

CANADA / JUDGMENT

Soligo v. Turner

2001 BCSC 205

COURT

Supreme Court of British Columbia

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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MELISSA KATHERINE SOLIGO
PLAINTIFF

AND:

ALAN EDWARD TURNER
DEFENDANT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE HUTCHISON

Counsel for the Plaintiff: D. W. Thompson

Counsel for the Defendant: M. J. Hargreaves

Dates and Place of Hearing/Trial: January 12 - 16, 2001

Victoria, BC

- [1] Melissa Katherine Soligo asks the court to assess damages she incurred when, on May 9, 1996, she was struck by a motor vehicle driven by the defendant, Alan Edward Turner. The side view mirror of Mr. Turner's pick-up truck struck Ms. Soligo's left shoulder while she was out for an evening stroll. The defendant admits liability for the accident, and the assessment of damages is the only issue.

- [2] At first Ms. Soligo thought that the accident was trivial and she refused to call an ambulance or go to the hospital. After she returned home she went to the McKenzie Clinic because her pain became more severe. A physician there advised her to ice her shoulder and take Tylenol #3 pills for the pain. Though she reported to work the next day the pain became too great and she left just two hours after arriving. Ms. Soligo realized that her shoulder was injured more seriously than she had first believed.
- [3] At the time of the accident, Ms. Soligo was 27 years old. She has a Bachelor of Education degree from the University of Victoria with a major in physical education. Hoping to be a teacher, Ms. Soligo was on the Victoria School Board's substitute teaching list, known as the teacher on call list ("TOC List"). She planned to build her seniority through substitute teaching in the hopes of securing a permanent teaching position.
- [4] At the time of the accident Ms. Soligo was also an elite curler. In 1992, she won a bronze medal at the winter Olympics in Albertville, France when curling was a demonstration sport. Ms. Soligo was also a member of the Canadian curling team that finished in second place at the 1991 World Curling Championships. While Ms. Soligo concentrated on her education and her teaching career, she maintained an interest in curling.
- [5] Since the accident, Ms. Soligo worked in a clerical position at Camosun College until the onset of the Complex Regional Pain Syndrome. Since the accident she has also had only limited participation in her sport.

DIAGNOSIS AND TREATMENT OF INJURIES

- [6] After the accident Ms. Soligo began experiencing severe pain in her left shoulder. Physicians attempted several non-surgical procedures to alleviate the pain and return Ms. Soligo to the life she enjoyed before the accident. In July 1996 she was referred to the Summit Early Intervention Program where nerve conduction studies were done. However, those studies indicated Ms. Soligo's shoulder functioned normally. In August and early September of 1996, she experienced subluxations of her shoulder. On September 9, 1996, Dr. Parton did another nerve conduction study of the left medusa and left ulnar, but again, the results indicated normal functioning. Dr. Parton repeated the procedure in October of 1996, and obtained similar results. Dr. Jane Moran, a sports medicine specialist, injected cortisone over two trigger points in the trapezius and laviter scapula in December 1996. In March of 1997 Ms. Soligo was examined by Dr. Killian of the Summit Pain Relief Clinic, who recommended a surgical consultation.
- [7] Dr. Bruce Yoneda, a well known and respected sports medicine orthopaedic surgeon, conducted intra-articular stabilization surgery on June 4, 1997. He followed this procedure with a stellate ganglion block. On October 17, 1997, March 12, 1998 and May 14, 1998, Dr. Yoneda repeated the surgical manipulation and injection. Dr. Gershman performed a subacromial injection on April 29, 1988 and Dr. Yoneda did a trigger point injection on June 25, 1998.

