IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pringle v. Pringle,*
2020 BCSC 75

Date: 20200121
Docket: M145697
Registry: Vancouver

Between:

Joshua Pringle

Plaintiff

And

**Tracy Pringle, Stanley Lawrence Amor,
and Honda Canada Finance Inc.**

Defendants

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

The Plaintiff appearing in person:	J. Pringle
Counsel for the defendants:	A.P. Zacharias C.D. Drinovz
Place and Dates of Trial:	Vancouver, B.C. December 9-13 & 16, 2019
Place and Date of Judgment:	Vancouver, B.C. January 21, 2020

Table of Contents

Introduction

[1] Joshua Pringle was injured when he collided with an automobile driven by his mother, Tracy Pringle. Mr. Pringle's back and buttocks struck the passenger side windshield of Mrs. Pringle's Acura. The impact broke the windshield. Mr. Pringle fell to the ground and broke his wrist.

[2] The collision took place after midnight, in a roundabout driveway just outside Mr. Pringle's apartment building. Mrs. Pringle had driven over to speak with Mr. Pringle. Mr. Pringle's sister, Emily Pringle, accompanied her mother. The visit had not gone well. It ended when Mr. Pringle told his visitors to leave and threatened to call the police. They did as he asked, but Mrs. Pringle accidentally took Mr. Pringle's keys with her when she left. They met in the driveway a short while later to return the keys.

[3] Immediately before the collision, Mrs. Pringle was at the wheel of her car with the ignition on. Emily was sitting in the front seat on the passenger side. Mr. Pringle was standing outside the car. Mr. Pringle and Mrs. Pringle were arguing through an open window.

[4] Mr. Pringle testifies that what happened next was that Mrs. Pringle began to drive away, circling the roundabout, while he was standing on the roadway. Mrs. Pringle was driving angrily and recklessly. When he realized that she was driving back towards him and was not going to veer away, he jumped and was hit by the moving car's windshield.

[5] In view of the manner in which this case was presented and argued, it is important to emphasize that Mr. Pringle's case is not that Mrs. Pringle assaulted him with her vehicle. The only claim alleged in the notice of civil claim is the conventional one that Mr. Pringle was injured through the negligent operation of a motor vehicle operated by Mrs. Pringle and owned by the other defendants. There is no doubt that Mr. Pringle was injured through a collision with a motor vehicle operated by Mrs. Pringle. There is no issue as to the vicarious liability of the other defendants. The central question in this action is whether Mrs. Pringle was negligent.

[6] The defendants deny that Mrs. Pringle was negligent. Mrs. Pringle and Emily Pringle testify that Mrs. Pringle was just putting the car into motion when Mr. Pringle leapt from the sidewalk into the windshield. As an alternate theory of the case, the defendants' counsel suggested to Mr. Pringle in cross-examination that he projected himself into the path of the moving car in an attempt at self-harm. Mr. Pringle denied the suggestion.

[7] Mr. Pringle and his mother have a complicated, difficult relationship. The challenges of their relationship are exacerbated by the fact that Mr. Pringle is the father of a beloved grandson of Mrs. Pringle. In the course of the trial, Mr. Pringle and his mother each attacked the other's character and gave evidence spanning the course of their relationship from Mr. Pringle's childhood. I need not address most of their accusations. My task, in these reasons for judgment, is to resolve just three issues:

1. Did the accident occur as a result of Mrs. Pringle's negligence?

2. If so, was Mr. Pringle contributorily negligent?

3. What are Mr. Pringle's damages?

Background

[8] The accident took place on September 12, 2012.

[9] Mr. Pringle was 31 years old at the time. He was living with his wife and their infant son in an apartment building on McCallum Road in Abbotsford. On the night of the accident, Mr. Pringle's wife and child were away visiting her parents in Williams Lake.

[10] Mr. Pringle was unemployed. His full-time occupation at the time was as a caregiver for his child. His marriage was in difficulty.

[11] In the early morning hours of September 12, Mrs. Pringle and Emily Pringle arrived at Mr. Pringle's apartment building. They had not called in advance and

Mr. Pringle was not expecting them. They gained entrance to the building because someone who was leaving held the door for them. They knocked on Mr. Pringle's door. He did not answer the door until Emily telephoned to tell him who was knocking. He answered the door and let them in. Mr. Pringle viewed the visit as an intrusion.

