

Trainor v DeArcos, 2024 NBKB 158: When Mental Health Amplifies Physical Injury

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Near the end of 2024, the New Brunswick Court of King's Bench delivered the ruling in *Trainor v DeArcos*, 2024 NBKB 158, which provides interesting insights into the assessment of causation and damages in a personal injury claim.

This decision addresses several concepts that are prevalent in personal injury/insurance defence cases, including causation in fact, causation in law, psychological injuries, credibility issues, and the doctrines of Crumbling Skull and Thin Skull.

This article provides an overview of the case and the Court's decision as it currently stands. While the conclusions of the Court reflect the Judge's interpretation of the facts and law, readers should note that an appeal has been filed, and the matter may undergo further review.

It is also noted that this decision has been the subject of some discussion amongst the bar, not only with respect to the eventual conclusion of the Court, but also regarding the application of the facts to principles of law, and the analysis related to same. The legal landscape surrounding this case will likely continue to evolve as the appeal progresses.

The following reflects a summary of the Judge's decision, with some editorial comments by the authors.

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On March 27, 2014, the 20-year-old plaintiff, Meghan Trainor, was involved in a motor vehicle accident near Moncton, New Brunswick. The accident occurred when a truck collided with her mother's vehicle in which she was passenger.

The physical injuries suffered by the plaintiff included a bruised and sore chest [resolved within three weeks], hairline fracture of the left hand [fully healed], and a broken heel bone. The plaintiff also claimed to have developed chronic pain and post-traumatic stress disorder as a result of the accident.

The defendant driver admitted liability for the accident, but disputed causation and damages. It was acknowledged by the defendant that the plaintiff had suffered some injuries, but the defendant denied that the accident was the cause of all of the injuries.

At trial, the Court examined whether the accident caused the plaintiff's injuries and whether she was entitled to indemnification for her damages. There were 15 witnesses who provided testimony, which included 10 qualified as Experts.

In determining the issue of causation, the Court compiled a pre-accident profile and post-accident profile of the plaintiff. This was based on both witness testimony and documentary evidence, such as medical records.

With respect to the pre-accident profile, the Court noted that the plaintiff had previously undergone surgery [femoral derotational osteotomy] on her left leg to treat femoral anteversion, and had recovered well from this treatment prior to the subject accident. Significantly, she had also faced psychological challenges, including depression, anxiety and borderline personality disorder, but was reportedly improving prior to the accident. Based on the testimonies provided by the various Experts, the Court accepted that the plaintiff had been “on a path to remission” as it related to her psychological condition, though also concluded that her psychological condition at the time of the accident made her particularly vulnerable.

The plaintiff’s post-accident profile revealed a complex combination of physical and mental health challenges, which had reportedly worsened over time since the accident. On the physical aspect, the plaintiff claimed to have developed widespread chronic pain, and admitted to having self-diagnosed fibromyalgia. Although the condition of fibromyalgia was referenced in the medical records, there was never a formal diagnosis of same by an appropriate Specialist. The plaintiff also developed *TMD* [temporomandibular disorder], post-accident, and the Court accepted that the root of this condition was the chronic pain [and associated grinding of teeth], from which the plaintiff was suffering.

Additionally, it was noted by the Court that, post-accident, the plaintiff underwent a femoral derotational osteotomy on her right leg. The medical evidence reflected that this surgery was on the horizon, pre-accident, and would have occurred eventually, however, the accident and consequential modification of the plaintiff’s gait required that this surgery be performed sooner.

Further, post-accident, the plaintiff reportedly continued to struggle with mental health issues, which were allegedly exacerbated by the chronic pain.

Overall, the plaintiff claimed that her accident-related injuries had resulted in persistent physical and mental health issues, severely limiting her ability to work, engage in daily activities, and maintain independence.

Law - Causation

It was confirmed by the Court that it was the plaintiff who bore the onus of proving on a balance of probabilities that the accident had caused or contributed to the injuries for which she sought compensation.

There are two aspects to the causation analysis: 1) causation in fact; and 2) causation in law. ‘Causation in fact’ engages the well-known “but for” test, and refers to establishing that the accident was the cause of the injuries. ‘Causation in law’ engages the legal doctrine of remoteness, and refers to establishing that the injuries were a reasonably foreseeable consequence of the accident. More specifically with respect to compensation for psychiatric injury, whether it was reasonably foreseeable that the conduct would result in injury to a person of “ordinary fortitude.”

