IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Acker v. Meister, 2003NSSC242

Date: 20031209
Docket: S.T. No. 196302
Registry: Truro

Between:

Matthew Acker

Plaintiff

v.

Joel Ray Meister, Peter Meister, Linda Meister and The Economical Mutual Insurance Company

Defendants

D E C I S I O N

Judge: The Honourable Justice Douglas L. MacLellan

Heard: October 28, 2003, in Truro, Nova Scotia

Counsel: Robert K. Dickson, Esq., for the plaintiff
G. Grant Machum, Esq., for the defendants

[1] The plaintiff Matthew Acker applies for summary judgment and for an interim payment of damages against the defendants Joel Ray Meister, Peter Meister, Linda Meister and The Economical Mutual Insurance Company.

FACTS

[2] The plaintiff started an action against the defendants based on injuries he sustained when he was struck by a vehicle driven by Joel Ray Meister and owned by Peter Meister and Linda Meister. (The defendants' vehicle). He claimed also against The Economical Mutual Insurance Company based on its refusal to continue to pay him Section B benefits.

[3] In the statement of claim filed with the Originating Notice the plaintiff alleged that on the early morning of April 12th, 2002 he was in the parking lot of the Bridgewater Mall in Lunenburg County when he was struck by the defendant's vehicle. He alleges that the defendant exited the parking lot and then made a U-turn and came back and struck him a second time knocking him to the ground and finally struck him a third time. He alleged that as a result of being struck by the defendant's

vehicle he sustained injuries which caused him to be disabled and not able to do the work he had done prior to being struck by the defendant's vehicle. He claimed general damages, special damages for loss of wages, future loss of wages and punitive and exemplary damages. He also relied on the provisions of the ***Motor Vehicle Act***, and in particular, Section 248(b). His statement of claim indicated that he had been cut-off Section B benefits and therefore claimed against Economical Mutual Insurance Company. In the alternative he also alleged that the defendant intentionally struck him and therefore committed an assault against him.

[4] The personal defendants denied the plaintiff's claim and put the plaintiff to the strict proof of his injuries. They also alleged contributory negligence on his part. The insurance company alleged that the plaintiff was not entitled to Section B benefits because he did not continue to take physiotherapy.

[5] In support of the application the plaintiff filed an affidavit dated September 15th, 2003 in which he stated:

> 4. That on the evening of April 11, 2001, I had attended a Lounge located at the Bridgewater Mall and at approximately 2 am on April 12, 2001, I decided to leave and began walking up the sidewalk of the mall parking lot towards my apartment. As I left the parking lot area and entered the crosswalk, I could hear a man yelling

at a car filled with people. It appeared that two cars were parked at a stop sign and the occupants were having an argument. A passenger from the second vehicle (behind the first car at the stop sign) was standing at the passenger side of the first car with the back door open, arguing with the people in the car.

5. That I approached the vehicles and stepped between the person from the second car and the open door and attempted to calm down the man from the second vehicle (who I later found out was Craig Veniot), advising him not to waste his time with the passengers in the first vehicle as they were just trying to initiate trouble.

6. After talking Craig Veniot into leaving, I began walking back to his car with him. After getting to the side of Mr. Veniot's car, I heard someone yell that he was coming back and then I turned, saw the headlights of the first vehicle coming directly at me and then was struck by that vehicle.

7. As a result of being hit by the car the first time, I flew onto the hood of the car and when the driver braked, I flew off the hood in front of the car onto the pavement of the parking lot. After getting hit, I remember being shocked that I got hit by a car. While I struggled to get to my feet, I saw that the car was coming at me again. Before I was able to get back up off the pavement, the car struck me the second time. I reached for the bumper and the grill in an effort to prevent myself from being dragged under the car. I was dragged along the parking lot for a short distance and then the vehicle stopped.

[6] He also indicated in that affidavit:

24. That due to this accident and the resulting injuries that I have sustained, I have not been able to continue with my employment, as my back pain and deteriorating muscle tone have not allowed me to resume a physically demanding job. Due to not working, I have had to give up my apartment in Bridgewater and I have since returned home to reside with my father and my grandmother, both of whom have a difficult time supporting another adult. This incident has put my life on hold until I can be rehabilitated and able to resume employment.

> 25. That I have no current source of income and have not been paid ongoing section B wage loss benefits or medical expenses by the insurer of the vehicle involved for the past eight months approximately.

