

CANADA / JUDGMENT

Mannella v. Obregon

2020 BCSC 715

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 715 Mannella v. Obregon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mannella v. Obregon,

2020 BCSC 715

Date: 20200508

Docket: M140561

Registry: Vancouver

Between:

Franco Mannella

Plaintiff

And

Jamie Obregon

Douglas M. Oak

Defendants

- and -

Docket: M1912458

Registry: Vancouver

Between:

Franco Mannella

Plaintiff

And

Gordon Conrad Haug

Defendant

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Plaintiff:

J.M. Cameron

Counsel for the Defendants:

R. Nagel

V. Dhaliwal

Place and Dates of Trial:

Vancouver, B.C.

January 27-30, 2020

February 3, 5-6, 2020

Place and Date of Judgment:

Vancouver, B.C.

May 8, 2020

INTRODUCTION

[1] This judgment deals with two negligence actions tried together by consent relating to motor vehicle accidents on January 31, 2012 (the "first" or "2012 accident") and October 30, 2018 (the "second" or "2018 accident"). Liability has been admitted in both. The parties have agreed that the plaintiff's injuries are indivisible. I have been asked to assess overall damages without apportionment.

[2] The categories of damages in dispute are:

- a) Non-pecuniary damages;
- b) Past loss of income earning capacity;
- c) Future loss of income earning capacity;
- d) Future cost of care; and

- e) Special damages.

BACKGROUND

- [3] The plaintiff is a 46-year-old married father of three young boys. He was born and raised in Vancouver. He graduated from high school in 1990. Since then he has been steadily employed in various physically demanding jobs as a general labourer and concrete worker.
- [4] At the time of the first accident the plaintiff was working as a concrete fabricator for a local company called Ocean Pipe. Since 2016 he has worked full-time for the City of Vancouver mostly as a driver but sometimes as a crew foreman. This is secure employment. He is cautiously optimistic about his prospects for promotion. He testified that it is the best job he has ever had.
- [5] The plaintiff was in two motor vehicle collisions before the ones referred to in the claims before the court. One of these was in 1998 in which the plaintiff suffered lower back, chest wall, breast bone and sternal pain. The plaintiff recovered completely from these injuries. There was a more serious T-bone type collision in 2001 in which the plaintiff suffered right-sided neck pain, shoulder girdle area soft tissue injury, exertional arm pain with associated tingling and numbness, and intermittent headaches and bilateral conjunctival injection.
- [6] This 2001 collision is relevant to my assessment here because the injuries and deficits now afflicting the plaintiff are described in more or less the same terms. I have concluded on the evidence that in the decade or so following the 2001 T-bone collision the plaintiff's condition had improved to the stage where he was almost fully recovered. He continued to experience headaches but these were not as frequent or severe. He could work full-time hours in strenuous occupations without limitation or accommodation. He was not inhibited in his social, home or family life.
- [7] In the plaintiff's own estimation, which I accept, he was back to 90 or 95 per cent of "normal" functionality before the 2012 accident. It seems clear on all the evidence that he is suffering through an aggravation of his 2001 physical injuries brought on by the 2012 and 2018 accidents. I will proceed on the footing that the present defendants are responsible to compensate him for the full range of his losses with a modest deduction to account for pre-existing harm caused by other people.
- [8] I accept the plaintiff's evidence concerning his present condition. These include soft tissue neck and shoulder pain, lower and mid back pain, and chronic headaches. I have no reason to think he is exaggerating his problems. There has been no failure to mitigate. There was no material dispute in the medical evidence about the plaintiff's accident-related limitations, though there was some divergence of opinion concerning his prognosis for future improvement.

- [9] The parties agree that because of the 2012 and 2018 accidents the plaintiff is no longer capable of employment requiring sustained heavy strength. In my view, given his background, training and career history, this constitutes a compensable impairment of his income earning capacity viewed as a capital asset. Indeed, I am persuaded by the totality of the evidence that the plaintiff is entitled to a measure of damages under every heading claimed. The amounts set out below in compensatory damages include a deduction as aforesaid for pre-existing injury and this factor will not be mentioned again.

JANUARY 31, 2012 ACCIDENT

- [10] The first accident happened while the plaintiff was driving to work. He was southbound on Blue Mountain Drive in Port Coquitlam. A vehicle driven by the defendant, Obregon, and owned by the defendant, Oak, came alongside the plaintiff in the lane to his right and then veered inexplicably to the left, colliding with the plaintiff and forcing his vehicle across the oncoming lanes of traffic, over the curb on the other side of the road, and onto a residential property where it came to rest only five feet or so from the front door of someone's house.

