IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Srenkel v. Kong,*
2025 BCSC 1518

Date: 20250807
Docket: M212642
Registry: Vancouver

Between:

Dan Srenkel

Plaintiff

And

Nicholas Patrick Kong

Defendant

Before: The Honourable Justice Loo

Reasons for Judgment

Counsel for the plaintiff:	R. Fang P.R. Bisbicis T. Su, Articled Student
Counsel for the defendant:	J. Miller D. Machat
Place and Date of Trial:	Vancouver, B.C. June 16-27 and July 3-4, 2025
Place and Date of Judgment:	Vancouver, B.C. August 7, 2025

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Introduction

[1] The plaintiff, Dan Srenkel, advances a claim for damages arising out of a motor vehicle accident which occurred on February 28, 2021, on Lougheed Highway in Coquitlam.

The accident

[2] On February 28, 2021, the plaintiff and some of his friends left a house party in Port Moody, and the defendant, Nicholas Kong, drove them home. The plaintiff was in the back seat. The other passengers were dropped off first, and so at the time of the accident he was the only passenger in the vehicle. He was in the backseat, sleeping.

[3] On Lougheed Highway, the defendant lost control of the vehicle, and it flipped over onto its roof. The plaintiff suffered significant injuries. Paramedics and firefighters attended at the scene and were required to remove the vehicle's door to extract the plaintiff from the vehicle. They took the plaintiff to the hospital by ambulance.

[4] Although the defendant denies liability for the accident, he did not lead any evidence or make any submissions contesting liability. The undisputed evidence is that the defendant lost control of the vehicle, probably because he fell asleep at the wheel. No other vehicle was involved. Accordingly, I find that the defendant bears sole liability for the accident. These reasons address this Court's assessment of damages.

Witnesses, credibility, and evidentiary issues

[5] The plaintiff called six lay witnesses, including himself, and six expert witnesses. The defendant called two expert witnesses.

Credibility

[6] The factors to be considered when assessing the credibility of witnesses were summarized by Justice Dillon in the well-known decision in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, as follows:

> Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[7] Further, in my view, para. 10 of Justice Dickson's decision in *Hardychuk v. Johnstone*, 2012 BCSC 1359 is of assistance in this case:

> The typical starting point in a credibility assessment is to presume truthfulness: *Halteren*. Truthfulness and reliability are not, however, necessarily the same. A witness may sincerely attempt to be truthful but lack the perceptive, recall or narrative capacity to provide reliable testimony. Alternatively, he or she may unconsciously indulge in the human tendency to reconstruct and distort history in a manner that favours a desired outcome. There is, of course, also the possibility that a witness may choose, consciously and deliberately, to lie out of perceived self-interest or for some other reason. Accordingly, when a witness's evidence is demonstrably inaccurate the challenge from an assessment perspective is to identify the likely reason for the inaccuracy in a cautious, balanced and contextually sensitive way.

[8] I am mindful of the caution, as stated in *Hardychuk,* that a witness "may unconsciously indulge in the human tendency to reconstruct and distort history" (para. 10), and I am also mindful that the Court's assessment of the reliability and the credibility of a plaintiff who is reporting his own injuries is particularly important.

[9] In this case, it is my view that the plaintiff testified in a measured and forthright manner. I found that he candidly admitted when symptoms were resolving and testified without prompting about facts that were not necessarily favourable to his case. When he showed frustration, it was with his condition and his circumstances, and, in my view, his frustration was understandable.

[10] Further, his evidence regarding the effect of his injuries on his abilities and capacities post-accident is corroborated by other witnesses. Although his brother, mother, and father were not independent witnesses, I found them all to testify without exaggeration and hyperbole. The evidence of none of the family members was significantly shaken on cross-examination.

[11] The expert witnesses and the two other lay witnesses called by the plaintiff – Quince Wakely, the plaintiff's music producer, and Milan Grossa, the plaintiff's physiotherapist in Slovakia – were more independent of the plaintiff than his family members, yet their evidence was also corroborative of and consistent with the evidence of the plaintiff and his family members regarding his injuries and his present condition.

Expert witnesses

[12] As stated, six expert witnesses gave evidence as part of the plaintiff's case, and two expert witnesses gave evidence as part of the defendant's case. Their evidence, where relevant to one or more of the issues in the action, will be described further during my assessment of the plaintiff's claims.

[13] The following expert witnesses gave evidence:

a) Dr. Ramesh Sahjpaul is a neurosurgeon who assessed the plaintiff on November 2, 2024. He was qualified to give expert opinion evidence regarding the diagnosis, prognosis, and causation of neurological injuries, including spinal injuries and chronic pain, and to make recommendations for neurosurgical and non-surgical treatments, as well as opinions on

vocational and avocational capacity, in relation to the plaintiff. He gave evidence as part of the plaintiff's case.

b) Derek Nordin is a vocational rehabilitation consultant who interviewed the plaintiff in mid-March 2025. He was qualified to give expert opinion evidence on the issues of vocational capacity, options, and abilities, as well as to make recommendations for vocational training as those issues relate to the plaintiff. He gave evidence as part of the plaintiff's case.

c) Dr. Nairn Stewart is a physiatrist who assessed the plaintiff on November 6, 2024. She was qualified to give expert opinion evidence on the diagnosis, prognosis, and causation of musculoskeletal injuries, headaches, vestibular injury, and mood disorders, and making recommendations for treatments, as well as providing opinions on vocational and avocational capacity, as those issues relate to the plaintiff. She gave evidence as part of the plaintiff's case.

d) Dr. Venugopal Karapareddy is a psychiatrist who assessed the plaintiff on November 1, 2024. He was qualified to give expert opinion evidence regarding the diagnosis, prognosis, and causation of mental health disorders and addiction, and making recommendations for treatment, as well as providing opinions on vocational and avocational capacity and restrictions as those issues relate to the plaintiff. He gave evidence as part of the plaintiff's case.

e) Darren Benning is an economist. He was qualified to give expert opinion evidence concerning future income loss and cost of future care multipliers, present value calculations, and past earnings losses, as those issues relate to the plaintiff. He gave evidence as part of the plaintiff's case.

f) Paul Pakulak is an occupational therapist who assessed the plaintiff on November 12, 2024. He was qualified to give expert opinion evidence about repetitive testing, functional capacity evaluation, and cost of future

care, as those issues relate to the plaintiff. He gave evidence as part of the plaintiff's case.

g) Mark Szekely is an economist who was qualified to and gave expert opinion evidence responsive to Mr. Benning's evidence in relation to the plaintiff's past wage loss. I excluded most of the balance of his report from evidence because the report was purportedly delivered as a responsive report but was not properly responsive to Mr. Benning's report.

h) Dr. Navjot Chaudhary is a neurosurgeon who assessed the plaintiff on March 3, 2025. She was qualified to give expert opinion evidence on the diagnosis, prognosis, and causation of neurological issues, including spinal injuries and chronic pain, and making recommendations for neurosurgical and non-surgical treatments, as well as vocational and avocational capacity, as those issues relate to the plaintiff. She gave responsive evidence on the part of the defendant.

