Court Takes Issue with Defence Medical Experts Who Derived Bulk of Their Income from Defence Work

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In Ontario, a plaintiff claiming damages arising from a motor vehicle accident ("MVA") must satisfy the statutory threshold in accordance with section 267.5(5) of the *Insurance Act* (the "Act"). Briefly, pursuant to the Act, a plaintiff must demonstrate that he or she has sustained a "permanent and serious impairment of an important physical, mental or psychological function" in order to recover either general damages or health care expenses.

The recent decision of *Mamado v. Fridson*, decided by Justice Baltman of the Ontario Superior Court, provides insight in relation to the Court's analysis of the statutory threshold.

Mamado v. Fridson involved an MVA which occurred on November 1, 2010. Following the MVA, it was the plaintiff's evidence that as a result of her injuries she was unable to resume her post-secondary studies or return to any form of gainful employment. Medical experts retained by counsel for the plaintiff provided evidence that the plaintiff's impairments, which related mainly to chronic pain, sprain and strain of the spine, stress and depression, satisfied the statutory threshold.

Following the trial of the action, the defendant brought a "threshold motion", alleging the plaintiff had not demonstrated that her injuries met the criteria of the threshold. In support of this position, the defendant relied upon the evidence of two medical experts, a psychiatrist and physiatrist. The Court determined that, in their evidence, neither of the defence experts had addressed the question of whether the plaintiff's injuries met the statutory threshold and, further, both had provided evidence that was, overall, determined to be supportive of the plaintiff's claim. In the Court's decision, Baltman J. further expressed concern with the fact that the majority of annual income for both of the defendant's experts was derived from conducting medical-legal work for defendants, stating:

Even though half of [the defence medical expert's], time and two-thirds of his annual income (of approximately $400,000) is devoted to medical-legal work for defendants, he insisted that does not influence him "in any way"; and

[The defence medical expert], appeared indignant when it was revealed that out of her income last year, which was in the range of $450,000 - $470,000, the majority came from assessments for defence lawyers and insurance companies. (She has never testified on behalf of a plaintiff, except on one occasion when the plaintiff also happened to be her patient). Incredibly, she is of the view that she can be seen as entirely neutral no matter to whom she owes much of her livelihood.[1]

In reaching the Court's decision, Baltman J. identified this evidence as one of several factors which evidenced a “serious flaw” in the defendant's expert evidence and ultimately found the plaintiff's injuries met the threshold. The defendant's motion was denied.

[1] 2016 ONSC 4080 (CanLII) at para. 28

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