

## **Nova Scotia Appeal Court upholds provincial law that limits insurance awards**

By MICHAEL MacDONALD The Canadian Press

Nova Scotia Appeal Court has upheld provincial legislation that imposed a \$2,500 cap on insurance awards for those who suffer minor injuries in auto accidents.

The court dealt with two appeals simultaneously from three accident victims who challenged the 2003 legislation, claiming the law violates their equality rights under Section 15 of the Charter of Rights and Freedoms.

In a ruling released Tuesday, a three-judge panel concluded that the cap on non-monetary damages for pain and suffering is not discriminatory.

The 55-page judgment reviewed several legal arguments put forward by two women hurt in separate accidents, and a third woman who claims she has suffered from post-traumatic stress disorder since seeing her father being struck by a truck.

The panel concluded that while the law creates disadvantages for certain groups, it is not the product of prejudice or stereotyping.

As well, the judges found the appellants failed to prove that regulations drafted after the law was passed went further than lawmakers had intended by extending the reach of the cap.

The provincial government argued that the legislation reflects sound public policy aimed at containing skyrocketing automobile insurance premiums.

The court's ruling carries little weight because the province's NDP government has already committed to scrapping the cap in favour of a deductible for personal injury claims.

Premier Darrell Dexter has said the existing cap creates "undue hardships" because it sometimes limits compensation for serious injuries.

The court noted that similar legislation in other provinces has withstood challenges under the charter.

The two accident victims argued that the law was invalid because they were denied their right to have their claims assessed by an impartial tribunal.

They also said the law was discriminatory because it covered certain types of chronic pain, but

not others.

As well, the pair said the law discriminates against women because it fails to recognize that women typically suffer larger non-monetary losses after auto accidents.

The woman suffering from post-traumatic stress said the law discriminates against those suffering from mental illness because it states that any injury that is not "physical in nature" is automatically deemed a minor injury that is subject to the cap.

The legislation was introduced after the Conservative government led by John Hamm promised during an election campaign to reduce insurance premiums by 20 per cent.

At the time, premiums in Nova Scotia were among the highest in the country as insurance companies complained about having to pay out large awards for bodily injury claims.

Critics have warned that the NDP's decision to eliminate the cap could be costly for consumers.

George Jordan, a former Conservative candidate and the province's former consumer advocate for insurance, has said insurance rates have fallen almost 27 per cent since the cap was introduced.

Removing the cap would open the door to large cash settlements for minor injuries that could lead to higher premiums for everyone, he said.

CLOSE WINDOW

© 2008 The Halifax Herald Limited