# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hilton v. Alan,*
2024 BCSC 1396

Date: 20240801
Docket: M206300
Registry: New Westminster

Between:

**Hilton Jacobs**

Plaintiff

And

**John Doe, Insurance Corporation of British Columbia, & Stanley Pestano**

Defendant

And between:

**Hilton Jacobs**

Plaintiff

And

**Alan Leblanc**

Defendant

Before: The Honourable Justice Greenwood

## Reasons for Judgment

| | |
|---|---|
| Counsel for Plaintiff: | S. Ballard, K.C. |
| Counsel for Defendant: | R. Nagel |
| Place and Date of Trial: | New Westminster, B.C.<br>April 22-24 and 26, 2024 |
| Place and Date of Judgment: | New Westminster, B.C.<br>August 1, 2024 |

## Overview

[1] This is a personal injury case in which the central issue is damages. The plaintiff was involved in two motor vehicle accidents and suffered injuries as a result. He seeks over a million dollars in damages broken down as follows:

| | | |
|---|---|---|
| a) | Non-Pecuniary Damages | $155,000 |
| b) | Past Loss of Earnings (net) | $369,000 |
| c) | Loss of Future Earning Capacity | $300,000 |
| d) | Past Loss of housekeeping capacity | $10,500 |
| e) | Future Loss of housekeeping capacity | $20,000 |
| f) | Cost of future care | $30,500 |
| g) | Special Damages | $125,389.41 |

[2] The defence concedes that the plaintiff is suffering from ongoing soft-tissue pain, with some associated psychological issues, but disputes the severity of the complaints, and the overall effect on the plaintiff's life and future. The defence argues in favour of a total award of approximately $110,000 (for non-pecuniary damages, costs of future care and special damages), and alternatively if the court accepts a past loss of earnings and a loss of future earning capacity, additional awards of $84,624 and $81,000 under those headings.

[3] With respect to past losses and loss of future earning capacity, the plaintiff bases his claim on losses arising from the running of a motorcycle school that he opened shortly after the accident, and from an IT business that he had built and run prior to the first accident.

[4] For the reasons that follow, I have concluded that the plaintiff suffered losses from the past running and the likely future running of the motorcycle school as a result of the accident and is entitled to an award that reflects those losses. I am not satisfied that the plaintiff suffered any loss attributable to the IT business as I find

that he had already moved to Squamish, and was in the process of winding down the IT business and changing careers irrespective of the accident.

[5] For convenience, I will assess the calculation of damages under each heading that forms the basis of the plaintiff's claim. The total award that I consider fair and reasonable is $430,289.41 broken down as follows:

| | | |
|---|---|---|
| a) | Non-Pecuniary Damages | $135,000 |
| b) | Past Loss of Earnings (net) | $140,000 |
| c) | Loss of Future Earning Capacity | $120,000 |
| d) | Special Damages | $5,389.41 |
| e) | Past Loss of housekeeping capacity | $7,400 |
| f) | Future Loss of housekee ping capacity | $5,000 |
| g) | Cost of future care | $17,500 |

**Background**

[6] The plaintiff is a 56-year-old man who was involved in two car accidents: one on March 15, 2016 and a second accident on December 8, 2016. He was a very active person when growing up in South Africa, including running, squash, rugby and competitive swimming. He also loved riding motorcycles.

[7] After completing high school, the plaintiff furthered his education by studying to be a telecom technologist, as well as taking a computer programming course. When he came to Canada he was certified as a program engineer for Novel. He continued his industry training, and obtained Microsoft certifications as well as other certifications related to software and programming, and some project management courses.

[8] The plaintiff ran his own IT firm under the name Jacobs Technology Management prior to the accident. He is also a certified motorcycle instructor, and is currently running a motorcycle school.

[9] The plaintiff purchased a house in Squamish in 2014. He currently lives in a suite in the house, and rents out a 4-bedroom suite on the main floor. A separate studio suite is rented by the motorcycle school and used as a classroom.



**Credibility and Reliabililty**

[10] Both parties referred me to the well-known passage from *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, which provides guidance on how to assess credibility:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet* (Township) (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.),* [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).

[11] I find that the credibility of the plaintiff's testimony was mixed. I accept generally his account that he suffers from injuries as a result of the accident that have had a negative impact on his life, but I do not accept all of his evidence.

[12] At times the plaintiff was either non-responsive or argumentative. He had a tendency to question anyone who he felt had given him bad advice, or disagreed with his assessment of the situation. I am not concerned that the plaintiff was trying to intentionally mislead the court, but he had a particular perspective on the events in his life since the first accident that coloured some of his testimony.

[13] The plaintiff seemed reluctant to agree to reasonable suggestions put to him that he perceived might be interpreted as inconsistent with his overall narrative. At times he was more focused on trying to figure out where counsel was going than on simply answering the questions. On more than one occasion he declined to answer simple questions directly. When pressed about important dates, or difficult areas in the evidence, he often fell back on his confusion or the fact that he was having a bad day.

[14] Despite these shortcomings, I am satisfied that various aspects of the plaintiff's evidence were credible and reliable. In particular, I accept that he continues to suffer from the effects of the first accident and it has affected his ability to work and his enjoyment of life.

[15] There are some aspects of the plaintiff's evidence that I have either not accepted, or not accepted fully. Where I have done that, it is on the basis of my concern over the credibility or reliability of the evidence on its face, in light of other evidence, or where I find it is not consistent with the "preponderance of probabilities" (*Faryna v. Chorny*, [1952] 2 D.L.R. 354 at p. 357 (B.C.C.A.). I will highlight those aspects of the evidence in the course of these reasons.

**Pre-accident employment**

[16] The plaintiff ran an IT consulting and integration business prior to the accident. After several years working in a variety of IT jobs in Toronto and then Vancouver, he set up his own company in early 2000. The business grew from the trunk of his car. He had a client base that he would offer service contracts to for their computers. For a fixed price, he would ensure the computers were serviced and up to date monthly, and provide 24/7 service in the event of a crash. This allowed his business to grow and become involved in some larger projects with BC Hydro, Vancouver General Hospital and a number of law firms. The business was based in the lower mainland.

[17] Running the IT firm carried with it a number of physical demands including crawling under desks, lifting computers and servers, wiring, and sitting for long periods. The work was mentally tiring and involved long hours. Sixty-hour weeks were not uncommon, and there was considerable pressure and responsibility.

