
CANADA / JUDGMENT

Christensen v. Jand

2018 BCSC 1294

COURT

Supreme Court of British Columbia

DECIDED

1 August 2018

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2018 BCSC 1294 Christensen v. Jand

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Christensen v. Jand,

2018 BCSC 1294

Date: 20180801

Docket: M151602

Registry: Vancouver

Between:

Bert Christensen

Plaintiff

And

Yashpaul Jand

Defendant

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

T.L. Spraggs

I.A. Mis

Counsel for the Defendant:

C.J. Hope

Place and Dates of Trial:

Vancouver, B.C.

June 18-22, 2018

Place and Date of Judgment:

Vancouver, B.C.

August 1, 2018

Introduction

- [1] The plaintiff, Bert Christensen, was injured in a motor vehicle accident that occurred on March 22, 2013, in Burnaby. It was an intersection collision. He was driving northbound on Nelson Avenue in Burnaby. A vehicle driven by the defendant, Yashpaul Jand, made a left-hand turn, and the two vehicles collided. Mr. Christensen commenced this action against the defendant, as the driver of the vehicle, seeking damages for the injuries he sustained in the accident. The defendant has denied liability for the accident.
- [2] The defendant concedes that Mr. Christensen suffered some injuries in the accident. However, the defendant disagrees with Mr. Christensen about the nature, extent, and seriousness of the injuries he claims were caused by the accident.
- [3] The defendant alleges that Mr. Christensen has failed to mitigate his damages.

Issues

- [4] The issues raised by the pleadings, evidence, and submissions are:
 - 1. Liability for the accident.
 - 2. What are the nature, extent, and duration of the injuries suffered by Mr. Christensen as a result of the accident?
 - 3. What is the appropriate award for general damages for pain and suffering?
 - 4. What is the appropriate award for past wage loss and loss of earning capacity?
 - 5. What is the appropriate award for future loss of earning capacity?
 - 6. What is the appropriate award for cost of future care?
 - 7. What is the appropriate award for special damages?
 - 8. Has Mr. Christensen failed to mitigate his damages, and if so, what would the appropriate reduction be?

Background

- [5] Mr. Christensen was born on June 28, 1966 and raised in Burnaby, BC. He completed his Grade 12 and has some college-level courses. He has been predominantly employed in blue-collar jobs such as warehousing and driving. He has also worked for his brother for a few years building crates.
- [6] At the time of the accident, he was working as a temporary letter carrier for Canada Post. He had held that position from July 11, 2011. He held an on-call position and was working a long-term assignment. This assignment provided him with the same route and eight hours of work a day. He was also working some overtime.
- [7] After the accident, he immediately returned to work in the same position carrying out the same job duties for approximately two weeks. He then worked reduced hours for approximately six months. In November 2015 he took on a long-term assignment that provide only four hours of work but on a fixed route. It is anticipated that this route will continue for at least another two years.
- [8] While growing up, Mr. Christensen was a very recreation-minded individual who enjoyed sports, particularly hockey, and being outdoors.
- [9] He was separated from his wife but was caring for his two sons on a 50% basis.
- [10] On March 22, 2013, Mr. Christensen was driving his 1999 Chevrolet Cavalier northbound on Nelson Avenue. As he approached Sanders/Hazel Streets intersection, he moved from the left northbound lane to the right northbound lane. He estimates he was travelling between 40 and 50 kph. The posted speed limit was 50 kph. As he approached the intersection, there were a number of vehicles in the left northbound lane with their left signal lights on. He did not see the defendant's vehicle, a 2006 Dodge Grand Caravan, until it was in front of him in the intersection. The defendant was driving southbound on Nelson Avenue intending to turn left and proceed east on Sanders Street. Mr. Christensen slammed on his brakes but he struck the defendant's vehicle. The pedestrian control light was flashing green for northbound and southbound traffic on Nelson Avenue.
- [11] Mr. Christensen's vehicle suffered damage to the front and a crack in the windshield. The driver and passenger airbags were deployed. The defendant's vehicle suffered damage to the right front side. Both vehicles had to be towed from the accident site. Mr. Christensen's vehicle was determined to be a total loss. The damage estimated to the defendant's vehicle was in the amount of \$5,585.50.
- [12] Mr. Christensen testified that he felt a big jolt. He heard a loud noise. His right ear "blew up and then heard a ringing". He thought his vehicle was on fire because there was smoke. He was able to squeeze out of the driver's door. He immediately felt a high-pitched sound in his right ear. The police attended and he provided a statement to them. He took pictures of the damage to his vehicle. He called his sister to come and get him.

[13] His sister attended and assisted in making an appointment with a walk-in clinic and an appointment with his family doctor for the following day.

Liability for the Accident

The Law

[14] The relevant statutory provisions of the Motor Vehicle Act, R.S.B.C. 1996, c.318 [MVA], governing left-hand turns are as follows:

Careless driving prohibited

144 (1) A person must not drive a motor vehicle on a highway

- (a) without due care and attention,
 - (b) without reasonable consideration for other persons using the highway, or
 - (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.
- (2) A person who contravenes subsection (1) (a) or (b) is liable on conviction to a fine of not less than \$100 and, subject to this minimum fine, section 4 of the Offence Act applies.

Yielding right of way on left turn

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

[15] The meaning of immediate hazard has been described as when the approaching driver must take some sudden or violent action to avoid the threat of the collision with the vehicle that is attempting a left turn: *Aerabi-Boosheri v. Retallick*, [1996] B.C.J. No. 143 at para. 8 (S.C.).

