Service

This service provides the most comprehensive and up-to-date collection of court decisions in which damages for personal injury or death have been awarded. It keeps subscribers abreast of the latest quantum of damages judgments and provides a wealth of cases upon which the researcher may draw.

What's New in this Update:

This release features new and updated case digests.

Case Law Highlights

Tractor trailer jack-knifed turned over and left roadway – Plaintiff truck driver traumatized – Plaintiff had no physical injuries – Plaintiff suffered post traumatic stress and depression – Plaintiff, a long-haul truck driver in a partnership with his wife, suffered injuries when the tractor trailer that he was driving lost all power, leading him to lose control of the vehicle, resulting in the truck jack-knifing, turning over, and leaving the roadway. Plaintiff was screaming to his wife, who was a passenger in the cab, as the collision was taking place. Plaintiff was traumatized, and remained motionless, as if paralyzed, and did not try

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to extricate himself from the cab, until his wife released his seat belt and compelled him to move. After the accident plaintiff stopped screaming but he still seemed “out of it”. A hydro vehicle came upon the scene, and plaintiff was unresponsive to questioning by hydro personnel who were assisting plaintiff and his wife. While plaintiff did not suffer serious physical injuries as a result of the collision, he suffered ongoing debilitating symptomology as a result of post-traumatic stress disorder and major depressive disorder caused by the collision and his reaction to it. He stopped driving within two years of the collision, when he had suicidal thoughts and attempted suicide. He later attempted suicide again, on more than one occasion. The totality of the evidence established that at the time of trial, 7-years post-collision, he was a shadow of his former self physically, emotionally, and socially, and was now incapable of enjoying life as he formerly did. He was also now incapable of maintaining gainful employment, either as a long haul truck driver, or by alternative means. Plaintiff’s psychological injuries were life altering in every respect. The prognosis for real progress after almost seven years of the debilitating effects of post-traumatic stress disorder and major depressive disorder from which plaintiff was left suffering was guarded at best and bleak at worst. Defendants failed to establish that plaintiff failed to mitigate his damages. Davies J. awarded plaintiff general damages in the amount of \$265,000, as well as \$1,455,000 for loss of future earning capacity, and \$1,781,000 for cost of future care. The Court of Appeal (Saunders J.A, MacKenzie J.A., and Hunter J.A. concurring) dismissed defendants’ appeal, finding that the trial judge’s conclusions on liability and quantum of damages were supported by the evidence.

Hans v. Volvo Trucks North America Inc.

2018 CarswellBC 2921 (B.C. C.A.)

Plaintiff was struck by motor vehicle – Plaintiff suffered multiple fractures including spinal cervical fracture concussion and lacerations – Plaintiff pedestrian, aged 36, suffered injuries when he was struck by defendant’s vehicle. Plaintiff was put in a medically-induced coma for six days after the collision. Plaintiff suffered a cervical spinal fracture that required neurosurgery and the fusion of the C-5 to C-7 vertebrae with rods and screws. He suffered non-displaced fractures of the L-2, L-3 and L-4 lumbar vertebrae, a fracture of the sacrum, bruising of the left adrenal gland, and a kidney laceration. He suffered a concussion, lacerations on his forehead, and a fractured tibia and fibula. The tibia was repaired by an orthopedic surgeon, who inserted a rod and screws that held the comminuted fracture in place. Since the collision plaintiff suffered the recurrence of a pre-existing weeping fistula in the anal region. Two surgeries were attempted to repair this problem, but the surgeries were unsuccessful. He was unable to perform duties required

of his job after the collision. There was no question that plaintiff had endured pain and suffering and that the pain may continue for some time into the future, especially if plaintiff stands for any length of time or holds his neck in awkward positions, as he was expected to do in the execution of the duties in his former job. His pain was manageable with medication as long as plaintiff refrained from activities that aggravated his symptoms. Before reducing for plaintiff's contributory negligence, Khaladkar (V.) J. assessed plaintiff's general damages in the amount of \$150,000, as well as \$36,051 for cost of future care, \$67,123 for loss of housekeeping capacity, and \$60,000 for retraining. The Court of Appeal (Fry C.J.N.L., Welsh J.A., and White J.A. concurring) dismissed plaintiff's appeal of the trial judge's assessment of damages, and allowed defendant's cross-appeal in part. Defendant's cross-appeal regarding the trial judge's finding that he was driving at excessive speed was dismissed. Defendant's cross-appeal of the trial judge's finding that plaintiff was struck on the shoulder of the roadway, cross-appeal on the basis that the trial judge failed to conduct a proper analysis of causation, and cross-appeal of the finding that defendant's actions amounted to negligence that caused plaintiff's injuries, were allowed.

Jadhav v. Kielly

2019 CarswellNfld 18 (N.L. C.A.)

Motor vehicle – Pedestrian struck and run over – Injuries included fractured skull brain damage and orthopedic injuries – General damages – Plaintiff suffered damages when he was struck and run over by a vehicle. He was pushed by defendant, stumbled into the roadway, and was struck and run over by defendant driver. He suffered a fractured skull, brain damage, and orthopaedic injuries. Before reducing for plaintiff's contributory negligence, a jury assessed plaintiff's general damages in the amount of \$225,000. The Court of Appeal (Strathy C.J.O., Hoy A.C.J.O., Feldman J.A., Brown J.A., and Paciocco J.A. concurring) did not disturb the damages awards on appeal.

Cadieux v. Cloutier

2018 CarswellOnt 20277 (Ont. C.A.)