OCTOBER 30, 2018 ACCIDENT

- [11] The second accident happened when the plaintiff was carpooling to work as a rear seat passenger in a vehicle being driven by a co-employee westbound on East Hastings Street near Kaslo Street in Vancouver. The driver of the plaintiff's vehicle came to a stop because the police were blocking the roadway for some reason. Several seconds later a vehicle driven by the defendant, Haug, struck the plaintiff's vehicle with some force from the rear.

THE MEDICAL EVIDENCE

Dr. Rossali Pilapil-Lee

- [12] Dr. Pilapil-Lee is the plaintiff's family physician. She treated him before and after both the 2012 and 2018 accidents. The plaintiff consulted with her the same day after the first one. His reported injuries included bilateral shoulder and scapular pain, right sided neck pain and back pain, and chronic headaches. He was recommended a course of physiotherapy and prescribed Oxycodone for pain. Epidural injections afforded him some back pain relief. The headaches were mitigated by Botox injections. He was disabled from work for 6 months returning in July 2012.
- [13] In a report written on July 12, 2018, three and a half months before the second accident, Dr. Pilapil-Lee wrote that the plaintiff's back pain and headaches would likely resolve, but the neck pain persisted. She predicted that flare-ups would compromise his ability to work from time to time. She recommended continuation of the epidural injections and Botox treatments, as well as intermittent massage and physiotherapy.

- [14] Then came the second accident and with it, as previously stated, an aggravation or worsening of the plaintiff's existing problems. In a second report dated October 31, 2019, Dr. Pilapil-Lee predicted that the plaintiff would continue to experience headaches, neck and back pain for an extended period into the foreseeable future. She did not expect these symptoms to disappear, but was optimistic that in time the plaintiff might return to his "baseline" before the accident, namely neck pain with improving back and headache problems mediated by injection treatments, perhaps with more frequent and longer lasting "flare ups" of pain and limited functioning.

Dr. Robert Robinson

- [15] Dr. Robinson is a neurologist whose practice is mostly devoted to the treatment of headaches. He examined the plaintiff on April 15, 2014 at the request of his primary care physician and again on October 25, 2019 at the request of the plaintiff's counsel. His opinion concerning the plaintiff's chronic headaches was that they are likely post-traumatic in nature, starting with the accident back in 2001 and aggravated by the 2012 and 2018 accidents.
- [16] The plaintiff's treatment for headaches has included Botox injections that have brought him consistent relief. He tried to go without these injections for a year or so in around 2016, but the headaches returned until he resumed Botox treatments in 2017, which resulted in further improvement. The 2018 accident resulted in a worsening of his pre-existing headaches.
- [17] Dr. Robinson reported that the plaintiff's condition is consistent with a diagnosis of persistent post-traumatic headache albeit with unusual features, namely conjunctival injection and tearing. Dr. Robinson did not believe that the motor vehicle accidents in 2012 and 2018 can be held wholly responsible for the plaintiff's post-traumatic headaches as he was having headaches of a similar nature prior to these accidents. He did not believe there will be a worsening in the headaches in the absence of further injury. Given the plaintiff's therapeutic history, in fact, he thought it likelier that the headaches will gradually improve and even resolve.

Dr. Russell O'Connor

- [18] Dr. O'Connor is a physiatrist who started treating the plaintiff in 2004. He performed a medical examination of the plaintiff in September 2019 at the request of counsel. His overall opinion was that the plaintiff had almost recovered from the effects of the 2001 accident when the 2012 accident occurred, and from there he enjoyed substantial improvements in his physical health and functioning before the 2018 accident. His present condition is improving yet again, and at the time of this trial Dr. O'Connor felt that the plaintiff had likely returned to his status immediately before the 2018 accident, though he was not as fit as immediately before the 2012 accident. He agreed with the other clinicians that the plaintiff continues to suffer principally from neck and shoulder pain, lower back pain and chronic

headaches.

