IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sunner v. Zhou,*
2023 BCSC 1300

Date: 20230728
Docket: M197017
Registry: Vancouver

Between:

Amarpal Singh Sunner

Plaintiff

And

Rui Zhou

Defendant

Before: The Honourable Mr. Justice Hori

Reasons for Judgment

Counsel for the Plaintiff:	M.S. Randhawa
Counsel for the Defendant:	A. Haynes
Place and Date of Trial:	Vancouver, B.C. January 4-6 and January 9-13, 2023
Place and Date of Judgment:	Vancouver, B.C. July 28, 2023

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Introduction

[1] In this action, the plaintiff claims damages arising from a motor vehicle collision that occurred in Vancouver, British Columbia on July 6, 2017 (the "Collision").

[2] The defendant admits liability for the Collision and admits that the plaintiff sustained injury as a result. However, the defendant denies that the injuries are as serious as the plaintiff alleges and denies that the damages are as significant as the plaintiff claims.

[3] The plaintiff claims compensation for:

a) non-pecuniary damages;

b) past earnings loss;

c) loss of future earning capacity;

d) loss of housekeeping capacity;

e) future care costs;

f) special damages; and

g) court ordered interest.

Background

[4] The plaintiff was 43 years old as of the date of trial. He has been married for 20 years and has two children who are seven and 13 years of age.

[5] The plaintiff was born and raised in Vancouver. He completed Grade 12 in 1997. He attended Langara College on and off for two years and took courses in psychology, sociology and organizational behaviour. However, the plaintiff did not complete this college program.

[6] In 1995, while still in high school, the plaintiff started working as a longshoreman in Vancouver. He worked his way up the seniority list until he achieved the position of foreman in 2006 and the position of yard foreman in 2016.

[7] After the Collision, the plaintiff continued to work as a longshoreman and continued to advance upwards within his employer's organization.

Credibility and Reliability

[8] The defendant concedes that the plaintiff is a credible and honest witness. However, the defendant submits that I should approach the plaintiff's evidence with caution. The defendant argues that the plaintiff's evidence is not entirely reliable because:

a) significant time has passed from the date of the Collision;

b) the clinical records call into question the accuracy of the plaintiff's recollection of his symptoms; and

c) the plaintiff tends to describe things in broad strokes and is not careful with the details of his evidence.

[9] I accept that the plaintiff's memory of his symptoms and recovery have faded over time and that his evidence, on some details, is not consistent with the notes recorded in the clinical records. I also accept that the plaintiff describes his life in broad strokes, without details, in some aspects of his testimony.

[10] Notwithstanding these shortcomings in the plaintiff's evidence, I generally accept the evidence of the plaintiff as credible and reliable. It is not surprising that given the passage of time, the plaintiff's memory has faded. However, the inconsistencies pointed out by the defence are not sufficiently significant to call into question the overall reliability of the plaintiff's evidence.

[11] However, there are aspects of the plaintiff's evidence that I have discounted or not accepted because of inconsistencies with other reliable evidence tendered by the parties. I will highlight those aspects of the plaintiff's evidence during the course of these reasons as they arise.

Circumstances of the Collision

[12] On July 6, 2017, the plaintiff was driving a 2010 Ford F150 pickup truck with his seatbelt buckled. He had stopped at the intersection of Marine Drive and Marine Way in Vancouver and was waiting to turn right onto Marine Way. As he was waiting to turn, the plaintiff's body was bending forward. He was looking left and waiting for a gap in the traffic to make his turn.

[13] While waiting at the intersection, the defendant struck the plaintiff's vehicle from behind. The defendant was driving a 2017 Dodge Ram pickup truck owned by the defendant. The plaintiff describes the impact between the vehicles as his truck being "hit really hard." He estimates that the impact jolted his vehicle forward approximately two feet.

Injuries

[14] When the Collision occurred, the plaintiff struck the right side of his head on the steering wheel of his truck. The force of the Collision then pushed his body back into his seat. The plaintiff testified that after striking his head on the steering wheel, everything went green for approximately 30 seconds. He had ringing in his ears and a "massive" headache.

[15] The day following the Collision, the plaintiff developed neck pain and pain in his upper, mid and lower back.

[16] The Collision and the injuries sustained by the plaintiff in the Collision have led to other difficulties for the plaintiff, including difficulties with sleep, mood and anxiety.

Ringing in the Ears

[17] The ringing in the plaintiff's ears was gone within a month.

Headaches

[18] The plaintiff's headaches started at the base of his neck and radiated up to his temples. He experienced constant headaches for approximately two weeks. The headaches lessened over time in both frequency and severity. By the time of the trial, the plaintiff reported getting headaches daily, but that they "come and go" and can last "a few hours to a whole day".

Neck Pain

[19] The plaintiff's neck pain started at the base of the neck on both sides. The pain was constant in the initial stages and limited his ability to turn his head to the left. The neck pain improved over time in terms of severity.

[20] The plaintiff continues to experience constant pain in the neck. The severity of the neck pain increases with activities such as heavy work, stressful work, working double shifts, driving and work requiring the plaintiff to look up.

Upper Back Pain

[21] The plaintiff's upper back pain started at shoulder level and extended down the trapezius on both sides of his spine. Since the Collision, the plaintiff has been in constant pain in this area of the back, but the severity of the pain has improved since the Collision.

[22] The pain in the plaintiff's upper back increases depending on his activities. Participating in activities such as climbing, sitting at a desk or in a vehicle, or observing multiple computer screens, aggravates the plaintiff's upper back pain.

Mid-Back Pain

[23] The plaintiff initially experienced severe pain in his mid-back following the Collision. The severity of the pain has improved since then, but activities such as cycling, driving, sitting, and working out at the gym aggravate his symptoms.

[24] The plaintiff continues to be in constant pain in the mid-back region, especially on the right side.

Lower Back Pain

[25] After the Collision, the plaintiff had constant pain in the lower back area at waist level. The pain in the lower back remained unchanged until the end of 2018 or the beginning of 2019, when the plaintiff started feeling improvement in this area.

[26] The pain in the plaintiff's lower back improved to the stage where the plaintiff now has intermittent pain in the lower back approximately two times per week. The plaintiff experiences lower back pain with activities such as prolonged sitting, climbing and having to observe multiple computer screens.

[27] The plaintiff finds that when he experiences pain in his lower back, the pain will resolve in approximately four hours with rest and Tylenol.

