IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stang v. Dhaliwal,*
2023 BCSC 2248

Date: 20231221
Docket: M186030
Registry: Vancouver

Between:

Tyler Lucas Stang

Plaintiff

And

Harjinder Singh Dhaliwal and Black Top Cabs Ltd.

Defendants

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for the Plaintiff:	P.H. Furtula M. Fahey
Counsel for the Defendants:	T.S. Brown A. Batra
Place and Date of Trial/Hearing:	Vancouver, B.C. September 12–15, 20–23, 2022 May 15–18, 2023
Written Submission Received from the Plaintiff:	July 13, 2023
Written Submission Received from the Defendants:	July 21, 2023
Place and Date of Judgment:	Vancouver, B.C. December 21, 2023

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Introduction

[1] The plaintiff, Tyler Stang, claims damages for injuries suffered in a motor vehicle accident. He was a pedestrian on Davie Street in the early morning hours of July 16, 2016, when he was struck by the taxi driven by the defendant Harjinder Singh Dhaliwal (the "Accident").

[2] The plaintiff claims substantial damages resulting from his injuries. Most significantly, he alleges that he is now unable to pursue his chosen career as an elevator mechanic.

[3] The defendants deny liability for the Accident. They also argue that the plaintiff's damages are minimal. They further argue that the plaintiff was able to work from 2018 until he suffered a workplace injury in 2020. They submit that the workplace injury was an intervening event that is divisible from his Accident-related injuries. The defence submits, in the alternative, that Mr. Stang was contributorily negligent in that workplace incident.

[4] There are several legal and factual issues that arise from the plaintiff's injuries and the chronology of events. The most significant issues relate to the subsequent workplace injury. In my discussion below, I address the proper characterization of that injury, and the damages flowing from it, in relation to the issues of causation and divisibility.

Issues

[5] The following factual and legal issues arise:

a) Who is liable for the Accident?

b) What injuries did the plaintiff suffer?

c) Credibility and reliability.

d) What is the proper treatment of the subsequent workplace injury?

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e) Quantum of Heads of Damage.

The Plaintiff's Background

[6] The plaintiff was born and raised in Drayton, Alberta. At the time of the Accident, he was 24 years old. During his formative years he was active in sports including baseball, weight-lifting, and golf. He was, and is, an avid musician.

[7] Growing up, the plaintiff describes himself as a hard worker who obtained his first job at age 14. He always had a part-time job during high school. That evidence was corroborated by his father.

[8] The plaintiff graduated high school in 2010. His first jobs, short-lived, were in the oil industry. He left that area because he wanted to pursue carpentry. He entered a carpentry apprenticeship in July 2011 with an employer in Drayton. In 2014 he moved to Calgary and continued his apprenticeship with a large construction company. In 2015, he moved to the Lower Mainland where his apprenticeship continued with an insurance restoration contractor, "FirstOnSite". In 2016, he completed the requirements to obtain his Red Seal designation in carpentry. However, due to paperwork delays (both his own and a former employer's), he did not obtain the formal certificate until 2019.

[9] As discussed below, during the time he was working in Calgary, he became acquainted with the job of elevator mechanic. He testified that, upon learning of the job and its higher salary, he formulated a goal to pursue that field as a career.

[10] During the pre-Accident period, from age 18–24, the plaintiff also pursued his musical avocation both in Drayton and in the Lower Mainland. His band, called "Sail With Kings", plays traditional acoustic songs with a punk sensibility. The band membership has included a series of other players, with the plaintiff being the only constant. I return to discuss the band's activities below.

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[11] As noted, the Accident occurred on July 16, 2016. I discuss in more detail below the significant events in the plaintiff's life that followed the Accident. I summarize them here to provide context:

a) He went off work immediately after the Accident and was off work (with one failed attempt at a return) until the Spring of 2018. He received several forms of therapy.

b) Sail With Kings went on a cross-Canada tour in the summer of 2017.

c) Approximately two years post-Accident, his treaters arranged a gradual return to work ("GRTW") with his former employer (as a carpenter).

d) As the GRTW was about to commence, the plaintiff informed the affected entities that he had decided to pursue a career as an elevator mechanic. He started an apprenticeship in May 2018 instead of returning to work as a carpenter. He worked full time in the new job.

e) He was single at the time of the Accident. He got married in late July 2019. That relationship did not last long, and he is now single again.

f) In March 2020, he suffered injuries to his wrists, and his upper and lower back while working for an elevator company (the "WCB Injury").

g) The next day he went off work and made a claim to the Workers' Compensation Board ("WCB"). WCB accepted his claim and paid him full income loss and rehabilitation benefits. As of the trial date, he was taking courses to retrain, and his claim had not been finally adjudicated by WCB.

h) Since 2020, he spent significant time playing video games. He live-streams his gaming on the internet. Subscribers pay or donate to his account.

[12] This chronology presents complex issues of causation and attribution of damages.

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The Accident

[13] The Accident occurred on July 16, 2016, at approximately 2:30 a.m., at the intersection of Davie Street and Denman Street in Vancouver.

[14] Mr. Stang was out with friends at the Three Brits Pub in the West End of Vancouver. At closing, they departed for a fast-food restaurant located to the north on Denman St. However, one friend had forgotten an item of clothing at the pub. Mr. Stang went back to retrieve it. He had to cross Davie St. to get to the pub. There was a small collection of people outside the pub.

[15] Mr. Stang was struck by a taxi driven by the defendant Mr. Dhaliwal, while, or soon after, crossing the street.

[16] The parties differ on where and how the Accident occurred. Each side submits that the other's version lacks credibility and reliability:

a) The plaintiff says that he was in a marked crosswalk (on the east side of the intersection), crossing on a pedestrian "Walk" light when he was struck by the taxi. The impact threw him up in the air, and he landed on the sidewalk. He then texted one of his friends. He testified that he recollected not having any conversation with Mr. Dhaliwal. In his testimony he accurately described the involvement of a witness (Ms. Allen, whose evidence is discussed below).

b) The defendant Mr. Dhaliwal testified that he was driving eastbound on Davie St. and stopped at a red light on the west side of the Denman intersection. When the light turned green, he drove through the intersection and past the crosswalk. He was approximately two to three car-lengths past the crosswalk, driving slowly, when he heard the sound of something hitting or bumping against his car. The sound was not at the front of his car, and he did not know from where it emanated. He stopped and saw the plaintiff sitting by the sidewalk. Mr. Dhaliwal assumed that the plaintiff was the person who had somehow collided with his taxi.

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[17] The plaintiff called Ms. Hillary Allen to testify. She worked as a server at a bar which is located across Davie St. from the site of the Accident. She completed her shift and was awaiting a taxi. She observed the Accident from across the street. She says the plaintiff was walking on a “Walk” sign and was within the crosswalk when he was struck by the taxi. She saw the plaintiff fly into the air and saw his head hit the pavement when he landed on the sidewalk. She says she crossed the street and had a brief conversation with the plaintiff, after which, he lost consciousness.

[18] Ms. Allen then waited for the police and provided information to them.

[19] I note that the defence submits that the plaintiff was intoxicated. Ms. Allen, a server in a bar, opined that Mr. Stang was not intoxicated “out of the ordinary”.

[20] In submissions, defence counsel pointed to notations in the ambulance and police records. Counsel suggests that those notes are inconsistent with the plaintiff’s version of events or level of intoxication. However, the defence called none of the authors of those notes. I place no weight on the written description of events expressed by unknown individuals who were not first-hand witnesses to those events.

[21] The defence also points to certain elements of Ms. Allen’s testimony that are clearly wrong. For example, both the plaintiff and Mr. Dhaliwal agree that Mr. Stang did not lose consciousness at the Accident scene. Ms. Allen testified that Mr. Stang lost consciousness after she spoke with him. Ms. Allen also testified that the plaintiff did not use his phone after the Accident. However, the evidence is clear that, immediately after the Accident, he texted one of his friends at the fast-food place.

[22] The defence submits that Ms. Allen is not credible or reliable. While I accept that there were discrepancies in Ms. Allen’s testimony, those concerns arise regarding her testimony about the events that occurred in the period after the Accident. On the sequence leading to the Accident, the core of her version of events aligns with the plaintiff’s version.