- [8] An M.R.I. scan of Ms. Soligo's cervical spine and left brachial plexus was conducted on July 9, 1998. In September 1998, Dr. Gibson did a motor nerve conduction study, sensory nerve conduction study, and needle electromyography. Neither the M.R.I. scan nor those studies revealed any abnormality in Ms. Soligo's shoulder and arm. On October 26, 1998 and January 7, 1999, Dr. Yoneda once again injected a trigger point.
- [9] On February 26, 1999 Ms. Soligo's family doctor recommended that she take four weeks off from work, beginning on March 10, 1999. During that period she saw Dr. Michael Boissevain, a psychologist. She also had a subacromial xylocaine injection on March 29, 1999.
- [10] On June 3, 1999 Dr. Yoneda again conducted surgical manipulation and injection, and on August 9, 1999 injected the plaintiff's subacromial space. On November 9, 1999, decompression acromioplasty surgery and surgical manipulation and injection were performed. Further surgical manipulation was done on March 22, 2000, followed by a trigger point injection by Dr. Yoneda on June 13, 2000.
- [11] All of these procedures, non-surgical and surgical, did little to alleviate Ms. Soligo's pain, or improve the function of her left arm. Expecting each surgery and injection to relieve the pain and cure her difficulties, Ms. Soligo only had disappointment added to the psychological burden of coming to the realization that competing in her sport at the elite level and teaching physical education were no longer within her reach. She was referred to Dr. Alan Bass, a respected psychiatrist and sports medicine physician. His reports were filed and he testified by way of a taped television examination and cross-examination. The transcript of his testimony was filed as an exhibit in the trial.
- [12] The severity of Ms. Soligo's impairment is revealed in Dr. Bass's prognosis found at pages 5 - 6 of his report dated November 28, 2000:

As I stated earlier I do not believe this young woman will return to work as a physical education teacher and she has a permanent impairment at the present time which is causing her a considerable handicap.

I gather it has been suggested that she might return to a general teaching post but I can't see that this is very feasible because although she can write on the blackboard with her right hand, she still has the same problem with the constantly painful left shoulder. Similarly she can't sit for very long at her desk, would have difficulty marking papers for long periods, and couldn't use a computer.

The best possible hope I would have for this lady is a part time job at the present time working at the thing she loves most, namely coaching the sport of curling. She has an international background, is well-known, has the drive, the personality which in my opinion is absolutely essential in coaching from my experience in other professional sports, and in this role she would be able to pick and choose her times with greater facility, and hopefully be able to cope. ...

- [13] When asked how much function Ms. Soligo was likely to gain, Dr. Bass responded that "[t]here may be some, minuscule improvement, or maybe a little bit of improvement", but that it would not be exceptional. During his cross-examination Dr. Bass was asked about the chance of Ms. Soligo regaining more function of her left arm. Dr. Bass responded that he thought that improved function was "unlikely but not impossible". For reference, see questions 25 and 120 of Dr. Bass's deposition.
- [14] Dr. Yoneda's report dated December 15, 2000 provides a similarly bleak prognosis. He opines that it is unlikely that Ms. Soligo will be able to follow her chosen career path to become a P.E. teacher, and that it will not be possible for her to regain her status as a world class curler.
- [15] The defendant asked that Ms. Soligo be examined by Dr. Hawkins, an independent orthopaedic surgeon. At page 4 of his report dated May 18, 2000, he states:
- I think this woman will ultimately be able to return to the work force although probably not as a physical education teacher as I understand that job to be.
- [16] Dr. Hawkins' report does not explain the extent to which he believes she can return to work, such as the number of hours per week he believes she could handle.
- [17] After hearing the evidence I find that it is highly unlikely that Ms. Soligo will ever be able to teach again. Because of her disability, she certainly could not work as a P.E. teacher. Even if I disagreed with Dr. Bass's opinion that she could not cope with additional university training to develop a different speciality, I find she could not handle the strain and stress of teaching full-time. While it is true that many teachers work on a part-time basis, they must first attain enough seniority to be able to request part-time work. Ms. Soligo could not expect to be given the opportunity to teach on a part-time basis without having first earned the necessary seniority. She has lost the opportunity to work full-time, and I find that she has little chance of earning similar wages while working on a part-time basis. I make these findings despite the more optimistic report of the defendant's psychologist Dr. D. J. Magrega.
- [18] One of the few areas of disagreement between the parties was about the value of long-term opioid therapy. Dr. Gershman of the Summit Pain Clinic testified in court about this therapy, being the use of small doses of morphine or its derivatives to overcome pain. In his report, Dr. Gershman stated that Ms. Soligo was an excellent candidate for this therapy. However, he also testified that opioids would not cure Ms. Soligo and may or may not increase her ability to function. Moreover, he acknowledged and adopted an extract from a medical journal article authored by Dr. David Fishbain, a professor of psychiatry, neurological surgery and anaesthesiology at the University of Miami School of Medicine. The extract said as follows:

