

SUPREME COURT OF NOVA SCOTIA
Citation: Walji v. Boudreau, 2009 NSSC 349

Date: 20091103
Docket: Hfx. No. 251021
Registry: Halifax

Between:

Frances Walji and Ginger Walji

Plaintiffs

-and-

James Boudreau and Carol Myer

Defendants

LIBRARY HEADING

Judge: The Honourable Justice Robert W. Wright

Heard: November 3, 2009 in Chambers at Halifax, Nova Scotia

Oral

Decision: November 3, 2009

Written

Decision: November 20, 2009

Subject: Summary judgment and interim payment of damages motions in rear-end motor vehicle accident case - Civil Procedure Rules 13.04 and 70.08.

Summary: The plaintiffs were rear-ended in a motor vehicle accident and brought a combined motion for summary judgment and an interim payment of damages. The defence admitted fault for the accident but maintained a denial of any causation of the plaintiffs' injuries as a result of the accident. Both plaintiffs had a significant medical history of pre-existing conditions.

Issues:

- (1) Are the plaintiffs entitled to summary judgment?
- (2) If so, should the Court exercise its discretion to order an interim payment towards damages?

Result:

(1) After reviewing the extensive medical records and reports filed with the motion, the Court found it indisputable that both plaintiffs suffered some degree of compensable injury as a result of the accident. They were therefore entitled to an order for summary judgment with damages to be assessed. The issue of the degree of causation of the plaintiffs' injuries as a result of the accident should be dealt with as part of the assessment of damages.

(2) The Court declined to exercise its discretion to grant either plaintiff an interim payment of damages. Because of the longstanding and complex medical histories of pre-existing conditions experienced by both plaintiffs, and surrounding issues of causation, the Court was unable to form a proper opinion of what the plaintiffs were likely to recover at trial. To do so would involve too much speculation and guesswork in trying to identify and evaluate the additional injury, loss and damage for which the defendants would be liable. Accordingly, the Court was unable to fix a reasonable contribution towards the damages the plaintiffs were likely to recover, resulting in the dismissal of those motions.

THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.