[18] The plaintiff initially ran his company with his ex-wife who was his partner. In 2010 they divorced, which caused upheaval in the plaintiff's life. He lost the office space in the house they had owned. In 2013 or 2014, he entered into a merger with another IT company in North Vancouver. The merger did not go well. According to the plaintiff, money that had been earned vanished.

[19] The plaintiff testified that approximately 18 months to a year before the first accident, he had identified his 10 best clients, including organizations with multiple computers, and intended to go back to what he had been doing before the merger. He described business as "solid" and "capable of growing further."

[20] The plaintiff had purchased a home in Squamish in 2014. He testified that prior to the first accident he was investing money in the Squamish property, which he planned to renovate and flip.

[21] Prior to the accident, the plaintiff took a motorcycle instructor's course at the Justice Institute. In January 2016, he became a certified instructor. In 2017, the plaintiff opened his own motorcycle school which he still runs today.

[22] The plaintiff testified that before his accident, his plan was to run Jacobs' Technology Management until he was 65 and then retire. He testified that he moved to Squamish as a result of the first accident, and that the move coincided with the end of his IT business apart from a few phone calls and follow up tasks.

**The plaintiff's pre-accident health**

[23] The plaintiff was in good health before the first accident. He had the occasional bumps and bruises, including the occasional sore back or knee, but had no serious health concerns.

[24] The plaintiff experienced stress and anxiety as a result of his divorce, and took prescription medication, but he recovered from that and was in a good place mentally and emotionally.

**Mr. Jacob's pre-accident activities**

[25] The plaintiff had grown up in South Africa enjoying a variety of outdoor activities and sports. His passion was riding motorcycles.

[26] The plaintiff was involved with the motorcycle community which was a big part of his social life. He would arrange what he referred to as Monday night rides every week. At times these events were attended by upwards of 200 people. He also organized a monthly "bike night" where riders would gather at a parking lot. Stunt riders would be invited, or riders would show off their bikes, and hamburgers and pop would be sold. The plaintiff would frequently tend the barbeque and bring the drinks.

[27] In the winter he would keep in touch with others at a pub, and attend family, school and community events with his children. He enjoyed going on bike rides with his daughters, and he liked hiking. He went on a number of family vacations, which were active affairs involving such activities as snorkeling, tubing, walking and bike riding.

[28] The plaintiff would also go on longer motorcycle rides into the United States. Some of these were multi-day trips involving many hours of riding a day. The plaintiff was a fit, safe and capable rider.

[29] The plaintiff was also active around his house in Squamish. He mowed the lawn, gardened, and enjoyed a fish pond in his backyard.

**The first accident**

[30] On March 15, 2016, the plaintiff was in his car at the intersection of Seymour and Dunsmuir Street in Vancouver, waiting to turn left onto Dunsmuir. He was at a complete stop when the defendant's vehicle slammed into him. The force of the

collision drove Mr. Jacob's vehicle into the intersection while his foot was on the break, and he came up hard against the seatbelt.

[31] The defendant admits liability for the first accident.

**Injuries and medical evidence**

[32] At the time of the first accident, the plaintiff experienced a rush of adrenaline and was able to drive his car from the scene of the accident. The next day he felt sore all over and he testified that from that point forward it only got worse.

[33] The plaintiff went to the emergency department of Squamish General Hospital on the day after the accident. He had pain and numbness in his fingers and forearms, recurring pain from his chest to his sternum, chest pain, headaches, back pain and neck pain. He also had difficulty with his right thigh, experiencing anything from numbness and itching to a total lack of sensation that would cause him to fall down.

[34] The plaintiff testified that he continues to suffer from the pain caused by the first accident, and some associated anxiety and depression. He described the difficulties he experiences as a result at work, around the home and socially and recreationally.

[35] Dr. Singla was qualified as an expert physiatrist and tendered a medical legal report dated December 5, 2023. The plaintiff has a condition called meralgia paresthetica. Dr. Singla explained that it occurs when there is an injury to the peripheral nerve at the front of the thigh. In this case it was most likely caused by the seatbelt.

[36] Dr. Singla's report describes Mr. Jacob's soft tissue pain, myofascial pain (whiplash associated disorder), central sensitization (spinal cord transmitting pain signals to the brain), persistent facetogenic pain in the lumbar and thoracic spine, and "post-traumatic Tietze syndrome" associated with inflammation of the cartilage that connects the ribs to the sternum. He attributed these diagnoses to the first

motor vehicle accident and opined that the plaintiff would likely continue to have some level of chronic pain for the remainder of his life.

**The second accident**

[37] On December 8, 2016, the plaintiff was leaving a physiotherapy appointment. He was parked in an angled parking lot. He climbed into his car, put on his seatbelt and checked his mirrors and backed out slowly. When he went to drive forward, he felt a collision and noticed that the defendant's vehicle had backed out and collided with his vehicle.

[38] The defendant does not admit liability, but did not call any evidence with respect to the accident. I have no reason to disbelieve the plaintiff's testimony that he had come to a complete stop and was about to drive forward when the defendant's vehicle collided with his. I am satisfied that the defendant is liable for the second accident and find no basis in the evidence from which to conclude that liability should be split 50/50 as the defence suggests.

[39] The second accident caused only relatively minor aggravation of the plaintiff' condition as it existed after the first accident. It interfered with his relief from physiotherapy and caused him additional pain, but within seven to ten days, it had subsided, leaving him in the same condition he had been in after the first accident.

**The plaintiff's heart attack**

[40] In October of 2020, the plaintiff had a heart attack which required quadruple bypass surgery. He recovered physically, but testified that his heart condition affected him emotionally and psychologically in 2021.

[41] Initially, while he was still recovering from the heart attack, the plaintiff reduced the number of students he was able to teach at the motorcycle school. He went from eight students to five. However, due to physical limitations associated with the first accident, he was never able to get back to eight students at a time.

[42] The plaintiff is not currently suffering from any physical limitations as a result of his heart attack. He continues to take heart medications and likely will for the rest of his life. The heart attack has affected him emotionally and mentally, and at times he experiences “brain fog” or has a hard time remembering exact dates and details.