[7] The defendants' filed a number of affidavits including one sworn by the defendant Joel Meister. He indicates:

> 4. **THAT** on April 12, 2001, I was travelling in the Bridgewater Mall parking lot in a 1992 Ford Tempo, leaving the parking lot after spending the evening at Tomorrow's Lounge.
>
> 5. **THAT** while I was at Tomorrow's Lounge, I drank approximately five beers but did not consume any other drugs.
>
> 6. **THAT** on my way out of the parking lot, I stopped my vehicle to allow friends of mine to get in the vehicle.
>
> 7. **THAT** it was at this point, the car behind me (the "second vehicle") started honking and a person unknown to me from the second vehicle approached my car and an argument occurred between this person and one of my passengers.
>
> 8. **THAT** I subsequently saw a person who I now know as the Plaintiff, Mr. Acker in front of my vehicle, cursing and swearing, saying "come on hit me, come on hit me". The Plaintiff was also banging his fists on the hood of my vehicle. The Plaintiff took no steps to move away from my vehicle and continued to prevent me from leaving the parking lot.
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> 9. **THAT** at this time, there were many people around my vehicle and I believed a physical confrontation would occur and I was fearful of not only my car being damaged, but also of being physically assaulted.

10. **THAT** as a result, I felt I had no other choice but to try to get out of the situation immediately. I could not reverse my car to leave the parking lot, so I took my foot off the brake and my vehicle rolled into the Plaintiff. I did so to remove both myself and my passengers from the situation.

11. **THAT** I then reversed and tried to manoeuvre around the Plaintiff.

12. **THAT** I do not believe I ever struck the Plaintiff a second time with my vehicle. I also deny dragging the Plaintiff with my car at any time.

...

14. **THAT** as a result of the events of the early morning of April 12, 2002, (sic) I was charged with three offences arising from the circumstances of that evening and consequently pled guilty to having consumed alcohol so that my blood exceeded 80 mg of alcohol in 100 ml of blood, contrary to s. 253(b) of the *Criminal Code*, dangerous driving, and having marijuana in my possession, contrary to s. 4(1) of the *Controlled Drugs and Substances Act.* However, while I pled guilty to these charges, I did not think that I did anything wrong in the circumstances given that, in my view, I had no other option at the time, and in order to remove myself from the situation, and because the Plaintiff would not move away from my vehicle, the only option I thought I had at that time was to move my car forward.

LAW

[8] Civil Procedure Rule 13.01 provides:

13.01. After the close of pleadings, any party may apply to the court for judgment on the ground that:

> (a) there is no arguable issue to be tried with respect to the claim or any part thereof;
>
> (b) there is no arguable issue to be tried with respect to the defence of any part thereof;
>
> (c) the only arguable issue to be tried is as to the amount of any damages claimed.

[9] Civil Procedure Rule 33.01(A)(1) provides:

> 33.01(A) (1) Notwithstanding the provisions of rule 33.01, the court may order the defendant to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set off, cross-claim or counter-claim on which the defendant may be entitled to rely, if the court is satisfied:
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> (a) that the defendant against whom the order is sought has admitted liability for the plaintiff's damages, or
>
> (b) the plaintiff has obtained judgment against the defendant for damages to be assessed.

[10] The plaintiff here acknowledges that before an interim payment should be made, the court must find that there is liability on the part of the defendant or any of them. He also acknowledges that where as here the defendants have denied liability that the court must first determine if summary judgment under Rule 13.01 is

appropriate, and if so, then go on to consider whether an interim payment is appropriate under Rule 33.01(A).

SUMMARY JUDGMENT

[11] Counsel both agree on the law in regard to a summary judgment application. In ***Bank of Nova Scotia v. Dombrowski*** (1977), 23 N.S.R. (2d) 532 our Court of Appeal indicated: (MacDonald, J.A. p. 537.)