Adverse inference

[14] Following the plaintiff's direct examination, it was brought to the Court's attention that defendant's counsel was in possession of a video and screenshots from a webpage that he wished to use in the cross-examination of the plaintiff. The video was a YouTube music video which features the plaintiff and was posted in July 2023.

[15] In oral reasons delivered during the trial, I found that the defendant provided no reasonable explanation for his failure to disclose the video earlier and that a refusal to permit use of the item would not prevent the determination of the trial on its merits. For these reasons, I refused leave to the defendant to use this video.

[16] Subsequently during the trial, it came to light that the plaintiff had made two other music videos since the accident. The defendant now argues that because of the plaintiff's failure to produce those videos in the litigation, the Court ought to draw

an adverse inference against the plaintiff that these videos would have been unhelpful to his case.

[17] In *1104318 B.C. Ltd. v. Dr. Paul Wittenberg, Inc.*, 2025 BCCA 68 [*Wittenberg*] at para. 76, the Court of Appeal held:

> An adverse inference may be drawn against a party who fails to adduce relevant evidence without sufficient justification. The nature of such an inference is that the evidence is being withheld because it undermines the withholding party's position.

[18] Further, the Court of Appeal cited with approval from *Wigmore on Evidence*, 3rd ed. (1940) vol. 2 at 162, as follows:

> The failure to bring before the tribunal some circumstance, document, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstances which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted.

[19] In this case, the plaintiff conceded that two other music videos exist, but it is far from clear that they would be of material relevance to the issues in dispute. There is no evidence that the two unproduced videos are materially different in content from the video that the defendant sought to adduce during the trial. All of the videos were produced following the accident. On the defendant's application for leave to adduce that video, I found that although the video was not irrelevant to the issues between the parties, the parts of the video that showed the plaintiff moving did not show him doing anything which was materially consistent with his testimony.

[20] This case is unlike *Wittenberg*, wherein the Court found that missing documents had previously been attached to relevant invoices and had been removed. It is much less clear in this case than in *Wittenberg* that the impugned documents were producible. Further, I have not been advised that the defendant made any inquiries regarding the plaintiff's music-related activities during the

discovery process, and there is no suggestion that the defendant demanded production of the videos under Rule 7-1(10) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

[21] Considering the foregoing, I accept the plaintiff's explanation that the videos were not produced because the plaintiff or counsel did not consider them to be relevant. I am unable to draw the inference that the videos were not produced because the plaintiff feared to do so. Further, based on the video that I did watch, I am unable to find that the two other videos, if produced, would have undermined the plaintiff's position. For these reasons, I decline to draw the adverse inference sought by the defendant.

The change in the plaintiff's circumstances as a result of the accident

The plaintiff's circumstances prior to the accident

[22] The plaintiff was 21 years of age on the date of the accident and 25 years of age at the date of trial. He was born in New Westminster but grew up in Slovakia, having moved there with his parents when he was about six months old.

[23] He was an active child, involved in arts and sport, particularly soccer. He testified that he loved playing soccer and was very passionate about it.

[24] In 2014, his father, who by that time was divorced from the plaintiff's mother, moved to Canada, and the plaintiff emigrated with his father. He arrived in British Columbia in February 2014, not being able to speak English.

[25] He started attending Terry Fox Secondary in grade 9 and graduated from that school in 2018. He played soccer for his high school and for two soccer clubs – one in grades 9 and 10 and one in grades 11 and 12.

[26] In the fall of 2018, he started but did not complete a biomedicine program in Slovakia. He returned to Canada in the summer of 2019, and in the fall of 2019, he started but did not complete a business program at Douglas College.

[27] The plaintiff's attempts at further schooling will be discussed further below in relation to the plaintiff's claim for future loss of earning capacity.

[28] In October 2020, the plaintiff started working at a warehouse in the Vancouver area unloading and loading shipping containers. At the same time, he played soccer, on his own and with friends, and worked out in a gym. He testified that in the two years before the accident, he played basketball, skied, and swam. He liked driving his car and going out with friends. He went camping and on trips with friends to Banff, Calgary, and Squamish.

[29] It is clear on the evidence that the plaintiff was an active, fit, and healthy young man prior to the accident. He did not have any physical limitations.

Causation

[30] Causation is not a serious issue in this action: the defendant does not suggest that the plaintiff's current disabilities pre-existed the accident or were caused by anything other than the accident.

The plaintiff's injuries and treatment

[31] As a result of the accident, the plaintiff suffered a fracture of the L2 vertebrae.

[32] He testified that before his first surgery, his back felt broken. He was in constant pain and was not able to sleep. He testified that he felt that he and his spine were disconnected.

[33] Approximately a week after the accident, the plaintiff underwent surgery to fuse his L1 to L3 vertebrae. Dr. Sahjpaul notes that the plaintiff "ultimately required surgical intervention for the L2 fracture with an L1 to L3 fusion."

[34] He testified that in the first year following the accident, he suffered from different types of lower back pain. These included a stabbing pain in his lower back, and a shooting pain that traveled from his lower back to behind his hamstring down to his calf.

[35] During the first year after the accident, it became clear that he required a second surgery, but he was on a waitlist in Canada. He was in intense pain and mentally deteriorating. His mother arranged for him to have surgery in Slovakia, and he travelled there in late February or March of 2022.

[36] In Slovakia, he had surgery to remove the stabilization instruments implanted into his back during the first surgery and underwent lumbar disc surgery to try to address his left leg pain.

[37] The second surgery helped but did not resolve the plaintiff's pain issues. The plaintiff testified that when he travelled to Slovakia, his pain was at level 8/10. After the second surgery, the pain declined to level 7/10 for several weeks and then to level 6/10 some months after that. Once his pain level reached 4/10, during the second half of 2022, it remained constant and remains at that level today.

