

File No. C44159

C A N A D A

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

(BEFORE THE HONOURABLE JUDGE G.J.F. BAKER)

SURREY, B.C.

2000 FEBRUARY 11

BETWEEN:

MANJIT KAILA

CLAIMANT

AND:

ROCCO GERACE

DEFENDANT

EXCERPT FROM PROCEEDINGS

(Reasons for Judgment)

APPEARANCES:

K. TAUNK	for the Claimant
C. WILSHIRE	for the Defendant
C. MacDONALD	Court Recorder
P. CURRIE	Transcriber

I hereby certify the foregoing to
be a true and accurate transcript
of the evidence recorded on a sound
recording apparatus, transcribed to
the best of my skill and ability



P. Currie
Transcriber

Judgment, (Baker, G.J.F., P.C.J.)

1 THE COURT: All right. I find that there was an
2 accident and that it occurred on the 12th of June
3 of 1998 and there was a car driven by Mr. Kaila
4 and that ran into some tires that fell off another
5 pickup truck and this caused Mr. Kaila to lose
6 control of his vehicle and it ran into a set of
7 stairs.

8 Now, as far as the stairs are concerned, they
9 were wooden stairs and I have come to that
10 conclusion because the statement says that Mr.
11 Kaila gave, shortly after the accident, the wooden
12 stairs, and he has pretty well positively
13 identified them as being wooden today. As far as
14 wooden stairs are concerned, if a metal object
15 hits a wooden stair, I am quite sure that the
16 wooden stair is slightly bruised. I have not seen
17 wood come out of such a situation without being
18 slightly bruised, unless it is what is a strain of
19 iron wood; that is pretty good. I think that was
20 on the St. Roach when it was built to travel the
21 Arctic. Anyway, I do not think that is terribly
22 important and I find that the vehicle stopped at
23 the stairs and the damage was that there were two
24 tires lost when one rim bent and there was some
25 damage to the front of the vehicle. It was all
26 settled with Mr. Kaila for the sum of two hundred
27 and fifty dollars. He said he spent fifteen
28 hundred dollars to buy his car, so he was not too
29 unhappy about that.

30 The injury that he sustained I find was a
31 whiplash injury. The medical report that we have
32 here says that there was an injury and the doctor
33 saw it and he treated Mr. Kaila over a period of
34 time, from June the 12th, and as he said in his
35 report on September the 23rd, he would see him
36 again on September the 11th, 1998, September 23rd
37 and December the 1st, 1998. His neck pain
38 gradually improved with his medication and
39 exercise since when he was seen on September the
40 23rd, 1998, the neck pain was much better.

41 I would have thought, you know, and I have
42 thought this to myself quite often, that should
43 not the doctor have said that the neck pain,
44 instead of being much better, was much worse?
45 That means it was getting better and not
46 improving. If it was improving, it would be more
47 painful, I would have thought. Anyway,

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1 examination shows minimal tenderness in the neck
2 with normal range of motion.

3 So, I find that Mr. Kaila was injured in this
4 accident and I am going to allow the sum of
5 twenty-five hundred dollars for those injuries as
6 general damages.

7 As far as the defendant is concerned, Mr.
8 Kaila, you were hired by Mr. Buehler (phonetic) to
9 drive a truck. Mr. Buehler has said that you were
10 a new driver and you were just learning. You were
11 paid twelve dollars an hour and you worked for
12 what would appear to be maybe three or four weeks.
13 Mr. Buehler generally was not too happy with what
14 you were doing and how you were doing it; he said
15 you were a new man but you still did not, and he
16 did hedge and he hummed and hawed when he was
17 talking about it, so he was not too happy about
18 that.

19 And also, the indication that the cheque that
20 was given to you was in dealing with October when
21 you actually worked for the gentleman in May, and
22 it would appear that that cheque was for payment
23 in May and possibly into June. The cheque was not
24 cashed for some time, for about a month and a
25 half, it would appear and why, I do not know. You
26 just said you held it because you wanted to, which
27 is perfectly all right, although when you get a
28 cheque, you should cash it because you might find
29 when you go to cash it that there is no money in
30 the account if you hold it too long.

31 And also, Mr. Buehler had the opportunity of
32 driving his own vehicle which he drove
33 occasionally, and he also hired somebody else
34 after you had been working for him. You were
35 paid, I find, for the work that you did for Mr.
36 Buehler and I do not find that Mr. Buehler would
37 have continued to hire you for any period of time
38 after the accident. I will say that I think that
39 quite possibly Mr. Buehler would have kept you on
40 for two or three days to see what was the problem,
41 but I do not find that he would have kept you on
42 any longer and it would appear that for one day,
43 you earned ninety-six dollars, that is gross, and
44 so I am going to allow the amount of your loss of
45 wages in the sum of two hundred dollars and that
46 is all.

47 So, there will be general damages in the sum

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1 of two thousand, five hundred dollars, two hundred
2 dollars for loss of wages. There will be costs
3 and those will be the costs of the medical report.

4 Have you seen the costs with Mr. Taunk, Ms.
5 Wilshire?

6 MS. WILSHIRE: No, I haven't, but I'm sure we'll be
7 able to agree, Your Honour.

8 THE COURT: All right. Fine. Now, I will leave that
9 up to counsel as far as the costs are concerned in
10 this matter.

11 I thank all the witnesses for attending.
12 Thank you all very much.

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14 (EXCERPT CONCLUDED)
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