

Citation: *Friendship v. Leamon*, 2023 YKSM 6

Date: 20230725  
Docket: 22-S0050  
Registry: Whitehorse

**SMALL CLAIMS COURT OF YUKON**  
Before Her Honour Judge McLeod

KEITH FRIENDSHIP

Plaintiff

v.

EBONY LEAMON and  
TEAGAN DUNCAN

Defendants

Appearances:

Keith Friendship

Ebony Leamon (by Videoconference)

Teagan Duncan (by Videoconference)

Appearing on his own behalf

Appearing on her own behalf  
assisted by Court Worker,

Esther Armstrong

Appearing on his own behalf

**REASONS FOR JUDGMENT**

[1] Ebony Leamon (along with her co-defendant Teagan Duncan) have admitted liability in a negligence claim filed in Small Claims Court by Mr. Keith Friendship.

[2] Mr. Friendship is a motorcycle rider who was out for a ride on the Alaska Highway on June 18, 2022, when Ms. Leamon rear-ended him as he slowed behind a line of traffic waiting for a car to turn left off the highway. Mr. Friendship's bike toppled, and he ended up on the ground with the engine of the bike resting on his leg. He was assisted by a passing fireman and a passer-by.

[3] Mr. Friendship was taken to hospital where he was treated for soft tissue injuries and neck and back sprain.

[4] Ms. Leamon was driving a car which belonged to herself and her husband, the co-defendant. The vehicle was not registered, nor was it insured.

[5] Ms. Leamon was charged with three driving offences and pleaded guilty to all three.

[6] Mr. Friendship brings an action for damages seeking reimbursement for the loss of his motorcycle and for his ensuing pain and suffering in the amount of \$25,000 plus costs.

[7] With respect to the motorcycle: it was a Yamaha Venture model which was rendered; according to a Letter from Mr. Doug Caldwell, the Parts and Service Manager of Yukon Yamaha, "non drivable and non-serviceable".

[8] In terms of the value, Mr. Caldwell considered a fair market value to have been anywhere between \$6,000 and \$8,500. He added that prior to the accident the vehicle could have been sold for as high as \$8,500, as used motorcycles are in short supply given the cost of a new motorcycle, which would be between \$20,000 to \$30,000.

[9] Mr. Friendship described his motorcycle as pristine. It was a 2007 model he bought in 2011, which he fully maintained, and cleaned regularly. He described the motorcycle as being 1300 cc, having four cylinders, and 68,000 km on the clock.

[10] Upon hearing Mr. Friendship's description of the motorcycle, Ms. Leamon agreed that despite her previous offer, she now accepts that \$8,500 was a reasonable value.

[11] Mr. Friendship had claimed for the cost of needed massage therapy for his injuries, he has abandoned that claim as his own insurance has covered the cost.

[12] Ms. Leamon also agrees to pay the towing costs incurred by the removal of the motorcycle. The invoice for \$357 was paid by Mr. Friendship to Capital Towing Services, a receipt dated August 28, 2022, is provided as proof of that expense being paid.

[13] Thus, the only issue left for me to decide is with respect of Mr. Friendship's claim for "pain and suffering", or in legal terms: non-pecuniary damages.

[14] The basis of an award such as this is not dependent on a calculation of certain expenses, rather it is an award that must be fair and reasonable and must provide the injured party with "reasonable solace for his misfortune". Solace is not about sympathy, rather it is taken to mean some amount that can make the life of an injured person — in this case, Mr. Friendship — more endurable (See *Andrews v. Grand & Toy Alberta Limited*, [1978] 2 S.C.R. 229, at pp 261-2).

[15] I will now turn to the factors that can influence the amount of non-pecuniary damages. I wish to stress at this juncture that the award of damages does not depend alone on the seriousness of the injury.

[16] The factors that I must take into account are as follows:

1. The age of Mr. Friendship;

2. The nature of his injury;
3. The severity and duration of his pain;
4. Any disability that he may have to endure;
5. Emotional suffering; and
6. Loss or impairment of life.

