

ONTARIO APPEALS COURT UPHOLDS \$17,000,000 PERSONAL INJURY AWARD

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The Ontario Court of Appeal has upheld one of the largest personal injury awards in Canadian history. The case, *Sandhu (Litigation Guardian of) v. Wellington Place Apartments*, affirms the principle stated by the same Court in an earlier case that “the verdict of a civil jury will not be set aside as against the weight of the evidence unless it is so plainly unreasonable and unjust as to satisfy the court that no jury, reviewing the evidence as a whole and acting judicially, could have reached it.”

The plaintiff was a two-year-old child, Harvinder Sandhu, who crawled out of a bedroom window and fell five storeys to the pavement below. As a result of the fall, Harvinder suffered severe injuries, including multiple fractures and a permanent frontal lobe brain injury. Evidence led at trial claimed that, for the rest of his life, he was expected to function at the level of a twelve-year-old child and would require round-the-clock care.

The jury found the landlord 90 per cent liable and Harvinder’s parents 10 per cent liable for his injuries. The evidence that the jurors heard indicated that the landlord had not fixed a broken screen in the bedroom window, despite being asked to do so for weeks. Additionally, no child lock had been installed.

The jury awarded damages totalling almost \$13 million, including:

- \$311,000 for non-pecuniary damages for “pain and suffering” (the maximum amount allowed in the Canadian judicial system, which places a cap on this type of damages)
- approximately \$1.6 million for future loss of income
- almost \$11 million for future cost of care
- \$100,000 each to Harvinder’s mother, father, and brother under Ontario’s *Family Law Act*.

The trial judge added approximately \$4 million for guardianship costs, legal costs and interest.

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On appeal, the defendants argued that the jury's award in each category was too high. The Court dismissed these grounds of appeal, finding that the jury's award in each category was within the appropriate range of damages and was supported by the evidence. The defendants also argued that, viewed cumulatively, the jury's award revealed that it "abdicated its responsibility" by awarding the highest amount claimed in each category and, in some cases, higher than what was requested. The Court of Appeal also dismissed this argument, calling it a "somewhat startling proposition."

This case shows that appeal courts will not lightly interfere with jury's decisions. Additionally, it illustrates the significant quantum of damages that can be awarded to infant plaintiffs who suffer catastrophic injuries. The defendants have sought further leave to appeal the decision to the Supreme Court of Canada, which has not yet decided if it will hear the case.