

# Non-Economic Loss (NEL) Case Studies

The NEL case studies relate to claims assessments.

## NEL Case Study 1

The Claimant was aged 27 at the date of the accident in 2008 and 31 years at the time of the assessment. The Claimant was driving through an intersection when the insured driver entered the intersection from the opposite direction and collided with the rear of the Claimant's vehicle. The impact of the collision spun the Claimant's car around in front of ongoing traffic and the car came to rest after colliding with an embankment on the opposite side of the road.

The injuries suffered by the Claimant included soft tissue injury to the cervical spine and shoulder including a labral tear which was surgically repaired following which the Claimant developed adhesive capsulitis to the right shoulder. The Claimant also suffered a subsequent psychological reaction to the event and its aftermath.

The Claimant was assessed by the Medical Assessment Service as having physical whole person impairment of 12% allowing 5% for her cervico-thoracic spine soft tissue and 7% for the impairment to her right dominant shoulder as well as having psychological whole person impairment of 6% due to a chronic adjustment disorder with depressed and anxious mood.

There was a dispute as to the nature and extent of the Claimant's injuries and the degree of her incapacity related to the accident. After considering the evidence from both parties, the Claims Assessor was not satisfied the Claimant was exaggerating her degree of incapacity as the Claimant did not have any pre-existing conditions besides high blood pressure.

In assessing non-economic loss the Claims Assessor took into account that before the accident the Claimant was independent, enjoyed life and partook in motorbike riding, swimming, wake-boarding and played tennis. The Claimant has a close and happy relationship with her daughter and was looking forward to sharing all of these activities with her.

Due to the accident, the Claimant complained of constant pain at the front of her right shoulder, restriction of movement which caused difficulties with dressing and washing herself as well as heightened anxiety when driving or as a passenger. She said her close relationship with her daughter has disappeared and she had limited her interaction with her friends.

The Assessor noted the relatively young age of the Claimant and the significant future life expectancy and the prognosis that the Claimant would continue to suffer pain throughout her life.

Date of assessment: 07 February 2013

Date of Accident: 30 November 2008

NEL: \$185,000

## NEL Case Study 2

The Claimant was aged 51 years at the date of the accident in 2008 and aged 55 years at the time of assessment. The Claimant was stationary preparing to turn left onto a main road when the insured vehicle collided with the rear of the Claimant's vehicle.

The injuries sustained by the Claimant included a large disc protrusion compressing the left C4 nerve root and thecal sac which was surgically treated by an anterior C5/6 discectomy and fusion.

The Medical Assessment Service assessed the Claimant as having a physical whole person impairment greater than 10%.

There was a dispute about whether the Claimant suffered an aggravation of a pre-existing lumbar condition and the degree of her future incapacity as a result of the motor vehicle accident. The Claims Assessor found, after assessing the evidence that the Claimant had indeed suffered a significant exacerbation and aggravation of her pre-existing condition and also found a significant degree of future incapacity.

When considering non-economic loss, the Claims Assessor took into account that the Claimant had gainful employment as a Registered Nurse, had taken over her brother's cleaning business in 2000 and was actively involved in swimming, yoga and undertaking all aspects of the heavy housework.

Due to the accident, the Claimant suffered ongoing and consistent neck, right shoulder and lower back pain and has to take strong analgesic medication to control the pain. She had been unable to return to her prior employment or any gainful employment in the future. The Claimant was also restricted by the activities she can do on a daily basis.

Date of assessment: 09 November 2012

Date of Accident: 07 October 2008

NEL: \$220,000

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### NEL Case Study 3

The Claimant was aged 43 years at the date of the accident and 45 years at the time of assessment. The Claimant was riding a motorbike when the insured vehicle made a right hand turn in front of him. He was not able to stop and as a result heavily impacted into the vehicle and sustained injuries.

The injuries sustained by the Claimant included closed head and brain injury, memory loss, speech difficulties, soft tissue injury, orthopaedic injury, aggravation and acceleration of degenerative changes of the lumbar spine, left arm, elbow, ulna, wrist, foot and right shoulder, leg, and knee as well as vertigo and tinnitus in the left and right ear and eardrums. The claimant also suffered an adjustment disorder with anxiety and depressed mood.

The Medical Assessment Service assessed the Claimant as having a whole person impairment of 42%.

There was a dispute as to the Claimant exaggerating the extent of his injuries and disabilities related to the accident. The Claims Assessor found, after assessing the evidence that the Claimant had exaggerated the extent of his injuries and disabilities notwithstanding he did sustain genuine and serious injuries as a result of the accident.

When considering non-economic loss, the Claims Assessor took into account the Claimant's injuries were of a serious nature and he has undergone two bouts of surgery and may require future surgery.

Due to the accident, the Claimant has not been able to obtain gainful full-time employment because of the constant pain, difficulty in moving his arms, difficulty walking, sitting, moving his back or neck.

Date of assessment: 29 November 2012

Date of Accident: 08 April 2010

NEL: \$225,000

### NEL Case Study 4

The Claimant was aged 34 years at the date of the accident and aged 39 years at the time of assessment. The Claimant was travelling through an intersection when the insured driver drove into the intersection at speed, colliding with the driver's side of the Claimant's car. The impact was described as a very heavy collision. The Claimant was rendered unconscious and sustained significant physical injuries.

The injuries sustained by the Claimant included soft tissue injury to the neck, back, left shoulder and chest, aggravation of a pre-existing degenerative disc disease of the lumbar spine, internal injuries and scarring on his abdomen. The Claimant also suffered chronic post-traumatic stress disorder and chronic major depressive disorder as a result of the accident.

The Medical Assessment Service assessed the Claimant as having physical whole person impairment of 20% and psychological whole person impairment of 20%.

There was a dispute as to the extent of the Claimant's pre-existing lumbar spine condition. But the Claims Assessor in evaluating the evidence found the Claimant did not have any significant physical or psychological pre-existing conditions prior to the accident.

In assessing non-economic loss, the Claims Assessor took into account the Claimant was working before the accident at up to 55 hours per week in gainful employment, participated in recreational soccer and spent time with his family.

Due to the accident, the Claimant had suffered a spiral of depression, could no longer return to gainful employment, was able to drive but suffered from panic attacks, had to take a significant amount of medications, suffers from constant pain and does not spend as much time with his family.

Date of assessment: 17 December 2012

Date of Accident: 28 June 2010

NEL: \$230,000

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