- [19] Dr. O'Connor recommended that the plaintiff should continue with the epidural and Botox injections to manage his back pain and headaches. He said that the plaintiff was managing quite well in his daily life. He is capable of medium level physical tasks and intermittent manual labour at work and at home, but he has cut back on physical and recreational activities, starting after the 2012 accident. He has been taking over the counter medications, but thankfully has weaned himself off Oxycodone.
- [20] Dr. O'Connor believed that the plaintiff has reached the level of maximum improvement. He expressed the opinion that the plaintiff's current limitations will likely continue indefinitely and that substantial improvement is highly unlikely. He recommended that the plaintiff should exercise as much as possible in low-impact activities, as well as carrying on with the injection therapies already mentioned, perhaps tapering off the Botox treatments eventually to see if he can manage without them. He suggested that massage therapy, while not a cure, may help the plaintiff manage some of his symptoms temporarily.

Dr. Timothy McDowell

- [21] Dr. McDowell is a neurologist who performed an examination of the plaintiff at the request of defence counsel. He did not dispute the other clinicians' impressions concerning the plaintiff's symptoms, but offered the opinion that the Botox injections were not "evidence based", even though he endorsed their continued use because they seemed to be having a salutary effect. He questioned the efficacy and medical justification of epidural injections, which he thought were likely causing a placebo response, and cited the risk of damage to nerves, bone tissue, strokes and paralysis from overuse. He recommended that such injections should be stopped.

Dr. Simon Horlick

- [22] Dr. Horlick is an orthopaedic surgeon who performed an examination of the plaintiff at the request of defence counsel. This revealed a history and findings in conformity with the records of anterior clinicians. He recommended that the plaintiff could benefit from physiotherapy and perhaps intramuscular stimulation treatment to reduce myofascial pain and maximise functionality, as well as a regime of exercise, core strengthening, weight loss, occasional massage therapy, and several sessions with a kinesiologist.
- [23] Dr. Horlick reported that the plaintiff's various deficits would not get worse over time. To the contrary, given his history of functional improvement to date there were grounds for optimism about a substantial if not full recovery, as long as he follows the recommended course of therapy and treatment. He specified that operative intervention would not be necessary. Dr. Horlick suggested that the plaintiff's 6-month absence from work after the 2012 accident was medically justified, and said that now that he is doing lighter work with the City of Vancouver there will likely be no further occupational disability.

NON-PECUNIARY DAMAGES

- [24] Non-pecuniary damages are awarded to compensate the injured party for pain, suffering, loss of enjoyment of life, and loss of amenities. The compensation awarded should be fair to all parties. Fairness is measured against awards made in comparable cases bearing in mind that each case is different: *Trites v. Penner*, 2010 BCSC 882 at paras. 188-189. The process is one of assessment and not mathematical precision: *Suthakar v. Humble*, 2016 BCSC 155 at para. 116.
- [25] The Court of Appeal outlined the proper approach to the assessment of non-pecuniary damages in *Stapley v. Hejslet*, 2006 BCCA 34 at paras. 45-46. The factors to be considered include the age of the plaintiff, the nature of his injuries, the severity and duration of his pain, disability, emotional suffering, loss or impairment of life, the impairment of family and social relationships, the impairment of physical and mental abilities, and loss of lifestyle. A stoic nature ought not to result in a lesser award.
- [26] In support of an award of \$110,000 under this heading, the plaintiff relies on:
- *Teunissen v. Hulstra*, 2017 BCSC 1569. The plaintiff was injured in a motor vehicle collision at 38 years old. He suffered a chronic, partly disabling soft tissue back injury resulting in pain and spasms. He was unable to successfully return to his physically demanding job at a funeral home and had to seek out lighter work. His symptoms had been ongoing for five years and his prognosis for recovery was poor. When his symptoms were under control, he was able to return to his normal activities with some modification or adjustment. The plaintiff was noted to be a determined and stoic individual who persisted in working and supporting his family despite chronic pain. He was awarded \$110,000 in non-pecuniary damages.
 - *Odian v. Carriere*, 2016 BCSC 112. The plaintiff, 46 years old at trial, was injured in a rear-end collision. She suffered from soft tissue injuries to her back, hip, knee, ankle and shoulder which resolved within a year, as well as neck pain and headaches which had persisted in the six years since the accident. Her symptoms were not likely to improve. Before the accident, she worked as a homebuilder and carpenter but began training as a bookkeeper due to pain from physical exertion, though the court concluded she did not need to change occupation. She gave up most of her pre-accident recreational activities and her relationship with her daughter and husband was affected. She was awarded \$100,000 in non-pecuniary damages.
 - *Ahonen v. Thauli*, 2013 BCSC 1607. The plaintiff was injured in a motor vehicle collision at 42 years old. She suffered from chronic neck pain and headaches. After the accident, she was unable to exercise at the gym or cycle with her pre-accident intensity and she avoided playing hockey and soccer due to her pain. She modified her household activities and performed them at a slower pace. Her tasks at work were restricted and required accommodation. The accident affected her relationships with her children and husband. Her prognosis for further recovery was poor and she was likely permanently partially disabled. She was awarded \$100,000 in non-pecuniary damages.

