

SUPREME COURT OF NOVA SCOTIA

Citation: *Ledson v Carter*, 2022 NSSC 189

Date: 20220630

Docket: *KEN*, No. 489051

Registry: Kentville

Between:

Michael Wayne Ledson

Plaintiff

v.

Aaron Carter and Miller Waste Systems Inc.

Defendants

Judge: The Honourable Justice Gail L. Gatchalian

Heard: June 22, 2022, in Windsor, Nova Scotia

Counsel: Chuck Ford, for the Plaintiff
Ben Johnson, for the Defendants

By the Court:

Introduction

[1] The Plaintiff, Mitchell Wayne Ledson, claims damages for personal injuries, including a brain injury, arising out of a July 28, 2018 accident involving the Defendant driver, Aaron Carter. Mr. Ledson says that he was driving a motorcycle along Highway 1 near Newport, Nova Scotia when Mr. Carter, who was driving a garbage truck in the opposite direction, attempted to make a left turn and crossed the centre line, causing Mr. Ledson's motorcycle to collide with the garbage truck.

[2] The Defendants seek an order compelling Mr. Ledson to produce the following documents, requested of Mr. Ledson during his discovery examination:

1. Police records from an assault on Mr. Ledson on August 12, 2017, as a result of which Mr. Ledson said he suffered a concussion.
2. Records, including police records and any claim by the Province of Nova Scotia for reparation (a repair bill) concerning a May 3, 2018 motor vehicle accident, as a result of which Mr. Ledson said he may have suffered a head injury.
3. Records relating to a 2015 or 2016 charge for driving under the influence ("DUI"), to which Mr. Ledson said he plead guilty.
4. Mr. Ledson's motor vehicle abstract.
5. Mr. Ledson's phone records for the 24 hours before the July 28, 2018 accident.

[3] The Defendants say that:

1. The police records from the August 12, 2017 assault on Mr. Ledson may provide information on the severity of the assault and are therefore relevant to the issues of (a) causation and (b) damages.
2. Records, including police records and any repair bill from the Province concerning the May 3, 2018 accident may provide information on the severity of the accident, and are therefore relevant to the issues of (a) causation and (b) damages.

3. The records relating to the 2015 or 2016 DUI are relevant to (a) Mr. Ledson's driving history and therefore to the issue of liability and (b) Mr. Ledson's employability and therefore to the issue of damages.
4. Mr. Ledson's motor vehicle abstract is relevant to (a) Mr. Ledson's driving history and therefore to the issue of liability, and to (b) Mr. Ledson's employability and therefore to the issue of damages.
5. Mr. Ledson's phone records for the 24 hours before the July 28, 2018 accident may shed light on his mindset and activities before the accident and are therefore relevant to the issue of liability.

[4] Mr. Ledson has refused to provide these documents, taking the position that they are not relevant.

[5] Under Civil Procedure Rule 15.02, a party to a defended action must disclose "relevant" documents. Under Rule 18.18(1), a witness in a discovery examination may be required to produce relevant documents or documents that are likely to lead to relevant evidence. "Relevant" is defined in Rule 14.01(1) as having the same meaning as at the trial of an action. The motions judge assesses whether the judge presiding at the trial would find the document to be relevant. At this stage in the process, relevance can only be assessed based on the pleadings and the evidence known to the judge at the time. A relevant document is one that is probative of a material fact in issue in the proceeding. A document is probative if it logically makes something more or less likely. The motions judge does not assess how probative the document would be in the context of the trial of the action but whether it is probative of a material fact in issue. If the evidence has some tendency as a matter of logic and human experience to make the proposition for which it is advanced more likely than the proposition would be in the absence of that evidence, then it is relevant. See *Murphy v. Lawton's Drug Store Limited*, 2010 NSSC 289 at para.16; *Saturley v. CIBC World Markets Inc.*, 2011 NSSC 4 at para.46; and *Wilson Fuel Co. v. Power Plus Technology Inc.*, 2015 NSSC 304 at para.16.

[6] I will consider each category of documents sought by the Defendants, and for each category, I will discuss:

- The pleadings.
- The evidence known at this time.

- What material fact(s) are in issue.
- Whether the requested documents are probative of a material fact in issue.

Police Records of 2017 Assault and Records of May, 2018 Accident

The Pleadings

[7] In the Statement of Claim, Mr. Ledson claims, amongst other things, damages for pain and suffering, loss of past and future income, loss of capacity to perform past and future valuable services, and cost of future care as a result of his injuries, including his brain injury.

[8] The Defendants have denied liability, causation and damages.

The Evidence Known at this Time

[9] In his discovery examination, Mr. Ledson acknowledged that he had been assaulted in the past, as a result of which he believed he suffered a concussion. Mr. Ledson also acknowledged that he had been in a previous motor vehicle accident in May of 2018, during which he may have bumped his head.

[10] Mr. Ledson concedes that medical evidence pertaining to previous head injuries is relevant to his claim for damages. Mr. Ledson has disclosed all relevant medical records to the Defendants.