[16] The law governing passing on the right is s. 158 of the MVA:

Passing on right

158 (1) The driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle, except

- (a) when the vehicle overtaken is making a left turn or its driver has signalled his or her intention to make a left turn,
- (b) when on a laned roadway there is one or more than one unobstructed lane on the side of the roadway on which the driver is permitted to drive, or

- (c) on a one way street or a highway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and is of sufficient width for 2 or more lanes of moving vehicles.
- (2) Despite subsection (1), a driver of a vehicle must not cause the vehicle to overtake and pass another vehicle on the right
 - (a) when the movement cannot be made safely, or
 - (b) by driving the vehicle off the roadway.
- [17] In *Nerval v. Khehra*, 2012 BCCA 436 at paras. 29-30, the Court of Appeal applied the following reasoning respecting the interaction between the obligations imposed by ss. 174 and 158 of the MVA:
- [29] I do not agree. In my opinion, the trial judge correctly concluded that the obligation created by s. 174 has priority over the obligation created by s. 158. This result follows from the reasoning of this Court in *Pacheco (Guardian ad litem of) v. Robinson* (1993), 75 B.C.L.R. (2d) 273 (B.C.C.A.) at para. 15, in which Legg J.A. stated:

In my opinion, a driver who wishes to make a left hand turn at an intersection has an obligation not to proceed unless it can be done safely. Where each party's vision of the other is blocked by traffic, the dominant driver who is proceeding through the intersection is generally entitled to continue and the servient left-turning driver must yield the right of way. The existence of a left-turning vehicle does not raise a presumption that something unexpected might happen and cast a duty on the dominant driver to take extra care. ...

- [30] I acknowledge that *Pacheco* did not involve a direct conflict between the obligations imposed by the equivalents of ss. 174 and 158, but in the course of explaining the obligation imposed on a driver about to turn left across oncoming traffic, and immediately after the passage just quoted, Legg J.A. endorsed the following principle:

16 I find support for that conclusion in the unreported decision of Mr. Justice McKenzie in *Bond v. Chernoff* (14 October 1985), Vancouver 27420/73 (B.C.S.C.). The accident in that case occurred at the intersection of Broadway and Victoria Drive. The plaintiff was proceeding east on Broadway. When the plaintiff's vehicle had entered the intersection he was confronted by the defendant's vehicle which was heading westbound making a left hand turn in front of his vehicle.

17 Mr. Justice McKenzie said:

I think the accident is readily explainable in that neither of the parties could see the other party because the view to [sic] one another was denied to each of them by the presence of the line of eastbound vehicles that were waiting in the eastbound lane for the foremost of those vehicles to make a left hand turn. It was not until the Plaintiff's vehicle and the Defendant's vehicle got to a point of inevitable collision that they became visible to one another and at that point each driver was helpless to prevent an accident.

I think the law is clear under the circumstances that the obligation of the Defendant doing the left turn was an absolute obligation and I am unable to discern, on the facts of this case, that the Plaintiff was negligent. [Emphasis added.]

[18] The Court of Appeal then outlined a two-stage analysis to assess liability under s. 174 of the MVA, being:

1. To determine whether an immediate hazard was present when the left-turning driver commenced the turn. If no immediate hazard was present, the left-turning driver becomes the dominant driver with the right of way: see para. 33; and
2. If the through driver is found to have been the dominant driver with the right of way, the court must determine whether the through driver was nevertheless negligent and at fault for causing or contributing to the accident: see para. 37.

[19] Once a determination has been made on who is the dominant driver, the onus of proving negligence shifts to the servient driver: *Dawes v. Valadas*, 2005 BCSC 1319 at para. 31. A dominant through driver may still be negligent, but the correct analysis is to recognize that the through driver is breaching his common law and perhaps statutory obligations and to address the issue as one of apportioning fault, not to reclassify the through driver as servient based on the degree to which the through driver is in breach of his obligations: *Nerval* at para. 38.

Application of the Law to the Facts

[20] The accident happened at the intersection of Nelson Ave and Sanders/Hazel Streets in Burnaby (the "Intersection").

[21] The evidence supports that on March 22, 2013, Mr. Christensen had left work at approximately 2:00 p.m. and was heading northbound on Nelson Street. He was driving in the left northbound lane and had crossed Kingsway Avenue. At this point, Nelson Street has four lanes - two lanes in each direction. The defendant was proceeding southbound on Nelson Street and was planning to turn left onto Sanders Street.

[22] The evidence of what happened as the parties approached the Intersection diverges. Although the evidence diverged, I find that both drivers gave their evidence trying to be as accurate as possible. I do find that Mr. Christensen was a forthright and credible witness. His evidence on how the accident happened was internally consistent and made the most sense.

[23] Mr. Christensen's evidence is that there were vehicles in the left northbound lane, turning left at the Intersection, so he moved to the right northbound lane. He testified that he made this lane change about 12-15 car lengths prior to the Intersection. He made the change because there were three to four vehicles waiting to turn left onto Hazel Street in the left northbound lane. He does not recall if, at the time of his lane change, the white line was dashed or solid. His plan was to proceed straight through the Intersection and then turn

right on Dover Street which was one block north of the Intersection.

- [24] As he was approaching the Intersection, he was travelling between 40-50 kph. As he was about to enter the Intersection, a van travelling in the southbound direction turned left in front of him. It happened very quickly. He immediately applied his brake but was not able to avoid the collision.
- [25] I also find the defendant was credible; however, as I will discuss, his evidence, and the story it told, was less plausible. The defendant's evidence is that he was planning on turning left onto Sanders Street at the Intersection. He stopped briefly at the stop line and then proceeded into the Intersection. He paused in the middle of the Intersection for approximately 15 seconds. He was aware of four vehicles who he believed were all turning left onto Hazel Street.
- [26] He waited for the first vehicle to commence its left turn and he slowly edged further into the Intersection. He believed the right northbound lane on Nelson Avenue was clear, so he commenced his left turn. He would have accelerated. His vehicle was already aligned east-west on Sanders Street when he was struck by Mr. Christensen's vehicle.
- [27] He testified that Mr. Christensen's vehicle was the third vehicle waiting in the left northbound lane on Nelson Avenue. He testified that Mr. Christensen's vehicle suddenly swerved out of the left northbound lane, accelerated to full speed into the right northbound lane, and struck him without applying brakes.
- [28] Considering all of the evidence, I prefer the testimony of Mr. Christensen to that of the defendant. Mr. Christensen's version is much more plausible. There was common sense to what he described in the steps he took as he approached the Intersection and how the accident unfolded. The evidence of the defendant, particularly in respect to how Mr. Christensen pulled out from behind the stopped left-hand vehicle, suddenly accelerated, and hit his vehicle after it was already into the Intersection, was not believable.
- [29] The defendant's evidence of how Mr. Christensen's vehicle went from a complete stop to full speed lacks believability. This would have required Mr. Christensen to fully engage the gas pedal when the defendant's vehicle was already in the Intersection. The defendant sought to explain this maneuver on the basis that the other driver intentionally drove into him. There is no rational reason for why a driver would endanger his own safety and proceed in this manner. The defendant's explanation of the events is at odds with logic and my impression of Mr. Christensen as a sensible and careful driver. Therefore, I favour Mr. Christensen's version.
- [30] Taking all of the evidence into consideration, I find the following facts regarding the accident:
- a. the accident happened during daylight on Friday, March 22, 2013, at the Intersection of Nelson Avenue and Sanders/Hazel Streets in Burnaby;

