

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: GISELA IMBROGNO, Plaintiff

AND:

PEDRO ANTONIO GONZALEZ and RODRIGO GONZALEZ, Defendants

BEFORE: Justice V. Christie

COUNSEL: Surina Sud, Counsel for the Defendants
Michael Hanton, Counsel for the Plaintiff

HEARD: October 24, 2019

DECISION: October 25, 2019

ENDORSEMENT

[1] This motion is brought in an action arising from a motor vehicle accident that occurred on or about April 21, 2016. Liability is still an issue in this case. However, it would appear that there is no real question as to how this accident happened. Pedro Gonzalez was driving behind Gisela Imbrogno and his vehicle rear ended her vehicle. While liability is still a live issue, as there have been no admissions in this regard, it does not appear to be a big hurdle for the plaintiff to get over. The crucial and more significant issue in the case is causation. The plaintiff pleads that she has sustained permanent and serious impairments of physical, mental and psychological functions as well as sustained chronic pain, depression and anxiety as a direct result of the subject accident. At the examination for discovery, it was discovered that the plaintiff was involved in a motor vehicle accident in 1999 and that she never returned to work again following this accident. There were many medical issues that flowed from that 1999 accident including Fibromyalgia, panic attacks and depression, for which she sought medical attention in 2013, 2014, 2015 and 2016. The plaintiff suggested at the examination for discovery that she currently experiences anxiety to the same degree that she did years ago.

[2] It is in this context that the defendants request the plaintiff be ordered to answer or provide items refused at the examination for discovery. Also, the plaintiff requests two things refused at the discovery of the defendant. I will first deal with the defendant's requests.

- (1) Statement of Claim – the defendant merely asks to know whether a statement of claim was issued. This is certainly not an onerous request. Comments made in that statement of claim may go to whether the plaintiff falls into the category of thin-skull or crumbling-skull, and therefore this is relevant to damages as a result of injuries claimed.

- (2) Nature of the plaintiff's work in 1999 and whether her failure to return to work was due to the 1999 motor vehicle accident – This is again not an onerous request. Even though there is no claim for loss of income, this is still relevant to her current claim for a loss of housekeeping, depending on the nature of her previous employment.
- (3) Medical records from 1999 to 2016 – This information would seem to be essential to a determination of “thin-skull or “crumbling skull” issues. The plaintiff claims that the only thing relevant is her circumstances at the time of the accident in 2016 and that 3 years of prior records provides enough information to assess the trajectory of her medical condition. I do not agree. If the injuries suffered from the 1999 accident make the plaintiff more prone or susceptible to some medical condition currently suffered, this is relevant. The defendant has agreed to bear the cost of obtaining these records. The trier of fact will not be overwhelmed by this evidence as counsel will determine what is necessary for trier of fact to see. Frankly these records could be beneficial to either side.
- (4) Medical/Legal reports – The same rationale applies as that in number 3 above. Further there is no privilege that exists any longer, pursuant to *Blank v. Canada (Minister of Justice)*, [2006] 2 S.C.R. 319, 2006 SCC 39
- (5) Future med/rehab and housekeeping – This is relevant in order to ensure no double compensation.

- [3] In summary, all items sought by the defendants are to be provided or answered, as soon as reasonably possible.
- [4] As for the plaintiff's request, as liability is still an issue, even though likely not a difficult hurdle, the cell phone records should be produced. These are ordered produced as soon as available. As for writing to the insurer client to request surveillance, Ms. Sud is not aware of any surveillance and would have produced it if it existed and will produce it if it exists in the future. If this is the case, then clearly it is relevant and Ms. Sud should make the enquiries sought immediately.
- [5] As for Costs, if the parties do not agree, written submissions of no more than 3 pages are to be provided to the court no later than November 1, 2019.



Justice V. Christie

Date of Endorsement: October 25, 2019
Date of Release: November 5, 2019