



The Supreme Court of Canada's Decision in Saadati v. Moorhead: Pragmatic Recognition of Mental Injuries in Bodily Injury Claims in Canada

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In [Saadati v. Moorhead](#), 2017 SCC 28, the Supreme Court of Canada filled a jurisprudential void in tort law when the SCC in a unanimous decision stated that proof of a recognized psychiatric injury is no longer a precondition for an award of damages for mental injuries caused by the negligent actions of others.

The case came to the Supreme Court of Canada in 2017, after previously making its way through the Supreme Court of British Columbia and then later appealed to the British Columbia Court of Appeal by the Defendant tortfeasor, Mr. Moorhead.

Background

This case arose out of a claim in negligence in the context of a motor vehicle accident. From 2003 to 2009, Mr. Saadati was involved in five separate motor vehicle accidents, sustaining various injuries as a consequence of these accidents.

Mr. Saadati was subsequently declared mentally incompetent in 2010. The trial of this matter dealt with the injuries Mr. Saadati allegedly sustained after the second accident, which occurred on July 5, 2005 when his tractor-truck was hit by a Hummer driven by the defendant motorist Mr. Moorhead. Following this accident, Mr. Saadati was taken to the hospital, but had evidently suffered no physical injuries, and was not admitted for observation.

[At trial](#), Mr. Saadati sought non-pecuniary damages for pain and suffering and for past wage loss. Mr. Moorhead admitted liability for the accident, but opposed Mr. Saadati's claim for damages suffered as a consequence of the accident.

Mr. Saadati was unfortunately unavailable to testify at trial. The BC Supreme Court trial judge rejected Mr. Saadati's claim for physical injury arising from the accident and held that the evidence from his psychologist was not sufficient to establish a compensable psychological injury. However, despite this finding, the trial judge found that the testimony of Mr. Saadati's family and friends at trial was nevertheless sufficient proof of psychological injury. Such injuries included a personality change, headaches and ongoing cognitive difficulties experienced by Mr. Saadati. Consequently, at trial, the trial judge awarded Mr. Saadati \$100,000 for non-pecuniary damages solely upon the strength of the lay collateral witness evidence adduced at trial.

The Defendants appealed and the [BC Court of Appeal](#) held that the trial judge erred in awarding damages for mental injury due to the BCCA finding that Mr. Saadati had not met the threshold of proving a recognized psychiatric illness through expert medical evidence. Mr. Saadati subsequently sought and was granted leave to appeal to the Supreme Court of Canada.

[The SCC](#) later overturned the BC Court of Appeal's decision and restored the original trial judgement and in doing so, also provided some very interesting and potentially

useful judicial commentary from the "highest Court in the land" in relation to seeking compensation for mental / emotional injuries.

Issues

To recover for mental injury, a plaintiff must show that their injury is "serious and prolonged" and rises above the "ordinary emotional disturbances that will occasionally afflict any member of civil society without violating his or her right to be free of negligently caused mental injury" (see para. 19).

Canadian courts had developed a general requirement that for emotional injuries to be compensable, a plaintiff must first meet a threshold of proving a recognized psychiatric illness through expert medical evidence to recover for any such mental injury. However, prior to *Saadati*, the SCC had never directly addressed that threshold "requirement"¹.

The SCC began its discussion on "mental injury" by confirming that there is no special proximity analysis for claims of mental injury as "the elements of the cause of action of negligence" were considered to furnish "principled and sufficient barriers to unmeritorious or trivial claims" (at para. 21).

The SCC then addressed the central issue on the appeal - (i.e.: whether establishing a recognized psychiatric illness through expert medical evidence is a threshold to recovering for mental injury). The SCC held that "no cogent basis has been offered to this Court for erecting distinct rules which operate to preclude liability in cases of mental injury, but not in cases of physical injury" (at para. 35). In fact, the SCC goes on to state in the same paragraph that "[i]ndeed, there is good reason to recognize the law of negligence as already according each of these different forms of personal injury — mental and physical — identical treatment."

The SCC's decision appears to both be driven by an increasing awareness of the emotional or mental health consequences of injured plaintiffs as well as underlying principles of fairness and consistency. In this regard the Court held the following in relation to diagnostic "labels" and the arguable parity of "physical" and "mental" injuries:

... requiring claimants who allege one form of personal injury (mental) to prove that their condition meets the threshold of "recognizable psychiatric illness", while not imposing a corresponding requirement upon claimants alleging another form of personal injury (physical) to show that their

¹ Prior to *Saadati v. Moorhead*, the Supreme Court of Canada's last thorough consideration of mental injury claims was in 2008 in *Mustapha v. Culligan of Canada Ltd.*, however that decision dealt with the discreet legal issue of the remoteness of damages, and did not directly address and consider the "recognized psychiatric illness" threshold issue.

condition carries a certain classificatory label, is inconsistent with prior statements of this Court, among others. It accords unequal — that is, less — protection to victims of mental injury [at para. 36].

The SCC clearly recognised that a plaintiff's mental or emotional injury may not be as readily demonstrable as a physical injury, but "the claimant's task in establishing a mental injury is to show the requisite degree of disturbance." (at para. 37) However, despite this pragmatic judicial commentary, of considerable significance, the SCC also confirmed that expert evidence can indeed assist in determining whether or not mental injury has been proven; it is just not a threshold requirement that could potentially bar compensable recovery for such "mental" injuries (at para. 38).

Commentary

When considering the legal and practical impact of the SCC's decision in Saadati, it is critically important to be mindful that the SCC was only answering the "narrow question of whether it is strictly necessary... for a claim to adduce expert evidence or other proof of a recognized psychiatric illness" (at para. 13).

Expert evidence to assist the Court in areas requiring expertise to assist the trier of fact with respect to understanding critical issues such as injury causation, prognosis, and treatment costs, benefits and limitations will all continue to be of ongoing importance in the just determination of such claims on their merits.

The SCC's judicial commentary in Saadati is most certainly a welcome pragmatic and equitable decision. Although the decision clearly recognises the significance of injuries beyond the "physical" realm, inclinations that Saadati stands for any potentially broader legal principle should certainly be met with caution.

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