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[23] In addressing the issue of liability, I note that on the Mr. Dhaliwal's version of events, he did not see the plaintiff until after the impact with the taxi. At that point the plaintiff was sitting or lying on the ground. Mr. Dhaliwal suggests that the plaintiff walked into the side of his taxi. That evidence conflicts with the plaintiff's and Ms. Allen's testimony that the impact threw Mr. Stang into the air.

[24] Given that Mr. Dhaliwal did not see Mr. Stang before the Accident, I prefer the descriptions of the Accident provided by Ms. Allen and the plaintiff.

[25] The only inference I can draw from all of the evidence is that, at the moment of impact, Mr. Stang was crossing the street and was in the crosswalk. I draw the inference that Mr. Dhaliwal was looking to his right to see whether anyone in the small crowd outside the pub needed a taxi. Hence, Mr. Dhaliwal was not watching where he was going. In other words, I assume that if a driver is paying attention to their path, then they will see a pedestrian whom they strike.

[26] On that basis, I find that Mr. Dhaliwal was 100% liable for the Accident. There is no evidence (that I accept) that Mr. Stang was contributorily negligent. I have found that he was in the crosswalk.

[27] Mr. Dhaliwal did confirm that, post-Accident, Mr. Stang was bleeding slightly from his head. Both parties agree that they engaged in a conversation with Ms. Allen, although they differ on the substance thereof. There is an allegation that the plaintiff suffered a concussion; however, I note that the plaintiff had excellent recall of the events both immediately before and after the Accident. He was able to text his friend. He remembered specific elements of interactions between Ms. Allen and Mr. Dhaliwal. The plaintiff testified that he was in and out of consciousness while in the ambulance and at St. Paul's Hospital. I attribute that to a combination of alcohol and the late hour. I do not attribute it to a concussion.

[28] I accept that the impact caused the plaintiff's body to fly up in the air and land on the concrete sidewalk. He sustained numerous injuries to his head and body.

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[29] Mr. Stang was transported to St. Paul's Hospital via ambulance. The police attended the scene.

Injuries Sustained in the Accident and Progress Thereof

[30] The plaintiff testified that impact of the Accident on his life was significant. Again, for the context of the descriptions below, it is important to recall that the plaintiff was off work for the first two years after the Accident.

[31] The plaintiff provided a description of his symptoms over time. None of his treaters were called at trial, and only limited clinical records were introduced. The first expert to see the plaintiff was Dr. Tarazi, on April 2, 2019, almost three years post-Accident. I discuss his reports in detail below. However, based upon the history, records, and physical examination, Dr. Tarazi opined in 2019 that "[h]is neck and back pain, that he is experiencing now, is causally related to the soft tissue injuries sustained in the subject accident."

[32] I noted above the WCB Injury that occurred in March 2020. The plaintiff links the pain that he was suffering in early 2020 to the Accident. The issue of causation must, of course, be rooted in the expert opinions. However, I find it helpful to follow the plaintiff's descriptions of his symptoms over time. As discussed below, the defence submits that his activities post-Accident do not match his testimony.

[33] The plaintiff saw his family doctor soon after the Accident. The plaintiff says that he reported injuries to his head, neck, back, shoulder, wrist, groin, knee, and ankle. He says that in the first six months, he continued to have the following symptoms:

a) Head: Symptoms that he related to a concussion, including headaches and difficulty reading, formulating sentences, and exerting himself. He had constant headaches and a sensitivity to lights and loud noises.

b) Neck: Limited range of motion, and a soreness that continues at trial.

c) Upper back and shoulders: An aching that disrupted his sleep.

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d) Mid and Low back: An aching.

e) Groin: Painful.

f) Wrists: Painful to the extent that he did not play piano.

g) Ankles: Improved quickly.

[34] The plaintiff says that his activities in the first months post-Accident were restricted, although he acknowledges his memory of that period has faded. He says he did not play any sports but he continued to distract himself with video games and music. He described playing shows with his band. He had a general recollection of some shows being cancelled, but no specific incidents. He says that he played through the pain because he is a fighter. He also says that other band members moved the heavier equipment.

[35] During the first months after the Accident, the plaintiff attended a number of treatments including appointments with a physiotherapist and a kinesiologist.

[36] I discuss below the evidence of his performances in the post-Accident period. The defendants submit that those activities are inconsistent with his complaints. In particular, the defence notes the three-week cross-Canada tour in July 2017. The six members in the band travelled in a motorhome to Halifax and back. The defendants note that the plaintiff prepared for and undertook this tour while allegedly totally disabled from working. He claimed further total disability for almost a year after this tour.

[37] The plaintiff testified that, as of the end of 2017, his symptoms had improved to a point:

a) that he continued to have cognitive issues and sensitivity to noise and light;

b) that he continued to have constant pain in his upper, middle, and low back;

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c) that his other injuries persisted, but were more annoying than disabling.

[38] To deal with the pain, he pursued an exercise routine involving stretching and using a heat pad. As discussed below, he testified that he did not take any pain medications.

[39] The plaintiff started attending an active rehabilitation program in October 2016. He completed that program in May 2018 at which point he was cleared by his family physician to pursue a GRTW with his former employer in his occupation as a carpenter. It was at that point that the plaintiff informed his former employer and his treaters that he had formed a different career plan. He advised that he had decided to pursue a career as an elevator mechanic.

[40] In his testimony, the plaintiff attempted to link his change of occupation to his physical condition in the Spring of 2018. In his resignation letter to FirstOnSite, he claimed that he was resigning because of medical advice. However, the evidence establishes that his medical team had approved the GRTW as a carpenter. His resignation pre-dated the commencement of his GRTW. The documents establish that, as of the date of his resignation, he had already interviewed for the elevator mechanic position.

[41] I do not accept the plaintiff's evidence on this point. As noted above, the plaintiff testified that he learned about the earnings of elevator mechanics while working as a carpenter in Calgary. He testified that he viewed the job of an elevator mechanic as being more desirable than being a carpenter. Based on his evidence, and the timing of the switch in occupations, I find that, at the point when his treaters held the opinion that he could return to work as a carpenter, he took the opportunity to commence in a new career path.

[42] As noted, the plaintiff suffered a subsequent injury in the workplace on March 9, 2020. He had been working as an apprentice elevator mechanic since May 2018. He says that he was careful to avoid heavy lifting activities. The plaintiff's testimony

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regarding the WCB Injury matched the description he gave to Dr. Tarazi, which was included in Dr. Tarazi's Second Report (April 22, 2022):

> Mr. Stang stated that he was working as an elevator mechanic in March 2020 when he lifted a mast (upright steel panel) with a crew of five people. This mast weighed several hundred pounds, and they were trying to replace it. As they were bringing the load down, he had to squat down. This aggravated his neck, back and wrist pain that he had been experiencing from a motor vehicle accident of July 16, 2016. He tried to work through his pain for the rest of that day and the next day. However, he never returned to his job any longer. …

[43] The plaintiff's counsel submits that that workplace injury was a mere blip and that Mr. Stang soon returned to his post-Accident (but pre-WCB Injury) condition. In response, the defendants submit that the WCB Injury was an intervening act.

[44] I discuss the expert medical evidence and my findings regarding causation and divisibility of the injuries below. However, at this point I state that I do not accept the plaintiff's counsel's submission that the WCB Injury was a mere blip along the timeline of Mr. Stang's physical condition. The facts do not support this submission:

a) The plaintiff testified that he has not witnessed any appreciable improvement in his overall condition since 2016.

b) He was able to work as an elevator mechanic for almost two years before the WCB Injury, but he was not able to return to that occupation after the WCB Injury.

c) Commencing in March 2020, he made a claim for WCB disability benefits and continued to receive those benefits for more than two years after the WCB Injury.

[45] I draw the inference that if the WCB Injury was a mere blip, then Mr. Stang should have been able to return to his pre-WCB Injury health status within months. Thus, he should have returned to his elevator mechanic job at some point after 2020. It is clear that he did not. I discuss that issue below.

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Credibility and Reliability

[46] The parties take different positions on Mr. Stang's credibility and reliability. In my opinion, these issues have significant importance in this case because, as noted, the plaintiff is the primary witness to his own condition over time.