[38] The plaintiff testified that after his second surgery, the biggest stabbing pains were gone – he said that it felt like that there were stab wounds inside of him that were healing.

[39] However, today, the pain in his lower back is still there. He feels pressure in his lower back, and because of the fusion of the two vertebrae together, it is difficult for him to move, and he is inflexible.

[40] He continues to suffer from shooting back pain from his lower back to his left calf. He suffers from swelling on the right side of his hip when he stands, sits, or walks for too long. He suffers from sore and tight hamstring muscles and knee pain. He testified that both of his legs are weak. These issues have significantly reduced his standing, sitting, and walking tolerances, which will be addressed further below.

[41] He testified that the only position that even temporarily alleviates his back pain is lying on his stomach.

[42] He testified that he suffers from neck pain – in particular, soreness and stiffness every morning – that is alleviated somewhat by stretching.

[43] He testified that he continues to suffer from sweating and sleep problems, and that he needs to smoke cannabis to fall and to stay asleep.

[44] The plaintiff testified that he continues to suffer from headaches and ear ringing. His headaches are pressure-type headaches, located behind his left eye. These headaches were constant immediately after the accident. Today, he still suffers from headaches approximately three times per week.

[45] Immediately after the accident, the ear ringing occurred in both ears. He said that the ringing was “on and off.” During the first year after the accident, the ear ringing was less frequent, but the intensity was unchanged. Today, this symptom appears mostly in the plaintiff’s left ear, perhaps three times per week.

[46] The plaintiff’s continued non-physical symptoms include depression, sweating, anxiety, and Post-Traumatic Stress Disorder (PTSD). He finds it hard to fall and to stay asleep and to focus, organize, and concentrate. He testified that he is worried about the future and that he is depressed because he cannot play sports or go to work and because the accident affected him and his family so much.

The plaintiff’s post-accident circumstances

[47] It is clear on the evidence that the plaintiff’s circumstances have changed drastically because of the accident.

[48] As stated above, the plaintiff’s evidence is that his pain level decreased after the second surgery to about 4/10 but that this level of pain has persisted until today.

[49] The plaintiff testified that much of his day is focussed on conserving energy for necessary tasks and resting. He walks slowly, and it is an ordeal to take a shower or to get dressed, particularly when he must bend down to put on socks or pants. Those tasks alone deplete much of his energy, requiring him to rest.

[50] He tries to walk 400 or 500 metres to a 7-11 store every day but testified that he must stop repeatedly, often to smoke cannabis, to manage the pain when he is

doing this. Even this walk depletes his energy to such an extent that when he arrives home, he must go to bed and rest for hours.

[51] He has not worked or played sports since the accident. He has not gone to the gym. He testified that he tried doing a leisure drive once, but it was not worth it because of the pain. The plaintiff testified that he cannot work because his daily routine takes all his energy for the day. He testified that when he goes to appointments, “I’m out for the rest of the day. That is the most I can do.”

[52] I observed that the plaintiff’s energy declined noticeably from the beginning to the end of his testimony. He testified that during court breaks, he lay down on a mattress provided by counsel and, on at least one occasion, slept during the lunch hour.

[53] The plaintiff testified that he experiences anxiety, particularly when he is being driven in a vehicle by someone he does not know well, and from the smell and sounds of cars. He testified that he continues to suffer from depression, although he is no longer suicidal as he was in the first year following the accident.

[54] The plaintiff testified that the one thing that helps with his mental health and to alleviate his depression is making music. He does this once a week and testified that he smokes cannabis and drinks alcohol before to mask the pain. However, even that activity is restricted by his injuries. He testified that he cannot go to make music more than once a week. He once tried to do so, but that effort required him to push his limits and took a significant toll on his health in the subsequent days.

[55] The above descriptions of the plaintiff’s present circumstances were corroborated by the testimony of his father and brother, Mr. Wakely, and the experts who examined him. His evidence was not shaken on cross-examination, and no evidence was called by the defendant to refute the plaintiff’s testimony regarding his condition. Accordingly, I accept the evidence of the plaintiff’s present condition set out above.

Prognosis

[56] Regarding the plaintiff's prognosis, Mr. Sahjpaul reached the following conclusions:

> With regard to his left leg pain, he has persistent symptomatology with left leg pain, reduced sensation, weakness and difficulty ambulating. In my opinion, more likely than not, he has sustained a permanent injury to the left L5 and S1 nerve roots and improvement is not anticipated.

[57] Dr. Sahjpaul testified that resolution of the plaintiff's headache, neck pain, and low back pain "is not anticipated," and that this pain "will probably be aggravated by increasing activities such as recreational pursuits, vocational pursuits and prolonged sitting."

[58] From both a recreational and a vocational perspective, Dr. Sahjpaul opined that the plaintiff's reporting – that his injuries have had a "marked negative impact on his ability to pursue this pre-subject MVA recreational pursuits" and that he has not been able to return to his pre-MVL vocation pursuits – was reasonable and was to be expected. Regarding recreational pursuits, Dr. Sahjpaul opined that he probably would not be able to resume these activities in the future, and with respect to his vocational pursuits, he is not expected to improve.

[59] Further, Dr. Sahjpaul opined that the plaintiff "is at risk for accelerated degenerative changes in the lumbar spine which can cause worsening pain or neurologic deficits and may require treatment up to and including surgery during the course of his lifetime."

[60] Similarly, Dr. Stewart opined that "it has now been four years since the collision and, given the duration of his symptoms, it is likely that Mr. Srenkel will continue to experience all of his current symptoms and limitations resulting from the collision in the future." Further, she opined that the plaintiff is "competitively unemployable in any capacity as a result of his serious orthopedic back injury and his soft tissue injuries in the 2021 collision."

[61] It is noted that the evidence of Dr. Stewart was not responded to by an expert witness called by the defendant. Dr. Chaudhary responded to the evidence of Dr. Sahjpaul but did not contradict him on any material issues.

[62] Dr. Chaudhary opined that the plaintiffs' symptoms have "plateaued and are most likely permanent."

[63] Regarding the plaintiff's mental health, Dr. Karapareddy diagnosed the plaintiff with Post-Traumatic Stress Disorder and Major Depressive Disorder, Moderate, with Anxious Distress. In respect of both disorders, Dr. Karapareddy's prognosis for full recovery is "guarded," or poor. He opines that the treatments suggested for the plaintiff are likely to prevent further deterioration in his symptomology, but he does not opine that the plaintiff's symptoms are likely to improve.

