

Punitive Damages - *Whiten v Pilot Insurance Co*, 2002 SCC 18, [2002] 1 S.C.R. 595

The Supreme Court of Canada set the punitive damages criteria/limit in Canada in the precedent setting case of *Whiten v. Pilot Insurance Co*. The initial case was heard in the Ontario Supreme Court, Whiten was awarded one million dollars in punitive damages. Pilot Insurance appealed the case to the Ontario Court of Appeal, in which the punitive damages award was reduced to \$100,000. Whiten then appealed to the Supreme Court of Canada, in which the SCC restored the initial one million dollars in punitive damages award.

Facts:

Pilot Insurance denied Whiten's house insurance claim after their house was destroyed in a fire. Pilot originally alleged arson, which was proved/admitted to be completely false and lacking any evidence. Pilot entered protracted litigation (over 2yrs) over the issue with Whiten to force them to make an unfair settlement for less than they were entitled to. Conduct was planned and deliberate.

Issue:

What is the availability of punitive damages?

1. Punitive damages are awarded only in exceptional circumstances for malicious, oppressive, and high-handed' misconduct that 'offends the court's sense of decency; rides the line between civil law compensation and criminal law punishment
2. Quantums seek to punish defendants and deter others from similar outrageous conduct.

Rule

The purpose of punitive damages rest in three areas (1) punishment (2) deterrence and (3) Denunciation

Essential elements of Punitive Damage Awards:

The following guiding principles were set:

- (1) Punitive damages are very much the exception rather than the rule,
- (2) imposed only if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour.
- (3) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant,
- (4) having regard to any other fines or penalties suffered by the defendant for the misconduct in question.

(5) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation.

(6) Their purpose is not to compensate the plaintiff, but

(7) to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened.

(8) Punitive damages are awarded only where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and

(9) they are given in an amount that is no greater than necessary to rationally accomplish their purpose.

(10) While normally the state would be the recipient of any fine or penalty for misconduct, the plaintiff will keep punitive damages as a "windfall" in addition to compensatory damages.

(11) Judges and juries in our system have usually found that moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient. (para. 94.)