CANADA / JUDGMENT

Flores v. Burrows

2018 BCSC 334

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2018 BCSC 334 Flores v. Burrows

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Flores v. Burrows,

2018 BCSC 334

Date: 20180305

Docket: M154002

Registry: Vancouver

Between:

Erwin Jaref Flores

Plaintiff

And

William James Burrows

Defendant

Before: The Honourable Mr. Justice Greyell

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

August 21-25 and 28-30, 2017

Place and Date of Judgment:

Vancouver, B.C.

March 5, 2018

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[1] The plaintiff seeks damages arising from a motor vehicle accident that occurred on June 15, 2013, in Richmond, BC (the "Accident"). Mr. Flores' vehicle was rear-ended by the defendant when he had stopped his vehicle at a yield sign at the intersection of No. 5 Road and Highway 99.

[2] The defendant has admitted liability but disputes that the Accident was the cause of the plaintiff's current symptoms and that the plaintiff's claim for loss of future income is valid.

[3] I will first discuss the circumstances of the Accident and describe the circumstances of the plaintiff prior to and following the Accident, before turning to the issue of damages.

[4] The most contested issue between the parties concerns whether Mr. Flores would or would not have pursued a Certified Professional Accountant ("CPA") designation program but for the injuries he sustained in the Accident.

The Accident

[5] On June 15, 2013, Mr. Flores had taken his parents to a movie and was returning to their house for dinner. His mother was driving and he was sitting in the rear seat of the vehicle, which was proceeding south on No. 5 Road in Richmond, BC, and came to a stop at a yield sign on the on-ramp to Highway 99. While stopped, the vehicle was rear ended by a Dodge Ram vehicle owned and operated by the defendant, Mr. Burrows.

[6] Mr. Burrows testified that he was following the vehicle Mr. Flores was in and was shoulder-checking to determine when he could merge into the traffic, that he did not see the Flores vehicle stop, and that he had no time to stop his own vehicle or to sound his horn before "slamming' into the rear of the vehicle that the plaintiff was in. He testified that the Accident happened "extremely quickly".

[7] Mr. Flores testified that at the time of impact, he had turned his head to speak with his father. He said the impact was sudden and that without warning he was "jolted" forward, that his head and torso moved quickly forward and back, and that in the process, his head hit the headrest.

[8] Mr. Flores got out of the vehicle to look at the damage and observed a crack in the rear tire cover buckle, dents, and scratches. Mr. Burrows examined the damage to his truck and noted a dent on the front and that the hood was pushed back.

Mr. Flores' Circumstances Before the Accident

[9] Mr. Flores was born on March 16, 1982, in Nicaragua, and came to Canada with his parents later that year. The family settled in Ladner, BC.

[10] Mr. Flores' religious faith has always been an important motivation for him, and forms a central part of his life and that of his family.

[11] When growing up, Mr. Flores was actively involved in competitive sporting activities. On a number of occasions, he received awards for being the most valuable player or as an all-star of the sport he played. His athleticism continued into his adult life, when he played slow-pitch softball, tennis, and ball hockey, as well as generally worked out.

[12] Mr. Flores met his wife, Melissa, through a church group in 2000. They married in June 2007, and have a son and a daughter aged seven and five.

[13] Mr. Flores graduated from high school in 2000 and then attended the University of British Columbia in the Faculty of Commerce, where he pursued a major in accounting, seeking to follow in the footsteps of his father, who was a Certified Professional Accountant. Mr. Flores graduated with a Bachelor of Commerce degree with an accounting major in 2004, and found jobs successively for short periods of time at an image product company, with Best Buy Canada, and with Providence Health Care, in various accounting support roles, and later in accounts payable.

[14] In 2005, Mr. Flores took steps to obtain his Certified Management Accountant ("CMA") designation, with a view of following in the footsteps of his father and advancing his accounting career. At the time, there were three major accounting designations in Canada: Certified General Accountant ("CGA"); Certified Management Accountant ("CMA") and Chartered Accountant ("CA"). By obtaining a CMA designation, one could earn more, take a higher position in management, or even set up one's own practice. Mr. Flores had thoughts of becoming a comptroller of a company or setting up his own accounting firm, as his father had.

[15] Mr. Flores successfully completed the first two of three phases under the CMA program. At the same time, commencing in 2006, he worked full time with the Pace Group ("Pace"), a public relations and communications firm. He first worked with Pace as an accounting clerk, working closely with Pace's outside accountant to provide the information she required to do Pace's books. His job included accounts payable, collection calls, invoicing, receipts, and other accounting-related functions.

[16] The first two phases of the CMA program included a five-month work-study program and a two-day examination. He failed the examination the first time he took it but passed when he retook the exam.

[17] Mr. Flores did not take the third phase of the CMA program. The third phase required mandatory attendance at courses that took place on Saturdays and Sundays. Attendance on Sundays offended Mr. Flores' religious tenants. He made attempts to seek accommodation, including taking the course in another province, which at the time was not feasible for him. He requested and was granted a deferral from taking the course, but never did complete it.

[18] In 2012 or early 2013, Mr. Flores accepted the position of manager of accounting services at Pace. He was recommended for the position by Pace's outside accountant. In that position, which he continues to hold, he reports to Mr. Humphries, the General Manager, and is responsible for invoicing, billing, payables, receivables, and all of Pace's other accounting functions other than those assigned to their outside professional accountant. Mr. Flores works closely with Mr. Humphries in developing budgets for new projects and preparing reconciliations when projects go over budget. He is a valued and key employee in the Pace organization.

[19] Mr. Flores is a salaried employee and currently earns $92,000 per annum.

[20] In March 2013, approximately three months before the Accident, Mr. Flores applied to and was accepted into the CGA program, in his pursuit to obtain certification as a CGA. He intended to start the course in September 2013. Mr. Flores testified that it was his intention to complete the program over two to three years. He said he felt that a CGA designation would enable him to advance his career and that it was his plan, once he had achieved his designation, to work at an accounting firm or with a government institution for about five years before setting up his own accounting firm. I will return to this evidence when I discuss damages for loss of future earning capacity.

The Status of Mr. Flores' Health Prior to the Accident

[21] At the time of the Accident, Mr. Flores was 31 years old and generally in good health. He suffered with sleep apnea and used nasal strips to assist him to sleep and help him deal with daytime fatigue. Mr. Flores led a healthy life with no limitations on his work or recreational activities. He played recreational baseball and tennis, and commuted to work by bike. He was fully engaged with his children and assisting his wife with all household chores.

The Injuries Sustained by Mr. Flores in the Accident

[22] Mr. Flores said he does not recall how he felt on the day of the Accident but does recall that the day following the Accident, he felt a general soreness in his back and it hurt to move his neck. The back pain spread into his neck, upper and lower back and hip. Mr. Flores testified that throughout the fall of 2014, he had persistent lower and mid back pain, soreness and a sharp pain on the right side of his mid back, as well as headaches, which were most often associated with neck pain.