Sleep Issues

[28] The plaintiff reports that he has trouble falling asleep on a daily basis. Once he is asleep, he awakens one to two times per night and rises in the morning feeling tired and not refreshed.

Mood

[29] Since the Collision, the plaintiff feels "down", irritable and tired to the extent that he avoids social interactions.

Anxiety

[30] The plaintiff's feelings of anxiety since the Collision manifest themselves with a racing heart and feelings of being overwhelmed when talking in public or to the workers that he supervises.

Treatment

[31] The plaintiff first saw his family physician, Dr. Lai, on July 10, 2017. On this first visit, Dr. Lai advised the plaintiff to remain off work and prescribed Naproxen, an anti-inflammatory medication to treat pain.

[32] The plaintiff next saw Dr. Lai on July 17, 2017. On this occasion, Dr. Lai advised the plaintiff to start physiotherapy. In addition, because the plaintiff was having difficulty tolerating the Naproxen, Dr. Lai changed the prescription to Cyclobenzaprine, a muscle relaxer.

[33] The plaintiff had a first assessment with a physiotherapist at Total Therapy on July 20, 2017.

[34] On December 8, 2017, the plaintiff first saw a kinesiologist to participate in an active rehabilitation program.

[35] The plaintiff attended for treatment with his physiotherapist or kinesiologist at least three times per week until May 2018. After May 2018, the treatments with these therapists became less frequent, but he attended at least one treatment session per week until May 2019.

[36] After May 2019, the frequency of the plaintiff's attendance at the treatment sessions fell off dramatically, to the point where the treatments were sporadic and there were long periods of time where the plaintiff did not attend any treatment sessions. The plaintiff testified that he reduced his treatment sessions in 2021. He explained that the reduction was the result of his being able to perform the rehabilitation exercises on his own, without the help of a kinesiologist. The plaintiff

claims to have continued with his rehabilitation exercises at home or at the gym after 2021.

[37] The plaintiff's testimony that his attendance for treatment sessions fell off in frequency in 2021, as opposed to 2019, does not accord with the records of the physiotherapist and the kinesiologist. Those records show that the plaintiff did not attend as frequently for therapy treatments starting in June 2019.

[38] However, I accept that this discrepancy in the plaintiff's evidence as compared to the records is due to the length of time that has passed from 2019 to the date of the trial, which has affected his memory of events, rather than being an attempt by the plaintiff to mislead the court. In any event, the discrepancy is not significant enough to discount or to disregard the plaintiff's evidence that when he reduced his kinesiology sessions, he continued his rehabilitation exercises on his own at home or in the gym.

[39] The plaintiff remained on Cyclobenzaprine for approximately six months. He stopped taking that medication because the side effects were creating difficulties for the plaintiff at work. He was feeling unsafe because the medication made him "woozy".

[40] As of the trial date, the plaintiff's pain medications consist of a mixture of Tylenol and Advil. He takes an Advil and a Tylenol together in the morning and afternoon on a daily basis. He avoids the Tylenol at night before going to sleep and takes two Advil instead.

Pre-Collision Health

[41] The plaintiff was generally in good health before the Collision. The only pre-Collision injury of any significance was a dislocated shoulder suffered by the plaintiff in December 2016, while weight lifting. The plaintiff received treatment for his right shoulder dislocation from doctors and physiotherapists. He took one month off work due to this injury and then returned to work on modified duties until March 2017. The

plaintiff testified that by March 2017 he was back to work on full duties without limitations.

[42] A physician with a specialty in shoulders assessed the plaintiff following this shoulder injury. There was no surgery required, but the plaintiff continued with some physiotherapy on the right shoulder after March 2017. The plaintiff has had no issues with his right shoulder since.

Medical Assessments

Physical Injuries

[43] Dr. Mark Adrian, a physical medicine and rehabilitation specialist, assessed the plaintiff for the purposes of this litigation and submitted a report on behalf of the plaintiff. Dr. Paul Chapman, also a physical medicine and rehabilitation specialist, assessed the plaintiff and submitted a report on behalf of the defendant. Both physiatrists assessed the plaintiff in September 2022.

[44] Both Dr. Adrian and Dr. Chapman conclude that the plaintiff suffers from pain in his neck and mid-back. They also conclude that this pain is caused by the Collision.

[45] The observations of both physiatrists are similar and are generally consistent with the symptoms reported by the plaintiff.

Neck

[46] Dr. Adrian noted limited range of motion in the plaintiff's neck when bending backwards and that his rotation to the left was limited to 75% of normal due to neck pain. Dr. Adrian also noted that the plaintiff retained the ability to fully rotate his neck to the right, although doing so triggered his neck pain.

[47] Dr. Chapman observed a full range of motion in the plaintiff's cervical spine. However, Dr. Chapman noted that the plaintiff reported "typical left sided neck symptoms" with left rotation. Dr. Chapman recorded in his notes that the plaintiff reported "typical neck discomfort" when the cervical spine was put into extension, as

well as when the extension was combined with left or right flexion. There was also "typical neck discomfort" with retraction of the head and neck.

Mid-Back

[48] Dr. Adrian found that the plaintiff had full range of motion in his mid-back. However, he noted pain when the plaintiff bent forward and during trunk rotation.

[49] Dr. Chapman also observed full range of motion in the plaintiff's mid-back but noted no complaints of discomfort except while he was lying on his back.

Lower Back

[50] Both Dr. Adrian and Dr. Chapman noted no pain or range of motion limitations related to the plaintiff's lower back.

Shoulders

[51] With respect to the plaintiff's pre-Collision injury to his shoulders, both Dr. Adrian and Dr. Chapman reported no deficits in range of motion or strength.

Psychological Injuries

[52] A psychiatrist, Dr. Abi Dahi, assessed the plaintiff's difficulties with mood and anxiety. Dr. Dahi assessed the plaintiff on September 29, 2022, and presented a report on behalf of the plaintiff.

[53] Dr. Dahi's diagnoses for the psychological injuries sustained by the plaintiff are:

a) persistent depressive disorder with anxiety features; and

b) passenger anxiety.

[54] Dr. Dahi concludes that these diagnoses did not exist before the Collision and, accordingly, they were caused by the Collision.