> Rule 13 has its antecedents in Order 14 of the English Supreme Court Rules. As stated in the *Supreme Court Practice* (1976), Vol. 1, at p. 136 the purpose of 0.14 is to enable a plaintiff to obtain summary judgment without trial if he can prove his claim clearly, and if the defendant is unable to set up a *bona fide* defence, or raise an issue against the claim which ought to be tried. *Roberts v. Plant,* [1895] 1 Q.B. 597 (C.A.); *Robertson & Co. v. Lynes,* [1894] 2 Q.B. 577; *Dane v. Mortgage Ins. Corpn.,* [1894] 1 Q.B. 54 (C.A.); *Edwards v. Davis,* 4 T.L.R. 385. The defendant is bound to show that he has some reasonable ground of defence to the action.
>
> In *Anglo-Italian Bank v. Wells (and Davies),* 38 L.T. 197, at p. 199 Jessel, M.R. said that 0.14 "is intended to prevent a man clearly entitled to money from being delayed, where there is no fairly arguable defence to be brought forward".
>
> In *Carl B. Potter Ltd. v. Antil Canada Ltd. and the Mercantile Bank of Canada* (1976), 15 N.S.R. (2d) 408; 14 A.P.R. 408, additional authorities with respect to the principles to be applied in an application for summary judgment were reviewed by my brother Cooper.

> The issue may, I believe, be summarized as being whether there is a fair issue to be tried, based on some reasonable ground of defence.

[12] In ***MacNeil v. Black*** (1988), 166 N.S.R. (2d) 127, Freeman, J.A. of our Court of Appeal reaffirmed that the position as set out in the ***Dombrowski*** case *(supra)* as being the correct approach on Rule 13.01 applications. He noted that in that case: (p. 129)

> "The threshold for showing the existence of a defence worthy of trial is not a high one, but the defendant has not me it.

[13] In ***Hall v. Woodland*** (1998), 164 N.S.R. (2d) 149, MacDonald, J. of this court said: (p. 152)

> In an application for summary judgment it is not the function of a judge to determine controversial matters of law and fact and, in the face of such controversy summary judgment I feel ought not to be granted. There are issues in contention between the plaintiff and defendant relative to liability. There are fairly arguable points which the defendant wants to argue before a trial judge. It is not for me to determine the facts and decide the matter in such a situation on a summary judgment application.

[14] The plaintiff here argues that the fact that the defendant Joel Meister pleaded guilty to charges of dangerous driving and impaired driving as a result of his involvement with the plaintiff on the night in question, should be proof enough that

he is liable to the plaintiff. The plaintiff also relies on Section 248 of the ***Motor Vehicle Act.*** It provides:

> 248(1) Where any injury, loss or damage is incurred or sustained by any person by reason of the presence of a motor vehicle upon a highway, the onus of proof
>
> (b) that such injury, loss or damage did not entirely or solely arise through the negligence or improper conduct of the operator of the motor vehicle,
>
> shall be upon the owner or operator of the motor vehicle."

[15] The defendants submit that the conviction on the criminal charges is not conclusive of liability. They also submit that they will use at trial the issue of self-defence suggesting that Joel Meister was attempting to remove himself and the passengers in his vehicle from a volatile situation. They suggest that provocation is an issue based on the suggestion that the plaintiff invited the defendant to strike him with the vehicle. They also suggest that contributory negligence and *volenti non fit injuria* are issues to be tried because they suggest that it was the plaintiff who initiated the contact between the parties.

[16] Finally, the defendants submit that causation is a serious issue and suggest that it is not clear that the plaintiff actually suffered injuries as a result of being struck by the defendants' vehicle.

FINDINGS

[17] In ***MacDonnell et al v. Freeman*** (1992), 105 N.S.R. (2d) 268, Tidman, J. of this court dealt with a claim by a plaintiff who suffered injuries while a passenger in a vehicle which left the highway. He ruled that the plaintiff must first establish by affidavit evidence that he has a valid claim at which point the burden switches to the defendant to disclose facts which would entitle him to defend the action. In that case, Justice Tidman was not satisfied that the plaintiff had proven the original claim of negligence and therefore dismissed the application for summary judgment.

[18] I am satisfied here based on the plaintiff's affidavit that he has shown a good claim based on negligence. It is clear that he was struck by the defendant's vehicle. He has the added benefit of Section 248 of the ***Motor Vehicle Act***. Based on the fact the defendant Joel Meister pleaded guilty to impaired and dangerous driving I

conclude that unless there is a clearly arguable defence the application should succeed.

[19] The defendant's affidavit relates to what transpired on the night in question. He alleges that he was provoked by the plaintiff "to come on hit me". He also submits that he was in fear for his safety and the possibility of damage to his vehicle. He at no time denies striking the plaintiff although he does deny striking him a second time and dragging him with his car.