**Causation**

[43] The plaintiff must establish on a balance of probabilities that the defendant’s negligence caused or materially contributed to an injury. The general test for causation is the “but for” test: “but for” the accident would the plaintiff have suffered the injury in question? A plaintiff need not establish that the defendant’s negligence was the sole cause of injury. If there are other non-tortious causes, the defendant will still be found liable if the plaintiff can prove the accident caused or materially contributed to the injury beyond the *de minimus* range (*Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-17, *Farrant v. Laktin*, 2011 BCCA 336 at para. 9).

[44] It is important to distinguish between causation as the source of the loss and the rule of damage assessment in tort. As McLachlin, C.J.C. explained in *Blackwater v. Plint*, 2005 SCC 58, [2005] 3 S.C.R. 3 at para. 78:

> …even though there may be several tortious and non-tortious causes of injury, so long as the defendant’s act is a cause of the plaintiff’s damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway…

[45] In the present case, I am satisfied that causation has been established, and that “but for” the accidents the plaintiff would not have suffered the injuries that were outlined in the evidence. The primary cause of the plaintiff’s injuries was the first accident, and the second accident caused minor and temporary aggravation of his symptoms.

**What is the legal effect of the second accident?**

[46] Where a plaintiff's damage is caused by the negligence of two or more people, each defendant is separately liable for a divisible injury he or she has caused, and jointly and severally liable for an indivisible injury he or she and others have caused (*Dale v. Vickers*, 2019 BCSC 821 at para. 134).

[47] While no submissions were made to me about apportioning liability, or about how causation should be treated in relation to the two accidents, in my view, this case is similar to *Derksen v. Nicholson*, 2015 BCSC 1268 and I would adopt the analysis in that case.

[48] In *Derksen*, as in this case, the plaintiff's injuries were caused primarily by an initial accident, and two subsequent accidents were merely "blips of exacerbation" which "dissipated, leaving the plaintiff in a state referable entirely to the first accident" (para. 52). The plaintiff's injuries were treated as indivisible when it came to non-pecuniary damages, but were otherwise treated as divisible, because the subsequent accidents had no causative relationship on a "but for" analysis to the plaintiff's other claims, such as lost income earning capacity (para. 43).

[49] In this case the effect of the second accident on the overall claim is minimal. I will treat it as indivisible from a non-pecuniary perspective, but I find that it otherwise has no effect on the plaintiff's claim for loss of income earning capacity (past or future), special damages, or loss of housekeeping capacity, all of which are attributable solely to the first accident.

**Non-Pecuniary Damages**

[50] The parties agree that the plaintiff is entitled to non-pecuniary damages but disagree on the amount. The plaintiff seeks $155,000 and the defence argues that a fair amount would be $95,000.

[51] The principles relating to non-pecuniary damages were recently summarized in *Langford (city) v. Matthews*, 2024 BCCA 214 at para. 44:

> [44] Non-pecuniary damages are intended to compensate the plaintiff for pain and suffering caused by their injuries and the consequences of those injuries, including the loss of amenities and enjoyment of life: *McCliggot* at para. 43. The amount of an award for non-pecuniary damages is determined by a functional approach that does not depend solely on the gravity of the injury, but also on the circumstances of the particular plaintiff: *McCliggot* at para. 44. While an assessment of comparator awards is important, damage awards in each case will vary to meet the specific circumstances of that case: *Howes v. Liu*, 2023 BCCA 316 at para. 26. In British Columbia, the assessment of non-pecuniary damages is generally guided by the non-exhaustive list of factors set out by this Court in *Stapley v. Hejslet*, 2006 BCCA at para. 46. They include the plaintiff's age, the nature of the injury, the severity and duration of pain, level of disability, emotional suffering, loss or impairment of life, impairment of family, marital and social relationships, impairment of physical and mental abilities, and loss of lifestyle.



[52] I am satisfied the accident had a significant impact on the plaintiff's ability to function, both socially and running his motorcycles school, as well as around the house and his choice of recreational activities. Before the accident he enjoyed hiking, active vacations, and long motorcycle rides. After the accident, he is still able to ride and to run his motorcycle school, but is not able to sustain the same level of activity. He does not ride as often, and is no longer able to go on long rides, or multi-day trips. He rarely participates in bike nights since the accident, and was not able to do much on a recent family vacation spending most of the time in his room. He is no longer able to do the same work around the house or in the garden, or when he is able to does so with additional pain and frustration.

[53] I accept that the physical pain the plaintiff experiences has a near constant quality, and significantly interferes with his enjoyment of life. He has become less sociable, and his mood has deteriorated. I have also considered the additional difficulty and frustration that the plaintiff has experienced in performing household chores, and that he will likely continue to experience in the future to some extent. As noted earlier, he is likely to experience some level of chronic pain for the rest of his life.

[54] I also accept that the plaintiff has experienced anxiety and depression. However, on the evidence, there were multiple causes of his anxiety and depression. He testified that his divorce had caused him a "tremendous amount of

pain and anxiety." He also testified that there was a lot of emotional and psychological fallout from his heart attack. Despite these other sources of anxiety, I am satisfied that the motor vehicle accident has contributed to his worsening mental state.

[55] The plaintiff referred me to the following cases as appropriate comparators: *Kam v. Van Keith*, 2015 BCSC 1519, *Scelsa v. Taylor*, 2016 BCSC 1122, *Broomfield v. Lof*, 2019 BCSC 1155, and *Vasan v. Herd*, 2022 BCSC 2000. The defendant referred me to *Tyler v. Sowinski*, 2022 BCSC 878, *Tang v. Duong*, 2020 BCSC 85, and *Latreille v. Downey*, 2020 BCSC 976.

[56] All of the cases cited involve similar injuries, but there are distinctions both in terms of the injuries and the effect on the particular plaintiff. For example, looking at the defendant's authorities, in *Tyler v Sowinksi*, the plaintiff's injuries had resolved to a greater extent than in this case. In *Tang v. Duong*, the plaintiff had recovered from the pain suffered on the order of 80% and the effect on his work, domestic ability, and recreational life were more modest than I find the case to be for the plaintiff in this case. In *Latreille v. Downy*, the plaintiff had significant pre-existing health difficulties and the trial judge found that the plaintiff's injuries were not as serious as he believed them to be.

