

## Mental injury has become easier to prove in personal injury cases

By Charlotte Hall

Our society has been trending toward a view that mental illness is no less important than physical illness, although it has not always been this way. Traditionally, claiming for a mental injury in the law has been tough to do, not only due to social attitudes, but also because there can be challenges in proving a mental injury.

Recently, however, the law has begun to recognize mental health issues as more, if not completely equal to other health problems such as physical illness or injury. The question arises: if a Plaintiff can prove that they suffered mental injury, can they receive remuneration for mental injury without having to call expert evidence on the matter? The Supreme Court of Canada has answered this question with a unanimous "yes" in its recent decision *Saadati v. Moorhead* 2017 SCC 28.

### Background

In this case, Mr. Saadati was involved in five motor vehicle accidents. This particular ruling dealt with the second accident, where Mr. Saadati's tractor truck was struck by the respondent, Mr. Moorhead. Mr. Saadati sought damages for pain and suffering, and past wage loss. The trial judge awarded him \$100,000 in General damages for pain and suffering (which are called 'non-pecuniary damages'). The Court of Appeal overturned this decision because in their view, Mr. Saadati had not demonstrated a "medically recognized" psychiatric or psychological illness/condition because there had been no "expert medical opinion evidence" regarding his alleged injury. Mr. Saadati's family members gave evidence that his personality had changed as a result of his accident injuries. The Supreme Court of Canada unanimously overturned the Court of

Appeal's judgment, ruling that Mr. Saadati was to be compensated \$100,000 in General damages for mental injuries proven through the evidence of lay witnesses (i.e. his family members). Mr. Saadati had never been formally diagnosed, and there was no expert opinion evidence of a psychiatric injury at trial.

The Court acknowledged that mental injury may not be as easily demonstrated as physical injury, but that the claimant can establish a mental injury by showing the requisite degree of disturbance. A claimant must show that the disturbance is "serious and prolonged" and rises above the "ordinary annoyances, anxieties and fears that come with living in civil society." Expert evidence is also helpful in determining whether there is an established mental injury; however it is not a requirement.

### Implications

This forceful ruling by our Supreme Court has reduced distinctions between mental and physical injury in tort law and in the common law, more generally. This is a positive step forward for the law when it comes to mental health and injury - indicating that the law has been brought up to date with medicine and science - both of which also increasingly recognize the equality of both physical and mental injury.

For further information, please contact any member of our Personal Injury group.