- b. the light was flashing green for north-south traffic on Nelson Avenue;
- c. the posted speed limit on Nelson Avenue was 50 kph;
- d. Mr. Christensen was driving north on Nelson planning to turn right on Dover Street, which is one block north of the Intersection;
- e. Mr. Christensen was travelling in the left northbound lane on Nelson and changed lanes into the right northbound lane approximately 12-15 car lengths prior to the Intersection;
- f. As Mr. Christensen passed the stopped left turning vehicles, the defendant's vehicle had not commenced the left-hand turn and was not a threat;
- g. Mr. Christensen's vehicle was close enough to the Intersection to constitute an immediate hazard, and the defendant should not have commenced his left turn;
- h. When Mr. Christensen saw the defendant's vehicle, he applied his brakes but was not able to avoid the collision;
- i. Mr. Christensen struck the defendant's vehicle on the front right passenger side with the front of his vehicle; and
- j. Mr. Christensen was driving within the posted speed limit.

Conclusion - Liability

- [31] I find that Mr. Christensen was the dominant driver at all times and he did not cause or contribute to the accident in any way. I am not prepared to find any contributory negligence on Mr. Christensen. He made a safe lane change, he was travelling within the posted speed limit, he was aware of what traffic was doing around him, and he was confronted with a vehicle that suddenly turned left in his path. He applied the brakes but was unable to stop or take any evasive action to avoid the collision. He acted as a careful and prudent driver throughout. The defendant is wholly at fault for the collision.

What are the Nature and Extent of the Injuries Suffered in the Accident?

Plaintiff's Position

- [32] Mr. Christensen claims that as a result of the accident, he suffered tinnitus, or ringing in his ears, more on his right than left, dizziness, difficulties with balance, jaw pain, and soft tissues injuries to his neck, shoulders, back, and right shin. The most significant complaint is the tinnitus.
- [33] Mr. Christensen testified that prior to the accident, he was very active and his general health was excellent. He had no hearing issues.

- [34] He testified that the pain and stiffness primarily resolved within a few weeks of the accident. He continues to get some morning stiffness, but it resolves with stretching and as the day progresses.
- [35] His most significant complaint relates to the tinnitus in his right ear. It has been constant since the accident. It affects his occupation, his home life, and his activities.

Defendant's Position

- [36] The defendant concedes that Mr. Christensen sustained soft tissue injuries as a result of the accident. The defendant says that these injuries have resolved. The defendant concedes that Mr. Christiansen has developed tinnitus as a result of the accident. The defendant disagrees that this condition impacts the ability of Mr. Christensen to carry out his occupation, activities of daily living, or recreational pursuits.

Applicable Law

- [37] In order to establish that the accident caused his injuries, Mr. Christensen must prove on a balance of probabilities that but for the accident he would not have suffered the injuries of which he complains.
- [38] The Supreme Court of Canada considered causation in *Clements v. Clements*, 2012 SCC 32, and confirmed that the basic test for determining causation remains the "but for" test articulated in *Snell v. Farrell*, [1990] 2 S.C.R. 311, and *Athey v. Leonati*, [1996] 3 S.C.R. 458. The plaintiff bears the burden of proving that but for the negligent act or omission of the defendant, the injury would not have occurred. The "but for" test recognizes that compensation for negligent conduct should only be awarded where a substantial connection between the injury and the defendant's negligent conduct is present: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21-23.
- [39] A plaintiff is not required to establish that the defendant's negligence was the sole cause of his or her injuries. The tortfeasor must take his or her victim as the tortfeasor finds them, and the tortfeasor is liable even if other causal factors, for which the defendant is not responsible, result in the victim's losses being more severe than they would be for the average person. At the same time, the tortfeasor need not put the victim in a better position than the victim would have been in but for the accident: see *Snell*; *Athey* at paras. 32-35.

Application of the Law to the Facts

- [40] As a result of the accident, Mr. Christensen suffered tinnitus predominantly in his right ear that continues to bother him. He also suffered from some dizziness and balance issues, jaw pain, and soft tissue injuries to his chest, neck, shoulders, back, and right shin. The soft tissues injuries essentially resolved within a few months, and he is left with some morning neck stiffness, which is not a concern for him.