Controversy abounds about the treatment of non-terminal non-malignant pain. Recently some pain physicians, notably Portenoy (Portenoy and Foley), have tried to demonstrate that some chronic pain patients are good candidates for chronic opioid analgesic therapy. This issue remains mired in controversy, as neither side has produced convincing study evidence to support their position.

[emphasis added]

- [19] Both Dr. Thomson, Ms. Soligo's treating physician, and Dr. Bass advised her not to take morphine for her pain. Ms. Soligo testified that she accepted the advice from her doctors, and I find that decision to be a reasonable one. I disregard long-term opioid therapy when considering Ms. Soligo's chances for recovery.
- [20] I note that Ms. Soligo has taken an anti-depressant since 1997. In March of 1999 she also participated in biofeedback sessions with Dr. Boissevain, the psychologist at Summit Pain Clinic. She has been involved in some group grief therapy and counselling and has had three sessions with Dr. Lorna Popham, a registered psychologist. Ms. Soligo testified that Dr. Popham has helped her cope with her disability. These difficulties were exacerbated in the spring of 2000 by the break-up of a relationship with a partner who had his own difficulties coping with Ms. Soligo's disability. Ms. Soligo has been advised by independent medical practitioners to take grief counselling. She has rejected this advice, perhaps unwisely. The defendant argues that such counselling should be taken and requests an allowance for it in the amount awarded for future care costs.

DAMAGES

- [21] Given Ms. Soligo's relatively bleak prognosis and chances of recovery, the court must assess her damages falling under four principal heads:
1. non-pecuniary general damages;
 2. past loss of income and opportunity;
 3. loss of capacity to earn income; and
 4. cost of future care.

NON-PECUNIARY DAMAGES

- [22] In *Milina v. Bartsch* (1990), 49 B.C.L.R. (2d) 33 (B.C.S.C.), McLachlin J. (as she then was), discussed the purpose of awarding damages for non-pecuniary loss. She said the following at pp.78 - 79:
2. For those losses which cannot be made good by money, damages are to be awarded on a functional basis to the end of providing substitute pleasures for those which have been lost. This is the philosophical justification for awarding damages for non-pecuniary loss.

...

9. The plaintiff is entitled to damages for pain, suffering and loss of amenities. These non-pecuniary damages have as their purpose the provision of new amenities and pleasures in substitution for those which have been lost but cannot be replaced in se.

[23] Ms. Soligo lives in constant pain. She has endured seven surgical procedures as well as multiple non-surgical treatments such as stellate ganglion blocks and steroid injections. She testified that she needs at least two or three physiotherapy sessions per week to remain functional at all. Mark Gottfried, the plaintiff's physiotherapist designed a hand splint for her because the third and fourth digits of her left hand are becoming clawed. Ms. Soligo suffers from Complex Regional Pain Syndrome, and has been diagnosed as having Posttraumatic Adhesive Capsulitis of her left shoulder.

[24] She has lost the ability to follow her chosen career path. She has also lost her ability to compete in her sport at the highest international levels. She may get some consolation from her success as a coach of junior curling with her teams winning B.C. titles in both 1998 and 2001. However, she has lost her own enjoyment from being an elite curler, and can only coach with the assistance of Tylenol #3 painkillers. She is also unable to do more than the most limited amount of house and yard work.

