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DAMAGES FOR PERSONAL INJURY AND DEATH — DIGEST SERVICE

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Release No. 8, October 2026

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 in the following sections: § 6 Multiple Injuries, § 7 General (Head), § 8 Brain and Skull, § 9 Jaw, § 10 Teeth, § 16B Scars and Lacerations: Torso and Limbs, § 20 Hearing, § 26 Whiplash, § 27 Shoulder and Collar Bone, § 30 Pelvis, § 33 Abdominal Cavity, § 38 Elbow, § 42 Fingers and Thumbs, § 46 Knee, § 48 Ankle, § 49 Foot, § 52 Pre-Existing Disability or Condition, § 53 Traumatic Neurosis, § 53A Depression, § 53B Chronic Pain Syndrome and § 69 Sexual Offences.

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Case Law Highlights

Plaintiff, aged 30 and working part-time while taking classes for her master's degree, suffered injuries when her vehicle was struck from behind. Prior to the collision plaintiff suffered from multiple significant health issues, including a longstanding history of anxiety, depressive, and post-traumatic symptoms which required counselling and medical management, migraine headaches, congenital kidney problems, interstitial cystitis, endometriosis, as well as a possible cervical spine herniation. As a result of the collision plaintiff suffered soft tissue injuries to her neck and back which left her with ongoing pain, and ongoing cervicogenic headaches. It was not established that plaintiff suffered a brain injury in the collision, and any complaints of perceived cognitive changes were due to chronic pain and mental health issues. Plaintiff's headaches were also likely aggravated due to her overuse of over-the-counter medications. Initial difficulties with balance had now largely resolved. While her pre-existing anxiety and depression were worsened as a result of the collision, she would likely have experienced some mental health difficulties in the future, including anxiety and depressive symptoms, regardless of the collision. Plaintiff did develop an adjustment disorder and a somatic symptom disorder as a result of the collision. Psychological factors, including kinesiophobia and catastrophizing, magnified and distorted plaintiff's experience of chronic pain. Her mental health conditions, including the adjustment disorder, somatic symptom disorder, anxiety, and depressive symptoms, featured prominently in her ongoing perception of her disability. While plaintiff's symptoms continued to cause her loss of enjoyment of life and impact her capacity to earn income, her pre-existing conditions would have continued to have some impact on her regardless of the collision, and there were multiple promising treatment opportunities available that could result in further improvement in her symptoms, and these factors were considered in assessing plaintiff's damages. Douglas J. awarded plaintiff general damages in the amount of \$125,000, as well as \$260,000 for loss of future earning capacity, and \$34,110 for cost of future care. [Originally digested in Goldsmith's Damages for Personal Injury and Death at § 2025-26.39, § 2025-52.13, and § 2025-53.55.] The Court of Appeal (Abrioux J.A., Gomery J.A., MacNaughton J.A. concurring) allowed plaintiff's appeal in part, increasing the award for loss of future earning capacity from \$260,000 to \$347,000. The plaintiff failed to establish that the trial judge erred in conclusions regarding the impact of plaintiff's pre-existing conditions, in improperly considering the severity of the collision when assessing plaintiff's injuries, in failing to award special damages, or in applying contingency reductions to several heads of damages.

Rathwell v. Shorey, 2026 CarswellBC 2515 (B.C. C.A.)

Plaintiff, a Ph.D. student aged 43 at the time of the incident and 65 at the time of trial, suffered injuries as the result of an assault. Plaintiff was riding a bus when he noticed noisy, alcohol-smelling minors, the defendants. One of them directed a homophobic slur at plaintiff when plaintiff inadvertently touched the teenager's knee. As he exited the bus, one of the defendants pushed plaintiff out. The three defendants punched plaintiff in the face and, when plaintiff was on the ground, in the stomach. Plaintiff suffered from post-concussion syndrome and chronic persistent pain syndrome. Twenty-two years post-accident, plaintiff still suffered chronic tension headaches, neck pain and thoracic and lumbar

spinal pain. He was diagnosed with post-traumatic stress disorder, depression, anxiety and a cognitive deficit. The numerous treatments that plaintiff underwent, and various medications he took, did not alleviate his symptoms. His permanent functional limitation due to psychiatric impairment was assessed at 15 percent. He was agitated, reclusive, stressed and fearful. He significantly reduced his athletic and leisure activities after the vicious assault. After a one-year leave from his studies, plaintiff withdrew from the PhD programme. He presently worked part-time as a freelance translator. The disability due to the injuries he had sustained 22 years prior was not physically apparent but nonetheless affected his life. The trial judge awarded non-pecuniary damages of \$80,000, as well as punitive damages of \$20,000. [Originally digested in Goldsmith's Damages for Personal Injury and Death at § 2024-9.4, § 2024-53.104, and § 2024-53B.37.] On plaintiff's appeal, the Court of Appeal (Andres C. Garin J.C.A., Michel Beaupré J.C.A., Peter Kalichman J.C.A.) found that the trial judge's failure to award any pecuniary damages constituted an error at law. The assault impaired plaintiff's ability to work full-time. The Court estimated that plaintiff could have earned 20% more than the \$663,744 he earned between 2003 and 2017. The Court allowed the appeal in part and awarded plaintiff \$132,750 in pecuniary damages, representing the 20% increase in his freelance revenue. Other awards were left undisturbed.

Barnard c. Zilic, 2026 CarswellQue 6017 (C.A. Que.)