[64] The defendant argues that there is some chance that the plaintiff will be able to do something remunerative, sometime in the future. However, when that proposition was put to Dr. Stewart, it was strongly resisted.

[65] The evidence described above is consistent with the plaintiff's evidence regarding his daily routine and his tolerances to sit, stand, and walk. His evidence is that the pain begins to increase when he walks, stands, or sits for more than 15 minutes. The side effects of prescription pain medications have proven intolerable for him and so he seeks to mask the pain using cannabis and alcohol.

[66] Considering the foregoing, I am satisfied that between the date of the accident and the date of trial, the plaintiff was unable to work, and that he is likely to be competitively unemployable for the rest of his life.

Assessment of damages

Overview

[67] The plaintiff claims damages under the following headings:

a) non-pecuniary damages;

b) past and future loss of housekeeping capacity;

c) past loss of earning capacity;

d) future loss of earning capacity;

e) cost of future care; and

f) special damages.

[68] In addition, the plaintiff advances an “in trust” claim on behalf of his mother, father, and brother arising from care provided by them for his benefit, following the accident.

Non-pecuniary damages

[69] The plaintiff seeks non-pecuniary damages in the amount of $350,000.

Legal principles

[70] The legal principles applicable to the assessment of non-pecuniary damages are well established. In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, the Court of Appeal outlined the factors to be considered in making such an award:

a) age of the plaintiff;

b) nature of the injury;

c) severity and duration of pain;

d) disability;

e) emotional suffering;

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).

The parties' positions on non-pecuniary damages

[71] The parties have cited cases which they submit demonstrate the appropriate award of non-pecuniary damages in this case.

[72] The plaintiff relies on the decision of this Court in *Zacher v. Prescesky,* 2019 BCSC 500*,* wherein the plaintiff was 24-years old at the time of the accident and working as a cook. He was enthusiastic about his future in restaurant kitchens and aspired to qualify as a "Red Seal" chef.

[73] The plaintiff sustained injuries including a concussion, which led to significant cognitive changes; femoral fractures requiring surgical intervention; spraining of the left knee and shoulder; and soft tissue injury to his neck and back. He also developed chronic pain and depression and extreme anxiety, which all persisted at the time of trial. He could only walk short distances, could not stand or sit comfortably, or play any sports. Once gregarious, he became socially withdrawn.

[74] Prognosis for full recovery was poor, and there was no realistic prospect he could be competitively employed either as a chef or otherwise. The Court found that the injuries had a profound adverse and permanent impact on the plaintiff's life. The Court awarded the plaintiff $300,000 in non-pecuniary damages. This sum in 2019, adjusted using the Bank of Canada inflation calculator, equals approximately $349,500 in today's dollars.

[75] The defendant cites the decision of this Court in *Khashei v. Pirro,* 2020 BCSC 1048, wherein the 32-year-old plaintiff was an experienced steel fabricator. The plaintiff's life was "devastated" by the accident, which caused his injuries. He suffered a significant back injury resulting in two back surgeries with the potential for a further surgery, a spinal fusion at L4-5. The plaintiff was also diagnosed with

several psychiatric conditions linked to his ongoing pain. The plaintiff was unable to return to his pre-accident employment.

[76] As a result of the accident, the plaintiff went from “taking great pride in his role as a provider for his family and a loving husband and father, to being dependant on social assistance, and relying on his wife to run the household. He was unable to play with or even carry his active three-year-old daughter.” The Court assessed non-pecuniary damages at $200,000 which is equivalent to $240,000, adjusted for inflation, in 2025 dollars.

Assessment of non-pecuniary damages

[77] Most of the factors set out in *Stapley* weigh in favour of a significant award for non-pecuniary damages in this case.

[78] The plaintiff was only 21 years of age when the accident occurred. The accident itself and its aftermath were traumatic. Particularly during the two years following the accident, he was dependent on his father, brother, and mother for assistance in everyday tasks such as dressing and showering.

[79] His brother described the plaintiff, before the accident, as dynamic, full of energy, social, and well-liked. He was passionate about and proficient at playing soccer.

[80] As discussed above, I am satisfied that his injuries are serious and permanent and continue to cause him significant pain. He cannot stand, sit, or walk comfortably. He was an active and fit athlete before the accident, and he has been disabled from participating in almost all the activities that he previously enjoyed doing.

[81] Several of the witnesses described the plaintiff as being a “happy” person before the accident and remarked at how he has changed in this regard. His mother testified that he used to be very cheerful but that after the accident he lost his optimism. She said that he became a “sad guy with signs of suffering.” His father

testified that he cannot do what he planned to do and is far from happy. Mr. Wakely testified that it is less enjoyable for him to be with the plaintiff after the accident because it is hard for him to see someone in such pain, the plaintiff is affected by the cannabis he smokes and the alcohol that he drinks, and sometimes they get into arguments.

[82] It is clear from the plaintiff's testimony that he is concerned about his future. He testified that he wanted to have a family, to have a steady job, and to take care of his family. He wanted to play sports, travel, have a dog and kids, and have his own family. He stated more than once during his testimony that he hates living his life now and that his life after the accident "sucks."

[83] The plaintiff's injuries have had a profound and permanent impact on his life. In my view, this case is akin to the situation in *Zacher,* with the exception that the plaintiff, prior to the accident, did not have the clearly defined career path and ambition that Mr. Zacher did, and therefore did not suffer the loss of a specific vocational aspiration. In my view, the plaintiff's circumstances justify an award of $300,000 in non-pecuniary damages.

Past and future loss of housekeeping capacity

[84] The plaintiff seeks an award in the order of $170,000 for past and future loss of housekeeping capacity, on the basis that he is no longer able to perform usual and necessary household work, such as deep cleaning, mopping, cleaning the bathroom, grocery shopping, cooking food, taking out heavier trash bags, and changing his bedsheets. His evidence in this regard is corroborated by his father and brother who both testified to their increased responsibilities around the home since the accident.

[85] Dr. Chaudhary opines that "Mr. Srenkel should avoid any domestic, employment, or recreational activities that require heavy lifting, repetitive bending, twisting, turning or any other strains on the paraspinal muscles; or activities that aggravate post-concussion syndrome symptoms."

