
BC COURT OF APPEAL SCALES BACK SKI LIFT AWARD

Reported case: Kralik v. Mount Seymour Resorts Ltd.

Citation: 2008 BCCA 97

At Issue: Should a plaintiff be found contributorily negligent for suffering a moment of inattention? What damages should be awarded to a plaintiff who is no longer able to perform physically demanding labour, but is capable of more sedentary work at a high level?

The Court: Court of Appeal for British Columbia

Judgment Rendered: March 4, 2008

Factual Summary: Kralik was an experienced skier, who was skiing with his son at the defendant resort. The two skiers lined up at a boarding ramp for the chair lift. As the chair approached, Kralik noticed there was snow and ice on it and tried to brush it off. Kralik's son seated himself without difficulty but Kralik was not able to seat himself in time, and the chair proceeded up the mountain with Kralik dangling from it. Kralik decided to jump from the chair, and fell 3 metres to the ground. The defendant claimed that its attendant had stopped the lift when she saw that Kralik was not on the chair. The defendant argued that Kralik was responsible for his own injuries. Kralik suffered an injury to his arm and shoulder in his fall. He had been a computer programmer with a Ph.D in mathematics in his native Slovenia. Since coming to Canada, he had been working as a painter of houses. He claimed that his injury affected his ability at that occupation.

Disposition by Lower Court:

The trial judge preferred the plaintiff's evidence and did not accept that the lift attendant stopped the lift, nor that she followed the procedures in the safety manual. The defendant was found to be entirely at fault. The trial judge awarded Kralik \$300,000 in loss of earning capacity, finding he was disabled from some types of work, but not less physically strenuous jobs.

Appellate Decision: Although the defendant was negligent in the manner in which the lift was operated, Kralik was familiar with the lift and failed to pay attention at the moment when it was necessary to do so, for his own safety. Once he failed to get onto the chair, he chose to hang onto it rather than move aside and let it go without him. Kralik was found to be 50% responsible for his own injuries. Kralik's loss of earning capacity award was also reduced to \$75,000, as it was recognized that Kralik could potentially earn more at a more sedentary job in the computer industry than he would have earned as a painter.