[25] Ms. Soligo's counsel argues the authority closest to this case on its facts is *Delli Santi v. Pacific National Exhibition et al.*, [2000] B.C.J. No. 901 (Q.L.); 2000 BCSC 716. In that case the plaintiff was also diagnosed with Complex Regional Pain Syndrome, and Allan J. awarded \$150,000 for non-pecuniary damages. At paragraph 4, Allan J. summarises the plaintiff's injuries as follows:

Mrs. Delli Santi is presently 41 years of age. She lives with her husband, Aniello, and their two children, Susanna, who is 12 years old, and Nico, aged 7. Before the accident, her health was good. She comfortably and happily integrated her family life with her own business. She and her children enjoyed sports such as skating and roller blading, and the family camped regularly. As a result of her injuries, she cannot work, engage in any activities, or do her own housework.

[26] Ms. Soligo was only 27 years old when she was injured and had not yet enjoyed motherhood as Mrs. Santi had. Ms. Soligo's athleticism and fitness has, and may continue to enable her to overcome her disability more completely than Mrs. Santi, but Ms. Soligo must live with that disability for much longer.

[27] While Mr. Hargreaves argues that the *Delli Santi*, supra, decision is not applicable, he does concede that Ms. Soligo has suffered a permanent disability. He submits, however, that grief counselling and the conclusion of this litigation will allow her to overcome some of the significant obstacles to her recovery. He submits that damages for non-pecuniary losses should be approximately \$100,000. He summarizes his argument as follows:

The Defendant admits that, notwithstanding the cautious optimism which he submits should prevail, the Plaintiff has lost more by way of enjoyment of life than most. Few Plaintiffs derive as much self-satisfaction from physical prowess as did the Plaintiff. Not all of that is lost. And there is compelling evidence that the Plaintiff had shifted focus from curling to career-building in 1993. But the evidence warrants a finding that she would still have engaged in high-level curling and would have enjoyed other activities now either closed to her or subject to significant limitation. In these circumstances, the Defendant submits that the Plaintiff is entitled to a substantial award: \$100,000.

- [28] The accident caused real grief for Ms. Soligo. The most recent and vivid example of her loss occurred when the rink for which she used to curl won \$50,000 in a "skins" game held in Saskatchewan, and broadcast on television. Ms. Linda Moore, the "dean" of women's curling on The Sports Network and a world champion curler, testified on Ms. Soligo's behalf and extolled her abilities. Ms. Moore created a 20-minute videotape of Ms. Soligo curling at the World Championships and the Olympics. The videotape was shown at the commencement of the trial and filed as an exhibit. She was also able to give the court some information about the number of coaching jobs available in the sport. While there are currently few paying coaching jobs, participation in, and popularity of, the sport are growing. It is clear that Ms. Soligo suffered a great deal when her ability to participate in the sport of curling was limited because of the accident.
- [29] While non-Olympians are equally entitled to be compensated for their pain caused by an accident, it is not difficult to appreciate the real feeling of loss when such a gifted athlete can no longer participate in her sport. Even if an injury causes more grief and damage than would normally be the case it must still be compensated, as per the "thin skull rule". While there are differences between the respective injuries of Ms. Soligo and Ms. Santi, I am not persuaded that they are significant enough to detract from Mr. Thompson's submission that \$150,000 is an appropriate amount for non-pecuniary general damages.
- [30] I therefore award \$150,000 for general damages.

PAST LOSS OF INCOME

- [31] The plaintiff and the defendant present very different scenarios for Ms. Soligo's past loss of income, that is, the income she failed to earn between the accident and the trial because of the accident. Determining past wage loss necessarily involves some speculation or looking into the "crystal ball". The relevant question here is how long would Ms. Soligo have spent on the TOC List before achieving her goal of a full-time appointment as a P.E. and Social Studies teacher? Much of the trial time was spent trying to resolve this issue.
- [32] Mr. Rienold Zimmer is the manager of education staffing for School District 61. He testified about Ms. Soligo's rate of pay as a substitute teacher, the seniority she had earned, and the number of days she had worked before the accident. Mr. Zimmer also provided information about how quickly Ms. Soligo could have obtained full-time work. He testified that given Ms.

