

Personal Injury

Defendant liable for plaintiff jumping out of bus

By **Brian Sunohara**



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(November 7, 2019, 9:24 AM EST) -- In *Little v. Floyd Sinton Limited* 2019 ONCA 865, the plaintiff was largely successful in an appeal involving an incident where the plaintiff jumped out of the back of a moving school bus.

Background

At the time of the incident, the plaintiff was 13 years old and in grade 8. On the last day of school, she decided to jump from the back of the school bus as it approached her stop. This was in keeping with an informal tradition that had evolved among the graduating grade 8 students at her school.

After jumping out of the bus, the plaintiff fell and hit her head. She sustained a catastrophic head injury and will likely never be able to work or live independently.

At trial, the school bus company was found 75 per cent liable and the plaintiff was found 25 per cent contributory negligent.

There was evidence of the school bus company knowing of previous incidents of students jumping from the school bus. However, contrary to the school bus company's own handbook, these incidents were not reported to the school.

The principal of the school testified that, had these incidents been reported, proactive steps to curtail such activity would have been taken.

After the reduction for contributory negligence, the plaintiff was awarded damages of just over \$7 million.

Causation

On appeal, the defendant argued that the trial judge misdirected the jury on the law of causation.

The Court of Appeal rejected this argument, noting that the question on appellate review is whether the charge provided the jury with adequate assistance to determine the questions it had to decide.

The court held that the trial judge properly explained the law and summarized the parties' respective positions. In addition, there was ample evidence to support the jury's verdict and apportionment of liability.

Mitigation

The defendant also argued that the trial judge erred by stating that, as a matter of law, the jury could not reduce the plaintiff's damages for a failure to mitigate.

At trial, the defendant had submitted that the plaintiff failed to follow medical recommendations regarding continuing psychiatric treatment and residing in a supervised group home. The trial judge stated that the plaintiff could not be held responsible for these decisions as she was not capable of

making decisions concerning her treatment.

The Court of Appeal agreed with the defendant's argument in this regard, stating that the plaintiff's incapacity did not excuse her, as a matter of law, from mitigating her damages. The issue of mitigation should have been determined by the jury.

However, the court indicated that this error did not affect the result because the defendant did not meet its onus of proving that any delay in obtaining further psychiatric treatment or residing in a group home would have changed the plaintiff's prognosis of disability or reduced her damages.

Collateral benefits

Lastly, the defendant argued that the trial judge erred in failing to deduct the past statutory accident benefits received by the plaintiff. Through inadvertence, trial counsel for the defendant did not notice this omission in the formal judgment.

The defendant's counsel on appeal sought to file fresh evidence explaining the inadvertence. In response, the plaintiff's lawyer sought to file evidence that the parties agreed that past statutory accident benefits would not be deducted because past damages would not be claimed by the plaintiff.

The Court of Appeal remitted this issue to the Superior Court of Justice for determination.

Conclusion

It is very difficult to overturn a jury's verdict. As noted by the Court of Appeal, the standard of appellate review of civil jury verdicts is exceptionally high.

One of the lessons from this case is that even if a plaintiff engages in a dangerous act, such as jumping out of a moving bus, a defendant can be found liable if it knew, or ought to have known, that such an incident could take place and failed to take proper steps to prevent the incident.

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