[55] I am not prepared to accept Dr. Dahi's diagnoses because there is no analysis or explanation as to how he arrived at these diagnoses. In his report, Dr. Dahi recites the plaintiff's background history, the history of the Collision, the plaintiff's family and personal history and the results of a short mental status examination. Dr. Dahi then states his diagnoses without explaining how the plaintiff's background history, the history of the Collision, the plaintiff's family and personal history or his mental status examination caused him to arrive at the diagnoses. Without that explanation, I cannot give any weight to these diagnoses.

[56] However, even without formal diagnoses from Dr. Dahi, I am prepared to accept that the plaintiff suffers from low mood and that he has periods of anxiety in circumstances that cause him stress.

Non-pecuniary Damages

[57] The plaintiff has experienced persistent headaches on a daily basis, and pain in his neck and back since the Collision. The plaintiff continues to have pain and discomfort in his neck, upper back and mid-back, which is aggravated by physical activity. The plaintiff's lower back symptoms gradually improved but he has intermittent pain in the lower back after certain activities.

[58] In order to deal with his pain symptoms, the plaintiff takes four doses of Advil and two doses of Tylenol each day.

[59] In addition to pain, the plaintiff continues to suffer from low mood and periods of anxiety.

Prognosis

[60] Dr. Adrian's opinion is that given the time that has elapsed since the Collision, it is unlikely that the plaintiff will experience any further meaningful improvement in his physical condition.

[61] As part of his future treatment suggestions, Dr. Chapman recommends that the plaintiff undergo a bone scan with SPECT imaging, to investigate whether the

facet joints are involved in producing the plaintiff's pain symptoms. If, on the bone scan, any of the facet joints are "found potentially amendable to treatment", then Dr. Chapman suggests treatment of the facet joints through guided injections. Dr. Chapman opines that the plaintiff has "good potential for some degree of further improvement" with his treatment suggestions.

[62] I am not satisfied that Dr. Chapman's treatment suggestions are a reliable measure of the plaintiff's future prognosis. In my view, the necessity and usefulness of facet joint injections is speculative as it relates to the plaintiff, because that treatment is dependent on the findings of a bone scan that has not been undertaken. Therefore, I am not prepared to accept Dr. Chapman's opinion that the plaintiff has "good potential for some degree of improvement".

Functional Limitations

[63] Dr. Adrian's opinion is that the plaintiff will have difficulty performing employment, household and recreational activities that involve:

a) prolonged static or awkward spine positions;

b) prolonged sitting, standing or stooping; and

c) prolonged and repetitive or heavy lifting, carrying, and holding.

Dr. Adrian characterizes the plaintiff as being permanently partially disabled.

[64] Dr. Chapman does not disagree with Dr. Adrian's opinions. He also concludes that the plaintiff is partially disabled since the Collision with respect to work, home and recreational activities.

[65] Prior to the Collision, the plaintiff was capable of and performed all of the yard work at his family home. Since the Collision, the plaintiff's wife did the yard work for two seasons. When the yard maintenance became unmanageable for his wife, the plaintiff and his wife hired a maintenance person to take care of the yard.

[66] Prior to the Collision, the plaintiff assisted with the housekeeping requirements of the family home. He cleaned the bathrooms once per week and he vacuumed two times per week. After the Collision, the plaintiff has not participated in these housekeeping activities because they increase his pain, and the pain affects him at work the next day. Accordingly, his wife performs all of the housekeeping work inside the home.

[67] Prior to the Collision, the plaintiff skied six to ten times per year. After the Collision, the plaintiff attempted to ski twice in the 2021/2022 season, but found that it aggravated his injury and caused him concern about his ability to work the next day. Accordingly, he has not tried to ski again. He wishes he could join his children on the ski hill but he does not.

[68] The plaintiff no longer cycles to the extent that he did prior to his injuries. He used to cycle three times per week in good weather, but now he limits his cycling to approximately one time per month. The plaintiff finds that cycling aggravates his injuries due to his body position on the bike and the bumpiness of the ride.

[69] The plaintiff was significantly involved in weight lifting prior to the Collision. He trained with weights five times per week for one to two hours each time. Since the Collision, the plaintiff finds that he is not as strong as he was before, so he does not lift heavy weights any longer. He limits his training with weights to approximately 45 minutes and focuses on rehabilitation and cardiovascular improvement.

[70] One of the activities that the plaintiff enjoyed prior to the Collision was singing at weddings. He would have that opportunity two or three times per year. However, he has not sang at a wedding since the Collision because he fears having an anxiety attack when performing.

[71] Prior to his injuries, the plaintiff socialized with friends and co-workers. He had drinks after work with co-workers two times per week, but he has not done so since the Collision due to his pain, and because he avoids mixing his pain

medications with alcohol. The plaintiff's social interactions with friends are now limited to special occasions such as birthdays or holidays.

[72] Most significantly to the plaintiff, the injuries he sustained in the Collision have affected him at work. The plaintiff has been a longshoreman for over 20 years. He has worked in many capacities and has progressed up the ranks to become a highly rated foreman. Before his injuries, the plaintiff was motivated and capable of working long hours. However, after his injuries, the plaintiff's pain limits the kind of work that he performs and the number of shifts that he takes. The pain also diminishes the plaintiff's enjoyment of his work.

Determination of Non-Pecuniary Damages

[73] An award of non-pecuniary damages compensates the plaintiff for the pain, suffering, loss of enjoyment of life and loss of amenities caused by the defendant's negligence. The underlying purpose of non-pecuniary damages was confirmed by Justice Kirkpatrick in *Stapley v. Hejslet,* 2006 BCCA 34 at para. 45, leave to appeal to SCC ref'd, 31373 (19 October 2006), citing *Lindal v. Lindal (No. 2),* [1981] 2 S.C.R. 629 at 637:

> 45 Before embarking on that task, I think it is instructive to reiterate the underlying purpose of non-pecuniary damages. Much, of course, has been said about this topic. However, given the not-infrequent inclination by lawyers and judges to compare only injuries, the following passage from *Lindal v. Lindal (No. 2), supra,* at 637 is a helpful reminder:
>
> > Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury" (Cooper-Stephenson and Saunders, *Personal Injury Damages in Canada* (1981), at p. 373). In dealing with an award of this nature it will be impossible to develop a" tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (*Thornton* at p. 284 of S.C.R.).
>
> [Emphasis in original.]