[23] His pain affected him at work. He said he would try to ignore it and work through his pain. His job required him to sit for long periods in front of a computer. He undertook massage therapy and physiotherapy to try and relieve the pain. He experienced hip pain whenever he had to lift his leg to 90 degrees in physiotherapy, a pain he said he had not experienced before.

[24] He testified that his condition has not significantly improved. He still gets headaches associated with neck pain. He testified that "pretty much every day" when he wakes up he has to "battle to manage the pain in his left shoulder and back", and that he gets up from his desk "often" to rest, stretch, or exercise to relieve the pain.

[25] Mr. Flores attended physiotherapy from August 2013 to May 2014, January to March 2015, and April to October 2016, to help relieve his pain. He has also been taking Pilates classes once a month since January 2016, and testified that he incorporates Pilates into his home exercises. He does light stretching at work and takes rests to relieve his pain, which, he testified, he did every day for about an hour. He testified that accordingly, his work day was now about nine hours, to enable him to get all of his work done. He testified that he has tried to modify his work station by raising his desk so he can work while standing, and has tried working on special foam flooring, neither of which relieved his pain. He has tried an exercise ball at his desk. This helped his lower back pain but did not relieve his mid-upper back pain.

[26] He no longer takes the bus or his bike to get to the SkyTrain on his commute to his workplace. Rather, he and his wife have bought a second car, which he now drives to the SkyTrain to avoid the lurching involved in a bus ride.

[27] Mr. Flores tried to resume participating in both tennis and baseball. He joined a local tennis club but found that he developed severe pain in his left knee.

[28] Mr. Flores' injuries have also interfered with his personal and family life. His injuries have impacted him emotionally and he has become frustrated with his wife about trivial things. His role as a father has also changed; prior to the Accident he would carry his children everywhere, but after the Accident he did not have sufficient endurance to carry them. Mr. Flores testified that he has worked through the emotional issues related to the injuries with his wife, but he is concerned about the impact of possible surgery for his labral tear (discussed later in these reasons) on his ability to work and provide for his family.

[29] While Mr. Flores started the CGA course program in September 2013, he withdrew from the program in October 2013. He testified that he did so because after working an approximate nine hour day, with the additional time commuting to and from work and with his ongoing neck and back pain, he could not keep up with the three hours' homework and exercises involved in the course. In cross-examination, he agreed that he did not consult with or seek advice from his attending physician, Dr. Turnbull, or ask her to provide a medical letter to the program to explain his problems with a view to trying to obtain an accommodation. He also agreed that he did not tell Pace that he would likely seek other employment once he had achieved his designation. He did advise Pace that he had been accepted into the program and that he had decided to withdraw.

Lay Witnesses Who Testified on Behalf of Mr. Flores

Mr. Jordan Humphries

[30] Mr. Humphries is the general manager of Pace. He described his relationship with Mr. Flores as a business one - he was Mr. Flores' boss - and said that the two "got along great". Mr. Flores reported to Mr. Humphries and Pace's managing partner.

[31] Mr. Humphries testified that he interacted with Mr. Flores on a daily basis and had a healthy relationship with him, and that Mr. Flores was responsible for the financial health of the company, including assisting with financial reporting, preparing future forecasts of income, and reporting to the managing partner. Mr. Humphries described Mr. Flores as a "great worker" with a "good work ethic" who "cared about" the company.

[32] Mr. Humphries said Mr. Flores had no work limitations prior to the Accident, but after the Accident, he was aware that Mr. Flores spent time stretching every day and that he had bought a standing desk and a "yoga ball". He confirmed that most of Mr. Flores' job required sitting in front of a computer.

[33] Mr. Humphries said Mr. Flores told him that he was intending to pursue his CGA accreditation and that Pace altered its website to reflect that Mr. Flores was doing this. He said Mr. Flores also told him that he had withdrawn from the program as it was too much to take on course work at night and do a full time job.

[34] In cross-examination, Mr. Humphries confirmed that there were no discipline problems with Mr. Flores; that he "took his job very seriously"; that he was a "level headed" and "even tempered person"; and that he "was a smart guy who knows how to communicate."

Ms. Melissa Flores

[35] Ms. and Mr. Flores met in 2000, when she was 13 years old, at a youth worship service, and married in 2007. After finishing high school, she attended the University of British Columbia at the same time Mr. Flores did. She graduated with a Bachelor of Arts in Biology and a Bachelor of Education. She currently teaches high school part time at Richmond Christian School.

[36] Ms. Flores described her husband as "very active" before the Accident, and testified that he had no physical limitations. She said he was very active with their two children and assisted with outdoor chores, doing most of the yard work, and indoor household tasks which involved heavier lifting.

[37] Ms. Flores testified that Mr. Flores started a program of physiotherapy and massage therapy following the Accident, and that he had to start a regime of stretching "to get through the day"; he stretched in the morning and did Pilates in the evening every day. She testified that he had discontinued playing tennis and baseball, which he had "really enjoyed" doing before the Accident. She said that since the Accident, his energy level decreased and he was not able to do heavy lifting at home and could not shovel snow from the driveway. She testified that at times he "snapped" at the children and was "testy" as a result of his pain. She said the two now share driving on trips to a family cabin, as Mr. Flores finds that sitting in one position hurts his back and hip.

[38] Ms. Flores testified that the two had planned that Mr. Flores would pursue an accounting designation; that Mr. Flores had taken two phases of the CMA course but because the courses in BC were on Saturday and Sunday, he could not complete the third phase in BC for religious reasons; and that he sought an accommodation and was told he could take the course in Alberta, which had Friday classes. As both had full time jobs, they were not interested in relocating to Alberta. She said the family could not afford to have Mr. Flores travel to and from Alberta each week to attend classes. She testified that notwithstanding this, they always planned that he would eventually proceed to complete his accounting designation.

[39] Ms. Flores testified that she and her husband had modified their home in the summer of 2012 by converting a building in their backyard to an office, which they equipped with the thought that Mr. Flores could use it to study after work in the evening, when he did take the course.

[40] She confirmed Mr. Flores' evidence that he registered for and was accepted into the CGA course in June 2013, with the course to start in September 2013. Ms. Flores testified that after the Accident, and after Mr. Flores started the course, when he finished work for the day and had had dinner, he would go to the backyard office to study. She said he would complain about pain in his neck and shoulders and would often take frequent breaks and stretch and move around to relieve his pain. Mr. Flores told her after about two months that he had quit the program because he was not able to concentrate or keep up doing the recommended

three hours of course work per day after working nine hour work days at Pace.

[41] In cross-examination, Ms. Flores agreed that Mr. Flores had been involved in a second motor vehicle accident in 2015, but said there was minor damage and he was not injured.

[42] Ms. Flores was not aware of the difficulty that Mr. Flores had passing the CMA examination in 2006, or that he made several attempts at the exam before passing it. She acknowledged that he had difficulty with calculus and believed he struggled, but that he ultimately had average marks and had passed.

[43] Ms. Flores agreed that Mr. Flores had been able to continue doing most of the household and outside yard activities that he did previously, saying that he "tries to cope the best he can" and that he had helped her father move a piano using a dolly. She said he got through these activities by resting and stretching. She agreed that their children were now aged seven and five and were heavier to carry than they had been.

