

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

C.H. No. 66971

I N T H E C O U N T Y C O U R T  
O F D I S T R I C T N U M B E R O N E

BETWEEN:

MARIE C. BUCKLEY

Plaintiff

- and -

ELIZABETH A. HARTLING

Defendant

Craig Garson, Esq., and Ms. Yvonne LaHaye, Counsel for the Plaintiff.

Harry M. Paton, Q.C., Counsel for the Defendant.

1990, February 5th, Palmeto, C.J.C.C.: - This action was heard on the 19th day of January A.D., 1990 and adjourned for written decision. At the hearing counsel for both parties agreed on the following matters;

1. Liability of the Defendant was admitted.
2. Special damages were agreed in the amount of \$711.30.
3. Pre-judgment interest at the rate of 9½% per annum as of November 3rd, 1987.
4. The evidence of Dr. Philip Belitsky, a Urologist, taken on discovery on the 16th day of January 1990, would be introduced as evidence on behalf of the Plaintiff, without further cross-examination, and it was agreed that Dr. Belitsky would be qualified as an expert in the field of urology. I was agreed that this evidence be adduced as Exhibit #1.

The action arose by way of a car - pedestrian accident which took place on November 3rd, 1987, at approximately 4:00 o'clock in the afternoon. The Plaintiff, a pedestrian was crossing Robie Street in the City of Halifax in a marked crosswalk near the building known as the Welsford Apartments. The Plaintiff was crossing the boulevard in an east to west direction, from the Halifax Commons so-called, to the west side of Robie Street on which the Welsford Apartments were situate. Traffic in the most easterly lane of Robie Street going north stopped to let the Plaintiff cross, but a motor vehicle driven by the Defendant in the outer lane going in a northerly direction did not stop and struck the Plaintiff. She was thrown in the air some 15 feet before landing on the pavement.

The Plaintiff spent some 34 days in the Victoria General Hospital and some three months at the Melville Lodge, a nursing home, before finally being able to live on her own. At the time of the accident the Plaintiff was 76 years of age, having been born on the 3rd day of March, 1911. At the time of this hearing the Plaintiff was some six weeks short of her 79th birthday.

Medical evidence which was not disputed indicated the Plaintiff suffered the following injuries.

1. Laceration of her mid-calf approximately one inch long on the right side and had many scrapes over her legs.
2. Fracture of both legs below the knee as follows:
  - (a) undisplaced fracture of the right tibia; and
  - (b) comminuted fracture of her left proximal fibula.
3. Multiple fractures involving the left side of her pubic bone of the pelvis.

4. An undisplaced fracture through the acetabulum of the pelvis.
5. A fracture of the greater tuberosity of the left femur.

Two witnesses gave oral evidence on behalf of the Plaintiff and there was no evidence adduced on behalf of the Defendant.

The Plaintiff gave evidence regarding the circumstances of the accident, her treatment at the Victoria General Hospital, at the nursing home and her present disabilities. I found the Plaintiff to be a most straightforward and honest witness who, in my opinion, tended to minimize her various complaints. She described her pain and suffering, both physical and emotional, during her period in hospital and in the nursing home. She described herself as a very active person before her accident, with no serious maladies or complaints, and indicated she had never been in a hospital prior to that time. She described her life since she got out of the nursing home indicating that she does not walk as much as she did previously, she has some fear of crossing streets, she has some concern with stairs and because of this concern she does not take the stairs a step a stair as she did previously. She testified that she does experience some aching from time to time when she is walking or sometimes when she gets out of a chair after sitting. She testified this aching would go away after two or three minutes and that these aches would only occur once or twice a week, not everyday. She testified she walks without a limp.

The Plaintiff testified regarding her urinary difficulties which she has experienced over the past year and a half. She testified she had to go to the bathroom every two hours or so, even during the night and has difficulty with being unable to hold her urine, often wetting herself, her clothes and her bedclothes. She testified this affected her ability to go places to some degree and that it was always foremost

on her mind. The Plaintiff testified she felt her life has been affected to some degree by the accident and I am inclined to accept her testimony.

The second witness for the Plaintiff was Dr. David I. Alexander, who was qualified in the field of orthopaedics. Dr. Alexander was the doctor who treated the Plaintiff in the Victoria General Hospital. Dr. Alexander submitted his report dated January 23rd, 1989, which was marked as Exhibit #2. He confirmed the various injuries suffered by the Plaintiff and the treatment given. In his opinion, the Plaintiff had suffered severe injuries to her musculoskeletal system, but had made a remarkable recovery for a person of her age. He testified that all of the fractures had healed satisfactorily and that it is unlikely that she will experience any further problems other than some minor aches and pains in the area of the pelvis.