[47] The plaintiff's counsel submits that Mr. Stang made a genuine attempt to provide accurate testimony. Further, counsel submits that his actions in the years since the Accident have been consistent with his ongoing complaints. In that regard, he has attended hundreds of treatments within different modalities (physiotherapy, massage, chiropractic, etc.). In the same period, his participation in sports significantly decreased. When he was objectively tested at Functional Capacity Evaluations ("FCE"), the results were confirmatory of his stated limitations.

[48] The defence casts a different light on Mr. Stang's credibility and reliability. The defence points to the following areas of his testimony and submits that they are incompatible with his actions.

[49] First, the defence notes that the plaintiff's own expert, Dr. Levin, described him as having a personality with obsessive compulsive ("OC") traits. I discuss that evidence below when addressing the expert evidence. The defence points to the testimony of Dr. Levin in answer to a question from the court:

> People like him have diminished emotional problem. … His perception of pain was more than a normal person. Or he dwells on it. It indicates that they are capable of doing more than they think.

[50] The defendants submit that, in keeping with his OC personality traits, the plaintiff exaggerated the injuries and symptoms that he ascribes to the Accident. The defendants submit that his trial testimony does not match:

a) his activities following the Accident; or

b) the accounts he provided to his treaters.

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[51] For example, the defendants note that in the months after the Accident, while he was off work from his carpentry job:

a) on July 20, 2016 (four days post-Accident), he performed at a “Battle of the Bands” with Sail With Kings.

b) on August 1, 2016 (two weeks post-Accident), the band played another gig involving a new member. Mr. Stang both recruited and trained that new member after the Accident).

c) on August 22, 2016, the band performed at the PNE Amphitheatre.

d) on October 17, 2016, he posted on Facebook about the production and release of a new single.

e) on October 21, 2016, he and his band participated in a “Battle of the Bands” and took third prize. He posted about making a video to promote the band’s participation in the competition.

[52] Hence, in the first three months post-Accident, the plaintiff participated in a number of musical performances, despite claiming that he was disabled from working. The defendants submit that these events demonstrate that, in the acute phase following the Accident, his injuries were not as serious as he claims.

[53] Thereafter, the defendants note that in the last three weeks of July 2017, Sail With Kings embarked upon a cross-Canada tour. They travelled to Nova Scotia and back in a motorhome and played several gigs along the trip. The plaintiff did a significant amount of the driving. Again, during this period, he was claiming total disability because of the injuries from the Accident.

[54] The defence also submits that the plaintiff manipulated his treaters by providing them with information that was designed to assist his own plans. For example, the evidence established that the plaintiff got married on July 31, 2019 (He has since divorced.) A note from his family doctor, dated July 23, 2019, indicated that the plaintiff needed time off work due to an undefined “illness/injury”. The

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defence submits that it is not a coincidence that he requested this note from his doctor one week before his wedding. The defence submits that this is a clear example of the plaintiff manipulating his family doctor in order to get time off work to prepare for his wedding.

[55] The defence further notes that Mr. Stang engaged in long periods of video gaming in 2022. The nature and duration of these sessions is documented because he streamed them on a video live-streaming service called “Twitch”. On some days, the recordings indicate that he remained gaming up to 12 hours at a time (with short breaks). As of the date of trial, the long recordings were still available for viewing.

[56] I return to discuss these activities (musical and gaming) below. Although it is unlikely that the plaintiff earned any substantial income from them, I note that each activity had an income component. Mr. Stang has no record of the income or expenses from these activities.

[57] The defence submits that the evidence of Mr. Stang’s musical and gaming pursuits contradicts his claims of disability arising from the Accident. The defence submits that I should not accept Mr. Stang’s description of his abilities and restrictions, because he was able to pursue the activities he enjoyed (music and gaming) during periods when he claimed to be totally disabled from working. In the alternative, they submit that I should be cautious in accepting his descriptions.

[58] I accept the defence’s alternative submission regarding Mr. Stang’s evidence. I view it with caution. I formed the impression during his testimony that Mr. Stang tends to view his situation in stark, binary terms. In other words, he sees himself as either “able to work” or “not able to work”. There is little middle ground. I note that this view was, to some extent, mirrored by his former employer. After the Accident, the insurance restoration company indicated that they did not have any “light” work available for Mr. Stang. They would only take him back when he was cleared to perform full duties.

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[59] However, for a period of two years post-Accident, Mr. Stang continued to take the position that he was totally disabled from working, despite pursuing other activities. In my opinion, the conception, planning, and execution of a cross-Canada tour with his band is inconsistent with the condition of a person who is totally disabled from working. Further, as noted, after two years, when his rehab team was ready to return him to work as a carpenter, he advised that he would be pursuing a different career path. I consider that chronology to indicate that he was ready for some form of employment before the planned GRTW.

[60] Further, as described above, the plaintiff sought to downplay the effect of the WCB Injury on his current condition. At trial, he blamed his current condition on the Accident, and testified that he has had little change in his condition since 2016. I do not accept that evidence from the plaintiff. The inference I draw from the approval for a GRTW is that the plaintiff's condition had improved by May 2018. Further, I find that the plaintiff's expert opinion evidence, primarily Dr. Tarazi's, does not support the plaintiff's chronology of his injuries.

[61] These findings lead me to the conclusion that I must take the plaintiff's descriptions of the chronology of his condition with caution. I place greater weight on the events and the opinions of the experts.

Expert Evidence

[62] In my opinion, the most important issues addressed by the expert evidence relate to causation and divisibility. Dr. Tarazi was the only expert who addressed those issues.

[63] The expert medical evidence tendered at trial consisted of:

a) For the plaintiff:

i. Dr. Tarazi, orthopedic surgeon—April 2, 2019, and April 22, 2022

ii. Dr. Levin, psychiatrist—August 5, 2019

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b) For the defence:

i. Dr. Perey, orthopedic surgeon—April 21, 2022

ii. Dr. Lari, psychiatrist—June 6, 2022

[64] In addition, each side tendered a FCE:

a) Plaintiff – Mr. McNeil—August 1, 2019

b) Defence – Mr. Gregson—April 14, 2022

[65] Finally, the plaintiff tendered the following reports of an economist, Mr. Benning:

a) Past and Future Income Loss Multipliers, December 2, 2020

b) Future Income Loss Report, February 1, 2022

c) Past and Future Income Loss Report, June 15, 2022

[66] I discuss each expert's opinions below.

Plaintiff's Expert Evidence

Dr. Tarazi – Orthopedic Surgeon

[67] Dr. Tarazi saw the plaintiff on two occasions and provided two reports dated: April 2, 2019 (the "First Report), and April 22, 2022 (the "Second Report").

First Report

[68] In his First Report (pre-dating the WCB Injury), Dr. Tarazi noted that, following the Accident, the plaintiff suffered pain in his neck, both shoulders, left wrist, left groin, mid and low back, left knee, and ankles.

[69] In respect of the low back injury, Dr. Tarazi opined that the plaintiff suffered a soft tissue strain of the muscles, ligaments, and facet joints. He noted, "his back pain is located in the mid and lower back region. It is primarily on the left side."

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[70] Dr. Tarazi noted that myofascial soft tissue strains usually resolve within six to nine months. However, the plaintiff falls into a category of patients who have chronic and permanent pain. In his First Report, Dr. Tarazi felt that there may be some potential for modest improvement, but indicated that the plaintiff would have to modify his activities in the future to accommodate his neck and back pain. Those modifications included heavy lifting, repetitive bending, and sudden twisting.

[71] Given that the plaintiff had no pre-existing conditions and no subsequent injuries, the First Report addressed the issue of causation with the simple statement that the Accident "has caused multiple musculoskeletal injuries."

[72] Dr. Tarazi recommended that the plaintiff go to the gym to gradually strengthen his paraspinal, core, and abdominal muscle groups. He also recommended taking anti-inflammatory medications and stated, "This will also help control this pain further so that he can exercise."

[73] As to the issue of work capacity, Dr. Tarazi wrote:

> In my opinion, as his pain is now chronic, he is not suited to return to his carpentry job anymore. He is now doing an apprenticeship for an elevator mechanic position. By his own account that job is less physical because there is less heavy lifting and bending. In my opinion he will likely be able to perform the job of an elevator mechanic for the rest of his working career, although with pain.