[12] Mr. and Mrs. Pringle spoke in the kitchen of the apartment. Emily Pringle did not participate in the conversation. It probably lasted for about 45 minutes.

[13] Mr. Pringle recorded the conversation without Mrs. Pringle's knowledge. In pre-trial proceedings, he was ordered to produce the recordings, but only produced some of them prior to trial. He produced the rest at the commencement of the trial. Allowing the defendants' objection, I did not allow Mr. Pringle to put in evidence or rely upon the recordings that he had not produced prior to trial. I should say that I doubt that the recordings Mr. Pringle was not permitted to use would have added much to my understanding of what occurred that night.

[14] Both Mr. Pringle and Mrs. Pringle were emotional and their discussion became heated. Mr. Pringle expressed a desire for more distance from his family. Mrs. Pringle expressed concern for his marriage, his emotional state, and her grandson. At the end, Mr. Pringle said that he wanted her to leave him alone. She responded that, if he felt that way, he should return to her a family ring. Mr. Pringle got the ring from his bedroom, gave it to her, and told her to leave. He threatened to call the police if she and Emily did not leave.

[15] Mrs. Pringle and Emily left the apartment. In gathering up her things, Mrs. Pringle picked up Mr. Pringle's keys. I find that she did so unintentionally.

[16] A few minutes after Mrs. Pringle and Emily had left the apartment, Mr. Pringle telephoned Mrs. Pringle to tell her that he wanted to come by her house in a few days' time to pick up things belonging to his son. Mrs. Pringle told him that she had his keys. They agreed that she would return the keys to him in the driveway in front of his building.

[17] They met there. Mrs. Pringle and Emily were in Mrs. Pringle's car. Mrs. Pringle handed Mr. Pringle the keys through her window. They argued some more. It is at this point that the witness's accounts of what happened diverge quite dramatically.

First issue: Did the accident occur as a result of Mrs. Pringle's negligence?

The starting point

[18] Four witnesses testified who were present at or immediately after the accident. Before turning to an assessment of the reliability and credibility of their accounts of the accident, it is helpful to assess what can be discerned from evidence that is undisputed.

[19] I have already noted some of this evidence. On all accounts, immediately before the accident, Mrs. Pringle was at the wheel of the car and Mr. Pringle was outside it on foot. The ignition was on and the car was in gear. They were arguing through an open window, either the driver's side window (on Mr. Pringle's account) or the passenger window (on Mrs. Pringle and Emily's account). Both Mr. Pringle and Mrs. Pringle were emotional.

[20] At the moment of impact, Mr. Pringle's back and buttocks struck the passenger side windshield of Mrs. Pringle's vehicle hard enough to break the glass, though not hard enough to smash through it and end up in Emily's lap. There is no evidence of damage to the hood or front bumper. I infer that Mr. Pringle was in the air when he made contact with the windshield. The car was moving forward towards him, or he was moving towards the car from the side, or both.

Witness accounts of the accident

[21] I turn to the testimony of the witnesses. I must say at the outset that, in my view, none of the accounts of the accident offered by witnesses is particularly reliable.

[22] I begin with Mr. Pringle. He says that Mrs. Pringle pulled away from him, accelerated around the roundabout, and struck him in the roadway. He says that he

saw the car coming towards him and considered that he and Mrs. Pringle were engaged in a power struggle. At the last moment he realized that she was not going to turn the car away and leapt into the air in an attempt to avoid being hit.

[23] Mr. Pringle's account of the accident includes implausibly dramatic elements. He says that Mrs. Pringle was "flying" and her tires were screeching. He says that his mother was calling out, "You'll be sorry" and, just before the impact, he heard Emily screaming "No mom, don't!". Adopting evidence given on discovery, he says that the impact launched him 25 feet in the air and that he flew into the grass. Inconsistently, he says that he does not remember the impact, just that he woke up on the ground.

[24] Mr. Pringle has given different accounts of his mother's speed at different times. Immediately following the accident, he was taken to a hospital by ambulance. Clinical notes record his complaint that he was struck at 5 to 10 kph. On discovery, he testified that she was probably travelling at 30 or 40 kph. In cross-examination, he estimated that she was travelling at 25 to 30 kph.