[57] Overall, I find the plaintiff's cases to be more useful but again there are distinctions. I do not consider the effect on the plaintiff's life in this case to be as profound as the effect on the plaintiffs' lives in *Kam v. Van Keith*, or *Scelsa v. Taylor*. In *Broomfield v. Lof*, the plaintiff was diagnosed with severe depression entirely attributable to the accident which was ongoing. I find that *Vasan v. Herd* provides useful guidance, but the plaintiff in that case was younger and faced additional years of pain and suffering, and had lost a part of his identity when his injuries prevented him from working on active police duty.

[58] Taking all of those factors into account, I find that an award of $135,000 for non-pecuniary damages is fair and reasonable. Of that, I would apportion $3,000 to the second accident.

**Past Loss of earning capacity**

[59] The parties disagree on whether the plaintiff is entitled to damages for past loss of earning capacity. The plaintiff argues that he should be awarded $369,000 to represent the cumulative total of his past loss of earning capacity from (1) his motorcycle school which is not able to run at full capacity as a result of his injuries, (2) Jacobs Management Technology which he says he was forced to abandon as a result of his injuries, and (3) lost rental income he would have obtained but for the accident.

[60] The defendant argues that the plaintiff has not demonstrated a real and substantial possibility that he suffered an income loss on any of the identified grounds.

**Legal framework**

[61] In *Andrews v. Grand & Toy Alberta*, [1978] 2 S.C.R. 229, Dickson J. explained that the loss of capacity to earn income is based on the consideration of hypothetical events:

> "We must now gaze more deeply into the crystal ball. What sort of a career would the accident victim have had? What were his prospects and potential prior to the accident? It is not loss of earnings but, rather, loss of earning capacity of which compensation must be made…. a capital asset has been lost: what was its value?" [emphasis added]

[62] Hypothetical events such as how the plaintiff's life would have proceeded without the tortious injury do not have to be proven on a balance of probabilities. A future or past hypothetical event will be considered as long as it is a "real and substantial possibility" and not speculation (*Grewal v. Naumann*, 2017 BCCA 158 at

para. 48, *Rab v. Prescott*, 2021 BCCA 345 at paras. 27-28 and 47, *Dornan v. Silva*, 2021 BCCA 228 at paras. 63-64, 93-95, *Lo v. Vos*, 2021 BCCA 421 at paras. 38-39).

[63] If the plaintiff establishes a real and substantial possibility, the court will measure damages by assessing the likelihood of the hypothetical event or events unfolding (*Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 27, *Rab v. Prescott* at paras. 28-29, 48, *Steward v. Berezan*, 2007 BCCA 150 at para. 17).

[64] The goal of the exercise is to put the plaintiff in the position he or she would have been in had the tort not occurred - not to put him or her in a better position. (*Blackwater v. Pint* at para. 74, *Athey v. Leonati*, at para. 32).

[65] Thus, in the context of a hypothetical past loss, compensation is based on what the plaintiff would have, not could have, earned but for the injury that was sustained (*Rowe v. Bobell Express Ltd*., 2005 BCCA 141 at para. 30, *M.B. v. British Columbia*, 2003 SCC 53, [2003] 2 S.C.R. 477). In other words, it is for work that the plaintiff "would have performed" but was unable to perform due to the accident-related injury (*Hartman v. MMS Homes Ltd*., 2023 BCCA 400 at para. 64, *Steward v. Berezan*).

[66] A trial judge considering losses based on hypothetical events, must also account for positive and negative contingencies that may reasonably affect the quantum of loss (*Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 35, *Kringhuag v. Men*, 2022 BCCA 186 at para. 35).

**Was there a past loss of earning capacity arising from the plaintiff's motorcycle business?**

[67] In the aftermath of the accident, the plaintiff suffered from ongoing pain, nerve damage to his leg, headaches and some related psychological difficulties stemming from the accident. Dr. Singla's expert report supported the limitations these conditions placed on the plaintiff's general abilities.

[68] In my view, the plaintiff has established a real and substantial possibility that he would have earned more income from the motorcycle school had he been able to

work at full capacity and were it not for the injuries he sustained as a result of the accident.

[69] The plaintiff testified, and I accept, that the motorcycle school was well received but he was not able to run it with a full complement of eight students per week due to physical limitations stemming from his accident related injuries. While he initially reduced the number of students while recovering from a heart attack, the effect of the heart attack was temporary, but he is still unable handle the demands of eight students. The demands of loading and unloading the bikes, teaching, and being on his feet in the parking lot for three days of instruction and skill tests on Sundays has proven to be more than he can handle in his current state. He has had to cut the number of students down to five students every second week to accommodate his physical limitations.

[70] There is a real and substantial possibility that the plaintiff's accident related physical limitations caused a pecuniary loss. If he had not been dealing with the effects of the first accident, he would have been able to take on more students and earn more money.

[71] The next step in the analysis is to assess the relative likelihood of hypothetical events, account for positive and negative contingencies, and assess the quantum of loss that will put the plaintiff back in the position he would have been in had it not been for the tortious injury.

[72] The motorcycle business effectively runs from April 1st to September 30th, a period of approximately 24 weeks. By regulation, a maximum of eight students per instructor is allowed. Since the plaintiff is the only instructor at the school, the maximum number of students would be eight students every week, rather than the current total of five students every second week.

[73] Darren Benning was called as an expert economist to quantify the plaintiff's potential loss. In support of the claim for loss of past income, he compared what the business would have earned if it had been operating at full capacity (six months a

year and eight students a week) and deducting what it actually did earn as derived from the corporate income tax returns from the business. This led to a total loss of $306,577. Mr. Benning also calculated the loss on the assumption that the business would only have been able to operate at 50% capacity even without the accident, and the loss in that case would be $87,844. Mr. Benning did this to give the court a range since the plaintiff had never operated this type of business before, and had no track record. He did not factor in any other contingencies.

[74] While I accept that the plaintiff lost the capacity to earn income from his motorcycle business as a result of the injury he sustained, I am not satisfied that the total loss of $306, 577 calculated by Mr. Benning is a realistic assessment of the position the plaintiff would have been in absent the accident related injuries.

[75] The motorcycle business had some limitations that would negatively affect business. Its location was not in a large urban centre, publicity was limited and mainly through facebook and Instagram, and there were shoulder seasons and weather concerns. I find that even without the accident there was a good possibility that the business would not have been at full capacity.