Soligo's speciality it would have been somewhat difficult for her to obtain full-time employment in the Victoria School District. Ms. Soligo's counsel also called representatives from the Sooke, Saanich and the Cowichan School Districts to show that between the various districts, Ms. Soligo's prospects could, and would, likely have been enhanced.

- [33] The evidence suggests that Ms. Soligo's long term prospects were better than her short term prospects because of the aging demographic of teachers in all districts. It would have taken more time for Ms. Soligo to attain that goal than the time submitted by her counsel. Further, by being on the TOC List Ms. Soligo would have been unable to take on other jobs in order to be immediately available to take on substitute work.
- [34] However, I cannot accept the defendant counsel's more pessimistic view of Ms. Soligo's prospects. He suggested that before the accident her hours spent teaching were decreasing not increasing. I agree that it is difficult to understand why she had not made efforts to be placed on the Saanich TOC List, but the evidence satisfies me that Ms. Soligo has the kind of persistence and drive to have succeeded in her quest for full-time employment albeit over time. Based on the evidence of those who had seen and mentored Ms. Soligo in the classroom and the gym, I am satisfied she was a superior candidate and would have achieved her goal but for the injury. I also note that a good substitute teacher may earn almost as much as a teacher with a permanent position, though without seniority and other benefits afforded to a full-time teacher.
- [35] In his written argument Mr. Thompson presented three different scenarios of Ms. Soligo's employment had the accident not occurred. While all three are based on Ms. Soligo obtaining full-time employment during the period between the accident and trial, each scenario has a different date at which that would have occurred. In the first scenario it is assumed that she would have been teaching on a full-time basis by September 1997. The second scenario has her teaching full-time by September 1998, while the third has Ms. Soligo teaching full-time by September 1999.
- [36] Counsel for the defendant was critical of Ms. Soligo's credibility because of how she reported her success as a substitute teacher to her health care providers, including those retained by the defendant. At one point she said that she was on the Saanich TOC List when she was not. She also overstated the number of her working assignments to several other people.
- [37] I find that Ms. Soligo is so intent on succeeding at whatever she does that it is difficult for her to underestimate her achievements. I do not find that she does so in order to mislead, but rather because her personality is such that she tries to achieve her goals through positive thinking. This trait has obviously helped her arrive at the success she has in athletics. The pride Ms. Soligo revealed when testifying that she had shot 93 in a round of one-armed golf demonstrated her approach to obstacles, and is not an admission that weakens her case. Her pride in teaching led her to overstate her accomplishments when asked to relate how much time she was actually in the classroom, but I do not find that she misled the court in order to strengthen her case.

[38] I find that it is most likely that but for the accident, Ms. Soligo would have been employed full-time as a teacher, or at least near full-time as a substitute teacher, by September 1999. Therefore Appendix C as presented by Mr. Thompson is the most plausible scenario and it is as follows:

APPENDIX "C" - Full-time by September 1999

Assume:

1996: Would have worked as a TOC during May and June, and September to December, and Camosun job in the summer

1997: Would have worked as a TOC during January to June, and September to December, and Camosun job in the summer

1998: Would have worked as a TOC during January to June, and September to December, and Camosun job in the summer.

1999: Would have worked as a TOC during January to June, Camosun job in the summer, and full-time teaching from Sept '99 to date

Would have earned:

1996:

TOC may and June

19 days (of ~30) x \$160/day

= \$1,600

Camosun College

4 weeks x 22.5 hrs x \$16.50/hr = \$1,485

3 weeks x 35 hrs x \$17.77/hr = \$1,866

TOC Sept. - Dec. 25 days (of ~70) x \$160/day = \$4,000

Total

\$9,000

1997:

TOC Jan. - June

55 days (of ~110) x \$160/day

= \$8,800

Camosun

7 weeks x 35 hrs x \$18.11/hr = \$ 4,437

TOC Sept. - Dec. 35 days (of ~70) x \$160/day = \$ 5,600

Total

\$19,000

1998:

TOC Jan. - June

82 days (of ~110) x \$160/day

= \$13,120

Camosun

7 weeks x 35 hrs x \$19.35/hr = \$ 4,437

TOC Sept. - Dec. 43 days (of ~70) x \$160/day = \$ 6,880

Total

\$24,000

1999:

TOC Jan. - June

82 days (of ~110) x \$160/day

= \$13,120

Camosun

7 weeks x 35 hrs x \$19.35/hr = \$ 4,437

Full-time Sept. - Dec. 4/10 (ie. 4 months) x \$40K = \$16,000

Total

\$34,000

2000:

Full-time

TOTAL

\$ 40,000

Total would have earned = \$126,000

Total actually earned = \$ 94,000

Loss = \$ 32,000

[the arithmetical computations are Mr. Thompson's]

[39] On the evidence, however, I think an award of \$25,000 for past loss of wages is an appropriate sum. I cannot accede to the defendant counsel's argument that Ms. Soligo earned \$54,350 more than she would have if she had not been injured. He arrives at those amounts by not giving enough weight to Ms. Soligo's expectations about substitute teaching and the inevitable increase in her experience.

LOSS OF CAPACITY TO EARN INCOME

[40] Mr. Thompson's written submissions contain the following summary on Ms. Soligo's loss of her capacity to earn income:

Loss of Capacity to Earn Income

45. The approach to assessing this head of damages has been summarized by the Court of Appeal in *Parypa v. Wickware* 1999 BCCA 88 (tab 2, Plaintiff's Authorities Brief).
46. The proper starting point is to consider the discounted present value of the future earnings to age 65 of an average British Columbia male with the level of education Ms. Soligo had. The plaintiff submits that it is appropriate to begin with male figures: *Terracciano v. Etheridge* (1997) 33 B.C.L.R. (3d) 328 (S.C.) (tab 3, Plaintiff's Authorities Brief).
47. The present value of these future earnings for the average male, with benefits, adjusted for all labour market contingencies (non-participation, unemployment and part-time factors) and adjusted for survival is approximately \$1,300,000 (report of Robert Carson, Exhibit 9, tab 35, p. 5 (Table B)). This figure is not tied specifically to teacher's earnings - it would be unrealistic to assume that a person as young as Ms. Soligo would necessarily be a physical education teacher and exclude the possibility that she may have done other work over her lifetime. However, as Mr. Carson points out at p. 4 of his report, *supra*:

Thus, while the average wage in Table 1 [the table giving rise to the \$1,300,000 figure] exceeds the average teacher's wage it is not inconsistent with the expected wage in a career in teaching if the possibilities of acquiring category 6 status and/or of promotion to work in school administration are taken into consideration.

By way of example, Reinhold Zimmer, the Greater Victoria School District staffing manager was first a P.E. and Social Studies teacher, then a Vice-Principal and now works in the District office.

48. Ms. Soligo submits that it is fair to conclude that her earnings would have exceeded these averages in Mr. Carson's model. She can be fairly characterized as having a record before the accident of high achievement. She comes from a family of high achievers. She had a very successful athletic career which likely would have led to economic opportunities: cash prizes, opportunities in broadcasting, or endorsements. Linda Moore testified that curling as a spectator sport - particularly on television - is growing; the future for players at the elite

level, it can be inferred, may be filled with opportunity.

