

Post Accident Alcoholism Deemed Compensable In BC Tort Claim



Reasons for judgement were released today by the BC Supreme Court, Vancouver Registry, addressing an interesting issue: whether alcoholism following accident related chronic pain is compensable in a tort claim. In short, Mr. Justice Voith held that it could be.

In today's case (Zawadzki v. Calimoso) the Plaintiff pedestrian was struck by a U-Haul truck driven by the Defendant. The Defendant was found fully at fault for the collision. The Plaintiff sustained various physical injuries the most serious of which was an elbow joint fracture which required three surgeries and resulted in a permanent partial disability.

Following the collision the Plaintiff began to drink in excess. This turned into clinical alcoholism the extent of which caused serious health consequences. In his lawsuit the Plaintiff claimed compensation not only for his physical traumatic injuries but also for the consequences of his alcoholism. The Defendant argued that the Plaintiff cannot be compensated for this as it is 'too remote'.

Mr. Justice Voith addressed this issue at length and paragraphs 99-123 are worth reviewing in full for the Courts analysis. Ultimately Mr. Justice Voith held that the Plaintiff's alcoholism was caused in part by the consequences of the crash and was therefor compensable. The Court provided the following reasons:

[99] *Shortly after the Accident, the plaintiff began to drink heavily. The results of blood tests performed on the plaintiff in late December 2004 indicated that certain liver enzyme levels were extremely elevated. The medical evidence uniformly establishes that such elevated results are directly referable to alcohol consumption. Dr. Smith confirmed that such elevated enzyme levels would not arise as a result of binge drinking, but rather reflected weeks or months of drinking.*

[100] *The plaintiff admits he began to drink excessively after the Accident and that his alcohol consumption reached the point where he was drinking 26 ounces of vodka on a nightly basis. . .*

[117] *In this case, Mr. Zawadzki's original physical injuries were foreseeable. So too, the defendants concede, were his depression and anxiety. It was the combination of pain and mood that Drs. Shane and Smith said gave rise to the plaintiff's excessive drinking. Dr. Smith also confirmed that Mr. Zawadzki had a "genetic predisposition", by virtue of the alcoholism of his parents, to alcohol abuse. A genetic vulnerability to alcohol abuse is the very type of pre-existing susceptibility that the "thin skull" rule addresses.*

[118] *It is clear that both a susceptibility to physical harm and to psychological harm fall within the ambit of the "thin skull" rule: Hussack at para. 143; Yoshikawa v. Yu (1996), 21 B.C.L.R. (3d) 318 (C.A.) at para. 19. I can see no principled reason why a similar vulnerability to an addiction disorder should be treated or viewed differently...*

[123] *I find that Mr. Zawadzki's alcohol abuse was caused by the Accident and that such alcohol abuse was reasonably foreseeable.*