[74] Justice Kirkpatrick continued, at para. 46, to list the following commonly cited, non-exhaustive factors that influence the award of non-pecuniary damages:

a) age of the plaintiff;

b) nature of the injury;

c) severity and duration of pain;

d) disability;

e) emotional suffering;

f) loss or impairment of life;

g) impairment of family, marital and social relationships;

h) impairment of physical and mental abilities;

i) loss of lifestyle; and

j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff).

[75] While the court decides the appropriate award for non-pecuniary damages by reference to comparable authorities, those authorities are only a rough guide: *Trites v. Penner*, 2010 BCSC 882 at para. 189. Each case must be decided after an appreciation of the individual plaintiff's loss and the ability of the award to ameliorate that loss. However, reference to comparable authorities maintains some consistency and fairness in the process.

[76] The plaintiff seeks an award of non-pecuniary damages in the amount of $150,000. The plaintiff submits that his claim for non-pecuniary damages is within the range of $100,000 to $175,000 as established by the authorities upon which he relies.

[77] In my view, the plaintiff's authorities on non-pecuniary damages involve injuries that were different and had a somewhat more significant impact on the plaintiffs in those cases than the injuries sustained by the plaintiff in this case.

[78] In *Cumpf v. Barbuta*, 2014 BCSC 1898, the court awarded $150,000 for non-pecuniary damages, which is approximately $187,000 in 2023. The injuries in that case caused some nerve impingement with pain radiating down the plaintiff's right leg. The nerve impingement symptoms were treated by epidural injections. The court found that the plaintiff was significantly affected in her day to day activities and was disabled from performing many of her activities at work and at home, other than light activities.

[79] The plaintiff in *Ferguson v. Watt*, 2018 BCSC 1587, received a non-pecuniary award of $140,000, which is equivalent to approximately $160,000 in 2023. In *Ferguson*, the plaintiff's injuries included right shoulder symptoms with inflammation, impingement, chronic pain and the potential for future surgery. The plaintiff in *Ferguson* also suffered an injury to her left knee, which triggered arthritis in that joint leading to inflammation and chronic pain. The most significant factor in this case was that the plaintiff's injuries forced her to abandon her role as an operating room nurse.

[80] In *Watts v. Lindsay*, 2019 BCSC 2239, the plaintiff received $160,000 in non-pecuniary damages or $184,000 in present day dollars. However, the plaintiff's psychological injury was the most significant. The plaintiff in *Watts* suffered from increased irritability, periods of rage, depression, anxiety, binge eating, crying spells, low energy, lack of motivation, frustration, difficulty with concentration and focus and flashbacks of the accident. The diagnoses for the plaintiff's psychological injuries were major depressive disorder, somatic symptom disorder and chronic post-traumatic stress disorder.

[81] The defendant submits that the range of non-pecuniary damages for the plaintiff is between $60,000 and $70,000. In support of this submission, the defendant relies on authorities in which the non-pecuniary awards are $60,000 to

$75,000. In my view, the authorities relied upon by the defendant involve injuries and symptoms that are less significant than the plaintiff's injuries.

[82] In *Palidwor v. De Vries*, 2021 BCSC 85, the court awarded $60,000 to the plaintiff for chronic mid-back pain and hip pain. The plaintiff in that case had a prior mid-back injury that was aggravated by the motor vehicle collision. The plaintiff remained capable, after the collision, of engaging in many of the activities that she enjoyed prior to the collision with modifications. Further, the plaintiff was a full-time homemaker, whose ability and capacity to perform housekeeping tasks was not significantly or meaningfully impaired as a result of the collision.

[83] The court in *Thabrkay v. Cecchin*, 2021 BCSC 1413 characterized the plaintiff's injury as mild, although the court did accept that her mild chronic pain levels were far from trivial. The court awarded $70,000 for non-pecuniary damages.

[84] The Collision altered the plaintiff's life significantly. He has been in pain since the Collision and is likely to remain in pain for the foreseeable future. The plaintiff's pain has prevented him from enjoying the activities he used to enjoy, limited his activities with his family and friends and, most importantly to him, it has limited him at work.

[85] However, the plaintiff has been able to continue working at the job he has enjoyed for over 20 years and has continued to progress up the ranks even after his injury. He can still participate in most of the activities he engaged in prior to the Collision but to a lesser degree.

[86] Having regard to the factors referred to in *Stapley* and the comparable cases, I award $110,000 to the plaintiff for non-pecuniary damages.

Work Capacity

[87] The plaintiff started work as a longshoreman in 1995 while still in high school. He started as a labourer and worked his way up the ranks in terms of skills, responsibilities and seniority. In 2006 the plaintiff became a foreman. After becoming

a foreman, the plaintiff continued to work his way up the various levels of foreman ratings until he became rated as a yard foreman in 2016.

[88] The plaintiff held the rating of yard foreman from July 2, 2016 and held that rating as of the date of the Collision.

[89] Before the Collision, the plaintiff had sustained a shoulder injury which caused him to be off work from the middle of December 2016 to the middle of January 2017.

[90] After the Collision on July 6, 2017, the plaintiff was off work to July 22, 2017. When he returned to work on July 23, 2017, the plaintiff worked fewer hours for a period of time but he eventually returned to full time work.

[91] The plaintiff continued to improve his ratings as a foreman after the Collision. He earned the rating of Terminal Planning Centre Foreman in January 2019. Later in the same year he earned the rating of Operations Foreman. Finally, in 2021, the plaintiff earned the rating of Rail Operations Control Foreman, which is the rating he currently holds.

[92] The nature of the work undertaken by the plaintiff as a foreman can be physical at times, requiring the plaintiff to lift and hold heavy items and climb up and down containers. The work also requires prolonged sitting in a vehicle or at a desk and requires significant work in front of multiple computer screens.

[93] In addition, the work is such that the plaintiff is unable to take any significant breaks during his shifts. The other longshoremen rely on the plaintiff to control the traffic in the port, organize their work and control the activities at the port.

[94] The ports run by the plaintiff's employer are open for business and require longshoremen to be on duty every day of the year except Christmas, New Years Day and Labour Day.

[95] The plaintiff could work three different shifts, each of which have a different rate of pay:

a) the graveyard shift, which is 12:00 a.m. to 8:00 a.m.;

b) the day shift, which is 7:00 a.m. to 4:30 p.m.; and

c) the night shift, which is 3:30 p.m. to 1:00 p.m.

[96] The plaintiff works pursuant to the terms of a collective agreement between the British Columbia Maritime Employers Association, and the International Longshore and Warehouse Union Ship and Dock Foremen Local 514 (the "Collective Agreement"). The Collective Agreement sets the usual employment terms including hours of work, rates of pay and vacation time.