[76] It is reasonable to assume that the school would not necessarily have been full from the outset of operations in 2017. It is clear from the evidence of Lee Heaver, who runs a motorcycle school in the lower mainland, that there are shoulder seasons that are less busy. The plaintiff ultimately made a full physical recovery from his heart attack, but the number of students he could have taken on during the time that he was recovering would have been reduced in any event. Finally, there is the fact that there likely would have been fewer students in 2020 and perhaps even into 2021 as a result of the Covid pandemic.

[77] The plaintiff concedes that it would be unrealistic to assume that his business would be completely full from April 1, 2017 to the trial date but for the accident. He says a fair evaluation of the potential revenue that would have been made would be midway between Mr. Benning’s two figures which rounded down would result in a damage award of $200,000.

[78] The defence submits, in the alternative, that if a real and substantial possibility of loss has been demonstrated, then the school operating at 50% capacity is a fair starting point and Mr. Benning's lower figure of $87,844 should be accepted as the plaintiff's post-tax income loss.

[79] If the plaintiff were healthy and had not suffered from the accident, there is no reason the motorcycle school wouldn't operate every week. When one includes the likely students and the school operating every week, I find the business would be operating at more than 50% capacity. In my view, the evidence supports the plaintiff's submission that a reasonable assessment of post tax loss is between the figures given by Mr. Benning, but I would reduce his suggested award of $200,000 to account for Covid, the effect of the plaintiff's heart attack, and the fact that during this period he was just starting a brand-new business and had no track record in the industry. In my view, a fair and reasonable assessment in the circumstances is $140,000.

[80] The defence suggests a 10% reduction in earning capacity over a three-year period from 2021 to 2023 and a portion of 2024 to account for the plaintiff's heart attack, but I have considered the effect of the plaintiff's heart attack on the business in assessing the overall total pecuniary loss at $140,000.

**Was there a past loss of earning capacity arising from the plaintiff's IT business?**

[81] In my view, the plaintiff has not established a real and substantial possibility of loss from Jacobs Management Technology. The evidence satisfies me that the plaintiff had already moved to Squamish and had decided to change careers before the first accident occurred. I am satisfied that the plaintiff was likely to wind down the IT business and open his motorcycle school even if the accident had not occurred.

[82] There are a number of facts from which I infer that it is highly unlikely that the plaintiff would have wound up continuing to work in the IT business had the accident not occurred. For example:

a) the plaintiff had always run his IT business from the lower mainland;

b) the IT business required travelling to client sites and emergency hands on support;

c) the merger he entered into had cost the plaintiff money;

d) the money that he was able to extract for himself from the business had declined significantly in the four tax years before the accident;

e) he acknowledged wanting to lighten his workload in 2015;

f) he had moved to Squamish before the first accident;

g) he had taken the motorcycle instructors course and obtained all necessary certifications before the first accident; and

h) motorcycle riding had been a lifelong passion of his and something he he had been doing since he was eight years old.

[83] The plaintiff testified that after the first accident he was no longer able to work at the IT business. Since he could not afford the mortgage on his condo in Vancouver and the house he owned in Squamish, he had to “pivot,” sell the condo and make a new plan. That plan involved moving in to the house in Squamish, renting part of it, and working at a motorcycle school, then “out of desperation” opening his own motorcycle school.

[84] I did not find the plaintiff’s evidence credible or reliable on these points. In particular, I do not accept his evidence that it was the accident which caused him to pivot and move to Squamish. He testified that he purchased the house in 2014 but only moved there after the first accident. This was important to his overall account that it was the accident that forced him to “pivot.” However, there was independent evidence that he was already living in Squamish. Mr. Dong, who was a friend of the plaintiffs, testified that the plaintiff was already living in Squamish at the time of the first accident, and had been living there since perhaps 2013.

[85] The plaintiff would not agree in cross examination that he had planned to move to Squamish before the first accident, but his evidence was not consistent with Mr. Dong's evidence that he was in fact living there already.

[86] One of the plaintiff's stated reasons for why he had to move was because he could no longer afford the mortgage on his Vancouver condo and the Squamish property which he had purchased in 2014. However, the title for the Vancouver condo was cancelled in November of 2015 some five months before the first accident, which indicates an earlier move.

[87] The timing of the plaintiff's move to Squamish is important not only to his account of how events transpired, but also to his continued involvement with Jacobs Management Technology. He acknowledged that the IT business effectively came to an end when he moved to Squamish, which only makes sense given the location of the business in the lower mainland and the need for on site visits to clients.

[88] The move to Squamish and an intention to change of careers was also consistent with the plaintiff's personal situation shortly before the first accident. He had been working up to 15 hours a day and seven days a week, and the purpose of the merger was to ease the load on him and to work less.

[89] It is clear that Jacobs Management Technology had been causing the plaintiff problems in the period before the first accident. In addition to the failed merger, the business was not going smoothly. In unrelated court proceedings, for example, the plaintiff represented that the business had lost $60,000 in 2014, and that this caused a reduction in his income due to a shrinking client base. In this proceeding, he agreed that he had not misrepresented those facts.

[90] The plaintiff was also confronted with an article that was published in a Squamish newspaper promoting his motorcycle school. The article was based on an interview with the plaintiff and stated that the plaintiff had moved to Squamish three years earlier in 2014. The plaintiff was asked about the article and it was suggested that he was the source of that information and that it was true.

[91] In response to the line of questioning about the Squamish newspaper article, the plaintiff gave a variety of answers including (1) it was the reporter who had reported that he had moved to Squamish in 2014, (2) he did not recall saying that, (3) the article was just a nice "puff piece" in a local paper, (4) it was unclear if the article had been "fact-checked", and (5) the reporter "could have" gotten it wrong. When pressed, and after a relatively lengthy pause, the plaintiff eventually denied telling the reporter that he had moved to Squamish in 2014.

[92] While there is no independent evidence about what was said and the reporter did not testify, I did not find the plaintiff's answers credible particularly in light of the evidence from his friend that he had been living in Squamish well before the accident.