[20] Counsel for the defendants raises a number of issues which it is suggested established that the defendants have an arguable defence to the claim advanced by the plaintiff. I will deal with each argument.

(1) **Plea to Criminal Charges**

[21] The defendant Joel Meister pleaded guilty to a number of charges as a result of his involvement with the plaintiff on the night in question. It is argued by his counsel that he should be able to fully explain at a trial the circumstances of his guilty pleas especially to the charge of dangerous driving.

[22] I have before me a transcript of what transpired in Provincial Court when he entered guilty pleas to these charges. During submissions on sentencing the Crown Prosecutor advised the Judge the facts upon which Mr. Meister should be sentenced. He said:

> **MR. TANCOCK**: Your Honour, this event occurred in Bridgewater on Friday, April 12th, and around 2, 2:30 in the morning. The subject of the initial complaint, a Mr. Acker, Matthew Acker has been at the Tomorrow's Lounge in the Bridgewater Mall and it was getting to closing time; so he went outside and spoke with some individuals on the sidewalk waiting for another individual he was going to leave with. When that person didn't show up, he started to walk down the sidewalk in front of Zeller's then to the cross walk at Old Bridge Street, and he was crossing the cross walk at that point heading towards the TD Bank when he heard people arguing. He turned around. There were two vehicles parked in the mall parking lot heading out on to Old Bridge Street. They were both at the Stop sign, one vehicle behind the other, and Mr. Acker indicates that he knew at least some of the individuals. He decided to walk back towards that area to see if he could intervene, calm them down. He walked up between the individuals and had some words to say that perhaps were a catalyst for other things to happen, but in any event the individuals in one of the vehicles that was driven by Mr. Meister had backed up and the next thing he knew, he heard a sound, and he looked and this vehicle was coming directly at him at a fast rate of speed. He knew he wasn't going to have the time to get out of the way or for the vehicle to stop and he sort of froze. The vehicle hit him. He hit the hood, flew through the air and landed on the pavement a few yards away. He got up to his hands and knees and then to his feet at which time the car came at him a second time, and this time he fell and he grabbed the front bumper and the grill area to keep from going under the car and the next thing he recalls is people being around him and the policy being there.

[23] Mr. Meister's counsel objected to this factual position and suggested through counsel as follows:

> **MR. NORTON**: Thank you, Your Honour. With respect to my client's view of what occurred on that night, he was n the bar at the mall, along with the victim, Mr. Acker was also there, although they weren't together, but when the bar closed, there was an altercation outside involving Mr. Acker and one of the passengers in Mr. Meister's car and when they got in their vehicle, when Mr. Meister got in the vehicle with Mr. Cole and two other passengers, Acker was, was also drinking, was abusive towards them and shouting at them and my client's account and that of the witnesses in the car was that Mr. Acker jumped up on the hood of his car and in the process of this melee and my client does admit when he jumped up, he drove forward to get him off the hood of the car, and he denies that he did anything more than that.

[24] In light of this conflict of information about the facts the trial judge suggested that a formal hearing on the issue should be held. Counsel for Mr. Meister requested that he be given time to speak with his client and came back to Court and said:

> **MR. NORTON**: And I was just retained this week. The only point which he wants to raise is on the Crown's submissions is that when this altercation occurred in the parking lot, the victim, Mr. Acker, was at the front of his car banging on the hood and had his arms up over the hood and he was taunting him to hit him, to drive into him and knock him down. This is according to my client and so he deliberately drove forward and knocked him down and he acknowledges that he backed up and there was a lot of confusion and people around the car at the time and he acknowledges that he could very well have hit Mr. Acker a second time, although he did not do that deliberately. I don't know. That's probably in accord with my learned friend's submissions.

[25] Based on this position, the Crown Prosecutor agreed that he should be sentenced on that basis and that was done. He was fined $1,000.00 for dangerous driving.

[26] In his affidavit provided for this hearing Joel Meister indicates that he did strike the plaintiff with his vehicle on one occasion but did so because he wanted to leave the area. He denied ever striking the plaintiff a second time.

[27] I reject the suggestion that the defendant should be able at this trial to attempt to explain away his guilty plea to dangerous driving. It is clear that he had legal counsel at the time of his plea and that he agreed to the facts as advanced by his counsel to the provincial judge. He in fact had been given an opportunity to have a hearing on the facts, but he instead accepted what his counsel advanced as the facts.