- [41] The tinnitus caused Mr. Christensen to develop anxiety, it disrupted his sleep, and it has taken an emotional toll. It has also caused some vertigo and concentration issues. These have arisen when having to focus at work in sorting mail to various addresses. He deals with this by getting up and walking outside for a few minutes. He finds that working inside exacerbates his condition.
- [42] His sister and eldest son testified to the changes in Mr. Christensen since the accident, from being outgoing, humorous, and good-natured to a grumpier, irritable individual. He has become more sensitive to loud noises and does not enjoy music in the same manner.
- [43] He has had some limited physiotherapy and massage treatments. He was prescribed a mouth guard but he was not able to sleep with it. He has tried using a white noise machine, but it was not helpful. He has not required any other ongoing treatments.
- [44] Dr. Stephen Sharpe, Mr. Christensen's treating family doctor, prepared a report dated May 12, 2014 and testified at trial. This doctor opined that Mr. Christensen had suffered soft tissue injuries to the cervical and trapezius regions. The doctor confirmed that Mr. Christensen has complained of ringing in his ears since the accident. The diagnosis was chronic bilateral, nonpulsatile tinnitus which was anticipated as being long-standing or permanent.
- [45] Dr. Sharpe testified that Mr. Christensen described his mood as fluctuating and that he has difficulty with tasks requiring mental focus. His understanding was that there are therapies that can improve or neutralize the sound but that the condition is a chronic one.
- [46] Dr. Longridge, otolaryngologist, prepared a medical-legal report dated May 18, 2016. The report sets out his opinion that the likely cause was the explosive sound of the airbag into Mr. Christensen's right ear. If the tinnitus has not resolved after one year, it is likely to be present on a long-term, permanent basis. The report confirmed that dizzy symptoms had fluctuated, and he had been symptom free from dizziness in the past two months. The doctor recommended that Mr. Christensen be assessed to see whether tinnitus retraining therapy ("TRT") could be effective in improving his sleep. In direct examination, he gave evidence on the costs of such treatment.
- [47] Dr. Longridge testified on cross-examination that his impression was that the sound was not intrusive enough that it impacted Mr. Christensen's normal daily functioning. As the doctor described, the noise is less intrusive because "it becomes part of you" and "you can get used to its presence".
- [48] Dr. Waseem, physiatrist, prepared a medical-legal report dated June 20, 2017. He was not required to attend for cross-examination. In the report, Dr. Waseem opines that Mr. Christensen has learnt to live with his neck pain, and it is not interfering with the performance of his usual employment duties, household tasks, or recreational activities. He provides no recommendation for treatment other than to continue using Advil as needed and to perform self-directed exercises.

- [49] Dr. Thompson, orthopedic surgeon, prepared a medical-legal report dated February 1, 2018, on behalf of the defendant. He was not required to attend for cross-examination. Dr. Thompson opined that Mr. Christensen likely suffered soft tissue injuries, strains, and contusions to his neck, shoulder, upper extremities (wrists), chest wall, and right lower limb. The majority of the soft tissue injuries improved over three to six months. He is left with some residual stiffness and discomfort in his neck, mid back, and lower back. This will not be a physical barrier for Mr. Christensen resuming his usual vocational, recreational, and household activity.
- [50] The experts agree that the soft tissue injuries and tinnitus were caused by the accident. They further agree that the tinnitus is likely permanent and there are no treatment options that will resolve this condition.
- [51] Accordingly, I find, on a balance of probabilities, that as a result of the accident Mr. Christensen suffered soft tissue issues, which have largely resolved, except for some mild early morning stiffness, and tinnitus, for which he will continue to suffer on a permanent basis.

What is the Appropriate Award for General Damages for Pain and Suffering?

- [52] Mr. Christensen seeks an award of \$100,000 to \$140,000 for general damages for pain and suffering. The defendant submits that the appropriate award for general damages is \$50,000 to \$60,000.

Applicable Law

- [53] A plaintiff is entitled to reasonable damages for his pain and suffering. The plaintiff should be placed in the same position he would have been if the accident had not occurred, but not in a better position: *Parypa v. Wickware*, 1999 BCCA 88 at para. 29.
- [54] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188-189.
- [55] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages at para. 46:

The inexhaustive list of common factors cited in *Boyd [v. Harris]*, 2004 BCCA 146] that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;

- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

- (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: *Giang v. Clayton*, 2005 BCCA 54).

- [56] The assessment of non-pecuniary damages is necessarily influenced by the individual plaintiff's personal experiences in dealing with his injuries and their consequences, and the plaintiff's ability to articulate those experiences: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.
- [57] Mr. Christensen relies on *Young v. Anderson*, 2008 BCSC 1306, *Chaudhry v. John Doe*, 2017 BCSC 1895, *Kijowski v. Scott*, 2015 BCSC 2335, and *Murphy v. Jagerhofer*, 2009 BCSC 335 in support of the general damages sought. A review of these cases support that the range of \$100,000-\$140,000 has been awarded for more substantial individual losses than what Mr. Christensen has suffered in this case.
- [58] For example, in *Kijowski*, the plaintiff, a 59-year-old credit union manager was awarded \$140,000 non-pecuniary damages for injuries by a motor vehicle accident, which significantly altered his recreational, professional, and domestic pursuits. Dr. Longridge was an expert witness in that case, and opined to permanent dizziness and imbalance impairments requiring indefinite vestibular therapy. The plaintiff also suffered from tinnitus and a hearing deficit (at para. 128).
- [59] In *Murphy*, the plaintiff, a 36-year-old financial advisor was awarded \$100,000 non-pecuniary damages caused by a motor vehicle accident, which left him with back and neck pain, hearing loss, tinnitus, episodes of dizziness, jaw pain, and myofascial pain. There was a "rather cautious outlook for improvement" (at para. 116).
- [60] The defendant relies on *Chumber v. Ford Credit Canada*, 2006 BCSC 1935; *Maddex v. Sigouin*, 2013 BCSC 1338; *Pichugin v. Stoian*, 2014 BCSC 928; *Yang v. Chan*, 2012 BCSC 1753; *Moukhine v. Collins*, 2012 BCSC 118; *Charlebois v. Vandas*, 2004 BCCA 356; and *Kiljowski*. The *Chumber*, *Maddex* and *Pichugin* cases clearly involve individual losses less than what Mr. Christensen has suffered. These cases provided non-pecuniary awards of \$35,000, \$42,000, and \$48,000 respectively.