[93] The plaintiff was also shown the letter of instruction from his lawyer to Mr. Benning which asked Mr. Benning to assume that the plaintiff had intended to open the motorcycle school in April 2016 (two weeks after the first accident), but due to his motor vehicle accident it was delayed one full season. When asked if he was the source of that information, and if he was disputing its accuracy, the plaintiff testified that he was just really confused, he had suffered a massive coronary and it had been 8 years since any of this happened. He did not really respond to the question.

[94] There is also the simple fact that setting up the motorcycle school involved more physical labour than the IT business, including loading and unloading motorcycles, and standing for long periods of time in the parking lot, as well as writing a new curriculum. It is less likely the plaintiff would have taken on such a challenge in the face of injuries that made such tasks more difficult, unless it had been his intention all along.

[95] It is clear that Jacobs Technology Management had significant sales in the last full year of business before the accident, but the plaintiff was not able to take significant wages or a significant dividend from the company. He explained this was from money that was missing as a result of the merger, but whatever the reason, the

money available for his own personal use had declined which is consistent with a decision to change careers and open his motorcycle school before the accident.

[96] I would add that even if the plaintiff had established that continuing work and income from the IT business was a real and substantial possibility, the loss would have to be set off against the loss from his motorcycle business. There was no suggestion that the plaintiff would be operating both businesses at the same time. The relative likelihood that he would have worked on the IT business, in my view, was very low, but even if he did, it would not likely have lasted long after the accident. Any loss that might theoretically have occurred, would be less than the loss I have found actually occurred in relation to the motorcycle school.

[97] While the evidence in this case may not be as clear cut, this is a situation like that in *Steward v. Berezan*, where allowing recovery for a pursuit that the plaintiff would not actually have been engaged in would put him in a better position than he otherwise would have been in were it not for the proven tort.

**Has the plaintiff proven a past loss of rental income?**

[98] The plaintiff maintains that he is entitled to a pre-tax loss of rental income in the amount of $30,475, which after deducting the marginal tax rate of 38% testified to by Mr. Benning would result in a net loss of $19,061.90. The plaintiff argues that he should be awarded the rounded down sum of $19,000 as a result.

[99] The defence argues that there was no evidence to support the loss of rental income claim, and that the expert evidence was based on assumptions not in evidence.

[100] Mr. Benning (the expert economist) calculated rental income loss for the time period between May 1, 2016 and April 14, 2017. He calculated the pre-tax loss from 2016 at $21,200 and the pre-tax loss for 2017 at $9,275 to arrive at the total of $30,475 relied on by the plaintiff.

[101] It is noteworthy, however, that Mr. Benning's calculation was based entirely on a factual assumption he was asked to make. Namely, that at the time of the first accident, the plaintiff was within six weeks of the completion of renovations to the rental suite, and that due to his injuries there was an eleven month delay until the suite could be rented on April 15, 2017. The question is whether those facts were in evidence.

[102] I agree with the defence that the evidence is insufficient to establish a provable claim regarding loss of rental income. I can find no evidence to support the key assumptions on which Mr. Benning's calculation was based; namely delay. No timeline was provided, and the plaintiff did not address the issue of delay to the construction project in his evidence, even when he was asked directly whether he had suffered any loss as a result of the delay. He testified only that he hired sub-contractors to finish the project because he was anxious to rent the property to tenants. There is simply no evidence that the construction project was delayed or would have been completed earlier were it not for the accident.

**Loss of Future Earning Capacity**

[103] An award for loss of future earning capacity represents compensation for a pecuniary loss. The award is an assessment not a mathematical calculation. It involves a comparison between the likely future of the plaintiff if the accident had not happened and the plaintiff's likely future in light of the accident (*Dornan v. Silva* at para. 156, *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32).

[104] As with past losses based on how a plaintiff's life would have unfolded were it not for the accident, an award for loss of future earning capacity depends on hypothetical events.

[105] In *Rab v. Prescott*, Grauer J.A. set out the three-step process for assessing claims for loss of future earning capacity. The first step is whether the evidence discloses a potential future event that could lead to loss of capacity. The second

step is whether on the evidence there is a “real and substantial possibility” that the future event in question will cause a pecuniary loss. The third and final step is to assess the value of that possible future loss, which must include assessing the relative likelihood of the possibility occurring (para. 47).

[106] Applying the three-part test, I am satisfied that there is evidence that discloses a potential future event that could lead to a loss of capacity. At present, the plaintiff suffers from ongoing pain, meralgia paresthetica, headaches and some residual depression and anxiety, and the evidence satisfies me that he will likely experience some chronic pain for the rest of his life. I am also satisfied that there is a real and substantial possibility that his condition will cause a pecuniary loss in relation to running his motorcycle business. He described his difficulties and his inability in light of the effects of the accident to handle the same number of students, and to fully run the business, and I am satisfied that the pecuniary loss will extend into the future. The real issue is at the third stage, and the valuation of the loss.

[107] The valuation of a loss of earning capacity may involve a comparison of what the plaintiff would probably have earned but for the accident with what he will probably earn in his injured condition, but that is not the end of the inquiry. Mathematical projections and calculations are only a starting point. The ultimate award must be fair and reasonable, and will depend on the evidence, hypothetical events, and positive and negative contingencies (*Reilly v. Lynn*, 2003 BCCA 49 at para. 101, *Jurczak v. Mauro*, 2013 BCCA 507 at paras. 35-37, *Siu v. Regehr*, 2022 BCSC 1876 at para. 171).

[108] In my view, despite numerous contingencies and the difficulty of predicting the future, I find there is sufficient evidence about the operation of the motorcycle school up to the time of trial, and sufficient evidence about the effect of the plaintiff’s injuries on his ability to maximize the profitability of the school in the future, to use that as a starting point in the analysis.

[109] The most valuable data in measuring the loss, in my view, is to examine the past loss in gross revenue and pre-tax income loss in the seven-year period

between the first accident and the trial. For example, if the plaintiff's business had theoretically been able to operate at 50% capacity (eight students every second week instead of five) the loss in gross revenue and the pre-tax income loss for the motorcycle school were calculated by Mr. Benning as follows:

| year | Loss in Gross Revenue | Pre-Tax Income loss |
|---|---|---|
| 2017 | $51,189 | $30,713 |
| 2018 | $23,753 | $14,252 |
| 2019 | $12,043 | $7,226 |
| 2020 | $23,383 | $14,030 |
| 2021 | $21,683 | $13,010 |
| 2022 | $16,818 | $10,091 |
| 2023 | $16,818 | $10,091 |

[110] As noted earlier, when assessing past losses, I concluded that the loss should be based on something between the school running at 50% capacity and 100% capacity. I would also observe that the trend is toward a smaller loss of revenue in recent years. The question is, based on these facts what is a reasonable loss to project into the future?