[28] A dangerous driving conviction under Section 249(1)(a) of the ***Criminal Code*** requires that the accused admit that he operated a motor vehicle in the manner that is dangerous to the public having regard to all the circumstances existing at the time. I conclude that to prove dangerous driving the Crown must show more than simple negligence on the part of a driver of a vehicle.

[29] I therefore reject the suggestion that the defendant Joel Meister has a fairly arguable defence to negligence in light of his guilty plea to dangerous driving.

[30] In ***Armoyan Group Ltd. v. Dartmouth (City) et al.,*** [1998] N.S.J. No. 26 (CA) our Court of Appeal made it clear that if a defendant makes admissions of fact which would make it impossible to succeed on his defence the Court is entitled to grant summary judgment.

[31] I find that in this case the defendant's admission to committing the offence of dangerous driving makes it impossible for him to succeed on a defence against a claim of negligence.

(2) <u>Self-defence and provocation</u>

[32] The defendant argues that the defendant Joel Meister was acting in self-defence and was provoked by the plaintiff.

[33] I conclude that these issues are only relevant to the claim of assault advanced by the plaintiff and have no relevance to the issue of negligence.

(3) <u>Credibility</u>

[34] The defendant suggests that the plaintiff's credibility is an issue and therefore there should be a full trial to test it.

[35] I reject that suggestion. The plaintiff's credibility can be tested on the issue of damages and in regard to the assault aspect of his claim. There is really no dispute here but that the plaintiff was struck at least once and likely twice by the defendant's vehicle.

(4) <u>Contributory negligence</u>

[36] The defendant argues that the issue of contributory negligence should be fully tried. It is suggested that the plaintiff was negligent because he was drinking and stood in front of the defendant's car. I reject this argument. It appears clear from the evidence that the defendant Joel Meister was aware that the plaintiff was in front of his vehicle when he drove it forward. There is evidence that the defendant could have exited the parking lot, but instead turned his vehicle around and came back to the area where the plaintiff was standing. It appears from the evidence that after he did this his vehicle came in contact with the plaintiff a second time.

[37] I also note that Civil Procedure Rule 33.01 provides that in making an interim payment the Court can consider the issue of contributory negligence, therefore, a claim of contributory negligence should not normally prohibit an interim payment.

(5) Causation

[38] The defendant argues that there are issues of causation here that require a full hearing. Based on the evidence before me I conclude that the causation issue should be addressed under Rule 33.01.

(6) Volenti

[39] The defendant argues that the plaintiff placed himself in harm's way and that he accepted the risk of being injured.

[40] I reject this argument. In light of the defendant's guilty plea to dangerous driving and the real probability that the defendant struck the plaintiff twice there appears to be no basis for this argument.

[41] I conclude that the defendants have not established a fairly arguable defence to the claim of negligence and therefore I would grant summary judgment. The issue of assault will have to go to a full trial in light of the suggestion of the self-defence issue.

Interim Payment

[42] In light of my finding that there should be summary judgment on the claim of negligence by the plaintiff, I must therefore consider the plaintiff's claim for any interim payment under Rule 33.01(a).

[43] That Rule requires that I at this point consider the possible damages the plaintiff would be entitled to and award an amount "not exceeding a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence".

[44] Here the evidence of the plaintiff is that he was not able to return to work after his injury. He said that he was at that time working as a labourer stacking lumber with Bowater Mersey. He was working three days a week as a casual employee at an hourly rate of $12.00 per hour.

[45] The plaintiff saw his family doctor and was referred to a specialist. He was not able to return to work and continues to be unemployed.

[46] In March, 2003, the plaintiff's family doctor, Dr. Mark Pennell, wrote to his lawyer as follows:

> I confirm that I am Mr. Acker's family doctor and I have attended him quite frequently since the date of the vehicle/pedestrian "accident" of April 12, 2002. I also confirm that since that time he has remained markedly disabled as a result of the injuries sustained in the accident. His initial presentation was to the hospital and I saw him on April 15 for the first time following the accident. He had multiple severe soft tissue injuries at that time. He complained of pain and swelling in his left leg and thighs all of his joints were sore including his hips and his left ankle. His neck was sore and stiff. His low back was sore and stiff. He had pain and bruising in his ribs and chest wall. Sore muscles in his left axilla. Pain in both wrists medially. Abrasions on his right elbow and generalized bruising. On examination on that date he had tender, sore, bruised abdominal muscles both scapulae were sore. He had abrasions over his left lower back and left pelvis. Bruising and abrasions and swelling of his left thigh. Both knees and his right ankle had limited range of movement with pain. There was tenderness in his left Trapezius. Rotation of his neck was markedly reduced with pain. Trapezius muscle was also tender, medial to both scapulae. He had abrasions on his right elbow, there were tender ligaments and tendons over his wrist joints medially, both right and left. There was tenderness in his upper lumbar spine with limited range of back movements with a large abrasion

> on his right low back. Bruising of his right thigh, a large hematoma in his left thigh. He was in a lot of pain and had great difficulty walking. Both knees had pain with flexion and extension with tenderness of both medial and lateral collateral ligaments. His right ankle revealed swelling, tenderness, laterally.
>
> His progress was slow and I saw him frequently on several occasions. He received repeat x-rays and CT scans to his lumbar spine which confirmed a wedge fracture of his L3 vertebrae and with a secondary osteoarthritic reaction.
>
> He continues to have a lot of symptoms from his back. His left leg has been slow to improve and he has chronic L5 root irritation which has been confirmed by an electromyography which was performed by Dr. Sapp who is a specialist in these types of injuries.
>
> He continues to receive physiotherapy when he can arrange transport and also non steroidal anti-inflammatory medication. Physiotherapy is a vital part of his management. I am enclosing a copy of Dr. Sapp's report and also the electromyography findings and his CT scan report. He is due to be followed up by Dr. Sapp who will continue to be involved in his management.
>
> I cannot see that there has been any significant improvement over the past eight months or so. Matthew still has great difficulty moving around, walking, and also has trouble sleeping at night because of pain and discomfort. Prior to this "accident" he was fit and well, actively involved in sports and regularly employed.

[47] The plaintiff was also seen by Dr. John Sapp, a specialist in physical medicine and rehabilitation. Dr. Sapp reported to Dr. Pennell in August 26, 2003 that:

> At this point, it would appear that most of his injuries were in the soft tissues. He probably had a significant injury to the lumbosacral area at the time of this accident or injury.

[48] Dr. Sapp saw the plaintiff again in May 2003. He wrote:

> As before, he has findings in keeping with mechanical back pain. It appears to be mainly arising from the posterior facets and most likely at the lumbosacral junction region.
>
> . . .
>
> I would expect that he will need to look for lighter work in the future once this more acute pain in the back has settled down.

[49] I am satisfied that the plaintiff has shown that he has sustained an injury which caused him to stop the work he used to do prior to being struck by the defendant's vehicle.

[50] The defendant suggests that the medical evidence discloses that the plaintiff had back problems prior to the incident with the defendant's vehicle and that they have not had an opportunity to have independent medical assessment of the plaintiff.

[51] I agree with the general statement that if causation for injuries is seriously an issue it would not be appropriate to grant an interim award because at the trial it might

be determined that the plaintiff's injuries were not caused by the defendant's action. See for example ***Hamilton v. Boudreau***, S.P. No. 06092 a decision of Wright, J. of this Court.

[52] I conclude, however, that to simply raise the possibility of a causation issue is not enough to stop an interim payment. There must be evidence that causes the Court to conclude that at trial there might be a finding of no liability because the plaintiff cannot prove that his injuries were caused by the defendant. A defendant takes a plaintiff as he finds him and pre-existing conditions are often present and are dealt with on an assessment of damages. However, where as here a plaintiff goes from being able to do a job involving manual labour to not being able to work for a substantial period of time, the Court would have to be satisfied that there is clear evidence before denying an interim payment based on causation.

[53] Here I find that the defendants have not put forth such evidence and I feel it is appropriate that an interim payment be made.

[54] The plaintiff in his pre-hearing brief initially asked for a substantial interim payment of $83,000.00 including amounts for general non-pecuniary damages of

$35,000.00 and past wage loss of $12,000.00 and future loss wages of $25,000.00, however, at the hearing agreed that an appropriate interim payment would be twenty to thirty thousand dollars.

[55] I conclude that an appropriate interim award in this case would be $15,000.00. The plaintiff will have his costs of this application in the amount of $750.00.

J.