[25] Mr. Pringle gave a statement to an ICBC adjuster on September 20, 2012. In it, he said that the car struck him while he was in the roundabout, facing its centre, and he thought that the car would drive by him. The front end of the car hit his left side and he flew into the grass. This cannot be correct, because the physical evidence establishes that he struck the windshield, not the front end of the car, and he now says that he does not remember the impact. Mr. Pringle now says that he was not facing the centre of the roundabout, rather he was standing next to the curb, facing outside it towards his building. He acknowledges other inaccuracies in the statement given to the adjuster. For example, he concedes that his denial to the adjuster that he had consumed alcohol or drugs that evening was false.

[26] It is plain from Mr. Pringle's presentation of his case in court and from text messages sent to Mrs. Pringle since the litigation began that he blames her for most everything that is wrong in his life and is using this lawsuit as a vehicle for the vindication of his perspective on their relationship. He unsuccessfully sought to have

charges laid against his mother after the accident. He is deeply invested in being proved right. He has been dwelling on the accident for more than seven years.

[27] Taking all this into account, I do not take Mr. Pringle's account of how he came to collide with the windshield of his mother's car at face value.

[28] I turn to Mrs. Pringle. She began by testifying that her car was not in motion. She says that Mr. Pringle was standing on the sidewalk beside the car, arguing with her through the open passenger side window. She estimates that he was about 1.5 feet away from the car. He said to her, three times, in a rage, that she should say goodbye to her grandson because she would not see him again. When she would not engage with Mr. Pringle, he jumped onto the car, landing with his back and his buttocks on the windshield, and then jumped off again, and she drove away.

[29] In cross-examination, Mrs. Pringle was shown a statement she gave to the police in March 2013. In it she offered the following account of the incident, beginning with the car in the roundabout:

> So he came over here and was talking to me, yadda yadda yadda and screaming, yelling and – so I said, "Josh, I'm not fighting with you. Here's the keys." I said, "I'm not fighting any more with you." And so he took off and as he's running up there, he says to me, "Kiss your grandchildren goodbye 'cause it's gonna be the last time you see them." And I said, "Josh, not going here with you." And I started to leave and he started running up for me and I kept going. With that, he jumped off the curb, cause there's a curb in the roundabout, … and jumped on my car.
>
> [Emphasis added]

Mrs. Pringle was asked where Mr. Pringle started running from and she said it was from the sidewalk. In further questioning, she acknowledged that the car was in motion, and she could not say how fast she was going.

[30] That Mr. Pringle was running towards the car from the sidewalk is inconsistent with a starting point on the sidewalk across from a stationary car that was less than two feet away. One cannot start running towards an object that one could reach out and touch. Moreover, if the car was moving, it must have been

moving towards Mr. Pringle. There is no other explanation for the impact on the front windshield.

[31] In her evidence in chief, Mrs. Pringle testified that she was afraid of her son, so much so that, when he telephoned her after the meeting in the apartment to say that he would want to come by to pick up his son's things, she told him that it would have to be at a time when her husband was present. In cross-examination, it was pointed out to her that, in her statement to the police, she said that her response to the request was, "No problem, anytime you want to come get it, hey man, it's here". Her response was telling. She said, "I guess I wasn't as afraid of you then as I am now". In other words, she acknowledged that her assertion in chief that she insisted on her husband's presence was a colourful false detail in her account.

[32] For these reasons, I do not accept Mrs. Pringle's account of the accident.

[33] I turn to Emily Pringle's account of the accident. It is similar to that given by Mrs. Pringle in her evidence in chief. Emily describes the car at a complete stop in the roundabout, while Mr. Pringle stood outside the car to her right and argued with her mother through her passenger window. He was, she says, beside her but a few steps forward, and the vehicle was a few feet away from the curb. Her mother started to pull away, putting the vehicle in motion, and Mr. Pringle came off the sidewalk and jumped onto the vehicle. Emily says that she saw Mr. Pringle's left shoulder hit the windshield, his hip hit the windshield wiper, and his left leg on the hood. Then he rolled off.

[34] While Emily Pringle's description of Mr. Pringle's impact with the vehicle is exceptionally detailed, even when she is shown a photograph of the windshield, she is unable to say whether the glass was broken through. This was the portion of the windshield she was looking out through as she and her mother drove off. She maintains that she is unable to recall anything at all of the argument that was taking place across from her, not even what it was about. She was generally an unforthcoming witness, except as it concerned the things she wanted to say.