49. Most of the elite-level women curlers have careers. Some have teaching careers. Linda Moore taught high school from 1977 to 1983, before moving on to her broadcasting, coaching, and management career. Lindsay Sparkes, who played third on Linda Moore's world championship and Olympic championship rink, taught school while curling competitively.
50. In assessing the loss of capacity, and in following the approach mandated by *Athey v. Leonati*, the court will attach weight to future hypothetical events according to their relative likelihood. Following are the possibilities which, it is submitted, will require weighting:
- The possibility that Ms. Soligo would have earned a greater income than the average person with her education - the plaintiff submits that there is a great likelihood of this for the reasons set out above.
 - The possibility that Ms. Soligo will succeed in her goal of obtaining some income from part-time coaching - the plaintiff submits that this possibility must be weighed having regard to the scarcity of the available positions, the fact that it is not high-paying work and the inability of the plaintiff to demonstrate all skills of the game.
 - If the plaintiff is unable to earn money from part-time coaching, the possibility that she would be able to cope with 9-12 hours per week at part-time work at Camosun College as suggested by Dr. Yoneda - the plaintiff submits that this possibility would depend on the availability of such work and her condition improving from where it is now, which is, as Dr. Bass put it, not impossible but unlikely.
 - The possibility that Ms. Soligo would have had children and taken time from her career or her curling to be a homemaker - the plaintiff submits that this possibility should be weighed with the reality in mind that most professional women today continue to work and do not interrupt their careers.
 - The possibility that the chronic pain which she is enduring will wear her down further and her condition may deteriorate; the plaintiff has been living in pain for a long while now and it is bound to take its toll over time - the plaintiff submits that this is a very real possibility.
 - The possibility that she may see the "unlikely but not impossible" improvement referred to by Dr. Bass - the plaintiff submits that if this improvement comes about, it must be remembered that Dr. Bass put this expectation in context: "There may be some, some minuscule improvement, or maybe a little bit of improvement, but I don't think it will be exceptional."
- [41] As stated, I am satisfied that Ms. Soligo will only be capable of part-time work because of her physical disabilities and her chronic pain syndrome. As would be expected, Mr. Hildebrand disagrees with Mr. Carson's use of male averages to determine income loss, and recommends a much lower figure based on average female income. I adopt Mr. Carson's

figures based on average incomes for men with Ms. Soligo's education. Because of her coaching and curling abilities, I find it is a substantial possibility that Ms. Soligo would have earned additional income from these activities, though it may have required her to take some time off from teaching. Her prospects to earn more than the average teacher were excellent. The evidence disclosed, however, that teachers generally retire at age 60 and often earlier. Further, Ms. Soligo expressed the desire to have children, and likely will stop working for a time. Given these possibilities and contingencies, a reasonable starting point for loss of earning capacity is \$1,300,000.

- [42] Ms. Soligo's present prospects are more difficult to predict. The defendant argues that Ms. Soligo can retrain by attending university and will thereby mitigate her losses. By so doing, she would reduce her income for four years, which would amount to between \$60,000 and \$80,000. The defendant submits that by retraining, Ms. Soligo would reduce her loss of future income to \$250,000, taking into account the reduction of her income during the retraining period. I do not accept this argument because I doubt that Ms. Soligo can retrain by taking further university education. Her disability destines her to work shorter hours at lower wages.
- [43] I begin by using Mr. Carson's average income for a male, and then discount it by %20 to take into account some of the possibilities mentioned in Mr. Thompson's argument and the fact that teachers often retire at age 60. I arrive at a value of \$1,040,000. According to Mr. Carson's calculations the present value for every \$1,000 in lost wages when calculated presuming her employment to the age of 60, is \$20,610. From the \$1,040,000 I subtract the amount that Ms. Soligo is likely to earn given her injuries. I postulate that she will earn between \$15,000 and \$20,000 per annum or, 15 or 20 times \$20,610, approximately \$300,000 to \$400,000 when extrapolated to age 60. Averaging those two figures, I would round out her loss of earning capacity to \$690,000.
- [44] I therefore award \$690,000 for loss of future earning capacity.

COST OF FUTURE CARE

- [45] Determination of the cost of Ms. Soligo's future care is based primarily on the report provided by Ms. Sheila M. Stewart, R.N., M.S.N., who is a rehabilitation consultant. The plaintiff's counsel relies on Ms. Stewart's report to claim \$330,510. Counsel for the defendant, however, suggests that the proper amount is \$102,875.
- [46] Counsel for the defendant points to a number of places in the report where Ms. Stewart was overly generous. He notes that a number of the items sought under this head are really "amenities" properly falling within general damages as they "make life a little more bearable". I do find that Ms. Stewart's report allows for items to be replaced at a more rapid rate than can reasonably be expected. Mr. Hargreaves also questions using an agency for housekeeping services and suggests the going rate would be \$14.00 an hour not \$18.50. The criticism seems justified because the same services noted elsewhere in the report are shown

for contingency home services at \$15.00 per hour.