[111] The plaintiff argues that the mathematical anchor that should be used is a loss of $30,000 per year from now until age 65, and a further loss of $20,000 per year until age 70, which when multiplied using the economic multipliers provided by Mr. Benning equals a total loss of $308,100, and that an award of $300,000 would be fair and reasonable in the circumstances.

[112] However, I do not accept that the losses are likely to be that high. Based on all of the evidence, I would adopt a loss of approximately $15,000 a year to age 65 and $10,000 a year to age 70 as a "mathematical anchor" to begin the analysis. If extrapolated using Mr. Benning's economic multiplier, that would amount to a future loss of $110,590 (10 x 11,059) and $43,460 (5 x 8,692) for a total future loss of $154,050 without accounting for any positive or negative contingencies.

[113] The plaintiff has a history of working hard and entrepreneurial experience, as well as a life-long passion for motorcycles. On the other hand, the business is

located in a smaller community, there is limited advertising, and there is no guarantee a relatively new business will succeed. The plaintiff has also suffered a heart attack (unrelated to the accident), which affects his concentration and mental health, and may reasonably reduce his capacity to work to 100% capacity in the future. Finally, while I accept that the plaintiff will have some level of chronic pain for the remainder of his life, his condition may improve if he follows Dr. Singla's recommendations.

[114] Weighing all the evidence, and accounting for the difficulty of gazing "more deeply into the crystal ball," I find a fair and reasonable award for loss of future earning capacity in the case at bar is $120,000.

[115] I have not included an award in relation to Jacobs Management Technology. In my view, the evidence supports the inference that the plaintiff would not have been engaged in that business in any event. I have summarized the relevant evidence and my conclusions on that point in relation to past losses, and I will not repeat it here. Suffice to say, I am not satisfied there is a real and substantial possibility of a pecuniary loss in relation to the IT business.

**Future Cost of Care**

[116] The plaintiff claims a total of $30,500 for the costs of future care. This is based on participation in a "Change Pain clinic program", a pain psychologist, and radio frequency ablations. These treatments were among those recommended by Dr. Singla, the physiatrist.

[117] An award for the cost of future care is based on the principle of restitution, and may include what is reasonably necessary on medical evidence to promote the mental and physical health of the claimaint (*Gao v. Dietrich*, 2018 BCCA 372 at paras. 68-69, *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9, [2002] 1 S.C.R. 205 at paras. 21-22). Whether the costs will actually be incurred by the plaintiff, and whether he or she is willing to accept the recommended treatment are both relevant

considerations. An award under this heading must reflect what may reasonably be expected to be required (*O'Connell v. Yung*, 2012 BCCA 57 at paras. 68-70).

[118] In the present case, the plaintiff claims $20,000 for attendance at an integrated pain clinic. There was no direct testimony that the plaintiff was interested in attending such a clinic, and no past experience doing so. Nevertheless, I accept on the evidence that attendance at some kind of pain clinic may reasonably be required.

[119] However, the only evidence supporting the cost of $20,000 came from Dr. Singla and related to one specific clinic - the "Change Pain" clinic program. It was unclear from the evidence why this specific program was required in the plaintiff's case. No detailed evidence was provided. There was no estimate of the cost of a "mixed model" clinic which I understood from Dr. Singla's evidence to be partially covered by MSP but not completely. Moreover, Dr. Singla's report recommends simply that the plaintiff attend "a multidisciplinary pain clinic (MDPC) in the community or hospital setting." It was clear that there are clinics that are fully or partially covered by MSP, although they may not provide all of the recommended treatments. While the assessment is difficult in light of the dearth of evidence, I would award $10,000 for future care in an integrated pain clinic representing those treatments that are reasonably required and not otherwise covered.

[120] With respect to the $5,500 claim that Dr. Singla recommended for a pain psychologist, that is based on the average cost of $100-$150 a session for three visits a month for a period of 15 months. However, although the plaintiff testified to his anxiety and depression since the accident, he has not seen a psychologist to date. He did not express any desire to see one, although he did not refuse either. When asked, he simply said he had not seen a psychologist "yet".

[121] The defence says it is not clear whether he would even attend such treatments. However, I find on the evidence that there are lingering psychological effects associated with the accident that reasonably require care, or may require care in the foreseeable future. Balancing all the relevant factors, I would assess the

amount at $4500 representing approximately three sessions a month for a 12-month period at the cost identified.

[122] With respect to the “radio frequency ablations,” Dr. Singla explained that this was a two-stage process in which anesthetic is injected into the facet joint as a diagnostic tool, and if there is a positive response then the second stage involves ablating the nerve which can provide pain relief, although the nerve has a tendency to grow back which may require further procedures every 15 months or so. While both procedures are covered by MSP there is a cost for medication of $50 to a $100 for the first stage, and $500 to a $1000 at the second stage for the needle used which is not covered. I am satisfied that this recommended treatment is reasonably required and assess the amount at $3,000 which will account for the potential need for multiple treatments and the negative contingency that the procedure may not be successful in the first place.

[123] The total assessed award for loss of future care is therefore $17,500.

**Loss of Housekeeping capacity**

[124] A loss of housekeeping capacity is the loss of an asset that should be compensated regardless of whether replacement services that may be used to value the loss are actually purchased (*Kim v. Lin*, 2018 BCCA 77 at para. 31).

[125] Where the plaintiff is unable to perform usual and necessary household work, the court has a discretion whether to treat the claim as part of the non-pecuniary loss or as a segregated pecuniary head of damage. Pecuniary awards are not appropriate, however, if the plaintiff is able to perform household work, but with additional difficulty or frustration. In those cases, non-pecuniary awards are augmented to fully reflect the plaintiff’s pain, suffering and loss of amenities (*McKee v. Hicks*, 2023 BCCA 109 at para. 112, *Kim v. Lin*, at paras. 27-33).