[35] Once it is accepted that the car was in motion at the moment of impact, it is exceptionally difficult to visualize how the accident could have occurred as described by Emily Pringle. The starting point is that Mr. Pringle was beside the stationary car, a few feet away, arguing through the open passenger side window. He would have to be pursuing the car as it started to move. He would have to keep up with it, leap sideways to land on the windshield, and come down with sufficient force to break the windshield.

[36] Even if one supposes that the car was only barely moving at the moment of impact, it is difficult to see how Mr. Pringle could have broken the windshield by hurling himself onto the car. The entire force of the collision would have to have come from Mr. Pringle having propelled himself upwards above the windshield in order to come down upon it. There is evidence that he was an athletic man, but I do not think it could have been to that extent.

[37] For these reasons, I do not accept Emily Pringle's account of the accident.

[38] The fourth witness is a former neighbour and friend of Mr. Pringle, Mr. Gluschko. Mr. Gluschko's present account of what he heard and observed on September 12, 2012 is limited. He says that he heard screaming in the parking lot and he cannot say whether it was Mr. Pringle or Tracy Pringle who was screaming.

[39] Mr. Gluschko provided completely inconsistent accounts of the evening in two statements to the police. In the first statement, he said that he saw the car strike Mr. Pringle from his balcony. In the second statement, he said that he did not see the accident, and alleged that Mr. Pringle bribed him with the offer of a television to give the first statement. In giving evidence, Mr. Gluschko explained that he gave the second statement because Mr. Pringle made advances towards Mr. Gluschko's fiancé and he did not like Mr. Pringle anymore. He said that he was not prepared to perjure himself for someone who was not even his friend or family.

[40] Based on his evidence and his conduct, I doubt that Mr. Gluschko feels an obligation to tell the truth under oath. He is an unreliable witness and I do not give

any weight to his evidence of the events of September 12, 2012 or his dealings with Mr. Pringle.

Legal framework

[41] The legal framework governing pedestrian-vehicle collisions is found in the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [*MVA*] and in the common law. The relevant common law was reviewed by Chief Justice Hinkson in *Wotherspoon v. Hameluck,* 2014 BCSC 2137 at paras. 16-29 [*Wotherspoon*]. For present purposes, the material elements are as follows.

[42] The driveway roundabout where the accident occurred was part of a "highway" as defined in s. 1 of the *MVA*, that is, it was a "private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited". There is no evidence that Mr. Pringle was struck in a crosswalk, as that term is defined in s. 119(1).

[43] Section 180 of the *MVA* requires a pedestrian who is crossing a highway at a point not in a crosswalk to yield the right of way to a vehicle. Accordingly, as between Mr. Pringle and Mrs. Pringle, Mrs. Pringle had the right of way.

[44] However, s. 181 qualifies s. 180 by requiring that a driver of a vehicle must exercise due care to avoid colliding with a pedestrian who is on the highway. Even though Mrs. Pringle had the right of way, she was still obliged to avoid hitting Mr. Pringle if she could do so by the exercise of reasonable care.

[45] The obligation of a driver to take appropriate evasive action to avoid a collision, even where she has the right of way, is recognized in the cases. In *Wotherspoon* at para. 20, the Chief Justice adopted the following passage from the judgment of Justice Dickson in *Hmaied v. Wilkinson*, 2010 BCSC 1074 at para. 23:

> [23] Regardless of who has the right of way, however, there is a duty upon drivers and pedestrians alike to keep a proper lookout and take reasonable precautions in response to apparent potential hazards: *Nelson (Guardian ad litem of) v. Shinske* (1991), 62 B.C.L.R. (2d) 302 (B.C.S.C.); *Karran v. Anderson,* 2009 BCSC 1105. Depending on the circumstances, from a driver's perspective one such hazard may be a jaywalking pedestrian: *Ashe v.*

> *Werstiuk*, 2003 BCSC 184, upheld 2004 BCCA 75; *Claydon v. Insurance Corp. of British Columbia*, 2009 BCSC 1077. If it is reasonably foreseeable or apparent that a pedestrian will disregard the law and thus create a hazardous situation, a driver is obliged to take all reasonable steps to avoid a collision. In such circumstances, if the driver has a sufficient opportunity to avoid the collision, but does not take appropriate evasive action, the driver will be found negligent: *Karran, supra; Beauchamp v. Shand*, 2004 BCSC 272.
>
> [Emphasis added.]