- [47] The report also suggests awarding \$1,000 every 7 years to cover the additional cost for an automobile with automatic transmission. The report suggests a similar amount to provide the car with power steering. However, once the initial investment was made, the car would be traded in with these improvements and thus the cost would not be repeated every 7 years. As well, I would find these items properly fall within Ms. Soligo's award for general damages.
- [48] I would reduce the claim for home support services by a contingency of 20% and allow \$63,000. I would only allow \$10,000 for equipment being replaced over time. It is not reasonable to estimate that all of the items will need replacing every 5 years. I would disallow the claim for independent living aids because that is a claim for an amenity. I award \$17,458 for supplies as claimed, \$118,912 seems to be an appropriate sum for treatment and therapy, and \$8,100 is a proper amount for vocational counselling. The claim for transportation allowance seems appropriate and I would allow the \$7,805 claimed. Ms. Stewart's report and Mr. Carson's calculations on that report require an additional sum if Ms. Soligo decides to live alone, or if she marries and has children that would require some additional help. I have already calculated Ms. Soligo's loss of future income, and if she was working and had children she would likely have incurred those additional costs in any event. I award \$25,000 for extra care to cover the contingency of Ms. Soligo living independently rather than the \$37,864 claimed. In doing so I consider the evidence given by her roommate, Ms. Gillyan Haden, that her future plans will mean that she will no longer be able to help Ms. Soligo.
- [49] Considering all the costs of future care, I award the sum of \$250,000, which I regard as fair in all the circumstances.

SPECIAL DAMAGES

- [50] The parties agreed to an amount for special damages, save a claim for \$626.99 which was the amount Ms. Soligo paid for graphite shaft golf clubs after trading in her steel shafted clubs. The evidence was that the light weight of those clubs enabled Ms. Soligo to golf with one arm. I find that the cost of the clubs is included in Ms. Soligo's award for general damages.

"IN TRUST" CLAIMS

- [51] Ms. Soligo makes an "in trust" claim to compensate Ms. Haden who has had to perform most of the heavy housekeeping and yard maintenance because of Ms. Soligo's disability. She also makes an "in trust" claim to compensate her parents who travelled from Trail to assist her after 6 of her 7 surgeries. Mr. Thompson claims \$15,000 for Ms. Haden and \$6,000 for Mr. and Mrs. Soligo. Mr. Hargreaves, however, suggests that \$10,000 be awarded in trust for Ms. Haden, but that nothing be awarded to Mr. and Mrs. Soligo.

[52] Ms. Haden should be compensated for the heavier burden she carried due to Ms. Soligo's injury. I also find that it is entirely appropriate to compensate Mrs. Soligo for the nursing care she provided and for the cost of her transportation. However, Mr. Soligo, only travelled from Trail to keep his wife and daughter company, but his assistance was not necessary. Mr. Soligo, being an accountant, may be of more assistance once this judgment is satisfied. As Macaulay J. did in *Green v. Wilson*, [1998] B.C.J. No. 67 (Q.L.), I prefer to deal with this claim on a global basis. I award \$18,000 "in trust", of which Ms. Haden shall have \$15,000 and Mrs. Soligo \$3,000.

SUMMARY

[53] In summary then, Ms. Soligo is entitled to a judgment for the following:

Non-pecuniary Damages: \$ 150,000

Past Income Loss: \$ 25,000

Loss of Future Income Earning Capacity: \$ 690,000

Cost of Future Care: \$ 250,000

In Trust Claim: \$ 18,000

TOTAL

\$1,133,000

[54] Ms. Soligo is also entitled to interest on her past loss of income as well as costs under Scale 3.

"R.B.McD. Hutchison, J."

The Honourable Mr. Justice R.B.McD. Hutchison

February 9, 2001 -- Memorandum to the Legal Publishers advising that on page 4, paragraph 8, in line 1 and on page 5, paragraph 8, in line 1,

the word "M.I.R." should read: "M.R.I."

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