[126] The plaintiff argues that he is unable to mow the lawn and has hired someone to perform that task, and that he offers reduced rent to his tenants in exchange for snow removal and setting out the garbage each week. He contends that there

should be a pecuniary award for past and future loss of domestic capacity based on reasonable assumptions and an hourly rate of $25 per hour that has been applied in other cases.

[127] The defence argues that there was little evidence to support a claim of loss of housekeeping capacity, and that in the circumstances, any award could be subsumed in the non-pecuniary damages award.

[128] I accept the plaintiff's evidence that to this point he has been unable to mow the lawn. He explained that he enjoyed yardwork before the accident and had been mowing the yard since he was very young. Based on testimony that the plaintiff spent $100 a month for five to six months a year, and there have been eight summers since the first accident, I would award $4400 for past losses. In terms of future loss of housekeeping capacity related to lawn care, I am not persuaded that the plaintiff will be unable permanently to care for his lawn. I note that while he has difficulties, he is able to load and unload motorcycles from a sprint van in conducting his business. In my view, a reasonable amount would be an additional $3,000 representing an additional five years of service from this point forward.

[129] The garbage and snow removal is very difficult to quantify. The plaintiff testified that he and his tenants had an agreement whereby they agreed to do the garbage and snow removal and received a "commensurate benefit" but that benefit was never defined. In fact, the plaintiff said it was not a fixed amount. The situation is further complicated by the fact that the rental portion of the property was rented out for below market as part of an overall agreement that worked for all parties.

[130] I conclude that $2500 is a fair amount for past loss of snow removal and would add $500 for past loss in relation to household garbage duties, which it seems to me would be fairly modest in the circumstances. I would award an additional $2000 for future loss of five years of service from this point forward. As with lawn maintenance, I am not satisfied that the plaintiff will be unable to perform these duties permanently, even though they may be more difficult. In arriving at these figures, I have considered the fact that the season for snow removal is limited to

approximately three to four months, and I have used the plaintiff's suggested rate of $25 an hour for two hours every other week as a rough guide.

[131] The total award for loss of housekeeping capacity as a separate category of pecuniary damages is $12,400.

[132] I find the remainder of the claim for loss of housekeeping capacity is better addressed within the award for non-pecuniary damages, and I have considered it under that heading.

[133] The plaintiff did not testify that he was unable to perform housework, but just that it was difficult and that he does the best he can. His daughter testified to the fact that the plaintiff was slower and seemed down after the first accident, but not to his inability to perform any specific tasks, or to any housework she did on a regular basis.

**Special Damages**

[134] In personal injury cases, special damages include actual or particular monetary losses that can be easily calculated. An injured person is entitled to recover the reasonable out-of-pocket expenses he or she incurred as a result of an accident. This is grounded in the fundamental governing principle that an injured person is to be restored to the position he or she would have been in had the accident not occurred: *Heltman v. Western Canadian Greyhound Lines*, 1966 Canlii 672, (1966), 57 W.W.R. 449 at p. 464-465 (B.C.C.A.). *X. v. Y.,* 2011 BCSC 944 at para. 281; *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.) at p. 78.

[135] The parties agree that the amount of $5,389.41 should be awarded as special damages to represent expenses incurred for treatment, medication and mileage.

[136] As noted, the plaintiff earns rental income from his home in Squamish, and claims an additional $120,000 representing money he says he spent on sub-contractors to complete renovations to the home, which he says he would not have needed to do were it not for the accident. He relies on *Corness v. Ng*, 2022 BCSC

334, aff'd 2023 BCCA 185 in which $107,706 was awarded for the costs of labour the plaintiff would have completed himself but for the accident.

[137] I am not satisfied that the plaintiff has proven the loss related to out-of-pocket construction expenses on a balance of probabilities. There is not a single receipt of any sub-contractor who was hired in a situation where one would expect that receipts would exist if that quantity of work had been done. No sub-contractors testified, and nothing was itemized in terms of what work was necessary, or how much each necessary item cost. No bank statements were tendered showing monies spent. None of these kinds of evidence are, in and of themselves, a legal requirement, but the burden remains on the plaintiff to prove the loss. I do not accept the plaintiff's evidence of a $120,000 loss.

[138] There are a number of features that distinguish this case from *Corness*. In *Corness* the plaintiff had a "clear history of investing in, renovating, and selling his primary residence (and one investment property) for gain" (para. 141). There was detailed evidence in support of the claim, including testimony from another contractor describing the plaintiff's work, clear testimony from the plaintiff on the specific tasks he had to hire third parties to complete, and invoices to support the vast majority of the claim.

[139] I would adopt the following comments from *Porter v. Willey*, 1998 CanLii 5437 (BCSC) which I find applicable in the circumstances (see also: *Sunner v. Lee*, 2023 BCSC 988 at para. 85):

> [53] Here again no receipts or other evidence of those expenditures were produced to the court. In my view where special damages such as the foregoing are claimed it is necessary for the person claiming them to prove them by some evidence as to the amounts incurred particularly when such evidence would be generally available.
>
> [54] In this regard I refer to the decision of Lord Goddard in the case of *Bonhom-Center v. Hyde Park Hotel* (1948), 64 T.L.R. 177 (C.A.) where he stated at p. 178:
>
> > Plaintiffs must understand that if they bring actions for damages it is for them to prove all damages; it is not enough to write down the particulars and, so to speak throw them at the head of the court,

> saying "This is what I have lost, I ask you to give me those damages". They have to prove it.

[140] I would not allow the claim for $120,000 as special damages for out of pocket expenses related to renovations on the plaintiff's Squamish home. Accordingly, the award for special damages will be $5,389.41

## Conclusion

[141] For the reasons stated, I award damages to the plaintiff in the amount of $430,289.41 broken down as follows:

| | | |
|---|---|---|
| a) | Non-Pecuniary Damages | $135,000 |
| b) | Past Loss of Earnings (net) | $140,000 |
| c) | Loss of Future Earning Capacity | $120,000 |
| d) | Past Loss of housekeeping capacity | $7,400 |
| e) | Future Loss of housekeeping capacity | $5,000 |
| f) | Cost of future care | $17,500 |
| g) | Special Damages | $5,389.41 |

[142] Unless there are matters of which I am unaware, the plaintiff is entitled to his ordinary costs.

"Justice Greenwood"