Findings of fact

[46] While I do not accept any of the witness accounts of the accident at face value, the testimony and photographs of the vehicle and the scene enable me to make the following findings of fact on a balance of probabilities.

[47] As I noted above, Mrs. Pringle was driving the car and Emily Pringle was seated in the front passenger seat. Mr. Pringle made contact with the windshield, backside first, on the passenger side. He was in the air at the moment of impact.

[48] I find that the vehicle was in motion at the moment of impact. I come to this conclusion taking into account the force of the impact, Mr. Pringle's evidence, and that Mrs. Pringle and Emily Pringle ultimately conceded that the vehicle was in motion. Considering the force of the impact, I find that the vehicle was not barely in motion but was substantially underway.

[49] I reject the defence thesis that Mr. Pringle leapt at or in front of the moving vehicle. It is simply implausible that Mr. Pringle would attempt to attack a car with his bare hands or, if he did, that he would crash into it backside first. Having heard Mr. Pringle's evidence and considering his conduct before and after the accident, I do not think that he leapt in front of the moving vehicle in an attempt at self-harm.

[50] The vehicle struck Mr. Pringle in the driveway and I find that he was standing in the driveway as it approached him. Mrs. Pringle should not have been driving so quickly in the roundabout that she was unable to avoid hitting Mr. Pringle. I find that she had an opportunity to stop or take evasive action to avoid hitting Mr. Pringle and failed to do so. This was not an inevitable accident. Mrs. Pringle was negligent.

Second issue: contributory negligence

[51] I accept Mr. Pringle's evidence that, as he saw the car approaching him, he viewed himself as engaged in a power struggle with Mrs. Pringle and failed to give way to the approaching vehicle until it was too late, at which point he leapt in the air and made contact with the windshield.

[52] Mrs. Pringle had the right of way and Mr. Pringle's failure to give way immediately to the approaching vehicle was negligent.

[53] Where damage has been caused through the fault of the plaintiff and the defendant, s. 1(1) of the *Negligence Act,* R.S.B.C. 1996, c. 333 provides that the defendant is only liable in proportion to the degree to which she was at fault. Section 1(2) provides:

> (2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.

[54] I am unable to say which of Mr. Pringle and Mrs. Pringle bears the greater fault for the collision. Pursuant to s. 1(2), I apportion their fault equally at 50% each. The defendants are liable for 50% of Mr. Pringle's damages.

Third issue: what are Mr. Pringle's damages?

[55] Mr. Pringle accepts that he has not suffered any income loss to this point or special damages. He seeks non-pecuniary damages of $80,000 and an award for loss of earning capacity. He also claims aggravated and punitive damages.

[56] The defendants say that Mr. Pringle's damages are in the range of $25,000 to $50,000 for non-pecuniary losses. They deny that he is entitled to damages for loss of earning capacity, aggravated damages, or punitive damages.

Non-pecuniary loss

Legal framework

[57] Non-pecuniary damages are awarded as compensation for past and future pain, suffering, disability and loss of enjoyment of life. The court must take into

account both the seriousness of the injury and the ability of the award to ameliorate the condition or offer solace to the victim; *Stapley v. Hejslet*, 2006 BCCA 34 at para. 45, leave to appeal to S.C.C. ref'd, [2006] S.C.C.A. No. 100 [*Stapley*]. In *Stapley*, at para. 46, the Court noted a non-exhaustive list of factors to be considered: age of the plaintiff; nature of the injury; severity and duration of pain; disability; emotional suffering; loss or impairment of life; impairment of family, marital and social relationships; impairment of physical and mental abilities; loss of lifestyle; and stoicism as a factor that should not, generally speaking, penalize the plaintiff.

[58] The evidence of Mr. Pringle's injuries consists of Mr. Pringle's own evidence and the observations of his condition contained in clinical records that were tendered in evidence. There is no expert opinion evidence. Although the clinical records contain the opinions of physicians who examined and treated Mr. Pringle, in the absence of expert reports as required by *Supreme Court Civil Rules,* R.11-7(1), I cannot rely on the records as evidence of those opinions; *Edmondson v. Payer,* 2011 BCSC 118 at para. 38, aff'd 2012 BCCA 114.

