

 **Chahal v. Sandhu**

British Columbia Judgments

British Columbia Supreme Court

R.W. Jenkins J.

Heard: May 28, 2020 (Defendant's written
submissions); June 1, 2020
(Plaintiff's written submissions).

Judgment: June 12, 2020.

Docket: M210928

Registry: New Westminster

[2020] B.C.J. No. 956 | 2020 BCSC 879

Between Anchaljit Kaur Chahal, Plaintiff, and Jagdeep Singh Sandhu and Newton-Whalley Hi
Way Taxi Ltd., Defendants

(15 paras.)

Counsel

Counsel for the Plaintiff: B. Yu.

Counsel for the Defendants: H.S. Rehlan.

Reasons for Judgment Defence Application for Further Independent Medical Examination

R.W. JENKINS J.

1 The defendant in this motor vehicle action seeks an order that the plaintiff attend before Dr. Khan, a physiatrist, on July 24, 2020, for the purposes of an independent medical examination (an "IME"). Defence counsel secured the July 24, 2020 appointment on April 30, 2020.

2 In the Notice of Civil Claim, the plaintiff claims the following injuries:

- a) Concussion;
- b) Injury to the head;
- c) Injury to the right shoulder;
- d) Injury to the right leg;
- e) Injury to the right foot;
- f) The effect of such injuries upon the plaintiff, including but not limited to headaches, fatigue, dizziness, sleeplessness, nausea and other physiological, psychological and emotional injuries.

3 Previously, in February 2020, the defendant had secured an IME for the plaintiff with Dr. Kemble, a neurologist, for June 11, 2020, seeking opinions on the plaintiff's neurological injuries and treatment. The instructions to Dr. Kemble by counsel for the defendant were "to provide to me your expert opinion concerning diagnosis, prognosis, causation, with respect to neurological injuries".

4 The request by the defendants for an IME with Dr. Khan was delivered to counsel for the plaintiff on May 7, 2020.

5 On May 11, 2020, counsel for the plaintiff replied to counsel for the defendants by email stating:

the defence already has an outstanding appointment with Dr. Prout, a neurologist (later corrected to refer to Dr. Kemble). The appointment is scheduled in the future and we do not have the report yet. We do not know if Dr. [Kemble] is going to comment on Ms. Chahal's physical symptoms, which is the same area a physiatrist would comment on. In my view, there is a substantial overlap between the two specialties, and there is a risk of a duplicative opinion . . . In my view, the defence already has an IME that could comment on Ms. Chahal's physical symptoms.

(underlining added)

6 On the same day, counsel for the defence responded by email stating Dr. Kemble, a neurologist, would better "be able to comment on head injuries and treatment whereas Dr. Khan, a physiatrist, would be in a better position to comment on other injuries and treatment, as well as disability".

7 Finally, on May 12, 2020, counsel for the plaintiff responded with an email to defence counsel

stating:

Thanks for your email. Unfortunately, it did not address my concern that Dr. Kemble's DME may very well address musculoskeletal complaints that Dr. Khan's IME is intended to address. My position is that without Dr. Kemble's report, Dr. Khan's IME is premature.

8 When the Notice of Application for the IME with Dr. Khan was issued on May 25, 2020, Dr. Kemble had not yet conducted an IME on the plaintiff.

9 A five day trial of this action is set to commence on November 6, 2020, and the 84-day time period before trial, by which time expert reports are to be exchanged, is August 24, 2020.

10 Both counsel rely upon the decision of *Tran v. Abbott*, 2018 BCCA 365, which included the following passages:

32. In my view, it is well-established that the purpose of an IME is to put the parties on an equal footing with respect to the medical evidence, and Rule 7-6 specifically contemplates more than one IME: *Wright v. Sun Life Assurance Company of Canada*, 2014 BCCA 309 at para. 31.

33. Multiple examinations may be appropriate and necessary where a variety of injuries are alleged, or the etiology of illness is not straightforward. In exercising its discretion on an application pursuant to Rule 7-6, the court must consider the effect of refusing the order sought on the conduct of the trial.

11 The gist of the objection by counsel for the plaintiff is that the defence has already retained and instructed Dr. Kemble to carry out an IME relating to the neurological injuries which the plaintiff has suffered. His concern is that the opinion of Dr. Kemble "could" comment on Ms. Chahal's physical symptoms. That examination has not been carried out and there obviously is no report available from Dr. Kemble. It may be that comments by Dr. Kemble in the future could comment on the plaintiff's physical systems as they may relate to her nervous system.

12 Looking at the plaintiff's injuries alleged in the Notice of Civil Claim, the concussion and injury to the head are distinct from the physical injuries to the plaintiff's right shoulder, leg and foot. A neurologist could comment on the etiology of the head injuries and may comment on the physical injuries claimed by the plaintiff. A physiatrist would be qualified to opine on the soft tissue injuries to the plaintiff's right shoulder, leg and foot and any rehabilitation required for those injuries.

13 If either Dr. Kemble or Dr. Khan provide written reports commenting on issues which the plaintiff submits are outside the scope of their expertise, it is open to counsel to object and the admissibility of the opinion could be addressed by the trial judge or the trial judge may admit the opinion and assess the same in terms of weight.

14 In these circumstances, I find that with the variety of injuries alleged, it is appropriate to order a further IME and that the plaintiff attend for the purposes of an IME with Dr. Khan on July 24, 2020.

15 As the defendants have been successful on this application, I order the plaintiff pay the defendants' costs of this application in any event of the cause. Costs will be on Scale B.

R.W. JENKINS J.

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