

Injuries To Passengers Of Drunk Drivers In ICBC Claims

November 14th, 2008

[Reasons for judgement were released today](#) by the BC Supreme Court awarding a Plaintiff damages as a result of a serious hand injury sustained in a 2006 single vehicle accident.

The Plaintiff was a passenger. The Defendant driver lost control of the vehicle and it flipped over onto its roof. The Plaintiff was injured in this collision. ICBC admitted fault on behalf of the driver, the main issue at trial was whether the Plaintiff was partially at fault for her own injuries for getting into a vehicle when she knew or ought to have known that the driver was impaired.

In finding that the Plaintiff was partly to blame for her own injuries the court said as follows:

[17] *In this case, the evidence establishes that the plaintiff must indeed assume some of the responsibility for her injuries. The plaintiff knew the defendant was drunk before she got into the truck. Although she was so drunk she was staggering and she does not recall the drive to the parking lot, she does recall the defendant's behaviour and testified that she knew he was drunk when they left the bar. She needed a ride home and either asked him for one or voluntarily accepted one from him.*

[18] *However, fault must be apportioned on the basis of the nature and extent of the departure from the respective standards of care: **Cempel v. Harrison Hot Springs Hotel Ltd.** (1997), 43 B.C.L.R. (3d) 219, 100 B.C.A.C. 212 at para. 24. On that basis, much more of the fault belongs to the defendant. He was clearly negligent. Not only was he impaired, but he chose to spin doughnuts, causing the truck to flip over. He had apparently driven without incident to the parking lot, and it was his decision to drive, while impaired, in such a dangerous fashion in the lot itself that led to the accident. While his behaviour was fuelled by alcohol, and the plaintiff should have foreseen that a drunk driver could put her in a position of danger, she was exposed to a greater degree of danger by his reckless antics. His departure from the applicable standard of care was much greater than the plaintiff's. I find the appropriate percentage of contributory negligence in all these circumstances to be 25%.*

The Plaintiff sustained a serious hand injury. In valuing her pain and suffering at \$50,000 the court found as follows:

[20] *The plaintiff, who is right-handed, suffered serious injuries to her left hand. All the skin was removed from the back of her hand, and the tendons were exposed. Her middle finger was fractured.*

[21] *She has had seven surgeries, during which the tendons have been repaired, the middle joint of the third finger has been fused, and a graft of skin from the inside of her thigh has been applied to the back of her hand. This skin graft was quite thick and has been reduced in stages.*

[22] *The plaintiff does not have pain or numbness in her hand, but has stiffness in the metacarpal phalangeal joints – that is, the joints that connect the finger to the hand itself – on her index, middle and ring fingers, with pronounced stiffness in the middle joint of her index finger. The fusing of the middle joint of her third finger means it will not bend. She has signs of early osteoarthritis in the middle and ring fingers. Her micro-surgeon/hand specialist, Dr. Hill, is of the opinion that she has the potential to develop arthritis in all the joints of her left hand. The third party's specialist, Dr. Gropper, does not share that latter view, but apart from that his opinions did not differ from Dr. Hill's. Arthritis could raise the possibility of joint replacement in the future, but the doctors did little more than mention this without elaboration.*

[30] *In summary, as a result of the accident, the plaintiff was required to have seven surgeries on her left hand. She is left with a non-dominant hand that is obviously different in appearance and function, regardless of the remaining surgery that will give some further amelioration in those respects. She is left with stiffness in three fingers, one of them fused, but does not suffer pain or numbness. She keeps her hand covered to avoid embarrassment. She has scarring, reduced grip strength, and reduced tolerance for repetitive activities involving her left hand.*

[31] *Based on the evidence before the court, the effect on her daily life and activities is not extensive. She finds some household chores difficult, and her left hand becomes tired when driving. She does face the prospect of advancing arthritis, particularly in the two presently affected joints.*

[32] *Considering all of the evidence, I am of the view that the amount proposed by the third party is reasonable. I award \$50,000 for non-pecuniary damages.*

This case serves as a stark reminder that if you know or ought to know that the driver of your vehicle is impaired by alcohol you can be found partially at fault for your own injuries if the driver is involved in a crash. Such a finding of contributory negligence will affect the value of your ICBC claim.