[97] While the plaintiff has been able to return to his duties as a foreman, he claims he is unable to work the number of hours that he was capable of working before his injuries. In particular, the plaintiff claims that due to the pain from his injuries, he has missed shifts, and has declined to take double shifts that were offered to him.

[98] Dr. Adrian's opinion is consistent with the plaintiff's evidence. As mentioned, Dr. Adrian concludes that the plaintiff will continue to experience difficulty performing employment activities that involve:

a) prolonged static or awkward spinal positioning;

b) prolonged sitting, standing or stooping; and

c) prolonged and repetitive or heavy lifting, carrying or holding.

[99] Dr. Chapman does not provide as much detail as Dr. Adrian, but Dr. Chapman's opinion is that the plaintiff is partially disabled with respect to his work and has been since the Collision.

[100] Paul Pakulak, an Occupational Therapist, performed a functional capacity evaluation on the plaintiff on September 8 and 26, 2022. The evaluation involved

physical testing of the plaintiff's function in various situations. Mr. Pakulak concludes that the plaintiff has functional limitations with respect to:

a) repetitive and prolonged overhead work;

b) repetitive and prolonged positioning of the neck and shoulders for work in front of the body;

c) repetitive and prolonged work below waist level;

d) prolonged intensive sitting; and

e) prolonged intensive standing.

[101] Mr. Pakulak's opinion is that the plaintiff is best suited for activity requiring up to modified medium level strength and that repetitive and prolonged activity above that level may adversely impact his productivity.

[102] The plaintiff's evidence about his functional capacity at work is consistent with the views expressed by Mr. Pakulak. The plaintiff continues to work at his job as a longshore foreman but his pain limits the kind of work he can do and the number of shifts he can take.

[103] The defence tendered a rebuttal report prepared by Karen Winkler, an Occupational Therapist. Ms. Winkler did not assess the plaintiff or perform a functional capacity evaluation. Ms. Winkler's report is a critique of Mr. Pakulak's report. While I accept that Ms. Winkler raises concerns about Mr. Pakulak's conclusions, I do not rely on Mr. Pakulak's opinions as the basis for my conclusions on the plaintiff's residual functional capacity. I have considered the results of Mr. Pakulak's testing only to measure the reliability of the plaintiff's evidence about his functional capacity.

[104] Based on the plaintiff's evidence and its consistency with the testing of Mr. Pakulak and the opinions of Drs. Adrian and Chapman, I find that the plaintiff's capacity to work has been compromised by the injuries he suffered in the Collision.

Past Earnings Loss

[105] The loss of earnings claim is not capable of precise calculation due to the nature of the plaintiff's work. The plaintiff has no set hours of work and has no set number of shifts that he works per week. The nature of the working hours available to the plaintiff is set out in a letter from the British Columbia Maritime Employers Association to plaintiff's counsel dated July 27, 2021:

> Longshore employment differs from regular employment in that each employee chooses when to make themselves available for work, as such, there is neither a regular schedule to which an employee must adhere, nor a guarantee of employment for the day should they make themselves available for work. Attendance records, annual reviews and assessment reports are not kept as the actual schedule of work is determined by the employee.

[106] Accordingly, the plaintiff's annual earnings vary depending on:

a) how many shifts he works;

b) how many double shifts and overtime hours are available and offered to him, and how many he is willing and able to work; and

c) his rate of pay for the shifts that he works, whether that be a graveyard shift, day shift or night shift.

[107] The best available predictor of what the plaintiff would have earned, absent his injuries, is his earnings history before July 6, 2017. I recognize that the plaintiff's earnings prior to July 6, 2017 may be understated to some degree because he did not receive his higher foreman ratings until after the Collision. However, the plaintiff had been a foreman since 2006 and a yard foreman since 2016. The plaintiff presented no evidence from his employer as to how his prospects for work were affected by higher ratings.

[108] The plaintiff's submission is that his hourly average wage rate is established by the wages he earned in a year, divided by the number of hours he worked in that year. On that basis, the plaintiff arrives at an average hourly rate for each year from

the year of his injuries. I adopt the plaintiff's approach to establishing an hourly rate for each year since 2017.

[109] In order to arrive at the number of hours of work lost due to his injuries after July 6, 2017, the plaintiff claims that he would have worked 3,000 hours in 2017 and 3,200 hours in each year thereafter. I am not prepared to accept the plaintiff's assertions about how many hours he would have worked had he not been injured for the following reasons:

a) After becoming a foreman in 2006, the plaintiff has never worked 3,200 hours in a year; and

b) The Collective Agreement provides that "No Foreman shall be required to work more than 520 hours in any 13-week period but may, at Foreman's option, work to a maximum of 624 hours".

[110] A maximum of 624 hours in a 13-week period is a maximum of 2,496 hours per year.

[111] In my view, it is appropriate to cap the hours workable by the plaintiff at 2,496 hours per year because the Collective Agreement uses mandatory language in establishing a maximum of 624 hours in a 13-week period. The plaintiff's employment records indicate that since 2016 there have been years where the plaintiff exceeded 2,496 hours but the excess hours were not significant. On the other hand, there are years before 2017 where the plaintiff did not reach 2,496 hours.

[112] The plaintiff testified that, contrary to the Collective Agreement, he was able to work more than 624 hours in 13 weeks because there were not enough foremen. He testified further that it was common for foremen to work 800 hours in a 13-week period. I am not prepared to accept the plaintiff's evidence in this regard. Firstly, this evidence is hearsay. Secondly, the evidence is contrary to the terms of the Collective Agreement and, as such, required confirmation from the employer to be reliable.

[113] While there may be years in which the plaintiff exceeds 2,496 hours, those excess hours will be off-set by the years that the plaintiff does not reach that goal. Therefore, I find that had he not been injured in the Collision, the plaintiff could have worked a maximum of 2,496 hours per year.

[114] The plaintiff's employment documents include records of the hours for which he was paid in each year since 1999. From those records I have determined the difference between the plaintiff's maximum hours allowable under the Collective Agreement and the hours the plaintiff actually worked in each year from 2017 to 2022. Where the records are incomplete, I have annualized the hours based on the average hours worked during the year.

[115] The difference between the maximum hours workable and the hours actually worked is set out in Table 1.