[27] The defendants submit that an award of between \$75,000 and \$90,000 would be more appropriate in the circumstances, citing:

- *Fedosenko v. Zahirfar*, 2018 BCSC 1297. The plaintiff, 53 years old at trial, was injured in two rear-end collisions in 2011 and 2012. He suffered low back and neck pain and headaches. Prior to the accidents, he lived an active outdoor life and ran a construction business applying stucco siding to new homes. Following the accidents, he was unable to perform certain physical activities related to his work and his recreational and social activities were limited. His prognosis was poor and his pain was expected to be ongoing. He was awarded \$80,000 in non-pecuniary damages, reduced by 10% to \$72,000 to account for pre-existing conditions.

- *Amini v. Khania*, 2014 BCSC 1671. The plaintiff was injured in a t-bone collision at 56 years old. He experienced constant, severe pain in his back, neck, and shoulder and headaches for three months after the accident. By trial, almost five years later, his pain had diminished but was still constant. His prognosis was considered guarded, if not poor. He had to substantially reduce his employment delivering newspapers and landscaping. There was a significant impairment of his ability to perform household work and he had to curtail his leisure activities to some extent. The court noted there was some likelihood the plaintiff would experience some pain related to pre-existing degeneration. He was awarded \$70,000 in non-pecuniary damages.

- *Paller v. Regan*, 2013 BCSC 1672. The plaintiff, 49 years old at the time of trial, was injured in a motor vehicle collision. He suffered from back and neck pain and headaches. His prognosis was poor for resolution of his chronic neck and back pain. He was also diagnosed with an anxiety disorder as a result of the chronic pain. Hockey was an important part of the plaintiff's life and his injuries impacted his skill, intensity, and enjoyment of the game. He became irritable which impacted his relationships with his wife and daughter. He was a stoic individual who pushed through his pain and continued to work as an ice rink maintenance person. He was awarded \$85,000 in non-pecuniary damages.

[28] Since the accidents, the plaintiff has stopped playing sports like soccer and hockey with his friends. He is cautious about his physical activities, including play with his children, to avoid aggravating his injuries. He still goes hunting intermittently. He struggles with performing some household tasks and chores, particularly those involving heavy physical exertion. He has suffered pain and limitations from his injuries for the years between the accidents and trial without full recovery. I am satisfied on the medical evidence that it is likelier than not he will continue to suffer from his injuries into the foreseeable future.

[29] In my view, the plaintiff's authorities identify a range of non-pecuniary damages reserved for cases involving more serious and debilitating injuries than he has suffered. The defendant's submission accords better with precedent. Considering the totality of the evidence and using the cases cited as a rough guide, I conclude that a just, proportionate and fair award under this heading is \$80,000.