Dr. Alexander testified that the injuries were not associated with any development of post degenerative osteoarthritis of her hips and that she would have no serious consequences in her ability to walk or move around. He confirmed, that although the injuries were serious and the Plaintiff had suffered a great deal of discomfort during the early rehabilitative period of her injury, the long term prognosis was good.

The evidence of Dr. Belitsky introduced as Exhibit #1 corroborated the Plaintiff's testimony concerning her urinary difficulties. His opinion was, and I accept it, that the difficulties experienced by the Plaintiff were caused by the trauma to the pubic area as a result of the accident. Dr. Belitsky testified that the Plaintiff in his opinion was not exaggerating her condition and in the transcript of his testimony on discovery, at Page 10, Line 10 of Exhibit #1, the following question and answer appears:

"Q. All right. Dr. Belitsky, there are many people that have this type of problem, or even more serious. And they manage to go along and live a pretty good, useful life, do they not?

A. Well the quality of their life is influenced by the concentration or focusing of their attention on their bladder, because they have to be very careful in planning for the day, very careful in knowing where all the toilets are where they're going to be, and altering their activities in such a way that they don't find themselves in circumstances where they don't have very quick access to a toilet. And they have to cary with them -- as this lady does -- extra clothes and pads, to try to allow themselves to function, despite their problem."

Dr. Belitsky does indicate that he suggested some additional medications to the Plaintiff's family doctor, which might help the situation but he could not be sure. Dr. Belitsky did not know if these medications had been used by the Plaintiff and with what result. In answer to a question by defence counsel as to how debilitating the Plaintiff's problem would be on a scale of one to ten, in his opinion, Dr. Belitsky opined that she would be in the midrange, somewhere between four and seven.

There is no question about special damages and pre-judgment interest. It is now for me to determine non-pecuniary general damages. The factors which I have determined I have to consider in this case are as follows:

1. The injuries suffered.
2. The hospitalization.
3. Subsequent convalescence.
4. Disabilities and future prognosis.

5. Pain and suffering, past, present and future.
6. The urinary problems including the incontinence.
7. The inconvenience.
8. The loss of quality of life.
9. The loss of enjoyment of life and amenities.
10. Any reduction in her ability to enjoy her usual recreation.

On submission counsel for the Plaintiff submitted the future of \$40,000.00 for non-pecuniary general damages while counsel for the Defendant suggested a range of \$10,000.00 - \$12,000.00.

I would thank both counsel for their memoranda and the cases cited in attempt to assist this court in coming to a determination of damages. It is somewhat difficult in that all cases are different and in dealing with injuries and disabilities no two cases are the same. There is no doubt that the Plaintiff suffered severe injuries and in my opinion is lucky to have survived the accident. She spent five weeks in hospital and three months in convalescence. She has made a remarkable recovery for a person her age and the future prognosis is good, except perhaps for the urinary problems which may be alleviated somewhat by medication although this is not positive.

The evidence indicates that the Plaintiff suffered considerable pain and suffering during her hospitalization and subsequent convalescence. She is suffering no discomfort now with the exception of some aches which occur for a brief period once or twice a week. In my opinion, these small aches and pains are not of serious significance and really do not affect the Plaintiff's ability to get around.

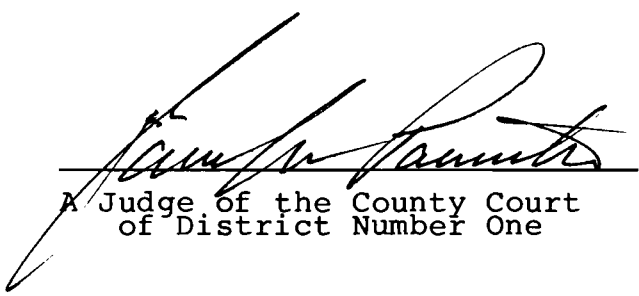
At this time, and in the future, the urinary problems are causing the most discomfort and inconvenience to the

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Plaintiff. In my opinion, this problem does cause some loss of quality of life and the enjoyment thereof, but not to any major degree. The Plaintiff does have some fear of crosswalks and ascending and descending stairs, however, in my opinion, this will not cause any great reduction in her ability to enjoy her usual recreation.

Without the urinary problems, in my opinion, the non-pecuniary general damages would range in the vicinity of \$16,000.00. I find there is some disability due to the urinary problems and that an amount of \$22,000.00 would be appropriate to compensate the Plaintiff for her total non-pecuniary damages.

Accordingly, I will award the Plaintiff the sum of \$711.30 special damages and \$22,000.00 general damages for a total of \$22,711.30 together with pre-judgment interest at the rate of 9½% per annum calculated from the 3rd day of November, 1987, to the date hereof. The Plaintiff shall have her costs of this action against the Defendant, said costs to be taxed on a party and party basis.



A Judge of the County Court  
of District Number One