[17] These factors may include impairment of family, marital and social relationships, impairment of physical and mental abilities, and loss of lifestyle (see *Stapley v. Hejslet*, 2006 BCCA 34, at para. 46).

[18] The aforementioned decision also suggests that a plaintiff's stoicism should not penalize the plaintiff, presumably on the basis that it would lead to arbitrariness; essentially, the more you complain, the more you get cannot be a factor of the determination of an amount of damages.

[19] I will now turn to the circumstances of the effect of this accident on Mr. Friendship's life.

[20] He is 66 years old. He works as the branch manager of GoNorth Yukon which is in the business of renting recreational vehicles and cars. He has worked in this capacity for five years.

[21] In his testimony at the hearing, Mr. Friendship described himself as "lucky" that he did not sustain more serious injuries, he received "just" soft tissue damage.

[22] Having said that, he described problems with his neck, shoulders, and lower back. If he makes a wrong move, he will get shooting pains in the afflicted areas. He says he is on prescription medication: a stronger dose of Ibuprofen than that available in a pharmacy without the necessity of a prescription.

[23] Mr. Friendship describes how since the accident, because of the pain he has to endure, he gets irritated more often describing how he has a short fuse. A letter from his doctor describes him in the following terms:

- he has required weekly massage therapy;
- he has had to modify his work and home activity to limit bending and lifting;
- he has increased anxiety and insomnia; and
- he describes himself as less outgoing and more distracted.

[24] With respect to massage therapy, a letter from his Registered Massage Therapist describes Mr. Friendship has had to have treatment once a week, now down to once per month, to reduce muscle tension in his lower back, shoulder, and neck area.

[25] In terms of his work, Mr. Friendship testified that prior to the accident, he would work with the technical staff in the cleaning and mechanical maintenance of the recreational vehicles that he rents out. He cannot do as much as he used to, and now goes home from work, exhausted, sore, and describes his evening as being spent in a chair. A letter from a colleague speaks to the man before his accident as being directly

involved with everything in the workplace, but now is unable to help with the day-to-day physical work to the same extent that he used to. Mr. Friendship's demeanour has reportedly changed as well; he frequently gets frustrated and will lose track of what he is doing.

[26] At the end of each day, his pain increases.

[27] In terms of recreational activities, Mr. Friendship is hopeful he will be able to play with and show, rather than just instruct, his 10-year-old grandson how to improve his golf game. He describes being unable anymore to throw a baseball over arm to play with his grandson.

[28] Mr. Friendship used to walk a lot, he now walks the Millennium Trail, but then says he "is done for the day".

[29] Mr. Friendship no longer has a motorcycle. He says he would not jeopardize his family's feeling of security by fear of him being involved in another accident. He became quite emotional as he described his long-standing love (since he was a teenager) of riding. He described having ridden the Alaska highway three times and riding from Saskatchewan. He was a member of the Motorcycle Gold Ring Club and used to go riding with his fellow members on a Sunday. He is no longer a member of the Club as he does not have a motorcycle. He also used to travel to Toronto and ride with a friend and also regularly with his employees with whom he would ride to Carcross on a morning, have coffee, and return.

[30] Mrs. Carol Friendship, Mr. Friendship's wife of 45 years corroborated all of the changes in her husband's life and concluded that he has lost some of his "sparkle".

[31] Thus, while the accident at first blush did not seem horribly serious, clearly, it has had life changing deleterious effects to Mr. Friendship's quality of life.

[32] I have no reason to disbelieve any of the details of Mr. Friendship's description of the curtailment in his activities since the accident, indeed it really was not questioned in any substantive way by the defendants.

[33] Before I turn to the amount of damages that will be awarded, I need to deal with the evidence of Ms. Leamon and that of her husband. Both spoke of their surprise at the extent of the suffering of Mr. Friendship, as their knowledge of personal injuries sustained by people they knew were involved in more serious accidents. To that contention, I articulate the well-known principle of law: "you take your victim as you find him". What that means is that people are individuals and as such, the extent of an injury is never the same in each person. It is what has happened to the particular individual making the claim that governs.