[74] The defendants note, for context, that at the time of Dr. Tarazi's First Report, the plaintiff had been working for nine months in his apprenticeship as an elevator mechanic. Dr. Tarazi's opinion was that the plaintiff could perform that work until retirement, although with pain. I find this opinion important, and I return to it below.

Second Report

[75] Dr. Tarazi saw the plaintiff again on April 22, 2022, two years after the WCB Injury. I set out Dr. Tarazi's account of the WCB Injury above. Mr. Stang had not returned to any form of work during the period between the WCB Injury (March 2020) and this second Independent Medical Examination ("IME").

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[76] Dr. Tarazi indicated that the plaintiff's symptoms as of April 2022 related to his neck with referred pain to his shoulders. There was pain that was located in the mid and lower back, both right and left side. (In 2019, the pain was primarily on the left side.)

[77] On the issue of causation Dr. Tarazi, wrote (at page 10):

> It is still my opinion that the motor vehicle accident of July 16, 2016 has caused a cervical and thoracolumbar myofascial soft tissue strain which has been treated conservatively until now. Mr. Stang's neck and back have been rendered quite vulnerable and susceptible to further injuries by the motor vehicle accident. I am not surprised that he suffered an aggravation in March 2020 at work. Absent the neck and back injuries that he sustained in the subject motor vehicle accident, he may never have been injured at work in March 2020 or any injury would most likely have been much less severe.
>
> …
>
> His neck, back and left wrist injuries were further aggravated by the work injury of March 2020. He is not suited to work as an elevator mechanic anymore because of his ongoing pain from the subject accident. He will be limited to mostly lighter work in the future. His pain is now chronic and will continue on a permanent basis.

[78] I return to these comments below when discussing the issues of causation and indivisibility.

[79] Dr. Tarazi provided the following opinion as to the plaintiff's ability to work in the future:

> When I last evaluated Mr. Stang in 2019, he told me that his job as an elevator mechanic was less physical compared to his pre-MVA carpentry work. However, it is now obvious that this elevator mechanic position did involve some heavy lifting which resulted in aggravation of his neck and back pain. At this point, as his neck, back and shoulder pain is now chronic and permanent, it is my opinion that he is not suited for a job of an elevator mechanic anymore.

[80] Hence, in his Second Report, Dr. Tarazi's opinion on work capacity changed. His opinion in 2019 was that Mr. Stang could work as an elevator mechanic, although with pain. As of 2022, Mr. Stang was "not suited for a job of an elevator mechanic anymore." I consider that change to be important and determinative.

[81] I return to discuss Dr. Tarazi's treatment recommendations below.

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Dr. Levin – Psychiatrist

[82] Dr. Levin saw the plaintiff for one psychiatric examination on August 5, 2019.

[83] Dr. Levin diagnosed the plaintiff with the following psychological conditions:

a) underlying obsessive compulsive personality traits;

b) mild concussive brain injury;

c) adjustment disorder with mixed depressive/anxiety symptoms.

[84] Dr. Levin opined:

> … From a psychiatric perspective, his underlying obsessive – compulsive personality traits and post–accident depressive symptomology undoubtedly interfered with his clinical progress and physical recovery.
>
> … It is most likely that Mr. Stang's pre-existent underlying obsessive – compulsive personality traits diminished his ability to adjust to his physical, psychological and cognitive limitations following the subject MVA. Consequently, the above-mentioned adjustment disorder progressed into a major depressive episode that still remains untreated.

[85] I will address the plaintiff's allegation of a head injury here. The only evidence on that injury derives from the plaintiff and Dr. Levin. I note that in his testimony about the circumstances of the Accident, the plaintiff provided accurate evidence. He exhibited no loss of memory for the events immediately before or after the Accident, although he claimed to have little recall of being in the ambulance or at the hospital. He also attributes some degree of mental fogginess (in the months following the Accident) to the head injury. However, that linkage is not supported by any medical opinion. Dr. Levin ascribes no ongoing symptoms to any brain injury. Hence, I find that if a brain injury was incurred, it had little to no effect on the plaintiff.

[86] Dr. Levin recommended treatment for Mr. Stang's residual depressive symptomology. He further found that if not treated, this condition would represent a significant risk factor for him developing another possibly more severe and disabling depressive episode in the future.

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[87] As noted above, Dr. Levin testified that Mr. Stang dwells on his pain and that his perception of pain was more than that of a normal person.

Russell McNeil – Functional Capacity Evaluator

[88] Mr. McNeil administered a FCE of the plaintiff on June 21, 2019. As of that date, Mr. Stang had been working in his apprenticeship in elevator mechanics for approximately one year.

[89] I note that there are some problems with the "factual assumptions" in Mr. McNeil's report. I do not know whether they derive from poor note-taking or from mis-reported facts. For example, Mr. McNeil describes the plaintiff as being the driver of a vehicle in the Accident. That would appear to be a misapprehension. The report also indicates that Mr. Stang "does not recall details of the impact". At trial, Mr. Stang gave clear evidence about his recollection of the impact.

[90] Further, the plaintiff advised Mr. McNeil that he resigned from his carpentry job after he tried the GRTW for a week. That appears to be a misapprehension. There is evidence that Mr. Stang had a failed attempt at an earlier GRTW. However, as noted above, he resigned from his carpentry job in May 2018 at the point he was about to be hired for the elevator mechanic job.

[91] Regarding the plaintiff's work as an elevator mechanic apprentice, Mr. McNeil reported:

> He is presently working full time in installations, 8 to 17 hours in a day depending on the job. … He is able to perform all aspects of the work but is restricted in his tolerance for lifting, carrying overhead work, and tool use and he requires assistance.

This information was supplied by the plaintiff.

[92] I pause to note that this report, like many other FCE reports, includes work limitations that I consider to be of limited relevance. For example, Mr. McNeil found that the plaintiff would be limited in activities requiring prolonged vertical reaching or "dynamic spinal positioning when bending as well as looking up." I accept that there

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are occupations that may require those positions, but in my opinion, the majority of the working population would have difficulty with them.

[93] Based upon the testing in 2019, Mr. McNeil opined that the plaintiff could work in “sedentary” and “light” work positions. He could also do “medium” work, with accommodations for the restrictions noted above. Mr. McNeil found that the plaintiff would not be able to meet the strength requirements of “heavy” work.

[94] In respect of “heavy” work, Mr. McNeil indicated that the plaintiff was not able to lift or carry 50 lbs on a “frequent” basis.

[95] Mr. McNeil’s report notes (without opining) that the occupation of “carpenter” is classified as “medium to heavy” work by the National Occupational Classification, whereas “elevator mechanic/installations” is classified as “medium”. Mr. McNeil opined that the plaintiff was:

a) not capable of working as a carpenter (neither full time nor part time);

b) capable of working full time as an elevator mechanic (with accommodations).

[96] Mr. McNeil opined that the plaintiff exerted full effort during the testing, and Mr. McNeil believed that the test results were reliable.

[97] I return to Mr. McNeil’s opinions on work capacity below.

Defence Experts

Dr. Lari – Psychiatrist

[98] Dr. Lari saw the plaintiff on one occasion and provided a report dated June 6, 2022.

[99] Dr. Lari provided the following diagnoses:

a) adjustment disorder with mixed anxiety and depressed mood;

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b) somatic symptom disorder – with predominant pain.

[100] Dr. Lari noted that the predominant pain has existed since the Accident in 2016. He further noted that there is no disability arising from the somatic symptom disorder. He deferred to other specialists (including Dr. Tarazi) on the issues of causation, disability, and prognosis of the chronic pain. Those issues are beyond his area of expertise. He recommended cognitive behavioural therapy for the somatic symptom disorder but noted that the prognosis for that condition would be secondary to the chronicity of his pain. I infer from his opinion that Dr. Lari felt that the pain was causing the plaintiff's mood issues, as opposed to the opposite.

[101] Dr. Lari recommended the following:

a) a referral to a psychologist with experience in chronic pain,

b) a trial of an antidepressant, and

c) a referral to a chronic pain program.

[102] Of note, Dr. Lari's opinion is that Mr. Stang's chronic pain will have to be treated before he will have improvement in his psychological condition.

Dr. Perey – Orthopedic Surgeon

[103] Dr. Perey, an Orthopedic Surgeon, saw the plaintiff on April 21, 2022. His report of the same date was tendered in evidence without objection or cross-examination.