- [61] In contrast, the Kijowski and Charlebois cases, which awarded \$140,000 and \$110,000 (albeit, in 2004), involved more substantial individual losses in my view.
- [62] The case most equivalent is Yang, in which \$60,000 was awarded for similar injuries. The medical evidence in this case was provided by Dr. Longridge and Madame Justice Wedge noted the following:
- [42] Mr. Yang testified that the tinnitus in both ears has persisted since the accident and has improved only marginally over time. He continues to suffer from ringing in both ears. While the tinnitus does not affect his ability to work while he is on the job, it is constantly a distraction. Further, he finds the tinnitus very disruptive of his ability to sleep. He is wakened several times each night by the ringing sounds, and the lack of sleep affects his mental acuity during the day. Mr. Yang takes sleeping pills to assist his sleep, but they also have the effect of making him drowsy during the day.
- [46] Dr. Longridge examined Mr. Yang and evaluated his condition in December 2011. The evaluation included extensive testing at Vancouver General Hospital to assess the severity of Mr. Yang's tinnitus and related dizziness. Several objective tests detected abnormalities in both inner ears and dizziness.
- [47] Dr. Longridge diagnosed Mr. Yang's tinnitus as being of moderate severity, which, he explained in his evidence, means that the condition is a significant problem for Mr. Yang.
- [63] Mr. Christensen has also suffered from anxiety, mood changes, and impact on his work which supports that a higher award should be made than in Yang.
- [64] While all of these cases are helpful to provide a general framework, as noted in Stapley at para. 45, the impact on Mr. Christensen as an individual is the key.

Application of the Law to the Facts

- [65] Mr. Christensen has suffered a permanent injury in the form of a ringing in his ears. There is a high unrelenting squeal in his right ear. This sound was reproduced by a computer and played during the trial. The sound was highly irritating and objectionable. Mr. Christensen testified that since the accident, he has been hearing the same sound. It is with him at all times and has impacted his personality, his outlook on life, his ability to sleep, his relationship with his children, and his occupation.
- [66] There is no treatment that can stop this noise. He has had to learn to accept it but thinks about it every day. This causes him anxiety.
- [67] He finds that loud noises bother him. He has become grumpier with his children.
- [68] In order to help him sleep, he drinks. He testified that he drinks two beers and a full glass of wine every night to help him sleep. He has concerns with this consumption since alcoholism has been an issue in his immediate family.

- [69] He is not a complainer and has returned to all of his past activities, except coaching soccer. There was approximately a four to six month period when he was not running. He has returned to running approximately the same distance as before.
- [70] He immediately returned to his scheduled work and has continued working.
- [71] His sister, oldest son, and his friend Darren Babey, testified to the change in his personality in that he was grumpier and less patient after the accident. His sister was most concerned in the initial two years, when she saw signs of depression, anger, and frustration. She testified to conversations during the initial two years when she had to "talk him off the ledge a little bit when he didn't think he could beat this" and he once told her, "he'll commit suicide with this". Gradually her brother started to accept the "new norm".
- [72] It is to Mr. Christensen's credit that he has returned to work and his activities. He has continued to care for his sons as a single father. He has been able to learn to live with the constant noise and has adjusted to life with it.
- [73] I have reviewed the various cases provided, and in assessing the particular circumstances of Mr. Christensen, I am of the view that the appropriate award for non-pecuniary damage is \$85,000.

What is the Appropriate Award for Past Wage Loss and Loss of Earning Capacity?

Applicable Law

- [74] In *Karim v. Li*, 2015 BCSC 498 at paras. 130-133, Mr. Justice Abrioux discussed the purpose and framework for determining the appropriate award for past loss of earning capacity, and the task of awarding compensation for pecuniary loss that has resulted from an inability to work.
- [75] Compensation for past loss of earning capacity is to be 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 at para. 49.

Application of Law to the Facts

- [76] It is important when assessing both the past and future loss of earnings to understand the nature of the employment that Mr. Christensen had. While working as a temporary Canada Post employee, there are essentially two categories of shifts:
- On-call shifts, which typically involve longer daily hours (up to eight hours) but with no guarantee of shifts every week for any extended period of time. These shifts generally are for one to three weeks and are not for a fixed route ("On-call shifts"); and
 - Long-term shifts, which typically involved shorter daily hours but guaranteed shifts every day for a longer period of time. These shifts would be for a fixed route ("Long Term-Part Time shifts").

- [77] Part of the job of a letter carrier, regardless of the category, includes sorting mail at the start of each shift. The mail sorting takes place in the depot and requires significant focus and concentration. After the mail is sorted, the job requires the delivery of the mail and parcels.
- [78] Prior to the accident, Mr. Christensen was working both categories of shifts. Mr. Christensen would take whatever work was offered to him but he preferred the Long Term-Part Time shifts since they offered guaranteed work. His evidence was that "anybody would take a long-term assignment if they could".
- [79] A review of the Canada Post attendance records show the following pattern of work prior to the accident:
- a. March 2012 to June 2012 - mainly working eight-hour shifts;
 - b. June 2012 to approximately mid October 2012 - mainly working shorter hours in Long Term-Part Time shifts;
 - c. Mid-October to November 2012 - mainly eight hour shifts with some overtime;
 - d. End of November 2012 to end of January 2013 - mainly working shorter hours in Long Term-Part Time shifts; and
 - e. February 2013 to date of accident - working mainly eight hour shifts.
- [80] Mr. Christensen testified that he immediately returned to his same job and duties and continued for approximately two weeks. However, he was not able to cope with the physical demands of full-time work. On April 8, 2013, he reduced to part-time work and worked at that capacity for approximately six months. On October 17, 2013, he began working longer hours.
- [81] It is difficult to know when Mr. Christensen would have stopped working the full-time job and chosen to accept a Long Term-Part Time position.
- [82] He testified that before the accident, he would accept overtime opportunities even after an eight hour shift. He does not think he could now perform overtime duties after an eight hour shift. This is inconsistent with the Canada Post attendance records that shows him working overtime after an eight hour shift since December 2014 on a number of occasions.
- [83] Mr. Christensen's ultimate goal is to work an eight hour day, owning his own route. The evidence supports that he is currently number one on the on call list, meaning that if a permanent position becomes available, he could apply for it. The problem is that if he were accepted on the permanent list, he would have to return to taking a variety of routes until a permanent route became available to him.