PAST LOSS OF INCOME EARNING CAPACITY

- [30] A claim for what is often described as "past loss of income" is actually a claim for loss of earning capacity; that is, a claim for the loss of the value of the work that the injured plaintiff would have performed but was unable to because of the injury: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30.
- [31] The parties agree that an award is due to the plaintiff under this heading, but their respective calculations of the amount are around \$20,000 apart. I bear in mind that the plaintiff is entitled to be placed in the same position, monetarily speaking, that he would have occupied but for the accident.
- [32] According to the plaintiff's income records, since taking employment with the City of Vancouver in 2016, he is earning a higher salary than at any previous time in his working life. I received no persuasive evidence about any real and substantial possibility of income from another source after that time. In my view, the defendant is on solid ground suggesting that the plaintiff's claim under this heading is limited to losses sustained during his 6-month absence from his previous employment and for 12 days' absence from City work after the 2018 accident.
- [33] At the time of the 2012 accident the plaintiff was a concrete fabricator at Ocean Pipe. Including an hourly pension top-up, he would have earned approximately \$22,000 during his 6 months off. To this figure, I would add the amount of \$3,000 for 12 days' wages from the City of Vancouver that the parties have agreed were lost because of the 2018 accident, for a running total of \$25,000.
- [34] The defendant also accepts that the plaintiff is due compensation for the wage differential from a job change in his previous career with Ocean Pipe, made necessary by accident-related losses of physical capacity, from concrete fabricator to concrete patcher. In my assessment the amount of this loss until May 2016, when the plaintiff moved to his new position with the City of Vancouver, is approximately \$14,000.
- [35] Finally, I am satisfied that because of his injuries the plaintiff missed opportunities for overtime shifts while he remained at Ocean Pipe. The evidence about this was not clear and my figure is a little rough and ready. Considering the plaintiff's earning history at Ocean Pipe, and taking note, particularly, of scheduling changes specifically enacted by management in 2013 to keep overtime to a minimum, in my assessment a fair measure of compensation for lost overtime is \$8,000.
- [36] The total amount of the award under this heading, therefore, is \$47,000 subject to the necessary deductions for taxation. No doubt counsel will be able to agree to a net amount. If not, they have leave to apply.

FUTURE LOSS OF INCOME EARNING CAPACITY

- [37] In *Parker v. Lemmon*, 2012 BCSC 27, the court set out a summary of the principles involved in assessing an award under this heading as follows:
- [42] The approach to such claims is well set out in the decision of Garson J.A. in *Perren v. Lalari*, 2010 BCCA 140 at paras. 25-32, which I summarize as follows:
- (1) A plaintiff must first prove there is a real and substantial possibility of a future event leading to an income loss before the Court will embark on an assessment of the loss;
 - (2) A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation;
 - (3) A plaintiff may be able to prove that there is a substantial possibility of a future income loss despite having returned to his or her employment;
 - (4) An inability to perform an occupation that is not a realistic alternative occupation is not proof of a future loss;
 - (5) It is not the loss of earnings but rather the loss of earning capacity for which compensation must be made;
 - (6) If the plaintiff discharges the burden of proof, then there must be quantification of that loss;
 - (7) Two available methods of quantifying the loss are (a) an earnings approach or (b) a capital asset approach;
 - (8) An earnings approach will be more useful when the loss of income is more easily measurable;
 - (9) The capital asset approach will be more useful when the loss is not easily measurable.
- [38] If the plaintiff is unable to prove a real and substantial possibility of a future event leading to an income loss, of course, there is no basis for an award under this heading. If such a possibility is established the plaintiff may prove the quantification of such loss either on an "earnings approach" or a "capital asset approach".
- [39] Regardless of the approach taken, the general principles the court should apply when making an assessment under this head of damages include the following:
- The task of a court is to assess damages, rather than to calculate them mathematically - *Mulholland (Guardian ad litem of) v. Riley Estate* (1995), 12 B.C.L.R. (3d) 248 (B.C. C.A.) at para. 43;
 - The standard of proof is not the balance of probabilities; the plaintiff need only establish a real and substantial possibility of loss, one which is not mere speculation, and hypothetical events are to be weighed according to their relative likelihood - *Athey v. Leonati*, [1996] 3 S.C.R. 458, 140 D.L.R. (4th) 235 (S.C.C.), at para. 27;

- Allowances must be made for the contingencies that the assumptions upon which an award is based may prove to be wrong - *Milina v. Bartsch*, (1985), 49 B.C.L.R. (2d) 33 (B.C. S.C.), at 79, *aff'd* (1987), 49 B.C.L.R. (2d) 99 (B.C. C.A.);
- Any assessment is to be evaluated in view of its overall fairness and reasonableness - [*Rosvold v. Dunlop*, 2001 BCCA 1] at para. 11.

(*Falati v. Smith*, 2010 BCSC 465 at para. 41, *aff'd* 2011 BCCA 45)

[40] If the assessment is made under the capital asset approach, the court should consider the four factors in *Brown v. Golaiv* (1985), 26 B.C.L.R. (3d) 353 (S.C.), namely whether:

1. The plaintiff has been rendered less capable overall from earning income from all types of employment;
2. The plaintiff is less marketable or attractive as an employee to potential employers;
3. The plaintiff 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
4. The plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

[41] The defendants in the present case argue that the plaintiff is entitled to no award under this heading. They emphasise the medical evidence suggesting that the plaintiff's condition may yet improve. They also say that, since 2016, he has been securely ensconced in optimally remunerative employment at the highest salary levels of his lifetime, and this is unlikely to change. Furthermore, the plaintiff has shown no past inclination to explore income sources outside of his full-time employment. I agree with the latter point but have distinct reservations about the others. While I share the defendants' hope that the plaintiff's various symptoms will abate, and that he will retire as a City of Vancouver employee, I am by no means persuaded that either is inevitable.