[44] She acknowledged that Mr. Flores' current goal is to achieve a professional accounting designation, and that they "hoped" for this if his health improved, but she did not think it was now achievable.

Plaintiff's Medical and Expert Evidence

Dr. Ruth Lorraine Turnbull

[45] Dr. Turnbull has been Mr. Flores' family physician since 1991. She said he had no complaints or issues with his neck, back, or shoulders, nor had he complained of headaches, prior to the date of the Accident.

[46] Mr. Flores attended Dr. Turnbull's office on June 17, 2013, and was seen by her associate. Dr. Turnbull first saw Mr. Flores in relation to the Accident on June 26, 2013, for complaints primarily of pain in his mid-back, particularly towards the end of the day at work, and also pain in the left shoulder, which she noted had started shortly after the Accident. She diagnosed him with soft tissue injuries, and referred him to massage therapy, and later to physiotherapy at the Canadian Back Institute ("CBI"), with the goal of increasing his flexibility and endurance to help him get through the day at work more comfortably. He attended Evolve Therapeutic Massage from late June 2012 to January 2014 for treatment of pain and stiffness in his upper back, and physiotherapy, as mentioned, from August 2013 to October 2016.

[47] Mr. Flores saw Dr. Turnbull on December 12, 2013, at which time he advised her that he was falling behind in his CGA program studies and that he had difficulty, after sitting at work behind a computer for eight hours, to sit at a desk for another three hours to do the required course work.

[48] On June 10, 2014, Dr. Turnbull recorded that Mr. Flores "feels well recovered from the MVA, enough that he can continue on his own". On December 3, 2014, Mr. Flores reported to Dr. Scott (Dr. Turnbull's associate) that he had injured his knee playing tennis. He was still attending physiotherapy.

[49] On September 22, 2015, Dr. Turnbull's notes record that Mr. Flores had ongoing pain in his neck and shoulders from the Accident, but "with exercise/conditioning significantly reduced in intensity". Physiotherapy had been discontinued in the summer of 2014 for a period. He had had left knee pain in the prior year but it was at that time "ok". He noted that his right hip was "rotated forward" and asked Dr. Turnbull if the Accident "might have caused it". He reported that he "sits at work with intermittent breaks - no problem" and that he had deferred his CGA program "until he feels that he would be able to sit comfortably for three [hours] at computer (after his full dayof [sic] work)". He was "doing core work 'pilates' for maintenance". On examination, Dr. Turnbull noted "full ROM well built and muscular - neck - full ROM all directions but muscle tense at end points of full lateral rotation; no spasm."

[50] During a February 3, 2016 office visit, she noted "neck and shoulders - no new complaints, overall improved and back to all his regular activities (but has deferred his [accounting] course for now". On her examination, she noted "no shoulder or neck spasms".

[51] In early February 2016, Mr. Flores was referred for surgical removal of a left wrist ganglion which was interfering with his recreational activities. He also restarted attending physiotherapy in April 2016 for "mid/low back and hip symptoms".

[52] In June 2016, Mr. Burzynski, his physiotherapist, wrote a note to Dr. Turnbull:

Mr. Flores restarted attending CBI Health Centre on April 20, 2016 for his mid/low back and left hip symptoms that were related to his motor vehicle accident on June 16, 2013. After a careful examination, it appears that Mr. Flores continues to be experiencing symptoms consistent with Chronic Thoracic and Lumbar Sprain/Strain as well as left hip dysfunction.

Mr. Flores presents with within normal limits of AROM of his thoracic and lumbar spine. However, his ROM at his left hip appears to exhibit restrictions with movement, especially with hip flexion. Mr. Flores continues to report significant pain with knee and hip flexion, prolonged sitting and stepping [into] the car. Orthopedic testing for a labral tear was negative, however, due to chronicity of the symptoms, the nature of the aggravating factors and the limited ROM, I believe Mr. Flores would benefit from further diagnostic testing (MRI with contrast agent).

Mr. Flores' treatment has consisted of manual therapy including mobilizations, as well as education and modalities as required, and a progressive stretching and strengthening program.

[53] Mr. Flores reported to Dr. Turnbull that he was experiencing pain in his left hip, perhaps brought on by Pilates and home exercises. His physiotherapist suggested that he have an MRI to rule out a labral tear.

[54] On September 12, 2016, Mr. Flores had an MRI arthrogram of his left hip done. The results showed that "features are suggestive of superior labral tear along with a multiloculated fluid collection along the anterolateral asper of left hip suggesting para labral cyst "

[55] Dr. Turnbull last saw Mr. Flores on May 3, 2017. At that time, she noted that he was attending Pilates once a month as well as doing Pilates exercises twice a week, as needed, to stretch his neck and back; and that he told her he was planning to resume his CGA course, and that if surgery was in order, it would take 6-12 months. She noted that he told her he still had ongoing neck and mid to upper back pain and left hip pain, especially on extension.

[56] In cross-examination, Dr. Turnbull testified that sleep apnea can exacerbate chronic pain symptoms. She agreed that the first time Mr. Flores complained of pain in his hip was in December 2013, and that she had not been asked to assist in obtaining an accommodation for him in deferring his CGA course. She also agreed that in the summer of 2015, he told her that he participated in slow pitch baseball, which involved "lots of sprinting". She said he was trying hard to remain well conditioned.

Dr. Zeeshan Waseem

[57] Dr. Waseem is a physiatrist whose practice includes the assessment and treatment of patients with neurologic and musculoskeletal injuries and chronic pain. Dr. Waseem was retained by the plaintiff's counsel to conduct an independent medical legal assessment of Mr. Flores. He authored an expert report dated May 4, 2017, after conducting an assessment of Mr. Flores on April 5, 2017. Dr. Waseem was cross-examined at trial.

[58] In preparing his opinion, Dr. Waseem reviewed the clinical records of Dr. Turnbull, Evolve Therapeutic Massage (massage therapy), CBI Health Centre (physiotherapy), Ladner Centre Medical Clinic, and the MRI radiology report of Mr. Flores' left hip.

[59] The defendant accepted Dr. Waseem's qualifications to opine in the area of physical medicine and rehabilitation with a specific emphasis on the evaluation, diagnosis, treatment and rehabilitation of chronic pain labral tear.

[60] At the time Dr. Waseem saw him, Mr. Flores was complaining of neck pain, which he said was 70% improved since the Accident, but which had been stable since 2015 when he started Pilates; that his mid-back pain was 60-70% improved (it worsened with prolonged standing or sitting, but was relieved by exercise and stretching); that he had ongoing headaches about once a week, which had improved through the use of Advil, but which had been stable and were triggered by neck pain; and that he had ongoing left hip pain in his left groin, which worsened with movements of the left leg but was alleviated with rest. The hip pain had improved 40% but had stabilized over the last one and one half years. Mr. Flores also complained of difficulty sleeping due to his neck pain and of not feeling refreshed in the morning.