[59] There is no legal rule requiring a plaintiff to put forward expert opinion evidence to substantiate a claim for damages for personal injuries; *Jalava v. Webster,* 2017 BCCA 378 at para. 11, leave to appeal to S.C.C. ref'd, 38119 (10 January 2019). The defendants do not dispute that Mr. Pringle suffered a significant injury in the form of a badly broken wrist. I must do the best I can to assess its effects on the evidence before me.

Mr. Pringle's injuries

[60] Mr. Pringle played sports in high school and through his twenties. These included baseball, basketball, lacrosse and golf. He lifted weights. He enjoyed outdoor activities such as bicycling, snowboarding, wakeboarding, and riding all terrain vehicles. Over the years, he suffered a number of sports injuries, including a broken wrist, a pulled rotator cuff that ended his baseball playing, and a compression fracture in his back. His past injuries caused him to suffer aches and

pains from time to time. In the period leading up to the accident, he smoked marihuana daily, at least in part to deal with his aches and pains.

[61] When he fell to the ground in the accident, Mr. Pringle broke his left wrist. He is right-handed.

[62] Immediately after the accident, Mr. Pringle was taken by ambulance to Abbotsford Regional Hospital. X-rays were taken confirming breaks in the two bones of the upper arm, the radius and the ulna, where they meet the small bones of the wrist. The admitting nurse noted bruising on the left hip and abrasions to the left knee.

[63] Mr. Pringle's broken bones required surgical reduction which took place later on September 12, 2012. The surgeon's operative note indicates that he observed:

> … a very comminuted intraarticular distal radius fracture. In fact, the fracture mostly involved the radial styloid, and a piece of the cartilage has been sheared off the junction of the styloid and the ulnar fossa. A rim of the ulnar fossa was also fractured off in multiple pieces.

The surgeon inserted two wires to hold the bones in place until the fractures healed. Mr. Pringle was discharged on September 13.

[64] The surgeon removed the wires and placed Mr. Pringle's left arm in a cast in an outpatient procedure on October 24, 2012. The cast was removed three weeks later.

[65] On November 27, 2012, an occupational therapist examined Mr. Pringle and noted that he had a significantly limited range of motion in his left wrist by comparison to his right.

[66] Two years after the accident, on September 9, 2014, an orthopedic surgeon noted significant continuing limitations in Mr. Pringle's range of motion in his left wrist. He reported:

> Plain x-rays … show a healed radial styloid fracture. There has been complete collapse of the lunate fossa and lunate with complete obliteration of the articular cartilage. There is also degenerative changes of the distal radial

> ulnar joint and there is an ulnar positive variance. Mid carpal joint appears to be preserved. Scaphotunate fossa appears to be preserved but the scaphoid is in abnormal position.

[67] I approach Mr. Pringle's testimony concerning his physical condition cautiously. Some of it is coloured by hindsight, and some of his descriptions of ongoing functional limitations imposed by his injuries are overstated.

[68] It is clear that Mr. Pringle experienced pain and inconvenience in the first two months after his accident, when wires were inserted and, later, when he was wearing a cast. It appears that the superficial injuries to his left hip and knee healed uneventfully.

[69] Mr. Pringle testified that, for two years or so after the accident, his grip strength in his left hand and the flexibility of his left wrist were so badly impaired that he could not hold a jug of milk, open a doorknob, use a kitchen whisk or flip an egg, ride a bicycle or lift his son in the air. He testified that he can now do most of those things, but he still cannot turn a screwdriver with his left hand. I accept Mr. Pringle's evidence in this regard. I find that he has suffered permanent limitations to the range of motion in his left wrist. Associated with those limitations is a certain degree of discomfort resulting from his wrist injury that he will always experience.

[70] Mr. Pringle's quality of life has diminished, but it is not at all the case that he is unable to use his left hand effectively. He accepts as accurate a description of himself in a resume prepared in February 2014 as "physically able to perform repetitive, labour-intensive work". In August 2015, he went wakeboarding on a family holiday at Cultus Lake. Photographs of him taken then show him freely holding onto the tow rope with his left hand, and I do not accept his evidence that he was laid up and had to put his left arm in a cast for several days afterwards. In 2016 and 2017, he held a job with Paramount Components that required him to lift at one end and vigorously shake wide sheets of metal weighing 40 to 100 lbs. He was not hampered by his wrist in performing that work.

[71] Mr. Pringle is not receiving treatment for injuries suffered in the accident. Medical Services Plan records show that he had not seen a physician in the two years before the trial began.