[34] Ms. Leamon spoke of her preparedness at the outset to admit negligence, which she did, to pay her debt to society in terms of the offences she committed, and of her anxiety.

[35] There is no doubt that this is a young couple who are prepared to admit liability. They were just not aware of the full extent of the damage to Mr. Friendship's lifestyle.

[36] While I appreciate Ms. Leamon is no doubt a good person, who made an error of judgment, however, that fact does not impact the assessment I must make. The couple's ability to pay relates to their application to arrange terms of payment, which I will set, but not to the actual amount.

[37] In terms of the amount of damages, I am obviously mindful of the fact that this Court's jurisdiction extends to a maximum of \$25,000.

[38] I am assisted in my assessment of the appropriate amount of damages, only to a limited extent, by the decision of former Chief Judge Lilles in *O'Neill v. Whitehorse (City)*, 2006 YKSM 1, which was released on May 25, 2006, where he awarded a sum of \$4,000 non-pecuniary damages to a plaintiff who sustained an injury to his right knee. The plaintiff was off work for seven days, and thereafter returned to work wearing a tensor bandage, and was unable to participate in his favourite recreational activities of basketball and football for a period of four months.

[39] Mr. Friendship's injuries are, unfortunately, much longer lasting than those of Mr. O'Neil.

[40] On April 1, 2006, the upward limit of Small Claims Court jurisdiction went from \$5,000 to \$25,000. It is not clear from the judgment whether the Chief Judge was working on the lower or upper limit.

[41] In that decision, there are a number of cases referred to, none of which postdate 2006. However, the most similar case appears to be that of *Plummer v. J.D. Irving Limited* (2000), 184 N.S.R. (2d) 364 (NS SC), which is summarized as follows:

The plaintiff tripped on a "dolly cart" at the defendant's building supply store. He injured his knee and was in considerable pain over the summer after the accident. He was unable to hike, fish, or perform all of the physical labour associated with his business. He was able to resume all of his activities less than one year after the accident. The Court awarded non-pecuniary damages of \$8,500.

[42] Also of assistance is the decision of *Stapley v. Hejslet* referred to in paragraph 17. While this is a decision from the British Columbia Court of Appeal, from a jury verdict as to the amount of damages, the decision reviews a number of cases where non-pecuniary damages were awarded. Those decisions relied upon were all from the early 2000s and were awards in the 10's of thousands of dollars.

[43] Clearly, that is not permissible in this case, however the Court of Appeal did say this, at para 110:

...Mr. Stapley is able to work, support his family and participate in recreational activities. The chronic pain he experiences has not and, according to medical evidence, will not in the future preclude those activities. In ordinary circumstances, an award of non-pecuniary damages for those losses would not exceed \$100,000.

[44] Mr. Stapley was awarded \$175,000.

[45] I point this out, not because I wish to scare the Leamon family; rather I wish to educate them as to the possibility of higher damages being awarded, should Mr. Friendship have brought his claim in the Supreme Court.

[46] In accounting for inflation since the decisions to which I have referred to were rendered, I consider that an amount of non-pecuniary damages of \$15,000 is appropriate.

[47] The total amount of damages awarded to Mr. Friendship therefore will be:

- \$8,500 for the loss of his motorcycle;
- \$357 for towing fees; and
- \$15,000 non-pecuniary damages.

[48] Thus, a total of \$23,857.

[49] Finally, in their reply dated October 31, 2022, the defendants have requested that they be permitted to arrange terms of payment.

[50] Accordingly, pursuant to the *Small Claims Court Regulations*, s. 62, Ms. Leamon and Mr. Duncan should prepare a payment schedule that they can meet and serve Mr. Friendship and the Court. This should be done within 14 working days of the receipt of this judgment.

[51] Mr. Friendship will have the right of reply and should do so within 10 working days serving both the Court and the defendants. If there is a dispute as to the terms of the payment, a further discussion may be necessary.

[52] This judgment, therefore, will be supplemented to include the terms of payment, and deal with the issue of judgment interest and costs.

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MCLEOD T.C.J.