[61] Mr. Flores "reported the following functional tolerances due to neck and mid-back pain": sitting (30-60 minutes); standing (10-20 minutes); and walking (30 minutes, after which he usually sits down).

[62] On his physical examination, Dr. Waseem noted muscle stiffness, increased muscle tone, spasms, taut band and trigger points in Mr. Flores' cervical paraspinal muscles, as well as increased pain on flexion, increased muscle stiffness, increased muscle tone, spasms, taut bands and trigger points in Mr. Flores' thoracic spine. There were no similar findings in Mr. Flores' lumbar spine or his upper extremities (arms) or his lower extremities (legs), except "notable weakness" evident in his left hip abductor muscles where there was "audible and painful snapping" of the left hip, specifically the iliopsoas tendon, which was "evident during active extension of the left hip "

[63] Dr. Waseem opined:

Based on the history obtained and review of provided medical records, Mr. Flores appears to have initially sustained a left hip labral tear and sprain/strain soft tissue injuries predominantly of the cervical and thoracic spines as a result of the subject motor vehicle accident.

These injuries have resulted in chronic left hip pain, left hip snapping pain syndrome, chronic myofascial pain syndrome of the cervical and thoracic spines and cervicogenic headaches.

[64] Dr. Waseem made the following comments in his report, in response to questions put to him by the plaintiff's counsel:

· Ongoing pain stemming from the accident-related injuries renders Mr. Flores less efficient in his occupation, causing him to work extra hours to maintain his usual productivity. Unable to withstand the rigorous study associated with his intended program of education due to pain, he has been unable to upgrade his accounting designation. Pain has inhibited his participation from previously enjoyed recreational activities and caused him to attend to housekeeping activities in an altered capacity as compared with his pre-accident status.

· There has been incomplete symptomatic recovery with plateau in improvement over time.

· To improve work efficiency, Mr. Flores would benefit from a sit-stand workstation.

· Given the lack of complete recovery now approaching 4 years post-accident and the long-standing nature of the symptoms, prognosis for full resolution of accident-related injuries is poor. He will continue to experience pain and his condition is considered chronic, unremitting and permanent.

· My recommendations for future treatments include continuing with oral analgesics as per his current regimen, obtaining a one year gym pass with personal training once monthly to maintain a self-directed home exercise program and continuing with Pilates-based exercises indefinitely. Intermittently, once every three months, he should have access to a health care professional to update, progress and monitor his exercise regimen.

· On the balance of probabilities, the presenting physical complaints related to ongoing neck, mid-back and left hip pain and headaches are attributable to the subject accident. The onset of neck, mid-back and headache symptoms is reported and documented to be within a reasonable time frame of the accident. Although the onset of left hip pain was delayed, a hip labral tear is a known traumatic entity; post-accident, there is no evidence of any other intervening traumatic event to more plausibly explain the development of a tear of the left hip. Absent the accident, it is improbable Mr. Flores would have spontaneously developed a labral tear. The injuries to the neck, mid-back and left hip are biologically plausible given the described mechanism of injury. The symptoms have persisted unabated since. A subsequent motor vehicle accident and left wrist ganglion cyst excision are not noted to have impacted on the accident related complaints and there is otherwise no evidence of a subsequent event or injury to more plausibly explain Mr. Flores's current physical presentation related to ongoing neck, mid-back and left hip pain and headaches.

Mr. Lucjan Burzynski

[65] Mr. Burzynski, Mr. Flores' physiotherapist, commenced treating Mr. Flores on August 14, 2013, initially for neck and back pain, and also, commencing in October 2013, for hip pain. He noted in his records following an October 31, 2013 visit that Mr. Flores had "discomfort at left hip".

[66] Mr. Burzynski testified that he treated Mr. Flores for three years on and off, until late 2016, for neck, back and hip issues, with active and passive treatment, and that he provided him with exercises to do at home. He testified that Mr. Flores did the exercises as requested. He encouraged Mr. Flores to be as active as he could be, but when he thought Mr. Flores might have a labral tear in his hip, he recommended that he "slow down" his exercise and activity regime but remain active.

[67] Mr. Burzynski testified that when Mr. Flores was released from his treatment, he was not symptom free.

[68] In cross-examination, Mr. Burzynski agreed that it can be hard to diagnose whether the hip is causing pain as the pain could be caused by lower back issues.

Mr. Douglas Hildebrand

[69] Mr. Douglas Hildebrand, an economist and director of Columbia Pacific Consulting Group, was qualified to give expert opinion evidence on Mr. Flores' loss of future income based on the assumption that he would have competed his CGA/CPA program in either 2015 or 2016, and gone on to earn income with a professional accounting designation over the remainder of his working life.

[70] Mr. Hildebrand used the National Occupational Classification ("NOC") category for "Financial Accountant and Auditors" in calculating Mr. Flores' future earning capacity. The category includes males in British Columbia who are working as financial accountants and auditors. The category would include the occupation that Mr. Flores is currently working with at Pace. In addition, as a secondary resource, Mr. Hildebrand also used the 2015 CPA Professional Compensation Study Report.

[71] I have taken Mr. Hildebrand's opinions into account in awarding Mr. Flores damages for loss of future income.

Defendant's Medical and Expert Evidence

Dr. Paul Marks

[72] Dr. Paul Marks, an orthopaedic surgeon, was qualified to offer expert opinion evidence on areas within his specialty. Dr. Marks had been the medical director of the Raptors basketball team and testified that he had considerable experience in diagnosing, assessing and treating musculoskeletal injuries, including "all manner of sprains and tears".

[73] Dr. Marks conducted an independent medical examination of Mr. Flores on December 14, 2016, and issued his report on February 17, 2017. He also prepared a rebuttal report dated June 26, 2017 in response to Dr. Waseem's report, in which he reaffirmed his original opinion and disagreed with Dr. Waseem's opinion, concluding: "I cannot discern how Dr. Waseem came to said negative opinion in the absence of a thorough and complete musculoskeletal examination considered mandatory during these types of assessments."

[74] In his February 17, 2017 report, Dr. Marks opined that Mr. Flores' prognosis for recovery was "considered excellent"; that he did "not attribute knee complaints or hip complaints to this accident"; that Mr. Flores had "[n]o disability with regards to activities of daily living, self-care, home maintenance or his vocation"; that he had "[n]o current or anticipated disability", and that there was "no necessity considered reasonable or needed with regards to future care including treatment, medications or housekeeping assistance".

[75] The plaintiff objected to the admissibility of Dr. Marks' reports on the basis that portions engaged in advocacy and other portions purported to offer an opinion on areas outside his area of expertise; that is, opinions regarding soft tissue injuries rather than orthopaedic injuries.

[76] In cross-examination, Dr. Marks agreed that the majority of his lectures were in the area of knee injuries but said knees were representative of joint study and that, in any event, his medical practice included all types of soft tissue injuries, including hips. He agreed that he could not offer an opinion on the issue of chronic pain as that was not within his area of expertise but rather in the expertise of a physiatrist.