[72] Mr. Pringle testified that he can no longer rock climb, snowboard, or engage in other sporting activities that he used to enjoy. I accept that he has suffered some reduction in his sporting abilities as a result of the accident.

[73] Mr. Pringle testified that, in addition to his physical injuries, he suffered psychological injuries: nightmares, panic attacks and recurrent thoughts of the accident. Mr. Pringle was seeing a counsellor for more than a year before the accident. He testified that he continued seeing the counsellor for many months afterwards, but the counselling records only show two further visits, and there are no records to confirm that he has sought counselling since October 2012. I am not persuaded that Mr. Pringle suffered distinctively psychological injuries resulting from the accident.

Authorities

[74] Mr. Pringle brought forward four cases. The one bearing the closest resemblance to this case is *Jang v. Ritchie*, 2013 BCSC 2459 [*Jang*]. Like Mr. Pringle, the plaintiff in *Jang* suffered a comminuted fracture involving his left distal radius and ulna. The long-term outcome was worse: Mr. Jang's left hand was permanently "fixed in a somewhat claw-like position" (para. 6). He was unable to carry on with the work he had had for 25 years as a sushi chef. He could no longer carry out simple household tasks such as carrying a laundry basket, opening a jar, or vacuuming. Justice Fenlon awarded Mr. Jang $80,000 for pain, suffering and loss of enjoyment of life.

[75] The defendants cite *Azam v. Bilaya,* 2014 BCSC 1615 [*Azam*], *Knezevich v. Cannon,* 2000 BCSC 841 [*Knezevich*], *Patoma v. Clarke,* 2009 BCSC 1069 [*Patoma*], *Michaud v. Machtaler,* 2004 BCSC 829 [*Michaud*] and *Wernicke v. Logan,* 2007 BCSC 1899 [*Wernicke*].

[76] The plaintiff in *Azam* suffered a series of injuries in various incidents. She was awarded $10,000 for a simple fracture of the wrist and a knee injury. The injuries did not require surgery. The plaintiff suffered other injuries as well and there is little discussion of the wrist injury in the reasons. Justice Gerow found that the plaintiff's evidence of her pain and suffering was not particularly credible. I do not find this case helpful as a guide to the case at hand.

[77] *Michaud* is a case in which the plaintiff was awarded damages equivalent to approximately $45,000 in 2019. It is not a helpful analogue to this case because that plaintiff's most significant injuries were soft tissue injuries to his neck and back, in addition to a broken wrist in his non-dominant arm. The plaintiff's wrist did not require surgery and does not appear to have caused him ongoing difficulty.

[78] The plaintiff in *Knezevich* suffered a lower back injury that resolved within two years and a broken left wrist. Surgery was not required and Justice Halfyard characterized the wrist injury as "minor". The plaintiff was substantially recovered from the wrist injury three years after the accident. Justice Halfyard awarded the plaintiff non-pecuniary damages of $22,500 (equivalent to approximately $32,000 in 2019).

[79] In *Patoma*, the plaintiff's only injury was a fractured left wrist. As in this case, surgery was required to set the bones in place and pins or wires were inserted that were later removed. The plaintiff, who was 68 years old at the time of the accident, was almost fully recovered two years after the accident. In that two-year period, he was disrupted in his recreational activities. Among other things, he was unable to play a musical instrument, the bagpipes, which he had formerly played twice daily. Justice Fenlon awarded non-pecuniary damages of $38,000 (equivalent to approximately $45,000 in 2019).

[80] In *Wernicke*, the plaintiff was 27 years old at the time of the accident. His injuries were a broken wrist and mid-back pain that persisted two years following the accident. He worked as a heavy duty mechanic and was able to return to work four months after the accident, but was limited in the kind of work he would be able to

take on in the future. His recreational activities were limited following the accident, and he would suffer ongoing discomfort in the future. Justice Loo awarded non-pecuniary damages of $45,000 (equivalent to approximately $55,000 in 2019).

Assessment

[81] In my view, the overall impact of Mr. Pringle's injuries on his life is less serious than that suffered by the plaintiff in *Jang*. It is more serious than that suffered by the plaintiff in *Knezevich*. This suggests that an appropriate award will be significantly less than $80,000 and significantly more than $32,000. *Patoma* and *Wernicke* are closer on their facts to this case and involve awards equivalent to $45,000 and $55,000.