[104] For a reason that remains unclear, Dr. Perey's report was limited to providing comment upon the status of Mr. Stang's wrist injuries. Dr. Perey notes that, after the Accident, Mr. Stang did not complain of wrist pain during the first 20 appointments with his family doctor. It was not until October 2018 that the first complaint of wrist pain was made.

[105] It follows that Dr. Perey's report did not respond to Dr. Tarazi's opinion. I am unable to rely upon it for any part of my decision.

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Matt Gregson – Functional Capacity Evaluator

[106] Mr. Gregson conducted a FCE on April 6–7, 2022, and his report is dated April 14, 2022.

[107] Mr. Gregson's opinion was that the plaintiff provided inconsistent effort through the FCE testing. Hence, he says that the test results represent a "baseline" and Mr. Stang can "likely function at higher levels".

[108] Mr. Gregson opined that:

a) "As a result of FCE findings Mr. Stang is likely capable of working as a Carpenter in an accommodated role."

b) "from a strength perspective Mr. Stang did not demonstrate the ability to meet the strength demands of an Elevator Mechanic Apprentice."

[109] I review and attempt to integrate these findings below.

Findings Regarding Expert Evidence

[110] Based upon the opinions expressed above:

a) Dr. Tarazi's opinions are uncontroverted. Dr. Perey does not address the same injuries.

b) Dr. Levin and Dr. Lari are in general agreement regarding the plaintiff's psychological make-up and ongoing problems.

c) The two FCEs reached different conclusions at different times:

i. Mr. McNeil found (in 2019) that the plaintiff could not work as a carpenter, but could work as an elevator mechanic (with accommodations);

ii. Mr. Gregson found (in 2022) that the plaintiff could work as a carpenter (with accommodations), but not as an elevator mechanic.

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[111] Although Mr. Gregson's opinion may appear to conflict with Dr. Tarazi's and Mr. McNeil's, I do not think that is the correct interpretation. FCE reports are, by definition, a record of a person's physical capacities at a certain point in time. They are a snapshot. Hence, two reports based upon testing at different times may show different results.

[112] Further, Dr. Tarazi opined that the plaintiff is "not suited" to carpentry work in 2019. That use of language is unspecific, especially for a medical-legal report. I accept Dr. Tarazi's opinion, but I infer that the language he used was vague for a reason. That reason is: Mr. Stang's complaints are similarly vague. I draw that inference for the following reasons:

a) As noted above, Mr. Stang was able to put his efforts toward music and gaming, but not toward employment related activities.

b) Mr. Stang testified that, through the entire chronology, he did not take any painkilling medication. He indicated that this was a choice he made regarding his own body. In my opinion it is unusual for a person to have:

   i. pain that is disabling, and

   ii. a recommendation (from Dr. Tarazi) to take medication, and yet;

   iii. to refuse that medication,

   iv. and thus, choose to remain in pain.

c) Whether an individual with chronic pain is able to work in a given occupation depends upon their subjective pain tolerance. As noted by Dr. Levin, Mr. Stang's perception of his pain exceeds the "normal".

[113] Again, I accept Dr. Tarazi's opinion that the Accident related-injuries resulted in the plaintiff not being "suited" for carpentry work. However, I interpret that statement in light of the FCE and psychiatric evidence.

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[114] I address the issues of causation and indivisibility below.

Causation and Indivisibility

[115] Two of the major issues in this action relate to the causation of the plaintiff's current medical condition and whether the damages caused by the Accident and the WCB Injury are "indivisible". If I were to find that Mr. Stang's current condition to be "indivisible", then I would have to discern the proper handling of the interplay between the (former) automobile tort compensation system and the no-fault compensation regime of WCB. In my opinion, the law on that issue is unsettled with *Pinch v. Hofstee*, 2015 BCSC 1888, appearing to arrive at a different legal conclusion than *Kallstrom v. Yip*, 2016 BCSC 829.

[116] However, based upon my analysis below, I find that the causation of Mr. Stang's injuries can be separated. In other words, I find that the Accident caused certain injuries. The degree of those injuries, and the disability arising from them, was described by Dr. Tarazi in 2019. Thereafter, the WCB Injury caused an aggravation of the underlying condition. The resulting symptoms of the WCB Injury are, again, described by Dr. Tarazi (in his Second Report). As discussed below, the plaintiff's condition was worse in 2022 when Dr. Tarazi re-examined him. Hence, I am able to discern the effect of the Accident and that a worsening of that condition was caused by the WCB Injury. I further find that the losses flowing from each injury are divisible.

[117] Both sides accept the following general propositions of law:

a) The primary test for factual causation is the "but for" test. The plaintiff must show that "but for" the defendants' negligence, the damage or loss would not have occurred. Put another way, the defendants' negligence must be necessary to bring about the damage or loss. However, the negligent conduct is not required to be the sole or predominant cause of the injury. Further, factual causation is determined in a "robust common-sense fashion": *Clements v. Clements*, 2012 SCC 32 at paras. 9–10. Scientific proof is not required. Inferences drawn from proven facts may suffice.

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b) Indivisible injuries are those that cannot be separated or have liability attributed to the constituent causes. Divisible injuries are those capable of being separated out and having their damages assessed independently. An example of a divisible injury is of one defendant injuring a plaintiff's foot and of another defendant injuring the plaintiff's arm.

[118] The determination of whether injuries are indivisible has been the subject of considerable judicial comment. Much of that comment followed from the decision in *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183, which involved both tortious and non-tortious injuries. In that case, the plaintiff suffered a herniated disc while recovering from injuries suffered in two motor vehicle accidents. Justice Major wrote for the Court:

> [25] In the present case, there is a single indivisible injury, the disc herniation, so division is neither possible nor appropriate. The disc herniation and its consequences are one injury, and any defendant found to have negligently caused or contributed to the injury will be fully liable for it.

[119] In *Bradley v. Groves*, 2010 BCCA 361, the Court of Appeal provided the following guidance:

> [17] *Athey* was a case involving both multiple tortious and non-tortious causes. The plaintiff had been injured in two motor vehicle accidents. While still recovering, he herniated a disc in his back during stretching at the gym. The question before the Court was how the damages should be apportioned between the tortious and non-tortious causes.
>
> [18] The Supreme Court of Canada found apportionment between tortious and non-tortious causes contrary to the principles of tort law, and therefore impermissible. The liability for any injury caused or contributed to by a tortious action should be borne jointly and severally by the tortfeasors, and not attributed to non-tortious action.

[120] The Court continued at para. 37:

> [37] We are also unable to accept the appellant's submission that "aggravation" and "indivisibility" are qualitatively different, and require different legal approaches. If a trial judge finds on the facts of a particular case that subsequent tortious action has merged with prior tortious action to create an injury that is not attributable to one particular tortfeasor, then a finding of indivisibility is inevitable. That one tort made worse what another tort created does not automatically implicate a thin or crumbling skull approach (as in *Blackwater*), if the injuries cannot be distinguished from one

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> another on the facts. Those doctrines deal with finding the plaintiff's original position, not with apportioning liability. The first accident remains a cause of the entire indivisible injury suffered by the plaintiff under the "but for" approach to causation endorsed by the Supreme Court of Canada in *Resurfice Corp. v. Hanke*, 2007 SCC 7, [2007] 1 S.C.R. 333. As noted by McLachlin C.J.C. in that case, showing that there are multiple causes for an injury will not excuse any particular tortfeasor found to have caused an injury on a "but-for" test, as "there is more than one potential cause in virtually all litigated cases of negligence" (at para. 19). It may be that in some cases, earlier injury and later injury to the same region of the body are divisible. While it will lie for the trial judge to decide in the circumstances of each case, it is difficult to see how the worsening of a single injury could be divided up.
>
> [Emphasis added.]

[121] I also note the guidance provided by Chief Justice McLachlin, as she then was, in *Blackwater v. Plint*, 2005 SCC 58:

> [78] It is important to distinguish between causation as the source of the loss and the rules of damage assessment in tort. The rules of causation consider generally whether "but for" the defendant's acts, the plaintiff's damages would have been incurred on a balance of probabilities. Even though there may be several tortious and non-tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway: *Athey*. …
>
> [Emphasis added.]