Table 1

Year	Hours Absent Injury	Hours Actually Worked	Compensable Difference (hrs)
2017	2,496	2,359.5	136.5
2018	2,496	2,545.0	0.0
2019	2,496	2,430.5	65.5
2020	2,496	2,588.5	0.0
2021	2,496	2,443.5	52.5
2022	2,496	2,392.0	104.0

[116] The plaintiff's income tax returns for 2017 to 2021 establish the plaintiff's annual employment income as set out in Table 2.

[117] The 2022 income in Table 2 is the income earned by the plaintiff to October 29, 2022. The evidence does not include the plaintiff's 2022 income tax information. However, the plaintiff's employment records include a summary of hours worked and wages earned in 2022, up to and including the pay period ending October 29, 2022. The summary shows that during the period covered by the summary, the plaintiff earned $232,409.64. The summary also shows that the plaintiff recorded 1,978

hours in that same period. Therefore, I have determined the plaintiff's average hourly rate for 2022 based on the figures in the summary.

Table 2

Year	Employment Income
2017	$236,944
2018	$252,732
2019	$258,116
2020	$271,399
2021	$255,316
2022	$232,410

[118] The average hourly rate for the years 2017 to 2022 are set out in Table 3. I have multiplied the average hourly rate by the compensable difference in hours to arrive at the lost income for each year from 2017 to 2022 in Table 3.

Table 3

Year	Employment Income (Table 2)	Hours Worked	Average Hourly Rate	Compensable Difference (Table 1)	Lost Income
2017	$236,944	2,359.5	$100.42	136.5	$13,707.33
2018	$252,732	2,545.0	$99.31	0.0	0.0
2019	$258,116	2,430.5	$106.20	65.5	$6,956.10
2020	$271,399	2,588.5	$104.85	0.0	0.0
2021	$255,316	2,443.5	$104.49	52.5	$5,485.73
2022	$232,410	1,978.0	$117.50	104.0	$12,220.00
Total					**$38,369.16**

[119] Based on the foregoing analysis, the total income loss that I have attributed to the plaintiff's injuries from the Collision is $38,369.16. This income loss figure is a gross amount. It must be adjusted for statutory deductions, including the taxes payable, to arrive at the compensable earnings loss figure.

[120] The plaintiff's income tax returns for 2016 to 2021 show that the plaintiff was taxed at an average of 32.7% of his employment income per year over that period.

However, I heard no submissions from either party on the appropriate tax deduction other than the plaintiff suggesting that the issue be deferred.

[121] I have not adjusted this loss for contingencies given that there have been years when the plaintiff has been paid for more than 2,496 hours in a year and there have been years when he worked less than that many hours. Therefore, while there is the potential that the plaintiff would not work the maximum, there is the potential that he may have exceeded the maximum in some instances.

[122] Therefore, the award for past earnings loss is $38,369.16 less statutory deductions. The parties have leave to make further submissions on the statutory deductions if they cannot agree.

Loss of Future Earning Capacity

[123] There are two possible approaches to an assessment of loss of future earning capacity: the “earnings approach” from *Steenblok v. Funk*, [1990] B.C.W.L.D. 1417, and the “capital asset approach” in *Brown v. Golay* (1985), 26 B.C.L.R. (3d) 353 (S.C.). The earnings approach will generally be more useful when the loss is easily measurable: *Perren v. Lalari,* 2010 BCCA 140 at para. 32. Where the loss “is not measurable in a pecuniary way”, the capital asset approach is more appropriate: *Perren* at para. 12.

[124] The plaintiff claims damages for loss of future earning capacity based on the earnings approach in the amount of $1,500,000. In the alternative, the plaintiff submits that the loss of capital asset approach results in a loss of earning capacity in the amount of $1,400,000.

[125] The Court of Appeal in *Rab v. Prescott*, 2021 BCCA 345, defined the analysis required when determining claims for loss of future earning capacity.

[126] Justice Grauer, at para. 47 of *Rab*, set out a three-step process for considering the claims for loss of future earning capacity:

> [47] From these cases, a three-step process emerges for considering claims for loss of future earning capacity, particularly where the evidence

> indicates no loss of income at the time of trial. The first is evidentiary: whether the evidence discloses a *potential* future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in *Brown*). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring—see the discussion in *Dornan* at paras. 93–95.
>
> [Emphasis in original.]

[127] The first question in the process is to decide whether the evidence supports the existence of a potential future event that could lead to a loss of capacity. In considering this question, *Rab* directs the court to consider whether the evidence discloses any injury or condition giving rise to the sort of consideration discussed in *Brown*. The considerations discussed in *Brown* are whether plaintiffs:

a) have been rendered less capable overall from earning income from all types of employment;

b) are less marketable or attractive as an employee to potential employers;

c) have the lost the ability to take advantage of all job opportunities which might otherwise have been open to them, had they not been injured; and

d) are less valuable to themselves as a person capable of earning income in a competitive labour market.

[128] In my view, there is evidence in this case that discloses an ongoing injury engaging the considerations set out in *Brown*. As I have set out in the previous discussion on past earnings loss, the plaintiff has ongoing difficulties with pain aggravated by his workplace duties. The pain the plaintiff experiences at work and the aggravation of his symptoms while at work are not likely to resolve or improve significantly in the future. Given the prognosis of both of physiatrists, Drs. Adrian and Chapman, the plaintiff's difficulties with pain will likely continue.

[129] Accordingly, I find that the plaintiff has satisfied the first step in the *Rab* analysis. There is evidence of an injury that could lead to a loss of capacity in the future.

[130] The second step in the analysis is to determine whether, on the evidence, there is a real and substantial possibility that the plaintiff's loss of capacity will cause a pecuniary loss. At para. 60 of *Rab*, Grauer J.A. concluded that a loss of capacity may be the event that could cause the future pecuniary loss. After accepting that the plaintiff in *Rab* suffered a loss of capacity, Grauer J.A. made the following finding:

> [60] … This loss of capacity was, in short, the event that could potentially cause a future loss. Considered in the context of her work history, her intention to keep working in her new entrepreneurial ventures, and her inability due to the accident, as found by the judge, to devote the same amount of energy and number of hours to work, I conclude that although the evidence was not the strongest, it remained open to the judge to find that there was a real and substantial possibility that this lack of capacity would lead to a future income loss.

[131] Accordingly, in this case, the question on the second step of the analysis is whether there is a real and substantial possibility that the plaintiff's loss of capacity will lead to a loss of income in the future.

