

Publisher's Note

2018 — Release 7

Previous release was 2018-6

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Goldsmith

Damages for Personal Injury and Death — Digest Service

This service provides the most comprehensive and up-to-date collection of court decisions in which damages for personal injury or death have been awarded. It keeps subscribers abreast of the latest quantum of damages judgments and provides a wealth of cases upon which the researcher may draw.

What's New in this Update:

This release features new and updated case digests. The information in the Consumer Price Index tab has been updated. Two new memos have been added to the Issues in Focus tab: How are future losses of earnings characterized in a personal injury action? and What is the quantum of damages that has been awarded for loss of housekeeping capacity for leg/ankle injuries and/or back pain?

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Case Law Highlights

Plaintiff, a 41-year-old veterinary assistant, suffered injuries as a result of a violent broadside collision that injured two of plaintiff's sons and caused the death of her five-month-old son. Plaintiff was removed from her vehicle using the jaws of life. Plaintiff suffered soft tissue injuries to her neck, left leg, and lower back with orthopedic consequences. She suffered headache and pain in her back and leg. She was found to have suffered fractures in her lumbar spine. She was left with ongoing lower back pain and limitation that impacted all aspects of her life. She also suffered from anguish and grief, and significant emotional distress, as a result of the death of her son. Defendant was impaired at the time of the accident, and maintained a not guilty plea. Plaintiff had to make many court appearances, including participating in a jury trial. This was very stressful for plaintiff, continued over a period of four years, and resulted in the conviction of the impaired driving defendant. Plaintiff was diagnosed as suffering from persistent depressive disorder, major depressive disorder, and post-traumatic stress disorder. She had major severe depressive illness and PTSD. She continued to feel great guilt and self-hatred about the accident, as she was the driver of her vehicle. She second guessed herself. She had become more emotional, moody, impulsive, and quick-tempered. These conditions and plaintiff's ongoing lower back problems continued at the time of trial almost 10-years post-accident. Plaintiff suffered permanent serious impairments to important physical and/or psychological functions. The loss of her son was significant and would last over her entire life. Hockin (J.) awarded plaintiff general damages in the amount of \$145,000, as well as \$238,500 for loss of future earning capacity, \$130,000 for loss of care, guidance, and companionship for the death of her son, and \$10,000 for loss of housekeeping capacity.

Rodrigues v. Purtill

2018 CarswellOnt 10498, 2018 ONSC 3102 (Ont. S.C.J.)

Plaintiff, aged 31, suffered damages as a result of defamation. Plaintiff was an anti-deer-cull activist. Defendant was an advocate of the local deer cull. Plaintiff had been charged with mischief after destroying two deer traps, and pleaded guilty to a summary charge, but was given a conditional discharge. Thereafter the plaintiff's activism declined. Defendant later posted on the internet that plaintiff was convicted of tampering with and destroying deer traps, and was a convicted felon who had extreme positions on animal rights issues and should not be believed. When plaintiff learned of the posting he was shocked that defendant referred to him as a convicted felon when he received a conditional discharge. Plaintiff contacted defendant to take down his posting, but no action was taken. Plaintiff then retained counsel who

sent a letter to defendant, pointing out that plaintiff had never been convicted of a criminal offence and was not a convicted felon, and demanded that defendant publish an apology for that and for saying that plaintiff was not worthy of belief. Defendant agreed to apologize for saying that plaintiff was a convicted felon but insisted that this was an error in his interpretation of the law and was not defamatory. Defendant did not retract suggestions that plaintiff was not worthy of belief. Defendant intended to attack plaintiff's character and integrity and chose his words deliberately, and his words were defamatory. In terms of the impact on plaintiff's reputation, while defendant's defamatory post diminished plaintiff's reputation in the eyes of the community, it did not do so to the extent complained of by plaintiff, as his identity in the community prior to the post was a notorious one, characterised by his very public activism activities which included the guilty plea for mischief. Defendant's high-handed conduct warranted an award of aggravated damages. Plaintiff was awarded general damages for defamation in the amount of \$50,000, as well as \$25,000 aggravated damages. Originally digested in Goldsmith's Damages for Personal Injury and Death at §2017-53.19. The Court of Appeal (Bennett J.A., Harris J.A., and Hunter J.A. concurring) allowed defendant's appeal in part, finding that the trial judge erred in assessing damages in a way that resulted in double compensation, and in making an award for general damages that was inordinately high. Regarding the general damages award, the judge took into account irrelevant factors, failed to accord sufficient weight to relevant factors, and mischaracterized the significance of the evidence. The award was reduced from \$50,000 to \$25,000. The award for aggravated damages substantially amounted to compensating plaintiff for the same conduct as was compensated by the award for general damages, and the award was reduced to \$10,000.

Kazakoff v. Taft

2018 CarswellBC 1514, 2018 BCCA 241 (B.C. C.A.)