[11] The only medical record pertaining to the assault is an Emergency Department report. It appears, from that report, that the assault happened the night of August 12, 2017, and that Mr. Ledson was seen in the Emergency Department the next morning at approximately 10:40 a.m. He reported having been “kicked/punched” several times in the face and head.

[12] The only medical record pertaining to the May, 2018 accident is an Emergency Department report. That report indicates that the accident happened at 1:00 a.m. on May 3, 2018, and that Mr. Ledson was seen in the Emergency Department just after 5:00 a.m. the same morning. His chief complaint was noted to be of back pain, and he was noted to have a concussion.

The Material Fact(s) in Issue

[13] The material fact in issue is Mr. Ledson's claim that he suffered a brain injury as a result of the July 28, 2018 accident.

Whether the Requested Documents are Probative of a Material Fact in Issue

[14] The Defendants say that the medical evidence relevant to the 2017 assault and the May, 2018 accident is sparse, and that the police records related to the assault and accident, and any repair bill from the Province for the accident, are relevant to, or are likely to lead to evidence relevant to, the severity of the assault and the accident. The Defendants say that information about the severity of the assault and the accident could help a specialist determine the severity of the previous head injuries suffered by Mr. Ledson. The Defendants say that the documents are therefore relevant to the issues of causation and damages. At the hearing, counsel for the Defendants stated that they were not pursuing the assertion, made in their brief, that the documents related to the previous accident were also relevant as "similar fact evidence."

[15] The police records of the assault will presumably contain statements from one or more witnesses confirming that Mr. Ledson was assaulted. Those statements may include witness descriptions of the nature of the assault, including how severe it was, for example, that he was kicked or punched in the head several times. The Defendants have not satisfied me that this kind of information is probative of Mr. Ledson's medical condition at the time, that is, the nature and extent of any head injury or concussion he may have suffered as a result of the assault. What a lay witness may have said to a police officer about the assault does not, in my view, logically make Mr. Ledson's claim that he suffered a brain injury as a result of the July 28, 2018 accident more or less likely.

[16] The police records of the May, 2018 accident will presumably contain statements from one or more witnesses about the condition of Mr. Ledson's car at the scene of the accident. The Defendants have not satisfied me that this kind of information is probative of Mr. Ledson's medical condition at the time, that is, the nature and extent of any head injury or concussion he may have suffered as a result of the previous accident. Nor have the Defendants satisfied me that a repair bill from the Province for the damage caused in the accident will contain any information probative of Mr. Ledson's medical condition at the time. The records sought by the Defendant, such as police records or any repair bill from the Province, related to the May, 2018 accident do not, in my view, logically make Mr.

Ledson's claim that he suffered a brain injury as a result of the July 28, 2018 accident more or less likely.

Records of the 2015 or 2016 DUI and the Motor Vehicle Abstract

The Pleadings

[17] In the Statement of Defence, the Defendants deny liability and claim that if Mr. Ledson suffered injury, loss or damage, it was caused by or contributed to by his own negligence. The Defendants claim that, at the date and place of the accident, Mr. Ledson:

- (a) Failed to take proper care for his own safety;
- (b) Failed to operate his motor vehicle in a careful and prudent manner having regard to all of the circumstances.
- (c) Failed to take reasonable or any training in the safe operation of a motorcycle.
- (d) Failed to maintain a proper or any lookout.
- (e) Failed to operate his motor vehicle in a careful and prudent manner and contrary to the provisions of the *Motor Vehicle Act*, R.S.N.S. 1989, c.293 as amended and the regulations under that *Act*.
- (f) Failed to operate his motor vehicle in a careful and prudent manner having regard to all of the circumstances.
- (g) Failed to slow down, stop or take proper or any avoiding action when a collision appeared or should have appeared imminent.
- (h) Operated his motorcycle when he knew or ought to have known his ability to do so was impaired; and
- (i) Such other negligence as may appear.

[18] As stated, Mr. Ledson claims damages, in part, for loss of past and future income.

The Evidence Known at this Time

[19] During his discovery examination, Mr. Ledson said that he has no recollection of the accident or the 24 hours before the accident, which occurred at approximately 10:30 a.m. on July 28, 2018.

[20] Mr. Ledson said that he was told afterwards that he had a backpack on at the time of the accident, and that there may have been one or two broken bottles of beer in the backpack. According to a toxicology report, Mr. Ledson was not impaired by alcohol at the time of the accident.

[21] During his discovery examination, Mr. Carter said that, before the collision, Mr. Ledson's motorcycle was moving in a straight line. Mr. Carter said that, as he was proceeding to make a left turn on Highway 1, the motorcycle collided with the garbage truck, and that at the time of the collision, part of the garbage truck had crossed the centre line. When he was asked if he was aware of anything that Mr. Ledson did that either caused or contributory to the accident, Mr. Carter answered "no." When he was asked if he was aware of anything that Mr. Ledson did that was inappropriate, Mr. Carter answered "no." Mr. Carter acknowledged that he was issued a summons by the police for failure to yield, which he did not contest.

