

Assessment Of Damages – CLA Claims: Carroll V Coomber and Anor [2006] Qdc 146

Judge
McGill SC DCJ

Date of Decision
31 May 2006

Key Issues Arising
Assessment of damages - CLA claims

Key Facts
The plaintiff was a 23-year-old female who was injured in a single vehicle accident on 7 September 2003.

Liability was admitted in full.

The plaintiff said that, after the accident, she had pain in her back. She went to Logan Hospital but was not admitted. In the days after the accident, the plaintiff experienced pain in her lower back, left shoulder and neck and had cuts on her right knee.

The plaintiff had extensive bruising around the area where the seatbelt would have rested.

She underwent numerous physiotherapy sessions, which she found helped ease her neck and some of her low back symptoms. She experienced ongoing pain in her knees, the right more so than the left.

The plaintiff was emotionally upset by the accident. She did not find psychological treatment helpful, but did talk to her mother about matters. The plaintiff returned to driving about three months after the accident.

Dr Gillett assessed the plaintiff to have a 1% impairment due to an injury to her left shoulder, a 2% impairment due to an injury to her right knee and a 3% impairment due to a lower back injury.



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Dr Lovell suggested that the plaintiff may have met the criteria for post-traumatic stress disorder, but those symptoms were largely abating. Using PIRS, Dr Lovell assessed the plaintiff to have a 4% impairment, which may reduce to 2% if she underwent an advanced driving course.

Decision

McGill DCJ found the plaintiff to be an honest and straightforward witness, who made concessions adverse to her interest on cross-examination.

In assessing general damages, McGill DCJ found that the following were the relevant Item Numbers:

- Bruising - 39 (ISV of 0 - 10)
- Neck injury - 89 (ISV of 0 - 4)
- Low back injury - 93 (ISV of 5 - 10)
- Knee injury - 140 (ISV of 0 - 5)
- Left shoulder injury - 98 (ISV of 0 - 5)
- Psychological injury - 12 (ISV of 2 - 10)

McGill DCJ selected the low back injury as the dominant injury, as it appeared to be the most significant of the three potential dominant injuries. However, he found that neither an ISV of 10, nor an ISV of 13 (an ISV of 10 plus a 25% uplift) were adequate to reflect the cumulative effect of the plaintiff's injuries.

The judge was of the view that, because the CLA provided that he could take into account other decisions, he could be guided by the assessment of general damages in *Coop v Johnston* [2005] QDC 79, in which the appropriate ISV was found to be 16. This was in spite of the fact that the plaintiff in *Coop* had sustained different injuries to the plaintiff in the present case. McGill DCJ considered that the plaintiff in the present case was not a great deal worse off than the plaintiff in *Coop*. He therefore determined that the appropriate ISV was 18 and awarded the plaintiff \$22,800.00 general damages.

In relation to future economic loss, McGill DCJ made a global allowance of \$40,000.00, noting the allowances of \$30,000.00 in *Coop* and \$20,000.00 in *Ballesteros v Chidlow* [2005] QSC 280, in which the plaintiffs were older and less seriously injured than the plaintiff in the present case. This allowance was in spite of the plaintiff's poor pre-accident work history.

Although he found that the plaintiff did not qualify for an allowance for gratuitous assistance by virtue of section 59 of the CLA, McGill DCJ was prepared to make an allowance for future non-gratuitous assistance. This was to allow for the possibility that the plaintiff would



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require assistance in the future when gratuitous assistance was no longer available. He allowed that assistance at an agreed rate of \$16 per hour from the time the plaintiff reached age 35 (in ten years' time) for the rest of her life at one hour per week, reduced by 20% for contingencies, which came to \$7,500.00.

In summary, judgment was given for the plaintiff:

INSURANCE ALERT

JULY 2006

General damages	\$22,800.00
Paste economic Loss	\$3,750.00
Interest	\$252.53
Future economic loss	\$40,000.00
Loss of superannuation	\$3,937.50
Future paid care	7,500.00
Future medication	\$3,600.00
Special damages	\$8,116.15
Interest	\$67.00
Total	\$90,023.18

Practical Application

The interesting feature in this decision is that McGill DCJ considered that he had a discretion to allow a higher ISV than permitted on an assessment made in respect of the plaintiff's dominant injury. At paragraph 47 McGill acknowledge that the plaintiff had suffered an unusual combination of injuries, where there is no one injury that is particularly dominant. He thought it was appropriate in those unusual circumstances to allow an ISV greater than what would be permitted applying an uplift to the range for the dominant injury. The case can be distinguished from many others on that basis.



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