[86] In *McKee v. Hicks*, 2023 BCCA 109 at para. 112, the Court stated:

> To sum up, pecuniary awards [for loss of housekeeping capacity] are typically made where a reasonable person in the plaintiff's circumstances would be unable to perform usual and necessary household work. In such cases, the trial judge retains the discretion to address the plaintiff's loss in the award of non-pecuniary damages. On the other hand, pecuniary awards are not appropriate where a plaintiff can perform usual and necessary household work, but with some difficulty or frustration in doing so. In such cases, non-pecuniary awards are typically augmented to properly and fully reflect the plaintiff's pain, suffering and loss of amenities.

[87] I agree with the plaintiff's submissions that he is entitled to a pecuniary award for loss of housekeeping capacity, because he is unable to perform usual and necessary household work. Further, I agree that such an award should be assessed with a view to the cost of obtaining replacement services on the open market: *McKee* at para 108.

[88] Mr. Pakulak's report states that the cost of housekeeping services is $37.53 inclusive of GST. At two hours per week, the plaintiff's past loss of housekeeping capacity amounts to $16,880.50, and his future loss of housekeeping capacity to age 82 is $3,903.12 per year / 1,000 x 31,356 = $122,386.23. These sums total $139,266.73.

Past loss of earning capacity

Legal principles

[89] The legal principles that apply to the calculation of damages in relation to an injured plaintiff's past loss of earning capacity from the time of the accident to the time of the trial requires the Court to assess what income the plaintiff would have earned but for the accident.

[90] These damages do not have to be proven on a balance of probabilities. Instead, the assessment of past loss requires the Court to estimate a pecuniary loss

by weighing possibilities and probabilities of hypothetical events. In *Grewal v. Naumann*, 2017 BCCA 158, the Court of Appeal held as follows:

> [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.

Assessment of the plaintiff's loss

[91] Mr. Benning opines that the plaintiff's past income loss totals $105,589. In response to evidence from Mr. Szekely that Mr. Benning's calculation ought to assume part-time rather than full-time work, at least for the years 2021-2022, given that the plaintiff's plan for those years was to try out for soccer teams, the defendant seeks an award for past loss of earning capacity in the amount of $101,440.

[92] The defendant proffered the report of Mr. Szekely, who opined that the claim for past loss of earning capacity ought to total $94,724. However, the defendant now submits that the award for past loss of earning capacity ought to be less than this figure, taking into consideration what the plaintiff was doing and had done vocationally in the two years leading up to the accident.

[93] The central questions to be answered by the Court in assessing the plaintiff's past loss of earning capacity are whether he would have worked full-time for the entire period between the accident and the trial but for the accident, and what work he would have done. A claim for past loss of earning capacity is a claim for the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury: *Rowe v. Bobell Express Ltd.*, 2005 BCCA

141 at para. 30, cited with approval in *Latreille v. Downey*, 2020 BCSC 976 at para. 265.

[94] The defendant points out that the plaintiff did not obtain a part-time job after leaving Douglas College in December 2019 until October 2020. He only worked at the warehouse job part-time, making less than $300 per week, even though he had no school or soccer commitments. The plaintiff did apply for a further job as a retail worker in a cannabis store shortly before the accident and was offered that job after the accident but could not accept it because of his injuries.

[95] In my view, given the plaintiff's pre-accident income at the warehouse job (approximately $300 per week or $15,000 per year), the income figures for 2021, 2022, and 2023 assumed by Mr. Benning ($29,755, $36,693, and $41,684, respectively) are inordinately high, given the plaintiff's specific circumstances and recent work history. The modest reduction applied to Mr. Benning's figures by the defendant to reflect part-time employment during 2021 and 2022 reduces the plaintiff's claim for past loss of earning capacity by only approximately $4,000 in total.

[96] As discussed, the plaintiff intended to focus on soccer for the two years beginning in the summer of 2021. In my view, it is not reasonable to conclude that during those two years he would have earned more than twice than he did each month in the four months before the accident, when he was not focussed on soccer.

[97] In my view, absent the accident, his income would have been in the order of $20,000 for 2021 (ten months), $25,000 for 2022 (due to his focus on soccer), and $30,000 for 2023. Although I am unable on the evidence to calculate exactly how his hypothetical income taxes and EI premiums are to be adjusted as a result of adjusting these past income amounts, I assess his past income at $3,500 for 2021 ($20,000 less $16,000 less taxes and EI premiums), $21,000 for 2022 ($25,000 less $2,470 less taxes and EI premiums), and $14,000 for 2023 ($30,000 less $13,472 less taxes and EI premiums).

[98] For 2024 and the first six months of 2025, after the plaintiff's focus on soccer was to end, I adopt Mr. Benning's calculations. He opines that the plaintiff's past loss of earning capacity for those years totals $41,412 ($27,263 + $14,149).

[99] As a result of the foregoing, I assess the plaintiff's total past loss of earning capacity at $79,912.

Future loss of earning capacity

Legal principles

[100] The Court of Appeal has prescribed a three-step test for assessing future loss of earning capacity in a trilogy of cases decided in 2021: *Dornan v. Silva*, 2021 BCCA 228; *Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421. The questions to be asked by the Court were summarized in *Rab* at para. 47 as follows:

1) Is there a potential future event that could lead to a loss of earning capacity?

2) Is there a real and substantial possibility that the future event in question will cause a pecuniary loss?

3) If such a possibility exists, what is the value of that possible future loss?

[101] Valuation of the loss can be done using either the "earnings approach" or the "capital asset approach": *Perren v. Lalari*, 2010 BCCA 140 at paras. 11–12 and 32. Under either approach, the plaintiff must prove that there is a "real and substantial possibility" of future events leading to an income loss: *Perren* at paras. 11–12 and 32–33. The earnings approach involves a calculation of the present value of a plaintiff's annual loss of income over the remaining years of employment and is more appropriate when the loss is more easily measurable: *Perren* at para. 32. By contrast, the capital asset approach involves a consideration of a person's lost ability to work in a certain position in their field of work as the loss of an income-earning asset, and is more appropriate where the loss is less easily measurable: *Park v. Targonski*, 2017 BCCA 134 at para. 123.

[102] The plaintiff has advanced submissions based on the earnings approach, and, in my view, that is the appropriate approach in the circumstances of this case.

Assessment of the plaintiff's claim

The first two questions in Rab

[103] Where the plaintiff has been mostly or completely disabled by an accident, as in this case, the first two questions stated in *Rab* are readily answered.

