

Jury Trials And Your ICBC Injury Claim

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Personal Injury Trials carry a certain element of risk with them. Typically there are 2 competing medical theories with respect to the extent of injury and connection to trauma. Additionally there is typically disagreement as the value of damages for these injuries by the lawyers involved regardless of which sides medical evidence is accepted. Furthermore a certain injury can be valued differently by different judges but varying results may be acceptable provided the compensation rests within the conventional range of damages for similar injuries. All of this adds to the risk of trial and the difficulty of attaching a specific value to any given ICBC claim for pain and suffering.

Injuries can best be valued in ranges and the best one can do to determine the likely value of an ICBC pain and suffering claim is to look to previous court judgements to help establish this range. Judges have to give reasons for their verdict, summarize the evidence they accept and award a specific figure for non-pecuniary loss. If you look up enough similar cases you may be able to come up with a range of potential damages for pain and suffering for categories of injuries. ([click here for a previous discussion of some of the factors that go into valuing pain and suffering in BC tort claims](#))

Jury trials carry an additional element of risk in BC Personal Injury Claims. One of the main reasons why jury trials are less predictable than judge alone trials is [because jurors are not permitted to be given a range of damages for non-pecuniary loss by the lawyers arguing the case](#). The BC Court of Appeal imposed this restriction on lawyers and this remains the law in BC.

In your typical ICBC claim that heads to trial with a jury 8 members of the public with little or no experience attaching a dollar figure to pain and suffering will be asked to value a Plaintiff's injury. These 8 members of the public will not be given guidance from the Court or from the lawyers involved as to what an appropriate range of damages is. This may sound strange but its true. Without referencing precedent its easy to understand how different juries can have wild swings in the amount of money they award a plaintiff for pain and suffering in an ICBC injury claim.

Reasons for judgement were released today by the BC Supreme Court illustrating the type of low award juries can award in ICBC Claims.

In today's case ([Cairns v. Gill](#)) the Plaintiff sued for damages as a result of a 2005 BC Car Crash. Madam Justice Gill, the presiding trial judge, summarized the evidence led by the Plaintiff at trial as follows:

[3] *The injuries sustained by the plaintiff were, in a relative sense, of a minor nature. Ms. Cairns testified that her neck was sore immediately after the accident and she developed a headache. By the next day, she also had pain in her shoulders. She went to a drop-in clinic and was given a referral to massage therapy, but she did not attend because such therapy had not assisted in the past. Some time after the accident, she began to feel pain in her low back. It was Ms. Cairns' evidence that her headaches lasted for several months and her neck and shoulder pain persisted for approximately one year. Her low back pain resolved approximately a year and a half after the accident. As to the frequency of her pain over the periods in question, she testified that she had pain on a daily basis for one or two weeks and thereafter, it came and went.*

[4] *Ms. Cairns testified that her injuries precluded her from engaging in certain activities such as walking, running and attending aqua fit classes and affected her ability to lift and carry. Her inability to engage in pre-accident activities also led to weight gain. At the time of the accident she was employed at The Brick and was attending university. It was her evidence that she missed two days from work, one immediately after the accident and the second, some time later.*

Assuming this evidence was accepted what would such a claim be worth? If you search the archives of this site and see the types of damages typically awarded by the BC Supreme Court for modest soft tissue injuries you may be able to come up with a range of damages. A range of \$10,000 or \$15,000 for non-pecuniary loss is certainly not unusual for injuries similar to those described by the Plaintiff. So what did the jury award?

In today's case the jury awarded a mere \$500 for the Plaintiff's pain and suffering. Granted it is unknown whether the jury accepted or rejected the Plaintiff's evidence of injury, however, assuming it was accepted one would be hard pressed to find a judgement this low by a BC Supreme Court judge for similar injuries.

Perhaps if the jury was given a range of damages for similar injuries the Plaintiff would have received a better result. Perhaps if the jurors knew what was typically awarded for such injuries their award would have been in the more conventional range. Maybe none of this would have made a difference in the Plaintiff's case but it just seems to make good sense to let juries have the same information judges have when it comes to valuing pain and suffering. What are your thoughts?