[82] Taking everything into account, I assess Mr. Pringle's non-pecuniary damages reflecting compensation for past and future pain, suffering, disability and loss of enjoyment of life at $50,000.

Loss of future earning capacity

[83] The burden is on Mr. Pringle to prove that there is a real and substantial possibility that he will suffer a future loss of income by reason of his injuries; *Perren v. Lalari*, 2010 BCCA 140 at para. 32. The amount of the loss is determined by assessing its probability, bearing in mind that it is ultimately a question of what is fair and reasonable in the circumstances; *Grewal v. Naumann*, 2017 BCCA 158 at paras. 48-49.

[84] Mr. Pringle has not suffered any income loss to date. While the range of motion in his left wrist is limited, this limitation did not constrain his ability to work for Paramount Components in 2016 and 2017. He left Paramount Components following a disagreement with the owner, and found work with Ralph's Auto Recyclers, earning a higher hourly wage. He testified that his present employer likes him.

[85] I am not persuaded that there is a real and substantial possibility that Mr. Pringle will suffer a future loss of income by reason of his wrist injury. His claim for damages for loss of future earning capacity is not made out.

Aggravated and punitive damages

[86] Aggravated damages seek to compensate a plaintiff for high-handed, malicious, insulting or oppressive conduct of a defendant that has aggravated the injury suffered by the plaintiff; *Bob v. Bellerose*, 2003 BCCA 371 at paras. 26-32, leave to appeal to S.C.C. ref'd, [2003] S.C.C.A. No. 408 [*Bob*]. Aggravated damages can be awarded in a negligence case, although it is unusual; *Bob*; *Iachetta v. Ioannone*, 2005 BCSC 566 at paras. 65-74; *Morrow v. Outerbridge*, 2009 BCSC 433 at paras. 254-259. As Cory J. put it in *Hill v. Church of Scientology*, [1995] 2 S.C.R. 130 at para. 189 (quoted by Huddart J.A. in *Bob* at para. 31), they express the "natural indignation of right-thinking people" at the defendant's conduct.

[87] Punitive damages are awarded in exceptional cases, not to compensate the plaintiff, but to punish the defendant for "'malicious, oppressive and high-handed' misconduct that 'offends the court's sense of decency'" representing "a marked departure from ordinary standards of decent behaviour"; *Whiten v. Pilot Insurance Co.,* 2002 SCC 18 at para. 36, quoting *Hill v. Church of Scientology* at para. 196.

[88] I have found that Mr. Pringle and Mrs. Pringle were both at fault in the accident. I do not accept Mr. Pringle's dramatic account of his mother's conduct leading to the collision. The details of the events leading to the collision are murky. I am not persuaded that Mrs. Pringle's conduct in striking Mr. Pringle with her vehicle was high handed, malicious, insulting or oppressive. It did not represent a marked departure from ordinary standards of decent behaviour. Mrs. Pringle's conduct was not such as to require an additional award to fully compensate Mr. Pringle or to require a punitive award.

[89] Accordingly, I dismiss Mr. Pringle's claims for aggravated and punitive damages.

Disposition

[90] For these reasons, I assess Mr. Pringle's damages at $50,000 and order that the defendants are liable to pay Mr. Pringle 50% of his damages, or $25,000.

[91] Mr. Pringle has recovered judgment within the jurisdiction of the Small Claims Court (currently $35,000). In the ordinary course, pursuant to the *Supreme Court Civil Rules,* R. 14-1(10), he would not be entitled to costs, other than disbursements, "unless the court finds that there was sufficient reason for bringing the proceeding in the Supreme Court and so orders". Mr. Pringle may wish to apply for an order that he recover costs on the ground that there was sufficient reason to bring the proceeding in this Court rather than the Small Claims Court. Mr. Pringle or the defendants may wish to bring to my attention offers made pursuant to R. 9-1 and ask me to exercise my discretion pursuant to R. 9-1(5).

[92] If either party wishes to apply for an order concerning costs, they may schedule a hearing before me through the Registry at 9:00 a.m. on a regular sitting day. The parties should file their authorities and any written argument they wish to rely upon at least three days in advance of the hearing. Unless a hearing concerning costs is requested within 14 days of the issuance of these reasons for judgment, Mr. Pringle will recover only his disbursements.

"Gomery J."

_____

The Honourable Mr. Justice Gomery