[104] I have found above that the plaintiff has probably been rendered competitively unemployable by the accident. Based on that finding, the plaintiff's medical condition in the future will lead to a loss of earning capacity, and there is a real and substantial possibility that his future condition will cause a pecuniary loss.

The plaintiff's likely employment path but for the accident

[105] The Court's central task in this proceeding is to determine what the plaintiff might have done, vocationally, but for the accident.

[106] The plaintiff seeks an award based on the assumption that he would have been an apprentice/journeyman tradesperson, whereas the defendant submits that any award to the plaintiff ought to assume that he would have earned only a high school diploma.

[107] Although the plaintiff hoped to try out in 2021 for a soccer team and ultimately to become a professional soccer player, the plaintiff made no submissions and advanced no evidence based on that possibility.

[108] All contingencies regarding the plaintiff's likely future earnings, but for the accident, are subject to the process set out in *Rab*. The Court must determine whether there is a real and substantial possibility that a future event would have occurred. Only if that question is answered in the affirmative, the real and substantial possibility must be quantified.

[109] In my view, there is a real and substantial possibility that, but for the accident, the plaintiff would have eventually achieved a trade certification.

[110] I have reached this conclusion in part because his parents have careers in which developing skill sets were important: his mother is a physiotherapist, and his father trained as an industrial engineer in Slovakia and works in quality control in Canada. His brother works at a company that sells, tests, and repairs fire safety products. Further, I find that the plaintiff was still "finding his way."

[111] As will be discussed in further detail below, by 2021 he had moved from more technical and academic options to more physical pursuits but was searching for something more remunerative than his warehouse job. It makes sense that pursuing a trade would have been the next logical step for him. The threshold to establish a real and substantial possibility is not a heavy one, although it must be met: *Kim v. Morier*, 2014 BCCA 63 at para. 7.

[112] On the other hand, I am unable to find on the evidence that the likelihood of the plaintiff achieving a trades certification would have been particularly high.

[113] Most of the evidence advanced by the plaintiff in support of his claim that he would have achieved a trade certification but for the accident was evidence of his interest or desire to become a tradesperson, rather than aptitude. He testified that he observed his soccer colleagues who had such certifications living good lives and driving nice cars, and that is what he wanted for himself.

[114] He testified that he would have kept trying until he got his trade certification because he wanted to work a high-quality job and to live the high-quality life that he planned for himself.

[115] He submits that the fact that he came to Canada without any English language skills but learned English even though it was difficult for him demonstrates his determination and perseverance. He also cites the fact that he obtained a license to sell cannabis so that he could apply for employment to the cannabis retail store that offered him a job after the accident.

[116] He points to his commitment to soccer and submits that his soccer activities demonstrate a level of determination that he would have applied to training for a trade if given the opportunity.

[117] On the other hand, it cannot be ignored that both times that the plaintiff tried to embark on a program that would have led to a good job and the "high quality" life that he wanted, he chose to leave within four months.

[118] Before finishing high school, the plaintiff was accepted into a biomedicine program at a Slovakian university. He started there in September 2018 and testified that he "liked this program but not too much." At some point he was required to see patients and discovered that he did not like the sight of blood. He left in December 2018 without finishing the first semester.

[119] In the spring of 2019, the plaintiff was accepted into a business management program at Douglas College starting in September of that year. He began with four courses but dropped one of them from the start. His grades were not good. He attended Douglas College for only two months. He testified that the "subject just wasn't for me so I did not continue it." He testified, "I did not like the program because there was a lot of sitting around listening to teachers. I wanted to be more of a doer than a listener. I just didn't enjoy it."

[120] After December 2019, he decided that he should apply for physically demanding jobs. He knew that he was strong and that he enjoyed physical work. In October 2020, he began working as a warehouse worker. This job required him to load and unload boxes from shipping containers from and onto pallets using a pallet jack. He testified that he liked this job and that when he was doing it, he was more fit than ever before. After a while he could do the job with ease.

[121] As discussed, before the accident, he applied for a job at a retail cannabis company but was unable to accept the job when it was offered because of his injuries.

[122] Predicting the plaintiff's future vocational path without the accident is particularly difficult because of his young age, and because he did not have a clear career route at the time of the accident. It is trite to say that young people may take some years to determine what they want to do with their lives. The plaintiff submits that he ought not to be punished for his lack of direction at age 21; as discussed above, he was still finding his way when the accident occurred. At the same time, the Court's assessment of the plaintiff's likely future but for the accident must be grounded in the evidence, not in speculation or hope.

[123] In answers given on his examination for discovery, adopted by him at trial, the plaintiff testified that if he did not achieve a professional soccer career, then he would "probably look for a job and … just take the one that makes the most money." He was asked at length about his future career plans, but he suggested only at the end of that line of questioning that he might pursue a career in a trade. He testified, "I would look maybe a plumber or something. Quick money, easy job."

[124] A trades program requires four years. It requires learning and problem-solving, and persistence and diligence given that it requires one to work hard at a lower wage while learning a craft. The plaintiff testified that he wanted "quick money, easy job," but that term does not accurately describe a career in the trades.

[125] Based on the foregoing, I find that the likelihood that the plaintiff would have obtained a trade certification but for the accident is 20%.

Contingencies reducing the plaintiff's damages claim

[126] The defendant argues that the plaintiff's claim for future loss of earning capacity ought to be subject to two negative contingencies: that if the accident had not occurred, the plaintiff's commitment to work may have fallen below that of an average high school graduate, and that the plaintiff's post-accident medical condition may improve and permit him to work in the future.

[127] Regarding the first of these arguments, although the plaintiff demonstrated a lack of commitment to working when he was 19 and 20 years old, and I have taken

this lack of commitment into account when assessing his past loss of earning capacity, I am unable to conclude on the evidence that there is a real and substantial possibility that this tendency would have continued throughout his life but for the accident. There are many young people who may be less motivated to work when they are young and still living with their family, as the plaintiff was, yet become fully employed when they embark on their own lives as adults.

[128] Regarding the second of these arguments, the defendant cites the evidence of Dr. Sahjpaul and Dr. Stewart, who both opined that the plaintiff may be a candidate for surgery to repair the disc protrusion in his back and that he may obtain some symptomatic relief as a result. Further, the defendant argues that the plaintiff has not undergone recommended treatments that may provide symptomatic relief. Finally, the defendant argues that if the plaintiff were to reduce his cannabis intake, his cognition and well-being would improve.