[22] Mr. Ledson acknowledged, in his discovery examination, that he plead guilty to a charge of driving under the influence in 2015 or 2016, when he was 18 years old. Mr. Ledson acknowledged that his driver's license was suspended as a result of the DUI charge. He said that his license was reinstated in 2017, but he did not have insurance. He said his license then expired on his birthday in 2018, twelve days before the July 28, 2018 accident. His license was then suspended for two years, from June of 2019 until June of 2021, as a result of not having insurance at the time of the July 28, 2018 accident.

[23] Mr. Ledson gave evidence of his employment history in his discovery examination. He has had the following jobs: working for a company that treats restaurant grease, in the produce department of a grocery store, for a company that makes concrete panels for walls, in a furniture shop warehouse, in a greenhouse and for a roofing company. He has taken pipe trades courses at the Nova Scotia Community College, and had planned to complete plumbing courses.

The Material Fact(s) in Issue

[24] The material facts in issue are: (a) whether the accident was caused by or contributed to by Mr. Ledson's own negligence, and (b) whether Mr. Ledson is entitled to damages for loss of past and future income.

Whether the Requested Documents are Probative of a Material Fact in Issue

Driving History

[25] The Defendants say that the details of Mr. Ledson's 2015 or 2016 DUI charge (such as the year and timing of the charge, how much Mr. Ledson was over the legal limit and the timing of any resulting driving suspension) and Mr. Ledson's motor vehicle abstract are relevant to, or are likely to lead to evidence relevant to, Mr. Ledson's driving history, and therefore the documents are relevant to the issue of liability. Without more, and in light of the evidence available at this time, namely the toxicology report and the discovery evidence of Mr. Carter, the Defendants have failed to satisfy me that the details of Mr. Ledson's DUI or his motor vehicle abstract logically make the assertion that the accident was caused by or contributed to by Mr. Ledson's own negligence more or less likely.

[26] In their brief, the Defendants made the bare assertion that the details of Mr. Ledson's DUI were also relevant to his credibility. Counsel for the Defendants did not pursue this argument at the hearing. The Defendants have failed to establish that details of the DUI are relevant to a material fact in issue.

Employability

[27] The Defendants also assert that the details surrounding Mr. Ledson's DUI charge and the motor vehicle abstract are relevant to his ability to obtain a driver's license and insurance, and therefore to his employability and the issue of damages. The Defendants also say that the details of the DUI charge are relevant because his criminal history is relevant to his employability and therefore to his claim for damages.

[28] The Defendants made no reference to Mr. Ledson's employment history or to any evidence that would suggest that Mr. Ledson's past or future employment would require him to have a driver's license or to have a record free from DUIs. The Defendants have not, in my view, established that details surrounding the 2015 or 2016 DUI charge or his motor vehicle abstract logically make Mr. Ledson's claim for damages for loss of past and future income more or less likely.

Phone Records for 24 Hours Before the Accident

The Pleadings

[29] As already stated, the Defendants claim that, if Mr. Ledson suffered any injury, loss or damages, it was caused by or contributed to by his negligence.

The Evidence Known at This Time

[30] During his discovery examination, Mr. Ledson said that he had no recollection of the accident or the day of or evening before the accident. He said that his friend told him afterwards that Mr. Ledson had texted him that morning to say he was coming over.

The Material Fact(s) in Issue

[31] The material fact in issue is whether the accident was caused by or contributed to by Mr. Ledson's own negligence.

Whether the Requested Documents are Probative of a Material Fact in Issue

[32] The Defendants say that, given Mr. Ledson's inability to recall the details of the accident, his phone records are relevant, or are likely to lead to evidence that is relevant, because they "may provide information on what the Plaintiff did in the hours before the accident," including his mindset and his activities. The Defendants say that the phone records are therefore relevant to liability and contributory negligence.

[33] This is pure speculation. The Defendants do not connect the information in the phone records to any of its allegations of negligence or contributory negligence on the part of Mr. Ledson in the pleadings. Arguably, the phone records might be relevant to the Defendants' allegation that Mr. Ledson "operated his motorcycle when he knew or ought to have known his ability to do so was impaired." However, this is simply a guess. The Defendants did not assert that the phone records were relevant to this claim. The Defendants did not argue, in the motion, that Mr. Ledson was impaired. They rest their motion for production of the phone records on the assertion that the phone records may provide information on what Mr. Ledson did in the hours before the accident, including his mindset and his activities. Without more, and in light of the evidence known at this time, in particular the toxicology report and the evidence of Mr. Carter, the Defendants have failed to satisfy me that the phone records for the 24 hours before the accident

are probative of the question of whether the accident was caused by or contributed to by Mr. Ledson's own negligence.

Conclusion

[34] The Defendants have, in my view, failed to establish the relevance of the requested documents, or that the requested documents are likely to lead to relevant evidence, even on a liberal view of the scope of relevance in the context of disclosure or discovery (see *Laushway v. Messervey*, 2014 NSCA 7 at para.49, citing *Saturley v. CIBC World Markets Inc.*, 2012 NSSC 57 at paras.9-10). The documents might have met the old "semblance of relevancy" test. In my view, they do not meet the trial relevancy test.

Costs

[35] The motion of the Defendants for production of documents is dismissed, with costs to the Plaintiff in the amount of \$1000, payable forthwith.

Gatchalian, J.