Loss of Past Earning Capacity

[84] Mr. Christensen submits that because of the accident his ability to earn income has been reduced. Reliance is placed on Mr. Justice Steeves' comments in *Mojahedi v. Friesen*, 2016 BCSC 1225 at paras. 73 and 75:

[73] A claim for past loss of earnings is for the loss of earning capacity or the loss of the value of the work that the plaintiff would have performed but was unable to perform because of the injury (*Rowe v. Bobell Express Ltd.*, 2005 BCCA 141, at para. 30). The loss of earning capacity rather than the loss of actual income is considered, although loss of income can be a way to measure loss of capacity. This is described in *Personal Injury Damages in Canada* at p. 205-06 as follows:

The essence of the task under this head of damages is to award compensation for any pecuniary loss which will result from an inability to work. "Loss of the value of work" is the substance of the claim - loss of the value of any work the plaintiff would have done but for the accident but now will be unable to do. The loss framed in this way may be measured in different ways. Sometimes it will be measured by reference to the actual earnings the plaintiff would have received; sometimes by a replacement cost evaluation of tasks which the plaintiff will now be unable to perform; sometimes by an assessment of reduced company profits; and sometimes by the amount of secondary income lost, such as shared family income.

[Emphasis in original.]

[75] In addition, a claim for past (or future) lost earning capacity is an assessment rather than a calculation, it requires considerations of fairness and reasonableness and all negative and positive contingencies are to be taken into account (*Abbott v. Gerges*, 2014 BCSC 1329, at para. 165).

[85] The defendant submits that once Mr. Christensen has been compensated for his past wage loss, there is no other compensation payable because Mr. Christensen admitted that he had not sustained any income loss since the initial six-month period after the accident in 2013.

[86] The evidence does support that immediately after the accident, Mr. Christensen was not able to do the work he had been doing prior to the accident, and that this was caused by his injuries.

[87] Mr. Christensen submits his past income loss for six months in 2013 is \$8,977.28 (gross). The defendant submits that his past wage loss "could be" in the range of \$8,256 (gross). These estimates are based on the higher end of the range of hours worked. The defendant submits that I should consider the contingency that Mr. Christensen would have switched to lower hours regardless of the accident.

[88] I note that between March 2012 and March 2013, Mr. Christensen's hours fluctuated roughly between full-time and part-time. With this in mind, and considering that Mr. Christensen was working full-time hours at the time of the accident, a fair and reasonable award is \$8,500 (gross).

[89] Mr. Christensen agreed that in the last four years, his working hours were based on availability of work, and not his ability to work. In cross-examination, he could not recall whether he had turned down overtime work. I accept the evidence given by Mr. Christensen that supports he did not sustain any past loss of earning capacity beyond the initial six-month period during which his physical injuries limited him. However, this does not preclude a future loss of earning capacity.

What is the Appropriate Award for Loss of Future Earning Capacity?

Applicable Law

[90] A claim for loss of future earning capacity raises two key questions: (1) has the plaintiff's earning capacity been impaired by his injuries; and, if so, (2) what compensation should be awarded for the resulting harm that will accrue over time?

[91] The recent decision in *Pololos v. Cinnamon-Lopez*, 2016 BCSC 81, provides an excellent summary of the applicable leading principles on the assessment of loss of future earning capacity:

[133] The relevant legal principles are well-established:

- a) To the extent possible, a plaintiff should be put in the position he/she would have been in, but for the injuries caused by the defendant's negligence; *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 185, leave to appeal ref'd [2009] S.C.C.A. No. 197;
- b) The central task of the Court is to compare the likely future of the plaintiff's working life if the Accident had not occurred with the plaintiff's likely future working life after the Accident; *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32;
- c) The assessment of loss must be based on the evidence, but requires an exercise of judgment and is not a mathematical calculation; *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18;
- d) The two possible approaches to assessment of loss of future earning capacity are the "earnings approach" and the "capital asset approach"; *Brown v. Golaiv* (1985), 26 B.C.L.R. (3d) 353 at para. 7 (S.C.); and *Perren v. Lalari*, 2010 BCCA 140 at paras. 11-12;
- e) Under either approach, the plaintiff must prove that there is a "real and substantial possibility" of various future events leading to an income loss; *Perren* at para. 33;

- f) The earnings approach will be more appropriate when the loss is more easily measurable; *Westbroek v. Brizuela*, 2014 BCCA 48 at para. 64. Furthermore, while assessing an award for future loss of income is not a purely mathematical exercise, the Court should endeavour to use factual mathematical anchors as a starting foundation to quantify such loss; *Jurczak v. Mauro*, 2013 BCCA 507 at paras. 36-37.
- g) When relying on an "earnings approach", the Court must nevertheless always consider the overall fairness and reasonableness of the award, taking into account all of the evidence; *Rosvold* at para. 11.
- [92] Also recently, in *Grewal v. Naumann*, 2017 BCCA 158 at paras. 48-49, the Court of Appeal provided a summary on the assessment of loss of future earning capacity and the application of a "real and substantial possibility" principle:
- [48] In summary, an assessment of loss of both past and future earning capacity involves a consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation. If the plaintiff establishes a real and substantial possibility, the Court must then determine the measure of damages by assessing the likelihood of the event. Depending on the facts of the case, a loss may be quantified either on an earnings approach or on a capital asset approach: *Perren v. Lalari*, 2010 BCCA 140 at para. 32.
- [49] 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.
- [93] It is this head of damages that represents the most significant and complex aspect of Mr. Christensen's case and generates the most disagreement between the parties.

Plaintiff's Position

- [94] Mr. Christensen is advancing a claim for loss of future earning capacity on the basis that his plan was to continue working at Canada Post and would one day become a permanent employee.
- [95] When he becomes a permanent employee, he will not be able to take advantage of on-call work, as he finds that type of work very challenging. After the accident, he tried on-call work but felt dizzy while sorting mail. He was not able to sort large amounts of mail. He was less efficient at sorting than his co-workers.

