

## How Can The Same Injury Have Different Values In An ICBC Claim?

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As I've [previously written](#), the exact same injuries can be valued differently by a Court when ICBC Claims go to trial. When a judge or jury awards money for non-pecuniary damages (*money for pain and suffering and loss of enjoyment of life*) the award isn't made by following a chart or a mathematical calculation, instead the award is made by 'assessing' damages.

An assessment is just as flexible as it sounds. There is no right award for pain and suffering. While past cases (what lawyers call precedents) are instructive, they only serve to provide a 'range' of acceptable awards. So long as a trial award falls within the acceptable range of damages it will not be interfered with if challenged on appeal.

In practice this means that two people with similar injuries can be awarded different amounts for their claims and both outcomes can be correct in law. Reasons for judgement were released today by the BC Supreme Court, Nanaimo Registry, discussing the ranges of damages in BC personal injury lawsuits.

In today's case ([Anderson v. Cejka](#)) the Plaintiff was involved in a 2006 rear-end crash in Parksville, BC. Fault for the crash was admitted. The Court was asked to value the Plaintiff's claim for pain and suffering.

Mr. Justice Halfyard found that the Plaintiff suffered from a Grade 2 Whiplash Disorder which took a long time to recover. The Plaintiff sought an award between \$40,000 - \$50,000, ICBC submitted that an award of \$15,000 - \$25,000 was more appropriate. The Court went on to award the Plaintiff \$20,000 for his non-pecuniary damages and in doing so the Mr. Justice Halfyard made the following comments about ranges of damages:

*[84] In my opinion, previously-decided cases, even where there are some similarities with the case at bar, can only assist in establishing a general range of damages which may apply to a particular case. This is because no two plaintiffs will ever be the same in age, previous state of strength and health, occupation and other activities. Moreover, the injuries (or combination of injuries) sustained by one plaintiff will never be the same as those incurred by another, in kind or severity. Additionally, the reaction of any two persons to the pain of a similar injury or to particular treatments will rarely if ever be the same. Other differentiating features may be the apparent length of the recovery period and, if the plaintiff has not recovered, the kind and extent of residual effects remaining from the injury at the time of trial, and whether any of the effects will be permanent.*

*[85] I have reviewed the cases cited by counsel, in light of the facts which I have found. Due to significant differences, I see no useful purpose in discussing them. There is no legal formula which can be used to measure the amount of pain and suffering and loss of enjoyment of life that a plaintiff has experienced as a result of an injury caused by the defendant. In my opinion, the range of damages for non-pecuniary loss in this case is the range suggested by Mr. Dreyer, namely, \$15,000 to \$25,000.*

*[86] The pain suffered by the plaintiff was never serious. He himself consistently described its severity as being one or two on a scale of ten. Within a few months after the accident, the symptoms became intermittent. Eventually, they became few and far between. The plaintiff was never disabled by the pain, to any significant extent. I must be careful not to penalize the plaintiff for being stoical in the face of pain. But I do not find that this is the case here. I award \$20,000 for this head of damages.*

When trying to determine how much your personal injury claim is worth the best thing you can do is read as many cases as you can dealing with similar injuries so you can determine a realistic range for your injuries.