

CITATION: Campbell v. Julta, 2007 ONCA 866
DATE: 20071210
DOCKET: C45633

COURT OF APPEAL FOR ONTARIO

CRONK, BLAIR and LaFORME JJ.A.

BETWEEN:

MELLONEY MARLENE CAMPBELL

Plaintiff (Appellant)

and

MANPREET JULTA, also known as MANPREET JUTLA

Defendant (Respondent)

Alfred M. Kwinter, for the appellant

Chris G. Paliare and Andrew K. Lokan, for the respondent

Heard and released orally: November 29, 2007

On appeal from the judgment of Justice J.R. Sproat of the Superior Court of Justice, sitting with a jury, dated June 16, 2006.

ENDORSEMENT

[1] The appellant appeals the jury's damages award in a civil case involving personal injuries arising out of a motor vehicle accident. She argues that the jury's rejection of her claim that the accident in question materially contributed to her condition at the time of trial flowed from the trial judge's failure to instruct the jury regarding the meaning of "material" contribution and that this non-direction led to a miscarriage of justice.

[2] We do not agree that the trial judge's charge on causation was deficient. When that instruction is read as a whole, we are satisfied that this jury would have understood that if it accepted the appellant's case regarding the onset, nature and duration of her injuries, the respondent should be held fully liable for her damages.

[3] However, the defence theory of the case was that the appellant's condition by the time of trial, including the fibromyalgia, if any, that she and some of her physicians believed she suffered, could have been caused by factors other than the 1999 accident. There was evidence at trial to support this contention. In particular, this was expressly confirmed by the appellant's own medical expert on fibromyalgia, Dr. Saul, under cross-examination.

[4] The jury clearly accepted the defence theory and concluded that the appellant had not met her burden of establishing that the respondent, by his conduct, was responsible for the full injuries from which she continued to suffer by the time of trial. It was open to the jury to reach this conclusion on this record. This does not mean that the jury failed to appreciate its task or that the trial judge's charge was flawed.

[5] We also note that the challenged instruction, indeed the entire charge, was reviewed by the trial judge with counsel before its delivery. The appellant's counsel made no objection at trial to this aspect of the charge at any time.

[6] Finally, although the trial judge's conclusions in his ruling on the defence threshold motion differed from those apparently reached by the jury, the trial judge's factual findings in his ruling, including those on causation, were in no way binding on the jury.

[7] In the end, we see no basis for appellate intervention with the jury's damages awards.

[8] Accordingly, the appeal is dismissed. The respondent is entitled to his costs of the appeal, fixed in the total amount of \$12,500, inclusive of disbursements and G.S.T.

"E.A. Cronk J.A."

"R.A. Blair J.A."

"H.S. LaForme J.A."