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Publisher's Note

2021 — Release 4

Previous release was 2021-3

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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 an update to the section General Principles of Assessment as well as new and updated case digests.

The section General Principles of Assessment has been generally updated to include new commentary and case law. In addition, two new sections have been added to the first section on Non-Fatal Injuries. Under the subsection Items of General Damages, a new section on Aggravated Damages has been added and under the subsection Collateral Matters, a section called Duty to Mitigate has been added.

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Case Law Highlights

Plaintiff suffered mental distress as a result of wrongful denial of insurance benefits. Plaintiff had been diagnosed with major depressive disorder with anxious features. She took a medical leave from work at that time. Defendant, her short and long-term disability insurer, provided her with benefits coverage until she attempted a gradual return to work. By the time plaintiff was up to four days of work per week, but her treating psychiatrist advised that there had been a worsening of her depressive disorder and she should be maintained at three days per week. In spite of this, defendant terminated her benefits as of the date originally scheduled for her return to full-time work. Defendant's breach of the duty of good faith caused plaintiff mental distress that was in the reasonable contemplation of the parties. Defendant's approach to plaintiff's claim was neither balanced nor reasonable. Defendant's unbalanced approach caused plaintiff significant distress, leaving her feeling unacknowledged and unheard. She felt betrayed and felt that she was being accused of lying and malingering when her situation was real and really not debatable. Defendant's failure to acknowledge the seriousness of plaintiff's condition was particularly difficult for her. This occurred during a period of vulnerability, particularly for an insured person experiencing anxiety and depression. It was reasonably foreseeable that defendant's unbalanced conduct would cause plaintiff's heightened distress. For mental distress, O'Brien (J.) awarded plaintiff general damages in the amount of \$10,000.

Kardaras v. Sun Life Assurance Company of Canada

2020 CarswellOnt 12310 (Ont. S.C.J.)

Plaintiff, training to be a nurse, suffered injuries when her vehicle was struck from behind. Prior to the collision plaintiff suffered asymptomatic degenerative spinal changes and prior migraine headaches. As a result of the collision plaintiff suffered soft-tissue injuries to her neck, upper back, and lower back, and began to experience different and more frequent headaches than the migraine headaches she had previously suffered on a long-term basis. Her ongoing headaches were caused by the collision. Her symptoms impacted her ability to work and complete the hours required to further her qualifications. As a result of the impact of her symptoms on her life, plaintiff developed mood difficulties. While treatment and time lead to improvement, plaintiff's symptoms did not resolve. As a result of her ongoing symptoms, the range of employment options open to plaintiff, and consequently her marketability, would continue to be restricted. Holmes (H.) J.

awarded plaintiff general damages in the amount of \$80,000, as well as \$107,500 for loss of future earning capacity.

Kuras v. Repo

2014 CarswellBC 2541 (B.C. S.C.)