[132] I have already determined that the plaintiff's loss of capacity has resulted in a past loss of earnings. In my view, a loss of earnings of the sort experienced by the plaintiff from the date of the Collision is likely to continue into the future. Accordingly, the plaintiff has satisfied the second step in the *Rab* analysis. The plaintiff has established that there is a substantial possibility that his loss of capacity will result in a loss of income in the future.

[133] The third step in the analysis is to quantify the loss of income which includes assessing the relative likelihood of the possibility of the loss becoming a reality.

[134] On the question of the likelihood of a pecuniary loss becoming a reality, I find that the likelihood that the plaintiff's loss of capacity will cause a pecuniary loss in the future is significant. Dr. Adrian's prognosis, which I accept, is that the plaintiff is permanently partially disabled and that it is unlikely that he will experience any

further improvement. Dr. Adrian also predicts that if the plaintiff continues in his current employment, he will likely continue at a reduced capacity into the future.

[135] Therefore, it is not necessary to adjust the quantification of the plaintiff's loss of future earning capacity on the basis that the substantial possibility of loss may not become a reality.

[136] The assessment of past or future loss requires the court to estimate a pecuniary loss by weighing possibilities and probabilities of hypothetical events. The use of economic and statistical evidence does not turn the assessment into a calculation but can be a helpful tool in determining what is fair and reasonable in the circumstances: *Dunbar* v. *Mendez,* 2016 BCCA 211 at para. 21.

[137] Extrapolating from the past earnings loss analysis, I expect that the plaintiff's annual loss of earnings in the future will be comparable to the average annual loss of earnings from 2017 to 2022. Based on that analysis, the average annual loss from 2017 to 2022 is $6,394.86.

[138] I will adjust this average annual loss downward to account for the general contingency of life events, such as other injuries or illness, that may have prevented the plaintiff from maximizing his earning potential in any given year, absent his injuries from the Collision. Accordingly, for the purposes of the future earnings loss analysis, I find that the plaintiff's loss of earnings into the future will be $6,000 per year.

[139] The plaintiff's claim for $1,500,000 in loss of future earning capacity is based on the premise that the plaintiff would have worked 3,200 hours per year had it not been for the injuries from the Collision. I do not accept the plaintiff's submission in this regard. The plaintiff's claim that he lost 30% of his earning capacity is based on the plaintiff's claim that he would have worked 3,200 hours per year had he not been injured. For the same reasons that I rejected the assertion that he would have work 3,200 hours per year, I also reject the plaintiff's submission that he has lost 30% of his earning capacity.

[140] The plaintiff has presented future income loss multipliers prepared by Hassan Lakhani, an economist with PETA Consultants Ltd. Mr. Lakhani adjusts his income loss multipliers for normal survival risks applicable to males in British Columbia.

[141] The defendant presents income loss multipliers prepared by Mark Gosling, an economist with Columbia Pacific Consulting Ltd. Mr. Gosling presents multipliers adjusted for normal survival risks which are similar to the multipliers presented by Mr. Lakhani. However, Mr. Gosling presents alternative multipliers which he adjusts for both the normal survival risks and for labour market contingencies. Mr. Gosling describes labour market contingencies as those contingencies that account for non-participation in the labour force, unemployment, and part time work.

[142] In my view, the labour market contingencies are not applicable in this case, given the plaintiff's work and earnings history. The risk that any of the labour market contingencies will apply to the plaintiff is small given that:

a) The plaintiff has worked in the same industry and for the same employer association since high school;

b) The plaintiff has no periods of unemployment while working in the industry; and

c) The plaintiff has consistently received promotions from his employer, even after the Collision.

[143] Based on these factors it is not likely that the plaintiff will lose his current position or that he will experience periods of unemployment due to seniority issues. Accordingly, the appropriate income loss multipliers to assess the plaintiff's loss of future earning capacity are the multipliers presented by Mr. Lakhani.

[144] In assessing the plaintiff's loss of future earning capacity, I must also consider that as the years pass, the plaintiff's capacity and motivation to work long hours may have diminished even without the injuries he sustained in the Collision. However, this contingency is off-set by the equally likely circumstance that the plaintiff's

injuries will compromise his capacity and motivation to work long hours earlier or more significantly than had he not been injured.

[145] While the plaintiff testified that he intends to work until age 72, the income loss multipliers presented by Mr. Lakhani go only to the plaintiff's 67th birthday. Accordingly, the plaintiff's future loss submission is based on the plaintiff's loss to age 67. I am satisfied by the medical evidence that the plaintiff is capable of working as a longshore foreman to age 67 at his current reduced capacity. While the medical evidence suggests that the plaintiff would experience difficulty performing work with greater physical demands or work in a less flexible environment, the evidence does not suggest that the plaintiff cannot continue working at his reduced capacity.

[146] Applying Mr. Lakhani's income loss multipliers to an annual loss of income of $6,000 per year to age 67, the loss of income would be $113,478.

[147] There is also the substantial possibility that other unrelated events in the plaintiff's life may negatively affect the plaintiff's earning capacity. However, those negative contingencies have already been factored into this analysis by adjusting the average annual loss from $6,394.86 to $6,000.

[148] After accounting for the various positive and negative contingencies, I award the sum of $118,000 for loss of future earning capacity.

Loss of Housekeeping Capacity

[149] The plaintiff claims $8,500 for the loss of housekeeping capacity from the date of his injury to and including 2022. This claim includes $6,800 for the services of a landscaper to assist with yard maintenance for the years 2019 to 2022.

[150] The defendant submits that I should incorporate the loss of housekeeping capacity into the plaintiff's non-pecuniary damages award as opposed to making a stand-alone award.

[151] In the circumstances of this case, where there is a discrete and quantified claim for an expense incurred by the plaintiff for tasks he cannot perform, I am

prepared to award the plaintiff's claim for loss of housekeeping capacity as a stand-alone category of loss.

[152] Accordingly, I award the sum of $8,500 to the plaintiff as compensation for the loss of housekeeping capacity to the trial date.

Future Care Costs

Active Rehabilitation

[153] The plaintiff claims the cost of a kinesiologist to oversee the plaintiff's active rehabilitation program. The plaintiff's occupational therapist recommends 15 sessions with a kinesiologist at a cost of $78 or $85 per session plus GST.

