COURT OF APPEAL FOR ONTARIO

CITATION: Jugmohan v. Royle, 2016 ONCA 827
DATE: 20161104
DOCKET: C60191

Blair, Epstein and Huscroft JJ.A.

BETWEEN

Mahadei Jugmohan

Plaintiff (Appellant)

and

Gordon Royle, Frank Naccarato and Ivan Bascom

Defendants (Respondents)

Steven Raphael, for the appellant

Mark Elkin and Nicholas Mester, for the respondents Gordon Royle and Frank Naccarato

Peter Yoo and Philip Pollack, for the respondent Ivon Bascom

Heard and released orally: November 1, 2016

On appeal from the judgment of Justice Stephen E. Firestone of the Superior Court of Justice, dated February 18, 2015.

ENDORSEMENT

[1] The appellant appeals the jury award of zero damages based on her action for damages allegedly sustained in a car accident and the trial judge's ruling that her claim for non-pecuniary loss is barred on the basis that her injuries do not fall

within the exceptions to statutory immunity provided for by the *Insurance Act*, R.S.O. 1990, c. I. 8.

[2] The appellant raises two main grounds of appeal.

[3] First, the appellant says the jury verdict is perverse as the evidence supported a finding that she suffered compensable damages as a result of the accident. This ground of appeal includes the appellant's argument that the trial judge erred by correcting his jury charge from his initial instructions, in which he expressed the view that an assessment of zero damages would not be appropriate, to an instruction that if the jury were to find that the accident did not cause any new injury, or exacerbation of any pre-existing injury, an award of zero damages would be available.

[4] We reject this first ground of appeal.

[5] The appellant's assertion that a properly instructed jury would have awarded damages cannot succeed. Although after the accident, the appellant underwent a right knee replacement and right shoulder rotator cuff repair, there was evidence that prior to the accident, she experienced osteoarthritis and generative changes in her right shoulder and right knee. There was expert evidence that the jury was entitled to accept that the appellant's post-accident difficulties were inevitable, given her prior conditions.

[6] The findings of a jury are entitled to great deference, particularly in cases such as this that depend largely on credibility. A jury verdict will not be set aside unless so plainly unreasonable and unjust as to satisfy the court that no jury reviewing the evidence as a whole and acting judicially could have reached it. On the evidence, it was open to this jury to conclude that the injuries that formed the basis of the appellant's claim were not caused by the accident and therefore that the appellant was not entitled to any damages.

[7] As to the correcting jury charge, although appellant's trial counsel initially objected to the proposed correction, he ultimately agreed to it after the trial judge reworded it to his satisfaction. The charge was clear. The members of the jury were not left with any misapprehension with respect to their duties or the principles to apply, in reaching their verdict.

[8] The disappointment that the appellant undoubtedly feels at the jury's verdict is understandable. However, her disappointment does not establish legal error or a perverse conclusion.

[9] With respect to the second ground of appeal, the appellant submits that the trial judge erred by disregarding relevant medical evidence that supported her position on the threshold motion and arrived at an unsupported conclusion. The appellant argues that the only expert evidence tendered in response to her

evidence was that of Dr. Cameron, who was demonstrably partisan and who based his opinion on a superficial review of the medical evidence.

[10] Again, we disagree.

[11] We do not accept the argument that the trial judge failed to consider material evidence. In his reasons, the trial judge made repeated reference to all of the evidence he heard at trial – evidence that he had an opportunity to weigh and from which he was entitled to make credibility findings. There was ample evidence upon which the trial judge could properly rely to find that the threshold was not met, particularly in the light of the jury award.

[12] Decisions of this nature are afforded the highest degree of deference and should not be interfered with absent palpable and overriding error. We find no reason to interfere.

[13] The appeal is therefore dismissed.

[14] The respondents, Royle and Naccarato, are entitled to their costs of the appeal, fixed in the amount of $10,000. Similarly, the respondent, Bascom, is entitled to his costs of the appeal, fixed in the amount of $10,000. Both amounts include disbursements and applicable taxes.