[42] It may be true that the plaintiff has a history of slowly recovering from previous injuries, but at his present age of 46, and given the length of time that has elapsed in the pretrial period without a return to full functionality, I am guarded about his prospects and sincerely concerned about his economic future. All in all, I am more inclined than otherwise to accept the views of Drs. Pilapil-Lee and O'Connor to the effect that the plaintiff is likely to suffer from significant long-term deficits or has reached peak medical recovery.

[43] A degree of caution is also required in considering his position with the City of Vancouver. I am not prepared to assume that it amounts to a job for life, as it were, or in any event that he is bound to stay there forever even if he could. The plaintiff may resign or be dismissed for any variety of perfectly plausible hypothetical reasons ranging from the bona fide desire to do something else, to personality conflicts, to disciplinary issues, to corporate reorganisation. If any such thing happens, the evidence leaves me in no doubt that all four of the *Brown* factors cited above will apply.

- [44] Moreover, I find there is a real and substantial possibility that the plaintiff's physical limitations will inhibit his progress and promotion through the ranks within the City of Vancouver workforce itself, where many jobs and crew assignments, including as foreman, require the capacity to do heavy work of which, through the fault of the defendants, he is no longer capable. In my view it is entirely possible, as well, that he will have to retire early because of the accelerated wear and tear on his body caused by the 2012 and 2018 accidents.
- [45] Because I am considering factors and contingencies that are not readily measurable, I will take the capital asset approach to valuation. It was affirmed by this court in *Patterson v. Solymosi*, 2019 BCSC 1508 at para. 104 that where this approach is used, it is admissible to award the equivalent of one, two or more years of salary in compensation, depending on the real and substantial possibilities under consideration and the relative likelihood of their occurrence.
- [46] The plaintiff's present salary is \$70,000 per annum. On all of the evidence, and considering the foregoing principles, allowing for the possibility that I may be wrong about the contingencies and assumptions referred to, and focussing on the overall fairness and reasonableness of the award to all parties, I conclude that an appropriate award under this heading is two years of salary, or \$140,000.

COST OF FUTURE CARE

- [47] Damages for costs of future care are intended to restore the plaintiff to his or her pre-accident condition, to the extent that it is possible to do so, based on what is shown to be medically necessary and reasonable to preserve or promote the plaintiff's mental and physical health: *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29-30.
- [48] The main medical recommendations arising from the evidence for the plaintiff's future care include ongoing epidural injections for back pain, but these are covered by the provincial medical plan, so in the end no claim was advanced for their cost, whether or not their continued use is necessary or justified.
- [49] I accept the prevailing evidence that the Botox injections are helpful to the plaintiff and think it only right that they should continue to be funded by the defendants. Originally, the plaintiff made a demand for four injections per year for life at present-value cost of over \$85,000, but he rightly conceded that Dr. Robinson's evidence came nowhere close to sustaining such a demand. Instead I award \$25,000 for these injections.
- [50] The plaintiff's demands for physio/massage therapy and active rehabilitation (kinesiology) seem eminently reasonable to me and they are hereby allowed in the amounts of \$9,389 and \$1,780, respectively.
- [51] The total amount of my award under this heading is therefore \$36,169.

SPECIAL DAMAGES

[52] The parties were able to agree on special damages for past medical and therapeutic treatments in the amount of \$8,307. The only point of contention under this heading concerned the plaintiff's demand for \$10,000 to cover the cost of hiring workers in 2012 to perform home renovations that he could have done himself if not injured. This claim was unsubstantiated by any documentary evidence, and the testimony I received on the subject was vague and unpersuasive. This part of the claim is dismissed.

CONCLUSION

[53] I award the plaintiff the following damages:

Non-pecuniary damages:

\$80,000.00

Past loss of income earning capacity:

\$47,000.00

Future loss of income earning capacity:

\$140,000.00

Cost of Future Care:

\$36,169.00

Special damages:

\$8,307.00

Total:

\$311,476.00

[54] The plaintiff will have his costs on Scale B.

"Baird J."

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