The Court also referred to the principles enunciated in the well-known Supreme Court of Canada decision *Saadati v Moorhead*, 2017 SCC 28, in which various safeguards were implemented by the Supreme Court of Canada in view of ensuring that unmeritorious claims of mental injury do not proceed to indemnification. These safeguards include a robust approach to the causation analysis, as well as an assessment of the plaintiff’s credibility.

Analysis - Causation in Fact

It was concluded that factual causation had been established with respect to the physical injuries of a broken heel, bruised chest and hairline fracture of the left hand. Further, it was indicated that the medical evidence supported the conclusion that the plaintiff suffered from post-traumatic stress disorder as a result of the accident.

The Court was also satisfied that the chronic pain, *TMD*, and additional surgeries on the plaintiff’s right leg were sufficiently linked to the accident through the “but for” test. Specifically, that these injuries formed part of a causal chain sufficient to meet the threshold for causation in fact.

Analysis - Causation in Law

Having determined that the various physical injuries and the post-traumatic stress disorder were a direct result of the accident, [causation in fact], the Court confirmed that these injuries were not too remote to warrant recovery.

However, interestingly, it was concluded that the widespread chronic pain, *TMD*, and surgeries on the plaintiff’s right leg were not a reasonably foreseeable consequence of the accident, and were too remote within the causation at law analysis to warrant recovery.

On the chronic pain aspect, it was specifically highlighted that the plaintiff’s pre-existing psychological conditions escalated the pain from the plaintiff’s physical injuries to an unforeseen level of injury.

With respect to the plaintiff's credibility, the Court found that there was sufficient medical evidence, noted to be "ample and convincing", supporting her claims. The following was concluded at paragraph 289: "The Court sees no reason to doubt that Meghan is afflicted by chronic pain; a pain that stems, at its root, from pre-existing psychiatric conditions and which was not caused at law by the accident."

Damages

Although the Court concluded that the chronic pain, *TMD* and additional surgeries were caused in fact by the accident, but not caused in law by the accident, the alternative possibility that these injuries were caused in law by the accident was also assessed.

In this regard, the Court considered the doctrines of Thin Skull and Crumbling Skull, which have been articulated and applied in numerous cases. These two doctrines were summarized by the Judge as follows:

- Thin Skull Doctrine: The defendant 'takes the plaintiff as they find them', with their weaknesses and predispositions, and is liable even if the plaintiff's injuries are more severe than expected due to an existing, but stable, condition.
- Crumbling Skull Doctrine: The defendant need not compensate the plaintiff for the effects of an unstable pre-existing condition, which they would have experienced in any event. In such a case, the defendant is liable for the additional damage, but not the pre-existing damage.

In applying these articulations of the two concepts, the Judge concluded that the plaintiff did not have weaknesses or predispositions, which would have engaged the Thin Skull doctrine.

Rather, the Court was of the view that the plaintiff had pre-existing psychological conditions that made her more vulnerable to pain, thereby engaging the Crumbling Skull doctrine. Specifically, the Court found that the plaintiff had an acute reaction to localized pain, which caused "unusual and extreme continued impairment", due to the pre-existing psychological conditions. The Court was satisfied that the pre-existing mental health conditions would have affected the plaintiff's overall health and employability in the future.

With respect to the right leg issue, the Judge again stated having been satisfied that this pre-existing condition would have affected the plaintiff's overall health in the future.

In summary, it was concluded that the defendant was not liable for any damages arising from the chronic pain, *TMD* and additional surgeries on the right leg. The decision does not address the *TMD* issue in detail in this part of the analysis, however, we note that this was elsewhere determined to be directly related to the chronic pain, which the Judge held was caused by pre-existing psychological conditions, and not any physiological cause.

The following amounts were awarded to the plaintiff:

- General damages: \$150,000
- Past loss of housekeeping capacity: \$20,929.11
- Future cost of care: \$53,959.54
- Past loss of earnings: \$100,000

Total: \$324,888.65

As a final comment, we note that foreseeability is a major factor to be considered in assessing the application of the Thin Skull doctrine – whether or not the injury is greater than one would have expected, the question remains foreseeability. With respect to the Crumbling Skull doctrine, a critical consideration is whether the condition was degenerative. A condition may be stable, but still degenerative. The analysis and conclusion in *Trainor v. DeArcos* may present as challenging to reconcile with these points. We await further direction from the Court of Appeal.

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