[122] I accept that the authorities indicate that it is difficult to see how a worsening of a single injury can be divisible. However, in my opinion, on the facts of this case, the evidence establishes exactly that.

[123] Applying the reasoning in *Blackwater* to the facts of this case, I find that evidence does not meet the "but for" test for causation. In other words, the plaintiff's best evidence is from Dr. Tarazi. He says that if the Accident had not occurred, then the plaintiff "may" not have suffered the workplace injury (on a balance of probabilities). I return to the portions of the Second Report that I quoted above where Dr. Tarazi wrote:

> I am not surprised that he suffered an aggravation in March 2020 at work. Absent the neck and back injuries that he sustained in the subject motor

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> vehicle accident, he may never have been injured at work in March 2020 or any injury would most likely have been much less severe. It is the motor vehicle accident injury and ongoing neck and back pain which made it much more likely that he would suffer this aggravation and where his pain would continue until now.

[124] These sentences require parsing:

a) The sentence beginning with "I am not surprised" does not influence my decision. It does not establish anything.

b) In my opinion, the sentence: "Absent the neck and back injuries that he sustained in the subject motor vehicle accident, he may never have been injured at work in March 2020" is the key to Dr. Tarazi's opinion. What does this sentence mean?

   i. It does <u>not</u> mean that absent the Accident, the workplace injury would not have occurred.

   ii. It does <u>not</u> mean that absent the Accident, the workplace injury would probably not have occurred.

   iii. Instead, it means what it says: Absent the Accident, it is possible that the workplace injury would not have occurred. The use of the word "may" indicates a possibility, not a probability.

c) The partial sentence: "any injury would most likely have been much less severe" is not an opinion on causation. It is an opinion on severity. This is not a case, like *Athey*, where there was a single injury (disc herniation) that led to the damages. Instead, at best, Dr. Tarazi says that if the Accident had not occurred, then Mr. Stang's WCB Injury would have occurred, but would probably have been less severe.

d) The phrase "made it much more likely that he would suffer this aggravation" does not indicate that the Accident caused the WCB Injury, only that the Accident increased the chance of its occurrence.

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[125] On the basis of Dr. Tarazi's two reports, I find that there were two separate causes of the plaintiff's current condition. The Accident caused a certain degree of disability. The WCB Injury caused a greater degree of disability. Because we have Dr. Tarazi's two reports, we have evidence of the two situations.

[126] It follows that the damages that flow from the two separate causes are divisible. My finding on the divisibility issue is supported by the fact that Dr. Tarazi's opinion changed from the First Report to the Second Report.

a) As of 2019, when the plaintiff had been working as an elevator mechanic apprentice for nine months, Dr. Tarazi opined that Mr. Stang would be able to do that work for the entirety of his career, albeit with pain.

b) In his Second Report, Dr. Tarazi revised his opinion after the WCB Injury, and in 2022, he found that Mr. Stang could not work as an elevator mechanic.

[127] In my view, that is a clear change in Dr. Tarazi's opinion. The only logical inference is that the change in opinion came about due to the WCB Injury. This finding is further bolstered by the plaintiff's FCE (with Mr. McNeil) which found that, in 2019, Mr. Stang could work as an elevator mechanic, but not a carpenter.

[128] In my opinion, the difference between the two injuries is further supported by the following:

a) The length of time between the two injuries, being almost four years.

b) The change in the location of the low back injury (from left side, to both sides).

c) The fact that the plaintiff worked as an elevator mechanic apprentice for almost two years before the WCB Injury occurred.

[129] To be clear:

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a) Based upon my analysis of the evidence set out above, I find that the Accident caused injuries that:

   i. affected Mr. Stang's capacity to work as a carpenter; but

   ii. did not limit his ability to work as an elevator mechanic.

b) Thereafter, in 2020, Mr. Stang suffered a second injury, the WCB Injury, that caused his inability to work as an elevator mechanic.

[130] It follows that the injuries suffered by Mr. Stang, although occurring in the same general areas, had separate causes. Further, the damages flowing from the two injuries are divisible.

What damages flow from the Accident-caused injuries?

[131] The occurrence of the WCB Injury does not, of course, result in an end to the damages caused by the Accident. I proceed below with an analysis of the damages that result from the Accident.

Non-Pecuniary Damages

[132] On the issue of non-pecuniary damages, both sides rely on the guidance provided by our Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, leave to appeal to SCC ref'd, 33886 (29 September 2010). I rely on that guidance in my analysis below.

[133] The plaintiff submits that the range of non-pecuniary damages in this case is $130,000–$170,000. In response, the defendants submit that an award of $70,000 would be appropriate compensation.

[134] The plaintiff relies on the non-pecuniary damage awards in the following cases:

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a) *Easton v. Wolovets*, 2015 BCSC 210— the plaintiff was a carpenter by trade. His work capacity was significantly impacted by his injuries. The court awarded $125,000 in non-pecuniary damages.

b) *Rahemtulla v. Sutton*, 2019 BCSC 1105—The plaintiff was a 36-year-old elevator mechanic who suffered a concussion, chronic pain and a resulting permanent reduction in his earning capacity. He was awarded $115,000 in non-pecuniary damages.

c) *Stare v. Whitehouse*, 2019 BCSC 1445—The plaintiff was an apprentice electrician. He continued in that employment, but he feared that he would be unable to sustain this type of physical work into the future. He was awarded $120,000.

d) *Flores v. Burrows*, 2018 BCSC 334—The plaintiff suffered chronic pain in his neck, back, and hip which kept him from enjoying activities he enjoyed before the accident. He missed no time at work, but found it difficult to sit for long periods and took more time to complete tasks than before the accident. He had difficulty lifting and with performing heavier household tasks and yard work. Prognosis for improvement was poor. He was awarded $115,000.

e) *Gurung v. Trampleasure*, 2020 BCSC 1643—The plaintiff was a 39-year-old nurse with a pre-existing back issue. She suffered chronic pain in her neck and right shoulder, headaches, and psychological issues. She was awarded $130,000 in non-pecuniary damages.

[135] I note that the defence submission proceeds from the position that the plaintiff's injuries resolved completely by 2018 when he commenced work as an elevator mechanic apprentice. That is not my finding. The defence relies on the following cases.

a) *Cegielka v. Grace,* 2020 BCSC 115—The plaintiff was a 32-year-old carpenter when his vehicle was rear-ended. His injuries caused ongoing,

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periodic neck and back pain, but no limitation on his work ability. The court found that the Plaintiff had overstated to some extent the impact of the accident on his life, while downplaying, somewhat unfairly, other events. The court awarded the plaintiff $40,000 for non-pecuniary damages.

b) *Wark v. Edlund,* 2021 BCSC 1410—The plaintiff's injuries caused some chronic pain in his neck and upper back which flared from time to time due to his work. That pain was chronic. The court awarded $60,000 for non-pecuniary damages.

c) *Pham v. Lee,* 2021 BCSC 1254—The plaintiff was injured in two accidents and was left with chronic pain aggravated by her work as a nurse. She managed her pain by remaining as a casual worker, but she also travelled extensively. The court awarded $55,000 for non-pecuniary damages.

d) *McLean v. Redenbach,* 2023 BCSC 8—The plaintiff suffered an acceleration and exacerbation of chronic pain for a period of four years. The court awarded $60,000 for non-pecuniary damages.

[136] In my opinion, the cases at the low end of the plaintiff's range are appropriate comparators for Mr. Stang's circumstances. He suffers from chronic pain. There is a psychological overlay. As noted above, I also find that his perception of his pain is greater than the "normal" person who does not have OC personality traits.

[137] I award non-pecuniary damages of $130,000.

Past Loss of Capacity to Earn Income

[138] The plaintiff claims $135,319 for past income loss. The plaintiff's theory includes income losses suffered after the WCB Injury.

[139] The defendants submit that the income loss was in the range of $37,000. The defence theory is that Mr. Stang's injuries fully healed by mid-2018.

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[140] The plaintiff was 24 years old when the Accident occurred. As noted above, the plaintiff started in carpentry in Drayton. In 2014, he moved to Calgary to work for PCL Builders Inc ("PCL"). He testified that while working for PCL, he first became familiar with, and interested in, the work of elevator mechanics. He understood that they earned higher pay than carpenters. He moved to the Lower Mainland in 2015 and attended courses at BCIT to complete the academic requirements of his apprenticeship. As a result, his 2015 income was dampened by time spent in school.