Mr. Sergiy Pivnenko

[77] The defence called Mr. Pivnenko, an economist with Associated Economic Consultant's Ltd., to rebut Mr. Hildebrand's evidence regarding Mr. Flores' loss of future income.

[78] Mr. Pivnenko has a Master's degree in Economics and has been employed as a consulting economist for some eleven years. He has given expert evidence in court on matters involving loss of income assessments on a number of occasions. He produced a report and was cross-examined at trial.

[79] Mr. Pivnenko's opinion was critical of Mr. Hildebrand's use of the NOC 1111 category (financial auditors and accountants) incomes as Mr. Flores' income earned at Pace was higher than his peers, and opined that Mr. Flores' background in accounting "may not align with jobs included in NOC 1111". It was his view that Mr. Flores' employment incomes were better compared with his age peers with similar education. He referred to the 2017 Robert Half Salary Guide for Accounting and Finance, a Canada-wide survey, and the 2015 CPA Profession Compensation Study: British Columbia, for sources of his data in producing schedules of estimates of Mr. Flores' earnings to assist the Court.

[80] In cross-examination, Mr. Pivnenko said that he considered an individual's education to be a more significant factor than their accounting designation in conducting a future income assessment. He agreed that the data he used included income for men and women, which disputed Mr. Hildebrand's evidence that women in accounting earned 37% less than men. Mr. Pivnenko testified that the differential was that men earned 15% more than women.

Discussion of Issues

Findings on the Reports of Drs. Waseem and Marks

[81] As I have described, the findings and diagnoses of Dr. Waseem and Dr. Marks arising from their respective independent medical examinations of Mr. Flores differ markedly.

[82] Dr. Waseem, who examined Mr. Flores on April 5, 2017, opined that the Accident caused Mr. Flores chronic left hip pain, chronic left hip snapping pain syndrome, chronic myofascial pain syndrome of the cervical and thoracic spines, and cervicogenic headaches, which he "considered chronic, unremitting and permanent".

[83] Dr. Marks, who examined Mr. Flores on December 14, 2016, opined that the Accident had caused Mr. Flores "cervical strain and lumbar strain", and that his prognosis for recovery was "excellent". He concluded that "no disability has been identified in this plaintiff with regards to activities of daily living, self-care, home maintenance or his vocation".

[84] For the reasons expressed by Justice Russell in Sidhu v. Liang, 2009 BCSC 1697, at para. 56, I will consider both reports in the context in which each witness was qualified to give expert opinion evidence and with regard to how their evidence related to the issues I must decide.

[85] Dr. Marks is an orthopaedic surgeon who was qualified to give expert opinion evidence on orthopaedic injuries and the assessment of myofascial injuries from an orthopaedic perspective. Dr. Waseem is a physiatrist, and was qualified to give expert opinion evidence on the evaluation, diagnosis, treatment and rehabilitation of chronic pain and labral tear issues.

[86] The issues between the two physicians can and must, in my view, be resolved by my conclusion that Dr. Waseem is qualified to give expert opinions to the Court, as acknowledged by the defendant, in the areas which are most central to this litigation.

[87] I refer to the recent comments of Justice A. Saunders in Khudabux v. McClary, 2016 BCSC 1886, at paras. 90-93:

[90] I digress with a general observation with respect to expert medical evidence in soft tissue injury cases.

[91] The expert medical evidence presented at this trial brought into focus a difficulty that not infrequently arises when a defendant pursues the strategy of tendering the opinion of an orthopaedic surgeon to rebut allegations of soft tissue injury. Of course, there may be situations in which such a specialist feels able to offer opinion evidence that sheds light on the nature and scope of such complaints. But it is also the case that a clash between experts pitting an orthopaedic surgeon against a physiatrist, specializing in rehabilitation medicine - or even, as in the present case, against a family physician - can possibly leave counsel in the position of the hoodlum in the film The Untouchables, at the point when he realizes too late that he has brought a knife to a gunfight.

[92] There is a tendency common to many orthopaedic surgeons who provide expert opinion reports in soft tissue injury cases before this court to express their opinions without qualification - specifically, without acknowledging the extent to which their opinions are shaped by or restricted to the narrow field of their own expertise. In the result, many such reports come before this court that, in substance, say "I have examined this patient, and nothing is wrong with them," when what is really meant is, "I have examined this patient, and I am unable to diagnose any orthopaedic injury". Expert witnesses who provide opinions in such stark terms without explicitly stating the limitations of their opinion may, if their opinions contrast with complaints of pain and suffering that are found to be genuine, and are at odds with contrary opinion evidence from another medical expert, risk creating confusion. They may also leave themselves vulnerable to a finding of bias if the unstated limitations of their opinions are not drawn out at trial.

[93] These risks should be avoided through counsel having, in the first instance, selected an expert witness qualified to give opinion evidence in a field relevant to the issues at stake. Counsel should be familiar with the commonly understood scope of expertise held by specialists in that field, and should endeavour to determine whether the expert they have retained shares that understanding. Once the expert's report has been prepared, counsel should always explore with their expert witness the extent to which their opinion has been

shaped, in terms of what is said and what is not said, by any limitations in the witness' expertise. Lastly, counsel should ensure that any limitations or qualifications in the expert's opinion are frankly acknowledged in the substance of the report.

[88] I prefer and accept the opinion of Dr. Waseem as to Mr. Flores' diagnosis, and his prognosis as to Mr. Flores' future recovery. In my view, Dr. Waseem is more qualified to give these opinions than was Dr. Marks. Dr. Waseem is offering an opinion in an area in which he has focused his practice for a number of years. Dr. Marks does not practice in the same specialty and his opinion cannot be given the same weight as that given to Dr. Waseem.

[89] I also discount Dr. Marks' opinion for his suggestion that Mr. Flores' complaints may be a form of malingering as his case is in litigation. In this respect, Dr. Marks is venturing into the realm of making a finding of credibility, a matter which is reserved for the court. I found Mr. Flores to be an honest and forthright witness in every respect, whose complaints were supported by the evidence of his physiotherapist, his attending physician, his wife and his employer, and by the objective fact that Mr. Flores attended physiotherapy, massage therapy and Pilates to try to obtain relief from his pain. A reasonable person would not usually put themselves through such an inconvenient regime unless they needed the treatment.

Particulars Concerning Mr. Flores' Education and Registration for the CPA Course

[90] As noted earlier, Mr. Flores graduated from the University of British Columbia in Commerce with a major in accounting in 2004. While his marks were average, he worked while attending school. He testified that he was motivated to ultimately obtain his CPA to follow in his father's footsteps.

[91] In 2005, Mr. Flores registered in the CMA program to commence a course of studies to achieve a CMA designation. He was successful in passing part one of the entrance exam but not part two. He was advised that he had three years to successfully complete both parts, that is, no later than June 2008, in order to enter into the Strategic Leadership Program ("SLP") and receive his CMA designation. The letter advising him of this also warned that "the CMA National Entrance Exam is a challenging exam demanding a significant time commitment in order to prepare properly" and that it involved "significant effort and sacrifice".