- [96] The tinnitus he suffers from the accident has impacted and will continue to impact his ability to engage in on-call work. If he is not able to work the on-call position he may not be able to perform the work of a permanent employee, if such a position is eventually offered to him.
- [97] A permanent position would guarantee him work, benefits, and a higher wage.
- [98] Mr. Christensen submits that his loss of earning capacity justifies damages in a range of \$75,882-\$243,500.
- [99] The high end of the range is a calculation based on what he is currently earning in 2017, \$36,111, and what he would have earned if working full-time, \$51,000. The present values of these two salaries to age 70 is \$843,500 and \$600,000, hence the difference of \$243,500.
- [100] An alternative approach, is that Mr. Christensen has lost a capital asset and a fair approach would be to award him three years salary. This was the approach taken in *Flores v. Burrows*, 2018 BCSC 334 at para. 139.
- [101] If Mr. Christensen's 2015 income of \$57,637 is used, then the diminishment of earning capacity is \$172,911. If his 2012 earnings is used, \$37,941, then his diminishment of earning capacity is \$113,823. If a lower number of years is used, then his loss is further reduced.

Defendant's Position

- [102] The defendant disputes that Mr. Christensen has sustained any future income loss. Mr. Christensen admitted that he is physically able to work eight hour shifts and has done so since the accident. He agreed that his current symptoms are not disabling. He testified that his tinnitus does not stop him from being able to do his work. He continues to enjoy the job and plans to continue working.
- [103] Dr. Waseem stated in his report that Mr. Christensen "is not disabled to any degree from performing his usual employment duties".
- [104] Dr. Thompson stated in his report that Mr. Christensen's physical injuries "will not be a physical barrier to Mr. Christensen resuming his usual vocational, recreational, and household activity".
- [105] The defendant submits that Mr. Christensen has not proven there is a real and substantial possibility of any future income loss, and, as such, none should be awarded.

Application of Law to the Facts

- [106] The evidence supports that Mr. Christensen struggled when working eight hour shifts that required being at different depots and delivering on different routes. He described it like "starting a new job everyday". He testified that following the accident, he began experiencing vertigo when he was sorting mail for different addresses at the start of shifts. He stated that the vertigo arises in moments of concentration and focus, such as looking at

mail, street names, and addresses. When he looks up and down, he gets an "off tilt" sensation that lasts a couple of minutes.

[107] The risk is that if in the future he is offered and accepts a permanent position, he will go to the bottom of the list, which would require him to accept the On-call shifts.

[108] He is concerned that he will not be able to work those types of shifts on an ongoing basis. He is also concerned that he cannot work the same amount of overtime as he did prior to the accident. He has worked some overtime but testified that there is "just no way" he could physically perform the same overtime work now. He explained that Canada Posts allows 1.75 hours of overtime for every eight-hour route.

[109] I find that there is a real and substantial possibility of a loss. The issue is how to quantify it. In the circumstances, the appropriate approach is the capital asset approach, as the loss is not easily measurable in a pecuniary way. I accept that Mr. Christensen has suffered an impairment to a capital asset, in that his ability to perform certain tasks and accept certain assignments has been impaired. In assessing the quantum of loss, the years' approach is the correct approach to follow in the circumstances: Flores at para. 138.

[110] In the circumstances, a fair award is two years' income. Mr. Christensen submits a range of annual income from \$37,941 (based on pre-accident earnings) to \$57,637 (based on 2015 earnings). As Mr. Christensen only worked one full year (2012) at Canada Post prior to the accident, I do not think his 2012 income is an appropriate figure to use in calculating his loss. Moreover, Mr. Christensen's 2015 income was his highest income with Canada Post. In my view, it would be fair and appropriate here to split the difference and use \$47,789 as the income figure.

[111] Therefore, I award Mr. Christensen \$95,500 for loss of future earning capacity.

What is the Appropriate Award for Future Care Costs?

[112] Mr. Christensen seeks an award for the future management of his tinnitus, for future counselling, and for massage therapy in the amount of \$26,000.

[113] The award for the TRT was suggested by Dr. Longridge, and he testified to the costs of a clinic assessment, \$1,200, costs for hearing instruments, \$4,000 each with a replacement every five years, and the need to have batteries replaced every quarter, \$30-40.

[114] The suggestion made in submissions was that Mr. Christensen would benefit from psychological counselling and some massage.

[115] The defendant submits that there is no medical justification for any future care award.

Applicable Law

- [116] Mr. Christensen is entitled to compensation for the cost of future care based on what is reasonably necessary to restore him to his pre-accident condition insofar as that is possible. When full restoration cannot be achieved, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the medical evidence to preserve and promote Mr. Christensen's mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at 83 (S.C.); *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29-30.
- [117] Cost of future care is established if there is a medical justification for the claim, and the claim is reasonable: *Aberdeen v. Zanatta*, 2008 BCCA 420 at para. 42; *Milina* at 84; *Tsalamandris v. McLeod*, 2012 BCCA 239 at paras. 62-63.
- [118] Future care costs are "justified" if they are both medically necessary and likely to be incurred by the plaintiff. The award is thus a matter of prediction as to what will happen in the future. If a plaintiff has not used a particular item or service in the past, it may be inappropriate to include its cost in a future care award. However, if the evidence shows that previously rejected services will not be (able to be) rejected in the future, the plaintiff can recover for such services: *Izony v. Weidlich*, 2006 BCSC 1315 at para. 74; *O'Connell v. Yung*, 2012 BCCA 57 at paras. 55, 60, and 68-70.

Application of the Law to the Facts

- [119] It was recommended by Dr. Sharpe, his family doctor, that Mr. Christensen attend a tinnitus clinic, a multidisciplinary clinic that emphasizes coping strategies and support. An appointment at this clinic was made for September 24, 2014, but Mr. Christensen chose not to attend.
- [120] Dr. Longridge, in his report, suggested that Mr. Christensen be assessed for TRT. There have been no steps taken by Mr. Christensen to schedule such an assessment. There is no evidence that if Mr. Christensen was assessed, he would be a candidate for any type of hearing instruments.
- [121] The evidence falls short of establishing support for an award of future care costs for the TRT and hearing instruments.
- [122] In respect to the submissions that Mr. Christensen would benefit from psychological counselling services in the future, there is no support in the medical reports that such treatment will be required.
- [123] Mr. Christensen's evidence, supported by his sister, was that the first couple of years were the most difficult in adjusting to the chronic tinnitus. Since then he has adapted to his new normal. The evidence does not support that any type of psychological counselling will be needed in the future.