[141] The plaintiff obtained a job at FirstOnSite Restoration in January 2016. By the time of the Accident on July 16, 2016, he had earned $15,582.

[142] As a result of that short work history, plus time in school, there is no steady history of employment earnings upon which I can base a past income loss assessment. As a result, I am using as my starting point the fact that the plaintiff was qualified as a Red Seal carpenter, and was capable of working in that capacity if the Accident had not occurred.

[143] The plaintiff testified that, at the time of trial, WCB placed him in training courses aimed at a career in sales. He is not aware of a specific career path that will derive from the courses he is taking. On a related note, I understand that his claim for WCB benefits remains open. I note that fact to provide context. It forms no part of my assessment of damages.

[144] The plaintiff's counsel tendered the expert reports of economist Mr. Darren Benning of PETA Consultants. He opines on the economic impact of the Accident on Mr. Stang's future earning capacity. Mr. Benning prepared three reports:

a) December 2, 2020 – "Past and Future Income Loss Multipliers"

b) February 1, 2021 – "Future Income Loss"

c) June 15, 2022 – "Past and Future Income Loss"

[145] Defence counsel did not tender any economic reports, presumably because of their submission that Mr. Stang was fully recovered by mid-2018.

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[146] I will address the defence submission first. The defence submission is that the injuries from the Accident had fully resolved by May 2018 when the plaintiff was cleared to pursue his GRTW. As noted, I have found that his injuries and limitations exceeded that date. Hence, I do not accept that aspect of the defence assessment.

[147] I do accept, however, the defence submission that following the Accident, Mr. Stang put substantial efforts toward playing music and (later) video games. The defence submits that those efforts, if focussed in a different direction, could have rendered employment earnings at some level. I accept this submission. I find it incongruent that a young man could plan, prepare, and execute a cross-Canada music tour in July 2017 while being totally disabled from working for the prior year and then the following 10 months.

[148] This submission, and this finding, does not lead to anything calculable. In my opinion, it simply creates a negative contingency. It raises the prospect that, in the first two years post-Accident, the plaintiff was capable of working in some capacity, but chose to focus on music, instead of pursuing some other line of compensable employment.

[149] In saying this, I accept that Mr. Stang was considered by his treaters to be disabled from working as a carpenter. However, I am assessing this loss based upon the unfolding of events. I am doing so in the absence of any expert opinion as to the plaintiff's ability to work during this period. No such opinion exists until Dr. Tarazi's First Report. As I have found above, based upon Dr. Levin's evidence, the plaintiff's perception of his disability exceeds his actual disability. Hence, I do not accept the premise that, because he was not working, he was totally disabled.

[150] The medical opinion of Dr. Tarazi in 2019 was that the plaintiff was capable of employment as an elevator mechanic. The actual activities undertaken by Mr. Stang, including the cross-Canada tour in July 2017, indicate to me that he would have been capable of working in some sedentary or lighter capacity during some period of time between the Accident and the date that he started in the elevator field (June 2018).

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[151] As of April or May 2018, Mr. Stang's treaters had agreed upon a plan to commence a GRTW in the carpentry field. Mr. Stang chose not to pursue that GRTW, and he switched into the elevator mechanic field. Having taken that step, in my opinion, Mr. Stang is precluded from claiming damages for past income loss (or past loss of capacity) that (he says) results from the Accident. I say that because he made a choice to change careers in order to improve his long-term earning potential. He left a Red Seal position to begin an apprenticeship. He was able to find full-time employment in the elevator field right away. In 2019, the year before the WCB Injury, the plaintiff's full-year income (as an elevator mechanic apprentice) exceeded his anticipated income as a carpenter. If his career switch involved lower short-term earnings, that reduction in pay was not caused by the Accident. It resulted from a decision Mr. Stang made in an effort to maximize his career earnings.

[152] To be clear, I do not find that Mr. Stang's entire claim for any loss of capacity terminated when he switched careers. I address the evidence and Dr. Tarazi's opinion below. However, as I have found above, his WCB Injury is divisible from his Accident-related injuries.

[153] The income loss that he suffered following the WCB Injury has been compensated by WCB. To the extent that there may be some linkage from the post-WCB Injury income loss to the Accident, I refer back to my finding regarding the plaintiff's videogame streaming activities. I find that if he committed the same effort toward finding gainful employment (in any capacity) as he did to videogaming, then his loss would have been substantially reduced.

[154] The plaintiff's written submission on the past income loss claim is premised on calculations included in Mr. Benning's June 15, 2022 report (Table 3A). The plaintiff's submission is based upon the loss from the Accident continuing through the end of 2022. The plaintiff's position on the calculation uses Mr. Benning's figures as follows:

a) It adopts Mr. Benning's calculations for the years 2016, 2017, and 2018.

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b) It then supplements Mr. Benning's calculations for 2019–2023 by making certain deductions. Counsel's submissions deduct the actual earnings reflected in Mr. Stang's Notices of Assessment. Those earning include the wage loss benefits paid by WCB following the WCB Injury. Mr. Benning did not deduct those figures.

[155] The plaintiff's calculation of past income loss is as follows:

Year	Income Loss
2016	$10,476
2017	$27,891
2018	$9,480
2019	$0
2020	$22,056
2021	$29,666
2022	$40,001
Total	**$135,319**

[156] Based upon my analysis above, I find that Mr. Stang's claim for past loss of capacity to earn income ceases in June 2018 when he switched careers to elevator mechanic. The net loss (post-tax) to that point is approximately $48,000. I reduce that figure by $10,000 because the plaintiff has not convinced me that he was totally disabled from working during the entirety of that period. As noted above, he had some capacity to work, as evidenced by his efforts with his band.

[157] As such, I find the damages attributable to the defendants under the head of "past loss of capacity to earn income" to be $38,000. That figure is after tax, but before any disability payments were received.

Future Loss of Capacity to Earn Income

[158] There is no dispute on the applicable law in this area. Despite that agreement on the law:

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a) the plaintiff submits that the damages exceed $2,000,000;

b) the defence submits that no future loss has been suffered.

[159] Our Court of Appeal has provided guidance in a number of cases, and summarized those tenets in *Rab v. Prescott*, 2021 BCCA 345. Justice Grauer distilled a three-step process:

> [47] … The first is evidentiary: whether the evidence discloses a *potential* future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in *Brown*). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring …

[160] I address each step in order below.

Step One: Does the evidence disclose a potential future event that could lead to a loss of capacity?

[161] My assessment of the first step in the analysis is based upon Dr. Tarazi's First Report and opinion. As noted above, Dr. Tarazi opined that Mr. Stang:

a) "is not suited to return to his carpentry job anymore";

b) "will likely be able to perform the job of an elevator mechanic for the rest of his working career, although with pain."

[162] After the WCB Injury, Dr. Tarazi changed his opinion to indicate that Mr. Stang was not capable of doing elevator mechanic work.

[163] If Mr. Stang had not suffered the WCB Injury, it is possible that he would have worked his entire career as an elevator mechanic and suffered no (future) loss of capacity to earn income. His elevator earnings would exceed his carpentry earnings. However, that version of the future did not transpire.

[164] Instead, the plaintiff is now in a position where he cannot work as an elevator mechanic (due to the WCB Injury) and he is limited in his ability to fall back on being

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a carpenter due to the injuries in the Accident. I note my use of the term “limited”. I return to discuss that term below under the Step Three analysis.

[165] It follows that test under Step One is satisfied.

Step Two: Does the evidence disclose a real and substantial possibility that the future event in question will cause a pecuniary loss?

[166] My finding on this step of the test flows from the answer to Step One. The evidence establishes that:

a) a future event has occurred (the WCB Injury);

b) as a result of the WCB Injury, Mr. Stang will have to pursue a career other than elevator mechanic;

c) one of the occupations for which he is qualified is carpentry;

d) he is limited in his ability to work as a carpenter; and

e) that limitation will cause a pecuniary loss.

[167] It follows that the test under Step Two is satisfied.