[129] However, these arguments are based on the proposition that treatment and changes may result in a future reduction of symptoms. There is no evidence that such a reduction in symptoms would enable him to be competitively employable.

[130] The defendant cites the fact that the plaintiff experienced significant symptom reduction while receiving treatment in Slovakia in 2024, at which time his pain declined from a constant level 4 to a 2. But the plaintiff also testified that, at that time, he was not doing anything else other than resting and taking treatments. Accordingly, the results of his treatments in Slovakia provide very little, if any, insight into what might happen if he were to undergo similar treatments in Canada while seeking to work at the same time.

[131] In my view, the possibility that the plaintiff's medical condition may improve and therefore he may be able to work in the future is not a real and substantial possibility on the evidence.

Quantification of the plaintiff's claim for loss of future earning capacity

[132] The only admissible evidence before the Court regarding the quantum of the plaintiff's loss of future earning capacity is the expert evidence of Darren Benning.

[133] In Mr. Benning's report, he opines that, but for the accident, the present value of the plaintiff's future income, assuming employment as an average B.C. male high school graduate to retirement at no later than age 70, would have been $2,096,986. Mr. Benning also opines that, but for the accident, the present value of the plaintiff's future income, assuming employment as an average B.C. male apprentice/journeyman tradesperson to retirement at no later than age 70, would have been $2,733,506. These figures account for general contingencies common to the workplace, such as temporary unemployment, early retirement, and mortality.

[134] The plaintiff's calculations assume that he would have started a trades program in 2023 after the failed pursuit of a soccer career. The calculations are accordingly based on the hypothesis that he would have earned the average income of a high school graduate during 2025 and 2026 and that he would have earned the average income of a tradesperson after that.

[135] I have found that there is a 20% likelihood that the plaintiff would have obtained a trade certification but for the accident. Accordingly, using the figures provided by Mr. Benning, I conclude that he is entitled to an award of $96,849 for the years 2025 and 2026 as a B.C. male with a high school diploma. For the remaining years of his expected life, the plaintiff is entitled to 20% of $2,584,672 (being $2,733,506 - $148,834) and 80% of $2,000,137 (being $2,096,986 - $96,849).

[136] On this basis, I award to the plaintiff the sum of $2,117,044 ($516,934.40 + $1,600,109.60) for his future loss of earning capacity.

Cost of future care

[137] In *Tsalamandris v. McLeod*, 2012 BCCA 239, the Court of Appeal held as follows regarding the assessment of an award for the cost of future care, citing the decision of Justice McLachin in *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33:

> [63] McLachlin J., as she then was, then went on to state what has become the frequently cited formulation of the "test" for future care awards at page 84:
>
> > The test for determining the appropriate award under the heading of cost of future care, it may be inferred, is an objective one based on medical evidence.
> >
> > These authorities establish (1) that there must be a medical justification for claims for cost of future care; and (2) that the claims must be reasonable.

[138] Further, the principles regarding the assessment of damages for cost of future care were summarized by Justice Gomery in *Gill v. Borutski*, 2021 BCSC 554:

> [107] The purpose of an award for the cost of future care is, so far as is possible with a monetary award, to restore the plaintiff to the position she would have been in had the accident not occurred. The award is based on what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff …

[139] The recommendations upon which the plaintiff's claims for cost of future care are based are set out in the report of Mr. Pakulak and quantified in the report of Mr. Benning as follows:

Multi-disciplinary chronic pain program	$13,618
Physiotherapy	$36,561
Active rehab	$32,283
Psychological counselling	$7,674
Transcarnial magnetic stimulation	$7,422
Ketamine treatments	$12,369
Ergonomic equipment	$7,617
Household chores	$30,731
Cleaning equipment	$9,471

Cannabis	$124,287

[140] The only item on this list opposed by the defendant is the cost of cannabis. The defendant submits that this claim ought to be disallowed because cannabis has never been recommended by a doctor, causes cognitive deficits, and does not markedly reduce the plaintiff's pain.

[141] As stated in *Tsalamandris*, there must be a medical justification for claims for cost of future care. Similarly, in *Gill*, it was held that an award for the cost of future care must be based on what is reasonably necessary *on the medical evidence* to promote the mental and physical health of the plaintiff.

[142] The plaintiff cites the decision in *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 for the proposition that a physician does not need to testify to the medical necessity of every item of care that is claimed. However, that statement was made in the context of evidence from other health professionals who recommended the treatments in dispute.

[143] In this case, there is no evidence from anyone other than the plaintiff that cannabis benefits his health. Mr. Pakulak states in his report that it is beyond his expertise to determine whether medications or pain-relieving substances are required because of the plaintiff's injuries.

[144] Considering the foregoing, the plaintiff's claim for the cost of cannabis is disallowed.

[145] Further, I disallow the claim for physically demanding cleaning. This claim duplicates the claim for loss of housekeeping capacity in respect of which I have already made a substantial award: see *Kim v. Lin*, 2016 BCSC 2405 at para 233.

[146] The plaintiff's claims in respect of the other items set out in the table above are allowed. By my calculation, they total $118,819.

In-trust claim

[147] The plaintiff advances an “in trust” claim arising from the fact that his father, brother, and mother cared for him after the accident.

[148] In *Popove v. Attisha*, 2019 BCSC 1587 at para. 57, this Court held:

> Claims for household duties and other services rendered by immediate family members are allowable where the plaintiff demonstrates the need for such services as a consequence of the injuries sustained. The plaintiff must satisfy the Court, on a balance of probabilities, that the family member providing the services suffered a direct pecuniary loss (because of the time and effort put into those services) *or* that the family member's efforts replaced housekeeping expenses that would have otherwise have been incurred: *Star v. Ellis,* 2008 BCCA 164 at para. 17.

[149] In *Popove*, the Court held that where the opportunity cost to the care-giving family member is lower than the cost of obtaining the services independently, the Court will award the lower amount: para. 58.

[150] Further, in *Bystedt v. Hay*, 2001 BCSC 1735 at para. 180, this Court held that if the services are rendered by a family member, they must be over and above what would be expected from the family relationship.

[151] In this case, Jaroslav Srenkel testified that in the first year after the accident, he spent two hours per day helping his son by cooking, making extra trips to the grocery store to buy groceries and juices for him, and performing extra cleaning and laundry to prevent his son from getting an infection. He testified that since his son’s return from Slovakia in 2023, he has continued to assist him with daily activities, including driving, vacuuming the house, cleaning the bathroom, and going grocery shopping for him. He testified that he spends approximately one hour a day performing chores for the plaintiff in addition to those that he would otherwise do.

