

SUPERIOR COURT OF JUSTICE

B E T W E E N :

RONALD WATSON
JOYCE WATSON

Plaintiffs

-and-

SHEILA GAVIN
DAVID GAVIN

Defendants

E X C E R P T O F P R O C E E D I N G S
HEARD BEFORE THE HONOURABLE JUSTICE T. LOFCHIK
on January 16th, 2007, at HAMILTON, Ontario

APPEARANCES:

G. Swaye	Counsel for the Plaintiff
R. Hooper	Counsel for the Plaintiff
D. Reisler	Counsel for the Defendants

TUESDAY, JANUARY 16TH, 2007

...EXCERPT OF PROCEEDINGS.

5 THE COURT: I will deal with the motion brought by the
Defendants first. The Defendants seek an order that the
Plaintiff's injuries do not meet the exception outlined
in s.267(5) of the *Insurance Act* and judgment
10 dismissing the Plaintiff's claim for general damages
against the Defendant. This action arises from a motor
vehicle collision, which occurred on January 8th, 2003,
in which Ronald Watson suffered several injuries.

15 The injuries complained of by Ronald Watson include
severe right thumb sprain, facial burns from the
airbag, left wrist fracture and a back injury with pain
radiating into the right hip and pelvic area. There is
a claim that Ronald Watson's life, as a result of these
injuries, lifestyle as a result of the injuries was
impaired. There was evidence that he is not able to
push or pull objects on a consistent basis, nor is he
20 able to lift or carry objects over five to ten pounds.
There is evidence that he has not been able to carry on
with his flower and vegetable gardening activities and
the evidence was that the activities which he has
carried on, on a very limited basis, are essentially a
mere shadow of what he did prior to the accident of
25 2003. The rose garden is basically non-existent and the
vegetable garden consists of much fewer vegetables and
a much smaller operation than he was carrying on prior
to the accident.

30 There was also evidence that Ronald Watson has not
returned, in any way, to his pre-accident woodworking
hobby. He gave evidence that he has physical
difficulties with discomfort, aching and pain in his

5 left wrist and right thumb during attempts to carry on these woodworking activities, subsequent to the accident. There was also evidence that Mr. Watson enjoyed walking as a retirement activity, the long walks on the Rail Trail, which is near to his home. The evidence was that Mr. Watson is no longer able to do this type of walking and he can only walk one city block without low back and hip pain.

10 There was medical evidence that the low back and hip pain, as is the evidence of Dr. Dunlop, that the low back and hip pain was a result of the motor vehicle collision. There's further evidence that Mr. Watson was able to do his own snow shoveling and other winter activities and also that he provided help, in various handyman activities, including snow shoveling, to his neighbours. He has not returned to that activity for himself or his neighbours since the motor vehicle accident.

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20 There is also evidence that Mr. Watson suffers from post traumatic stress disorder, anxiety disorder, depressive disorder, frustration, lack of patience and vulnerability. It was his evidence that his emotional state and the evidence of Dr. Kaplan in that I believe his emotional state is such that he is extremely vulnerable for any crisis from a psychological point of view.

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30 The Court of Appeal in Meyer and Bright set out three questions to be answered when determining the statutory exemption provisions. Those questions were upheld as relevant with respect to Bill 59, which covers the case before this Court. The questions are as follows: has

5 the injured person sustained permanent impairment of a
physical, mental or psychological function? If so, is
the function, which is permanently impaired, an
important one? If so, is the impairment, of an
important function, serious? The Court of Appeal has
held that a person who can carry on their daily
activities but is subject to permanent symptoms, which
have a significant on their enjoyment of life, are
considered to have a serious and permanent impairment.
That's the decision of May v. Casola, [1998] O.J. No.
10 2475. Whether an impairment is serious or substantially
interferes with the regular activities of the Plaintiff
is a question of fact related to the circumstances of
each case.

15 I find that the Plaintiff has sustained an impairment
of an important psychological function as the result of
being injured. He is more psychologically fragile than
he was prior to the accident. However, I'm not
satisfied that the impairment is either permanent or
serious. The Plaintiff has responded well to
20 psychological treatment and while he takes medication
for depression and is perhaps vulnerable to stress, I
do not find that his functioning or lifestyle is
seriously impaired by this injury. I find that the
Plaintiff has sustained an impairment of an important
25 bodily function as the result of injuries to his left
wrist, thumb and lower back. I find that the impairment
is permanent. The impairment prevents the Plaintiff
from carrying on activities, which are important to
him, mainly woodworking, gardening, walking and helping
out his neighbours. While these are not important to
some people, they were a significant part of his life,
30 prior to the accident. I find that these activities are
significantly curtailed by his injuries. While one

might not be able to say which injury prevents him from doing what activity, the cumulative effect is to render him unable to do things which were important to him pre-accident and I find they are still important to him now but that he cannot do. That renders the impairment serious. I find therefore that the Plaintiff has brought himself within the exception set out in s.267(5) of the *Insurance Act* and the Defendants' motion is dismissed.

...END OF EXCERPT.