[154] The defendant agrees that additional active rehabilitation sessions are appropriate for the plaintiff to maintain his at-home active rehabilitation program. However, the defendant submits that since the plaintiff has already had a significant number of sessions with a kinesiologist, five further sessions are reasonable.

[155] It is clear that the plaintiff has participated in an active rehabilitation program with a kinesiologist in the past. It is also clear that he has obtained some benefit from those sessions. While he discontinued his active rehabilitation program with a kinesiologist and continued with his home exercise program, there may be a need in the future for updates to his rehabilitation program as well as changes to the program based on altered symptomology. Therefore, I will award 10 kinesiology sessions at $85 per session.

[156] Therefore, I award $892.50 inclusive of GST for the plaintiff's future active rehabilitation costs.

Physiotherapy Treatments

[157] The plaintiff continues to attend physiotherapy treatments when he experiences flare-ups of his symptoms. The physical therapy sessions provide him with temporary relief.

[158] Dr. Adrian opines that if these treatments assist with pain management, allowing the plaintiff to minimize his medication, it is reasonable that he continues on with this type of treatment. Accordingly, I find that an award for future physiotherapy treatments is appropriate.

[159] The plaintiff claims 18 physiotherapy treatments per year.

[160] The defendant submits that there should be no award for the cost of future physiotherapy. The defendant submits that the plaintiff is unlikely to use those services because he has done so only sporadically in the last few years and he is best able to manage his symptoms with his own exercise program and over-the-counter medication.

[161] In my view, one physiotherapy treatment per month should be adequate to address the plaintiff's symptom flare-ups. The plaintiff's Occupational Therapist establishes the cost of physiotherapy at $85 per treatment. I will award the cost of 12 physiotherapy treatments per year at the cost of $85 per treatment for an annual cost of $1,020.

[162] The plaintiff claims the cost of physiotherapy until the age of 75. I am prepared to award the annual cost for physiotherapy until the plaintiff reaches age 65. By the age of 65, the plaintiff may not require these treatments any longer or he may have required them even if he had not been injured.

[163] The plaintiff has tendered a report from Mr. Lakhani which provides multipliers to calculate the present value of future care costs that the plaintiff will incur on an annual basis.

[164] Based on Mr. Lakhani's multipliers, the present value of $1,020 per year to age 65 is $18,092.76. Therefore, the award for future cost of physiotherapy is $18,092.76.

Psychotherapy

[165] The psychiatrist, Dr. Dahi, recommends at least 24 sessions of cognitive behavioural therapy (“CBT”) to manage the plaintiff’s anxiety.

[166] The defendant agrees that the plaintiff would benefit from CBT sessions and accepts the cost of those sessions set out by the plaintiff’s Occupational Therapist at $5,400.

[167] Therefore, the plaintiff will have the cost of CBT sessions in the amount of $5,400.

Home Traction

[168] Dr. Adrian recommends that the plaintiff purchase a home traction unit to assist with his pain control. The defendant agrees that the cost of a home traction machine is a reasonable cost to incur.

[169] Therefore, I award the sum of $419 for the purchase of a home traction unit as indicated by the plaintiff’s Occupational Therapist.

Housekeeping Services

[170] The plaintiff claims a yearly cost of $3,840 to $4,290 plus GST for assistance with more physically demanding household chores. The plaintiff’s Occupational Therapist recommends four hours of assistance every other week plus an additional eight hours of assistance every six months to help with heavier seasonal cleaning.

[171] The difficulty with this recommendation is that there is no evidence that the plaintiff participated in the more physically demanding household activities before his injury. His evidence was that he cleaned the bathrooms once per week, vacuumed two time per week and helped with the dishes.

[172] The plaintiff also claims the cost of future yard care and maintenance at the rate of $945 to $1,218 plus GST per year.

[173] However, the plaintiff claimed, and I awarded, loss of housekeeping capacity in the amount of $8,500 for the period from date of injury to and including 2022. The award for loss of housekeeping capacity included the cost of yard maintenance. Therefore, I find that it is reasonable to carry this loss of housekeeping capacity into the future.

[174] The loss of $8,500 per year for the 5 years after the plaintiff's injury is $1,700 per year. I am prepared to make an award for the future loss of housekeeping capacity to the plaintiff until age 70.

[175] Based on the cost of future care multipliers presented by the plaintiff, a cost of $1,700 per year to age 70 has a present value of $34,532.10

[176] Therefore, the plaintiff's award for future house keeping services is $34,532.10.

Medications

[177] The only medications that the plaintiff takes for pain are Tylenol and Advil. The plaintiff's evidence is that he takes two Tylenol per day and four Advil per day.

[178] The plaintiff's Occupational Therapist establishes the cost for Tylenol at $0.13 per pill and the cost for Advil at $0.26 per pill.

[179] The plaintiff consumes 730 Tylenol per year and 1,460 Advil per year.

[180] Accordingly, the yearly cost for Tylenol is $94.90 and the yearly cost for Advil is $379.60 for a total of $474.50 per year in medication costs. The Occupational Therapist's evidence is that both GST and PST are applicable to these medications. Therefore, the yearly cost for the plaintiff's medications is $531.44 per year inclusive of GST and PST.

[181] I am prepared to award the medication costs to age 75. The present value of the medication costs, applying Mr. Lakhani's multipliers, to age 75 is $11,922.32.

Summary of Future Care Cost

[182] The total cost of future care award to the plaintiff is summarized as follows:

Kinesiology:	$892.50
Physiotherapy:	$18,092.76
Psychotherapy:	$5,400.00
Home traction unit:	$419.00
Yard maintenance and housekeeping:	$34,532.10
Medications:	$11,922.32
Total:	**$71,258.68**

Special Damages

[183] The parties have agreed on special damages at $6,923. Therefore, the plaintiff will have his special damages in that amount.

Summary of Damages

Non-Pecuniary Damages:	$110,000.00
Past Earnings Loss (subject to statutory deductions):	$38,369.16
Loss of Future Earning Capacity:	$118,000.00
Loss of Housekeeping Capacity:	$8,500.00
Future Care Costs:	$71,258.68
Special Damages:	$6,923.00
Total:	**$353,050.84**

Court Ordered Interest

[184] The plaintiff will have court ordered interest on those awards that attract interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

Costs

[185] If the parties cannot agree on the issue of costs, they may, within the next 30 days, schedule a time for submissions on costs.

"D.K. Hori J."

HORI J.