[152] Lukas Srenkel testified that in the first year after the accident, he spent between one and two hours per day on extra household chores for his brother’s benefit, which included cleaning the bathtub, cleaning the toilet, vacuuming and sweeping, heating up his brother’s food, cooking food, and helping his brother with his laundry. He testified that since his brother’s return from Slovakia, he spends

approximately 30 minutes a day cleaning, taking out garbage, and generally tidying the house.

[153] The plaintiff claims a total of $35,938.95, based on two hours per day and one and a half hours per day of services rendered by his father and brother, respectively, during the first year after the accident, and one hour and 30 minutes per day for each of them, respectively, during the last two years.

[154] The defendant submits that these amounts of time are not reasonable. He submits that the plaintiff's father and brother are entitled to compensation for a combined four hours per week during the first year and two hours per week thereafter.

[155] In my view, the appropriate award on behalf of the plaintiff's father and brother falls somewhere between these two positions. I accept that the plaintiff's care required much work on the part of Jaroslav and Lukas Srenkel and that they performed many tasks that they would not have had the plaintiff not been injured. On the other hand, I find that some of the tasks taken on by the plaintiff's father and brother, particularly those involving cleaning and the taking out of garbage, would have been done even if the accident had not happened. Further, in my view, some of the tasks – for example, at least part of the cooking and grocery shopping – would be expected of them because of their family relationship. Accordingly, not all their efforts replaced housekeeping expenses that would otherwise have been incurred.

[156] Based on the foregoing, I award an in-trust claim on behalf of Jaroslav Srenkel based on services being rendered for eight hours per week for the first year and four hours per week for the next two years. Using the defendant's suggested rate of $20 per hour, the total amount is $16,640 (8 x 52 x $20 + 4 x 104 x $20).

[157] Further, I award an in-trust claim on behalf of Lukas Srenkel based on services being rendered for four hours per week for the first year and two hours per week for the last two years, totalling $8,320 (4 x 52 x $20 + 2 x 104 x $20).

[158] Monika Srenkel testified that she normally works eight to ten hours per day, but that when her son came to Slovakia for surgery in 2022, she first limited her work hours to three hours a day so that she could care for him. She cared for him by helping him get in and out of bed, dressing him, doing physiotherapy exercises with him, and taking him to appointments. By the time that the plaintiff left Slovakia in 2023, she was working at her physiotherapy practice for up to four hours a day.

[159] The plaintiff claims a total of $25,470.90 for the services rendered by his mother, based on an average of four and a half hours per day for the year that he was in Slovakia before and after his surgery.

[160] The defendant submits that the plaintiff's mother ought to receive compensation for two hours of care and assistance per day for the first three months, for one hour per day for the next three months, and for two hours per week for the last six months.

[161] In my view, because of her evidence regarding the time that she took from her physiotherapy practice to care for her son, the in-trust claim advanced on behalf of Monika Srenkel is particularly strong. I award the full amount claimed on her behalf, being $25,470.90.

[162] The total in-trust claim awarded on behalf of Jaroslav, Lukas, and Monika Srenkel is $50,430.90.

Special damages

[163] A plaintiff is entitled to recover the reasonable out-of-pocket expenses that he or she incurred because of a motor vehicle accident. With respect to compensable special damages, this Court stated as follows in *X. v. Y.*, 2011 BCSC 944:

> [281] It is well established that an injured person is entitled to recover the reasonable out-of-pocket expenses they incurred as a result of an accident. This is grounded in the fundamental governing principle that an injured person is to be restored to the position he or she would have been in had the accident not occurred: *Milina* at 78.
>
> [282] However, this compensatory principle mandates that expense claims be limited to those which are restorative as distinct from those which would put

> the plaintiff in a better position than before the accident: Cooper-Stephenson, *Personal Injury Damages In Canada*, 2d ed (Toronto: Thomson Canada, 1996) at 134. Moreover, remoteness may limit the recovery of damages: Cooper-Stephenson at 134.

[164] The defendant opposes two categories of special damages.

[165] First, he opposes the plaintiff's claims for cannabis purchases. In this regard, he makes arguments like those that he made in response to the plaintiff's future cost claim for cannabis – that no doctor has recommended cannabis to the plaintiff, that it causes cognitive deficits, and it does not markedly reduce the plaintiff's pain. However, I disallowed the plaintiff's future cost claim relating to cannabis because the authorities require medical evidence to support such a claim, and there was no such evidence. By contrast, the law in respect of special costs requires only that the costs were incurred as a result of the accident and that they were reasonable.

[166] The plaintiff testified that he smoked cannabis only occasionally and socially before the accident. He testified that the pain medications prescribed by his physicians cause him stomach issues and that cannabis helps him to sleep and assists in relieving his headaches. Cannabis may not reduce the plaintiff's pain, but he testified that it distracts him and helps him to manage the pain. Based on the plaintiff's evidence, I find that his past purchases of cannabis were reasonably incurred in relation to the accident and are properly claimable.

[167] Second, the defendant opposes claims for trips to Slovakia taken by the plaintiff between May and September 2024 and between December 2024 and February 2025. He argues that these trips to Slovakia were not reasonably incurred in relation to the accident.

[168] However, the plaintiff testified that he attended at rehabilitation centres in Slovakia during both trips. As discussed above, his pain was at least temporarily reduced by those treatments. During the trip between May and September 2024, he went to the Black Sea in Bulgaria on the recommendation of his doctor. Based on this evidence, I find that the costs of the two disputed flights and the associated flight insurance are properly claimable as special costs.

[169] For these reasons, the plaintiff is awarded the full amount of his special costs claim, being $22,929.95.

Summary

[170] In summary, the plaintiff is awarded damages under the following headings:

Non-pecuniary damages:	$300,000.00
Loss of housekeeping capacity:	$139,266.73
Past loss of earning capacity:	$79,912.00
Future loss of earning capacity:	$2,117,044.00
Cost of future care:	$118,819.00
In-trust claim:	$50,430.90
Special damages:	$22,929.95
TOTAL	$2,828,402.58

Costs

[171] Unless there are settlement offers or other matters relevant to costs of which I am not aware, the plaintiff shall have his costs of this action at Scale B. If either party needs to address the issue of costs, he may arrange to make short written submissions through the registry.

"Loo J."