[92] Mr. Flores completed the National Entrance Exam in 2006. He applied for and was granted a deferral for entry into the SLP, which was set to commence in January 2007. He was "strongly encouraged" by the CMA coordinator to register for the SLP no later than September 2008.

[93] In July 2007, Mr. Flores was advised by the CMA coordinator that the next enrollment period commenced in August 2007, and he was given a deadline of August 17, 2007 to apply. He was advised that the course program included full days of study on Saturday and Sunday. As the study conflicted with his religious beliefs, he elected not to proceed with the SLP.

[94] In March 2013, Mr. Flores applied to the CGA program in order to advance his career objectives of becoming certified. He and his wife testified that their children were, at the time, old enough, such that his wife could care for them in the evening when Mr. Flores was studying, and they were settled enough in their life that he could pursue his lifetime ambition. The CGA program involved a period of two to three years of course work and a combination of work and study.

[95] Mr. Flores was advised that he was accepted into the course on June 18, 2013, two days following the Accident. He testified that he attended a course orientation seminar in July 2013, at which he was told that students were expected to do 20 hours of course study each week, in addition to performing their full time jobs. He was also advised that he had credit for some courses as a result of taking his accounting major.

[96] Several weeks after he commenced the CGA program, Mr. Flores testified that he received a message from the CGA program to all registrants advising how much progress candidates should have made in their course material at that time. Mr. Flores testified that he was "shocked" to find out how much he had fallen behind in such a short period. He said he found it difficult to put in extra work studying after finishing a lengthened workday at Pace, trying to get his responsibilities completed at work while taking rest breaks to cope with his neck and back pain. He said he found the CGA studies to be taxing; he was tired and had to take time out to stretch his neck and back, and was falling further and further behind.

[97] Mr. Flores said he concluded that there was no way he could catch up with the course material and, in October 2013, he made the decision to withdraw from the program. He did not seek the opinion of Dr. Turnbull or advise her of his decision, nor did he immediately tell his wife. He testified that the two had planned for his taking the course and he was embarrassed to disappoint her because he was unable to complete it.

[98] In 2015, the CGA, CMA and CA designations were consolidated into one designation, the Chartered Professional Accountant ("CPA") designation.

[99] Mr. Flores testified that he very much wanted to complete the CPA designation program. Even though he was not registered in the program, he spent time in the evening to practice studying his old CGA material to prepare himself to eventually take the course. He said he found his neck and back pain when sitting caused him to lose the ability to concentrate.

[100] I turn to the assessment of damages.

Non- Pecuniary Damages

[101] In Stapley v. Hejslet, 2006 BCCA 34 [Stapley], at para. 46, the Court of Appeal set out a non-exhaustive list of factors that the court is to take into account in assessing this head of loss:

(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;

(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] B.C.J. No. 163 (QL), 2005 BCCA 54).

[102] The plaintiff says an appropriate award for non-pecuniary damages falls in the range of between $100,000 and $120,000. In support, the plaintiff relies on Dhaliwal v. Meerdink, 2014 BCSC 2418; Ahonen v. Thauli, 2013 BCSC 1607; Kam v. Van Keith, 2015 BCSC 1519; and Severud v. Smit, 2016 BCSC 1021. The plaintiff acknowledges that the above range depends on whether I find that there is a causative link between the Accident and the labral tear he suffered.

[103] The defendant submits that non-pecuniary damages should be awarded in the range of between $60,000 and $70,000. The defendant relies on Sandhu v. Gabri, 2014 BCSC 2283; Bove v. Wilson, 2016 BCSC 1620; and Rutter v. Allen, 2012 BCSC 135.

[104] While the cases relied on by counsel are useful in providing the court with a broad range of examples of previous decisions reflecting the application of the principles set out in Stapley, it is useful to keep in mind the words of Justice N. Brown in Scelsa v. Taylor, 2016 BCSC 1122, at para. 234:

[234] It is not possible to fully reconcile the awards, which are not precedential, but rather, give some guidance. They are distinguishable to some extent based on how pervasive and chronic are the effects of the injuries, on how many facets of life are significantly impacted, and on the extent to which the plaintiff is able to continue with former activities and occupations. The higher range of cases exhibit more intense iterations of depression such as social isolation or significant loss of social contact and an impact on significant other persons in the plaintiff's life, such as children and spouses. Chronic myofascial pain, permanent or significant loss of work previously highly valued by the plaintiff and/or significant loss of earning capacity also mark cases in the range of $100,000 or more.

[105] The defendant says the labral tear issue was not caused by the Accident. In Andrews v. Mainster, 2014 BCSC 541, Justice Pearlman noted, at para. 189:

[189] In determining causation, I also bear in mind that caution is required before drawing any inference that because one event follows another in time, the first event is the cause of the second: White v. Stonestreet, 2006 BCSC 801 at paras. 70-74.

[106] On the evidence, I find it more likely than not that the labral tear was caused by the Accident. Mr. Flores had no issue with his hip, notwithstanding an active lifestyle, prior to the Accident. The issue with Mr. Flores' hip was first noted by Dr. Turnbull on December 12, 2013 when she noted that his physiotherapist was treating him for "hip girdle pain". His physiotherapist testified that he commenced treating him for hip related complaints on October 4, 2013. There was no intervening event subsequent to the Accident to have brought on the hip injury. I accept Dr. Waseem's conclusion that the Accident caused Mr. Flores' labral tear as a reasonable conclusion. I do not accept that Mr. Flores' knee injury was caused by the Accident. It appears to be entirely related to him playing tennis.

[107] At the time of the trial, almost four years had passed since the Accident. Mr. Flores continues to suffer from pain in his neck, back and hip, which prevents him from enjoying the activities he enjoyed prior to the Accident, and while he has not missed time from work, he has difficulty sitting for long periods and must spend more time at work completing his tasks than he did before the Accident. He has difficulty lifting and performing heavier household tasks and yard work. Mr. Flores' prognosis for improvement is, as found by Dr. Waseem, poor; he will continue to experience pain which is "chronic, unremitting and permanent."

[108] After considering the principles set out in Stapley and the cases referred to by counsel, I award Mr. Flores $115,000 in non-pecuniary damages.

Past and Future Opportunity Loss/Diminished Earning Capacity

[109] The plaintiff claims past loss of income or past loss of earning capacity from the value of the work he would have performed but was unable to perform: Rowe v. Bobell Express Ltd., 2005 BCCA 141, at para. 30; Grewal v. Naumann, 2017 BCCA 158 [Grewal], at para. 44 (citing the principles set out in Athey v. Leonati, [1996] 3 S.C.R. 458 [Athey], at paras. 27-28) and paras. 48-49. The latter two paragraphs of Grewal read:

[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.

Lost Earnings to Date of Trial

[110] I conclude that there is a real and substantial possibility that Mr. Flores would have completed his CPA designation by December 31, 2015. As the authorities provide, Mr. Flores is not required to prove that he would have achieved his designation on a balance of probabilities.