[124] In respect to the submissions that Mr. Christensen would benefit from massage in the future, the evidence does not sufficiently support this. Mr. Christensen did attend for two massage treatments right after the accident in June and December 2013. Dr. Waseem, physiatrist, made no recommendation for any further massage therapy treatments.

[125] There is no basis for any future care costs award on the evidence presented.

What is the Appropriate Award for Special Damages?

[126] It is well established that 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: *X. v. Y.*, 2011 BCSC 944 at para. 281; *Milina* at 78.

[127] The parties agree that the therapy costs to treat the soft tissue injuries in the amount of \$916.23 is appropriate. The parties disagree on whether the pillow and mattress should be reimbursed.

[128] In October 2016, Mr. Christensen purchased a new mattress and pillow for the sum of \$1,027. He claims that he did so to see if it would assist him with his sleep.

[129] The defendant submits that by that date, Mr. Christensen's physical injuries were essentially resolved. The pillow and mattress were not specifically made or marketed for treatment of injuries. He had been using a second-hand mattress for a number of years. It is likely that he would have purchased a new mattress and pillow at some point in the future.

[130] I am not convinced that the defendant should reimburse for the new mattress and pillow.

[131] The award for special damages is \$916.23.

Failure to Mitigate

[132] A plaintiff has an obligation to take all reasonable measures to reduce his or her damages, including undergoing treatment to alleviate or cure injuries: *Danicek v. Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111 at para. 234.

[133] Once the plaintiff has proved the defendants' liability, the defendant must prove that the plaintiff acted unreasonably and that reasonable conduct would have reduced or eliminated the loss. Whether the plaintiff acted reasonably is a factual question and it involves a consideration of all of the circumstances: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 202.

[134] The test for failure to mitigate is set out in *Chiu v. Chiu*, 2002 BCCA 618 at para. 57:

[57] The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably.

[135] The defendant submitted that either Mr. Christensen has failed to mitigate or his symptoms were not as bothersome as he claims, in the following two aspects:

- a. addressing his sleeping issues; and
- b. failing to attend the tinnitus clinic.

Sleeping Issues

[136] Mr. Christensen testified that he has experienced problems getting to sleep due to his tinnitus. He did not report these sleep problems to his family doctor. He did not seek any type of sleeping medication to assist his sleep problems. He has treated his sleep difficulties by drinking alcohol in the evenings.

[137] The evidence does not support that Mr. Christensen suffers from fatigue as a result of his sleeping difficulties to the extent that he cannot carry out his household, recreational, or work activities. The evidence supports that he never stopped looking after his children and carrying out household chores such as cooking, cleaning, shopping, and laundry. He is able to run up to three times a week for about 10 kilometres.

[138] Dr. Sharpe testified that he would only rarely prescribe sleep medication and would only prescribe it for a short period of time.

[139] The evidence does not support that Mr. Christensen would have been prescribed sleep medication, and, that if he had, this type of medication would have assisted him on a long-term basis. There is no basis to find a failure to mitigate on Mr. Christensen's part for failure to seek and take prescription medications to assist his sleep.

Attendance at the Tinnitus Clinic

[140] It was recommended by Dr. Sharpe that Mr. Christensen attend at the tinnitus clinic to obtain strategies on coping with the tinnitus.

[141] When Mr. Christensen attended on Dr. Sharpe on March 21, 2014, he was emotional and tearful, complaining that he was fearful of the future if the symptoms remained chronic. It was in this setting that Dr. Sharpe recommended a prompt assessment with the tinnitus clinic.

[142] Dr. Sharpe's report notes that the tinnitus clinic was a multi-disciplinary clinic that emphasized coping strategies and support.

- [143] When Mr. Christensen returned for a reassessment on May 9, 2014, the doctor noted that he was "more emotionally grounded today". After that visit, Mr. Christensen's subsequent visits to Dr. Sharpe in 2014 focused on respiratory symptoms he was having.
- [144] As of May 2014, Mr. Christensen was back to his work, child care duties, and recreational activities. He had begun the process of adapting to the tinnitus. He ultimately was successful in adapting. This is supported by his own evidence, along with the impression that Dr. Longridge formed that the tinnitus was not intruding on his normal daily functioning during the day.
- [145] The evidence does not support that if Mr. Christensen had attended the tinnitus clinic his damages would have been reduced.
- [146] The defendant has not shown, on a balance of probabilities, that attending the tinnitus clinic would have reduced Mr. Christensen's symptoms. There is no basis to reduce the damages for this allegation.

Conclusion

[147] The defendant is solely responsible for the accident.

[148] Mr. Christensen is entitled to the following damages:

Non-pecuniary damages

\$85,000

Past income loss

\$8,500 (gross)

Future loss of income earning capacity

\$95,500

Special damages

\$916.23

TOTAL

\$189,916.23

[149] Mr. Christensen is entitled to interest on the past wage loss and special damages claims.

[150] The amount of past wage loss should be net: Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, ss. 95 and 98. The parties should be able to agree on what that amount is but may make written submissions if they are not able to do so.

[151] Mr. Christensen is entitled to his costs at Scale B unless there is a submission to be made on any offers to settle. If so, the parties are at liberty to file written submissions. The party seeking to rely on an offer to settle must file and serve submissions within 60 days from the date of these reasons. Counsel for the responding party is entitled to file and serve written submissions in response within 15 days of receipt of the submissions. Any reply submissions must be filed and served within 10 days of the receipt of the responding submissions.

"The Honourable Madam Justice Forth"

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Prepared on 29 October 2026 · Esheria