



No. B841989
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WANDA GRACE McEVOY also known as
WANDA GRACE EWEN, PATRICK JAMES
McEVOY, KELLY LYNN McEVOY, an infant
by her Guardian Ad Litem WANDA GRACE
McEVOY also known as
WANDA GRACE EWEN

PLAINTIFFS

AND:

FORD MOTOR COMPANY, FORD MOTOR
COMPANY OF CANADA LIMITED, and
CAPITAL MOTORS
(POUCE COUPE B.C.) LTD.

DEFENDANTS

AND:

FORD MOTOR COMPANY
FORD MOTOR COMPANY OF CANADA
LIMITED

THIRD PARTIES

SUPPLEMENTARY

REASONS FOR JUDGMENT

OF THE HONOURABLE

MR. JUSTICE HINDS

Counsel for the Plaintiffs

John N. Laxton, Esq., Q.C.
Joseph M. Prodor, Esq.
R.D. Gibbens, Esq.

Counsel for the Defendants
Ford Motor Company, Ford Motor Company
of Canada Limited, and for the
Third Parties

David A. Hobbs, Esq.

Place and dates of application:

Vancouver, B.C.
November 14th and 21st, 1989

On September 6th, 1989, lengthy written Reasons for Judgment were issued. On page 42 the following, inter alia, was stated:

- a) Wanda McEvoy will have judgment against Ford and Ford Canada for 65% of the following:
- (1) the award for past loss of support of \$185,000.00 plus court order interest thereon calculated from October 2nd, 1978, to the date hereof, at the Registrar's rates for non-pecuniary damages.

...

- b) Wanda McEvoy shall be entitled to interest at 8% per annum on 65% of the award for future loss of support, the tax gross-up, and the investment counselling fee (all of which total \$169,000.00) in the event that the payment of 65% of \$169,000.00 is not made within 30 days of the date hereof. The interest would run from the date hereof to the date of ultimate payment.

Counsel for the Defendants applied in October, 1989, for determination of the proper method for the calculation of pre-judgment interest under paragraph a) (1), above set forth, and for clarification of the terms of paragraph b) above set forth. Counsel for the Plaintiffs applied for an order that costs be awarded to the Plaintiff on a solicitor and client basis rather than on a party and party basis.

Due to my involvement in other trials I heard counsel briefly on the early mornings of November 14th and November 21st concerning the applications of counsel for the Defendants. I agreed to give rulings thereon as quickly as possible. The application of counsel for the Plaintiffs regarding costs was adjourned for hearing at a later date.

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3 Counsel confirmed that no formal order reflecting the "Summary" of
4 my Reasons for Judgment, set forth on pages 42 and 43 thereof, has been
5 entered. They agreed that I had jurisdiction to resolve the matters raised in the
6 Defendant's application. The matter of calculation of pre-judgment interest on
7 the award for past loss of support and the rate of interest stipulated in paragraph
8 b) of my Summary (8% per annum) had not been the subject of comment in the
9 lengthy submissions of counsel delivered at the end of the trial in the last days of
10 June 1989.

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12 The major issue to be determined is whether, in an action brought
13 under the provisions of the Family Compensation Act R.S.B.C. 1979 c.120, an
14 award made for past loss of support falls within the meaning of the words
15 "special damages", as those words are used in section 1(2) of the Court Order
16 Interest Act R.S.B.C. 1979 c.76 (the Act). If so, pre-judgment interest would be
17 calculated in six month intervals in order to reflect the periodic nature of the
18 past loss of support.

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20 Counsel stated that there are no British Columbia decisions directly
21 on point.

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23 The determination of a claim for loss of support under the Family
24 Compensation Act involves consideration of a number of factors including a
25 number of contingencies. It involves an assessment rather than a precise
26 calculation. It is similar, in many respects, to the determination of a claim for
27 past loss of income, or lost earning capacity, in an action for damages for
28 personal injuries.

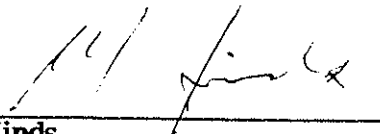
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3 Baart v. Kumar et al (1985), 66 B.C.L.R. 1 (B.C.C.A.) involved, inter
4 alia, consideration of whether an award for past loss of income or lost earning
5 capacity came within the meaning of "special damages" in section 1(2) of the
6 Act. Seaton J.A., for the majority, made an exhaustive analysis of the history of
7 the wording of the Act and he considered numerous authorities. He concluded
8 that the award should properly be characterized as "special damages" within the
9 meaning of those words in section 1(2) of the Act. He decided that pre-judgment
10 interest should be calculated on a six monthly basis pursuant to the provisions of
11 section 1(2) of the Act.

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13 The reasoning in Baart v. Kumar (supra) is applicable to the issue to
14 be determined on this application. For the purpose of calculation of pre-
15 judgment interest there is no significant difference between the components of
16 an award for past loss of wages or loss of earning capacity in a personal injury
17 action, and the components of an award for loss of support in an action brought
18 under the Family Compensation Act. I therefore rule that the award for past
19 loss of support is an award of special damages and pre-judgment interest shall be
20 calculated thereon in accordance with the provisions of section 1(2) of the Act at
21 the Registrar's rates for pre-judgment interest.

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23 I now turn to consider paragraph b) of the Summary on page 42 of the
24 Reasons for Judgment.

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26 When I directed that the Plaintiff was entitled to interest at 8% per
27 annum for late payment I was cognizant of the requirement under the Interest
28 Act (Canada) that interest at the rate of 5% per annum be paid on a judgment. I
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3 therefore intended that the total rate of interest payable after judgment on the
4 awards specified in paragraph b) would be 13% if not paid within 30 days of the
5 date of the issuance of the Reasons for Judgment. I was aware that the
6 "Bankers' Prime Rate" referred to in Master T.J. Halbert's directive of June 30th,
7 1989, was 13 1/2% per annum for the period extending from July 1st, 1989 to
8 September 30th, 1989.
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D.B. Hinds

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16 Dated at Vancouver, British Columbia,
17 this 30th day of November, 1989.
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