[111] I find that, based on the evidence of the plaintiff of the ongoing chronic back and neck pain he was having that time, he had a reduced tolerance for sitting at a computer (which comprises a great deal of his job functions). I find that he had a pain-induced reduced energy level resulting in lack of energy and focus. He was required to put in longer hours to achieve his regular job duties. His functionality was thus less than it was before the Accident and directly resulted in Mr. Flores having to withdraw from his CGA course. I accept his evidence that he simply could not keep up with the workload required to keep him up to date and to complete his CPA course. Even though the medical notes of Dr. Turnbull reflect that Mr. Flores was making progress in improving, the evidence is clear that he remained bothered and limited in function by chronic neck and back pain and by pain in his hip. Mr. Flores' evidence is corroborated by the evidence of Ms. Flores, by Dr. Waseem, and by observations that his employer made while Mr. Flores was at work.

[112] Dr. Waseem detected objective signs of muscle tautness when he examined Mr. Flores in 2017. His physiotherapist, Mr. Burzynski, whom he was seeing on and off from the fall of 2013 to late 2016, treated him for pain in his neck, shoulders and hip area.

[113] While I have concluded that there is a real and substantial possibility that Mr. Flores would have completed his CPA course by December 31, 2015, I must also take into account that there is some possibility that he would not have completed the course.

[114] The negative contingencies which I think apply in this case are several. The most significant one is that Mr. Flores may very well have underestimated the extent of the coursework required of him to complete the designation. The CPA program warned candidates that the workload was "substantial". As is evident from his time records at Pace, Mr. Flores had significant responsibilities and worked long hours to fulfill those responsibilities to the satisfaction of his employer. Mr. Flores was earning a substantial salary; a salary he and his family relied on. They had no other substantial asset base. Ms. Flores worked as a teacher but I have no evidence before me that the family could have sustained itself without Mr. Flores' income from employment. Had the coursework come into conflict with Mr. Flores' work duties, I think it inevitable that Mr. Flores would have sacrificed his enrollment in the

course to maintain his working relationship with Pace. In my view, there is an even chance that this conflict could have arisen.

[115] I have also considered the possibility that Mr. Flores may have taken three years, rather than two, to complete the CPA designation course, which would mean he would not have completed the course until January 1, 2017.

[116] I accept Mr. Hildebrand's estimates of Mr. Flores' earning potential for 2016 and 2017 to the date of trial. I would deduct Mr. Flores' actual earnings, net of income tax, from Pace.

[117] I reject the plaintiff's counsel's alternative suggestion for valuing Mr. Flores' loss by valuing an extra hour per day, caused by "the extra time it takes to get his job done" as an appropriate method of valuing the loss. This valuation method is simply too uncertain and would potentially unfairly penalize the defendant. While a majority of the extra time Mr. Flores put in at work was to compensate for his lack of full functionality, there were undoubtedly times in the accounting cycle when he would have worked extra hours in any event.

[118] In all of the circumstances and taking these factors into account, I award Mr. Flores $22,500 for loss of past earning capacity.

Loss of Future Earnings/Diminished Earning Capacity

[119] The plaintiff submits that given his functional limitations, including his chronic pain and resulting fatigue, there is a real and substantial possibility that he will suffer a loss of future income as a result of the Accident. In particular, he says he would have completed his accounting designation program but for the Accident, and will incur substantial financial loss over the remainder of his life.

[120] The defendant submits the evidence establishes that the plaintiff would not likely have completed his CPA designation and that he will not sustain a loss of income from his current position, given that he has not implemented the recommendations of Dr. Waseem. The defendant further submits that, should the court accept that Mr. Flores would have completed his accounting designation, the assumptions underlying the report of Mr. Hildebrand should be rejected in favour of the assumptions used by Mr. Pivnenko in his report. The defendant submits that if there is an award for loss of future income, such award should be limited to six months' annual income or $50,000.

[121] The fundamental principle underlying a claim for loss of future income was set out by the Court of Appeal in Perren v. Lalari, 2010 BCCA 140, at para. 32: "[a] plaintiff must always prove that there is a real and substantial possibility of a future event leading to an income loss" (emphasis added).

[122] A future or hypothetical possibility of an income loss will be taken into account as long as it is a "real and substantial possibility and not mere speculation": see Athey, at para. 27.

[123] If a plaintiff is successful in proving a real and substantial possibility of income loss, then a plaintiff may prove such loss of earning capacity using either a loss of earnings approach or a capital loss approach, depending on the facts of the case. The former approach is generally used when the loss is more measureable, the latter approach when earning loss is not so easily measureable.

[124] When earning loss is not so easily measureable, the capital loss approach takes into account a number of considerations, including whether a plaintiff:

· has been rendered less capable overall from earning income from all types of employment;

· is less marketable or attractive as an employee to potential employers;

· has lost the ability to take advantage of all job opportunities which might otherwise have been open to him, had he not been injured; and

· is less valuable to himself as a person capable of earning income in a competitive labour market.

See Brown v. Golaiy, [1985] B.C.J. No. 31 (S.C.) [Brown], at para. 8.

[125] In my view, the evidence established quite clearly that Mr. Flores was dedicated to achieving his professional accounting degree. He had set this as an early goal, registering in the Faculty of Commerce at the University of British Columbia with a major in accounting. Upon graduation, he registered for and commenced courses leading to that goal, only to find that he could not compete the course because classes were held on Sundays. Mr. Flores pursued his interest in accounting through his employment at Pace where he quickly moved to a senior accounting position, earning a relatively good salary. When he and his wife decided to renovate their house in 2012, they converted a shed in their backyard into an office, in anticipation that Mr. Flores would use it as an office from which he could study when he resumed his CGA designation studies. Mr. Flores registered for and began the CGA designation course in 2013, just prior to the Accident. He advised Pace that he had done so. Pace revised its website in order that its customers would have an accurate picture of its employees.

[126] I find that the plaintiff has met the onus of establishing that absent the Accident there was a real and substantial possibility that he would have obtained his CPA designation and that he would have found employment in a professional accounting capacity. Having found that the injuries Mr. Flores sustained in the Accident have prevented him (and will likely continue to prevent him) from achieving this goal, he is entitled to damages for his loss.

[127] As noted recently by Justice Sewell in Chong v. Nguyen, 2017 BCSC 1564, at paras. 100-101, in assessing damages for lost earning capacity, whether past or future, the court must consider hypothetical events that need not be proven on a balance of probabilities.

[128] In preparing his analysis, Mr. Hildebrand took into account that Mr. Flores' historical income was already above the income earned by his age peers and it was unlikely that he would only accept employment in "above average" income earning categories. He also considered that as Mr. Flores wanted to own an accounting firm, this would skew future earnings higher.

[129] In cross-examination, Mr. Hildebrand agreed that he did not build an articling period into his wage loss calculation period. He said that given Mr. Flores' experience, he would likely be given credit for this and would earn more than a typical articling student. He also agreed that he had not built in an assumption that Mr. Flores might not pass his CPA examinations.

