

ONTARIO

**SUPERIOR COURT OF JUSTICE
BETWEEN:**

Conceicao Loureiro)	
)	<i>Gary Mazin, Supriya Sharma, Vasiola</i>
)	<i>Bibolli, for the Plaintiff</i>
Plaintiff)	
)	
– and –)	
)	
Elaine L. Brown)	
)	<i>Jeremy Shaw, Vanessa De Sousa, for the</i>
Defendant)	Defendant
)	
)	
)	
)	
)	
)	HEARD: April 4, 2019
)	

2019 ONSC 2672 (CanLII)

REASONS FOR DECISION

J. E. FERGUSON J.:

[1] The plaintiff brings this action for damages arising from a motor vehicle accident (“the accident”) occurring on April 23rd, 2013. Liability for the accident was admitted. The trial was heard before a jury. The jury returned a verdict on April 5th, 2019 awarding \$50,000 for general damages. The statutory deductible amount for the relevant period of time is 38,818.97 leaving net general damages under consideration for judgment in the amount of \$11,181.03.

[2] That amount is only recoverable if the plaintiff meets her burden of proof that her injuries and impairments meet the threshold. I ruled that the plaintiff’s injuries met the threshold and dismissed the defendant’s motion. These are the reasons that follow.

[3] The plaintiff was also awarded healthcare expenses, past and future housekeeping and home maintenance costs.

[4] It is well settled in law that the plaintiff's injuries must surpass one of the thresholds set out in 267.5(5)(a) and (b) of the *Insurance Act* in order to recover an award of general damages. In this case, the injury must be "permanent, serious impairment of an important physical, mental or psychological function".

[5] The plaintiff must adduce specific evidence to establish that her injury meets the threshold from one or more physicians. There must be other evidence corroborating the physician's evidence.

[6] The starting point for any threshold analysis continues to come from the Court of Appeal's decision in *Meyer v. Bright*¹ ("*Meyer*"). In *Meyer* the framework was established for analyzing the threshold. There are three questions for the trial judge to consider:

- (1) has the injured person sustained a permanent impairment of a physical, mental or psychological function?
- (2) if yes, is the function with is permanently impaired an important one? and
- (3) if yes, is the impairment of an important function serious?

[7] The jury verdict is only one factor that the trial judge may consider when determining the threshold motion. A trial judge is not bound to the verdict coming to its ultimate conclusion regarding the threshold motion. In this case I heard the motion on April 4, 2019. I made my decision but did not provide counsel with that decision until April 5, 2019, after the jury rendered its verdict.

[8] In this case the larger claims were for housekeeping and home maintenance (past and future). The plaintiff is a traditional Portuguese housewife who before the accident did all of the housework and home maintenance both inside and outside of the house. This was confirmed by both her husband and daughter who testified that they were "spoiled" by her. Since the accident the plaintiff's ability to perform these functions has been dramatically changed. She cannot do most of these functions and some only on a limited basis.

[9] Although the plaintiff has worked part-time about two hours a day as a lunchroom supervisor with "kids" for about 20 years that is not what defined her. The plaintiff's primary role in life was that of a homemaker. She loved to look after her family. She took exceptional pride in caring for her home and the entire family including her husband, her two children, her parents and her in-laws. Being a homemaker was essentially her full-time job and is what provided meaning and purpose to her life.

[10] I accept the plaintiff's medical evidence provided by Dr. Abeyasinghe, Dr. Khan, Dr. Rockman and Dr. Getahun, and find that she injured her right wrist and right shoulder, has developed post-traumatic stress disorder, depression and anxiety as a result of the accident. Dr. Frank (for the accident benefit insurer) also found the plaintiff to have sustained mild PTSD and depression as a result of the accident. The plaintiff had no pre-existing physical or

¹ *Meyer v. Bright*, 1993 (ONCA) 3389.

psychological health problems. She has sustained permanent impairments of physical, mental and psychological functions which are all important and serious to her.

[11] I am aware that there are gaps in her medical treatment and that she has provided inconsistent complaints to various health practitioners. She is a poor historian. I accept that she is afraid of doctors. I am aware that she has not been compliant with her medication and treatment, specifically counselling. The jury reduced her damages because of a failure to mitigate. The plaintiff is both credible and reliable. I also accept the evidence from her husband and daughter who were also credible and reliable as to the change in her “entire being” following the accident.

J.E. Ferguson J.

Released: May 1, 2019

CITATION: Loureiro v. Brown, 2019 ONSC 2672
COURT FILE NO.: CV-14-00508925-0000
DATE: 20190429

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CONCEICAO LOUREIRO

Plaintiff

– and –

ELAINE L. BROWN

Defendant

REASONS FOR DECISION

J.E. Ferguson J.

Released: May 1, 2019