[130] Based on the assumption that absent the Accident, Mr. Flores would have achieved his CPA designation, and that in light of the Accident, he will not obtain the designation and will continue to work in a position similar to his current position until he reaches retirement age, Mr. Hildebrand estimated Mr. Flores' future income loss at $621,306.

[131] Mr. Pivnenko used data from the National Household Survey ("NHS") data bank, which showed income earned by BC males with a Bachelor of Commerce degree as a basis for his opinion on Mr. Flores' future income loss. The NHS data includes a broad range of occupations, business sectors, and professional designations, and includes financial analysts and real estate brokers.

[132] In addition, Mr. Pivnenko relied on the Robert Half Salary Guide for Accounting and Finance in arriving at some of his conclusions. He did not know the methodology underlying the survey and acknowledged that the survey "may not be" accurate. He did not separate out female workers from male workers (acknowledging that the former earned 15% less than male workers).

[133] The defendant, while maintaining that Mr. Flores is not entitled to any award for loss of future income based on Dr. Mark's opinion, says, based on Mr. Pivnenko's report, after applying contingencies, that an award should not be more than $50,000.

[134] Each of Messrs. Hildebrand and Pivnenko provided the Court with schedules of wage loss and the present value to be applied to any determined annual loss.

[135] An award for loss of future earning capacity is not to be calculated solely on the basis of mathematical calculations, while "if there are mathematical aids that may be of some assistance, the court should start its analysis by considering them": Jurczak v. Mauro, 2013 BCCA 507, at paras. 36-37.

[136] I accept that the plaintiff has suffered an impairment to a capital asset, as he meets the factors set out in Brown: he has been rendered less capable overall from earning income from all types of employment; he is less marketable or attractive as an employee to potential employers; he has lost the ability to take advantage of all job opportunities which might otherwise have been open to him but for the Accident; and generally, he is less valuable to himself as a person capable of earning income in a competitive labour market.

[137] Mr. Flores was, at the date of trial, 35 years old. He has some 30 to 35 years of future employment available to him. While it remains a possibility, it is unlikely that he will complete his CPA certification given his ongoing pain, fatigue, stamina and inability to focus. Dr. Waseem considers his prognosis to be poor. Some of the negative contingencies which I must take into account include the possibility that Mr. Flores may not have finished the CPA course absent the Accident, for a number of reasons: perhaps because he found it too hard or because the hours required competed with his job at Pace, perhaps for family or other personal reasons, or perhaps because of the potential difficulty finding employment in his chosen field as a result of economic reasons or other factors. In addition, it is possible that Mr. Flores' condition may improve to the extent that he can take the course.

[138] Any award made for loss of future earning capacity must be fair to the defendant. In Miller v. Lawlor, 2012 BCSC 387, at paras 134-140, Justice MacKenzie discussed the authorities wherein damages were assessed in terms of a number of years of lost income. In my view, that is a correct approach to follow in the present circumstances.

[139] I award Mr. Flores three years' income or $276,000, based on Mr. Hildebrand's evidence. I prefer Mr. Hildebrand's evidence and the data he used over that used by Mr. Pivnenko, as I conclude that it more accurately reflects the income Mr. Flores would have earned had he received his CPA designation.

Special Damages

[140] The plaintiff claims special damages in the amount of $27,434.12. Of this amount, the parties have agreed on $5,836.72. The agreed amount includes the cost of physiotherapy, with the exception of one $60 visit relating to Mr. Flores hip, which the defendant says was not accident-related, massage therapy, and Pilates.

[141] Of the amount claimed as special damages, the largest expense, some $21,442.20, relates to the cost of the purchase of and the insurance for a second vehicle, which the plaintiff says was necessary to enable him to "adapt to [his] Accident-related injuries". To be recoverable, the cost of items to be recovered as special damages must be supported by medical evidence and must be reasonable. There was no medical evidence to support the purchase of a vehicle to assist the plaintiff in his commute to work (in place of riding his bike), nor do I consider the expense to be a reasonable one. As the defendant argues, the purchase of the vehicle was the purchase of an asset, one which the plaintiff's wife uses to transport their children. I disallow this claim.

[142] I allow the physiotherapy claim of October 6, 2016, as I find that the hip problem was more likely than not caused by the Accident.

Cost of Future Care

[143] The plaintiff claims $25,000 for the cost of future care to cover the "reasonable or normal expectations of what the injured party will require".

[144] The purpose of an award for cost of future care is "to restore, as best as possible with a monetary award, the injured person to the position he would have been in had the accident not occurred", and is "based on what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff": Gignac v. Insurance Corporation of British Columbia, 2012 BCCA 351, at paras. 29-30.

[145] To the date of trial, Mr. Flores had taken physiotherapy, massage therapy, and Pilates. Of the three, he has continued with Pilates. Dr. Waseem recommended that Mr. Flores continue with his Pilates and with the oral analgesics he is currently on; that he obtain a one year gym pass with a personal trainer once monthly to maintain a self-directed home exercise program; that he meet with a healthcare professional to monitor his exercise program every three months; and that he obtain a sit/stand work station both at work and at home to improve his workplace efficiency and to help him study.

[146] The plaintiff did not provide the Court with any cost estimate for Dr. Waseem's recommendations and relies on the comments of Justice Voith in Rahimi v. Ma, 2014 BCSC 710, at para. 161:

[161] Though no cost for this item was provided, courts will, on occasion, "ball park" an expense; see Chaban v. Chaban, 2009 BCSC 87 at paras. 65-73; Loewen v. Bernardi, 93 B.C.L.R. (2d) 242, [1994] B.C.J. No. 1169 (C.A.) at paras. 24-27.

[147] I allow Mr. Flores $2,500 for continued Pilates treatments, $150 for the Advil he is currently taking, $1,500 for a personal trainer for one year, and $2,000 for sit/stand desks at work and at his home office.

Loss of Housekeeping

[148] Mr. Flores claims damages for loss of housekeeping capacity.

[149] Mr. Flores' wife, Melissa, suffers from rheumatoid arthritis and throughout the parties' marriage has been able to perform limited housekeeping. Mr. Flores has been responsible for both indoor and outdoor housekeeping functions which require heavy lifting. He did all washing of heavier pots and pans, vacuuming and scrubbing, as well as moving any heavy furniture. After the Accident, he experienced pain, particularly in his lower back, when performing these tasks. Ms. Flores testified that over the last winter, the driveway to their home was not cleared because neither of them could physically manage the work.

[150] I consider an award of $7,500 to be a reasonable award in this case.

Summary

[151] To summarize, I have awarded Mr. Flores the following:

a) $115,000 in non-pecuniary damages;

b) $22,500 for loss of past earning capacity;

c) $276,000 for loss of future earnings/diminished earning capacity;

d) $5,836.72 in special damages, plus $60 for the cost of the physiotherapy claim of October 6, 2016;

e) $6,150 for cost of future care; and

f) $7,500 for loss of housekeeping capacity;

TOTAL: $433,046.72

Costs

[152] If the parties are unable to agree on costs, they have liberty to apply by filing submissions within 30 days of the issue of this decision.

"Greyell J."

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