Step Three: Quantification of the Loss

[168] The quantification of damages for loss of future earning capacity has been, and will continue to be, a subject of much judicial consideration. The legal principles relevant to the assessment were summarized by Justice Voith, as he then was, in *Pololos v. Cinnamon-Lopez*, 2016 BCSC 81:

> [133] The relevant legal principles are well-established:
>
> a) To the extent possible, a plaintiff should be put in the position he/she would have been in, but for the injuries caused by the defendant’s negligence; *Lines v. W & D Logging Co. Ltd*., 2009 BCCA 106 at para. 185, leave to appeal ref’d [2009] S.C.C.A. No. 197;
>
> b) The central task of the Court is to compare the likely future of the plaintiff’s working life if the Accident had not occurred with the plaintiff’s likely future working life after the Accident; *Gregory v.*

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> *Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32;
>
> c) The assessment of loss must be based on the evidence, but requires an exercise of judgment and is not a mathematical calculation; *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18;
>
> d) The two possible approaches to assessment of loss of future earning capacity are the "earnings approach" and the "capital asset approach"; *Brown v. Golaiy* (1985), 1985 CanLII 149 (BC SC), 26 B.C.L.R. (3d) 353 at para. 7 (S.C.); and *Perren v. Lalari*, 2010 BCCA 140 at paras. 11-12;
>
> e) Under either approach, the plaintiff must prove that there is a "real and substantial possibility" of various future events leading to an income loss; *Perren* at para. 33;
>
> f) The earnings approach will be more appropriate when the loss is more easily measurable; *Westbroek v. Brizuela*, 2014 BCCA 48 at para. 64. Furthermore, while assessing an award for future loss of income is not a purely mathematical exercise, the Court should endeavour to use factual mathematical anchors as a starting foundation to quantify such loss; *Jurczak v. Mauro*, 2013 BCCA 507 at paras. 36-37.
>
> g) When relying on an "earnings approach", the Court must nevertheless always consider the overall fairness and reasonableness of the award, taking into account all of the evidence; *Rosvold* at para. 11.

[169] I have that guidance in mind when approaching my assessment below.

[170] In high overview, I consider the starting point for the assessment of the loss suffered by the plaintiff to be represented by the difference between:

a) his (without-Accident) earning potential as a carpenter, with no restrictions or limitations; and

b) his (post-Accident) earning potential given the limits on his ability to work as a carpenter.

[171] For reference, the evidence provided by the plaintiff's economist, indicates that Mr. Stang's assumed career earnings, to retirement at age 67, would be:

a) approximately $1,756,000 (assuming average full-time full-year earnings of a BC male carpenter);

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b) in the range of $1,072,624 (assuming he achieves the average income for a BC male working as a cashier).

[172] I note that:

a) Mr. Benning used the figures for “cashiers” because he was instructed to assume that fact by counsel; and

b) each of the projections above includes consideration of: non-wage benefits, non-participation, unemployment, part-time work, employment insurance benefits, survival, mortality, and present value.

[173] The plaintiff’s submission, based upon Mr. Benning’s estimates, is that Mr. Stang’s future with-Accident career earnings will be in the range of $1,072,624, from the September 2023 trial date through retirement at age of 67, based on the earnings of BC male cashiers. Counsel submits that Mr. Stang may not work as a cashier, but that the plaintiff will work in positions that command similar wages. Counsel submits that the income of male cashiers is similar to the salary range Mr. Stang can expect working in the customer service field. Counsel notes that Mr. Stang is currently being retrained by WCB and is attending courses at BCIT. Mr. Stang testified that the expected salary range is approximately $30,000 to $40,000 per year.

[174] For context, a person earning minimum wage in BC would make approximately $30,000 in a year of full-time employment.

[175] As noted, the primary position of the defence is that the plaintiff has not established the factual underpinning necessary for an award under this head of damage. My findings above do not accept that position. The alternative position of the defence is that the plaintiff has not provided any evidence to show that a future event will result in future loss of earning for him. The defendants submit that Mr. Benning’s Future Income Loss Reports are all speculative. Counsel submits that Mr. Benning admitted under cross-examination that if he had more information, his reports would have been more reflective of the plaintiff’s actual situation. For

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example, Mr. Benning did not know the type of training the plaintiff was taking at BCIT. It follows that he does not know the ultimate career for which the plaintiff will qualify. The defence submits that Mr. Benning is not able to say whether Mr. Stang's (as yet undetermined) career will pay him more than his (theoretical) without-Accident projected income.

[176] In short, I do not accept the defence submission on this issue. By definition, the assessment of future loss of capacity deals with uncertainties. That is especially true in the case of young workers.

[177] In my discussion above, I used the term "limited" to describe the plaintiff's capacity to work in carpentry. I used that word because, in my opinion, the plaintiff's evidence does not establish that the Accident caused him to be disabled from work as a carpenter. As noted, Dr. Tarazi opined that he was "not suited" for his carpentry job. I discussed the inferences I draw from that use of language. Mr. Gregson's April 14, 2022 FCE (the only FCE conducted after the WCB Injury) indicated that the plaintiff could work as a carpenter with accommodations. Hence, the evidence supports a limitation to his ability to work as a carpenter, but not a complete bar.

[178] On the other side of the equation, I do not accept that the plaintiff's future career earnings will be equivalent to those of a "cashier". As noted, that was an assumption that counsel instructed Mr. Benning to make. The occupation of cashier is, by definition, an entry level position. A person working as a cashier has not progressed up the employment hierarchy. Hence, the assumption in Mr. Benning's report is that Mr. Stang will remain in an entry level position through to retirement. In my opinion, that is not a reasonable assumption. Mr. Stang is currently in courses at BCIT. He is taking those courses toward qualifying for a position in sales. His evidence at trial was that he is a hard-working and ambitious person. He continued to be ambitious after the Accident, as demonstrated by his switch of careers to elevator mechanic apprentice. It would be incongruous to find that he was hard-working and ambitious before the Accident, but not hard-working and ambitious after the Accident.

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[179] As a result, I use Mr. Benning's projections of career earnings as a starting point:

a) I find that Mr. Stang's with-Accident career earnings will exceed the earnings of an average cashier.

b) I expect that he will pursue some form of directed sales within the construction industry. Those are the courses he is taking at BCIT.

c) I further find that Mr. Stang is capable of working in some capacity as a carpenter, if he receives accommodations.

d) However, in my opinion, Mr. Stang will be forced to make a choice between working as a carpenter and working in some form of sales position. Common sense says that he will not be able to pursue both types of work on a part-time basis.

[180] Mr. Benning does not provide estimated career earnings for alternate occupations apart from cashiers. As a result, there is no evidence relating to the average career earnings for a BC male with BCIT diploma. As a result, I am left to consider those earnings as a contingency.

[181] As noted above, the starting point for my analysis is:

a) Approximately $1,756,000, career income as carpenter, less

b) Approximately $1,072,624, career income as a cashier,

c) Leaving a (starting point) loss of capacity at $683,376.

[182] In my opinion the plaintiff's actual career earnings will exceed that of a cashier. I do not consider the "cashier" career income to be an apt starting point. This is not a positive contingency. It is simply a question of the correct point of comparison.

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[183] I also find that there are positive contingencies. As noted, the plaintiff is hard-working and ambitious. He is retraining and his education will provide him with a base for achieving higher income.

[184] There are also negative contingencies. I described above that Mr. Stang is diagnosed with some OC personality traits. I expect that those traits will pose difficulty for him in some occupations. It is possible that those same traits may assist him in other occupations. However, overall, I expect that his OC traits will be a hinderance.

[185] I formulate my assessment of Mr. Stang's with-Accident earnings on the following basis:

a) According to Mr. Benning's reports, the average earnings for a cashier peak at approximately $58,000, but the majority of the annual earnings are in the range of $45,000.

b) In my opinion, Mr. Stang's average yearly earnings will exceed a cashier's income by approximately $10,000 over the entirety of his career. I reach that opinion, taking both the positive and negative contingencies into account.

c) Using the economic multipliers from Table 5 of Mr. Benning's June 15, 2022 report, delayed one year to account for the delay in the trial, I find that the appropriate multiplier for Mr. Stang's additional income is 23.253. That figure takes into account all labour market contingencies and survival.

[186] Based upon those considerations, I find that the plaintiff's career earnings will exceed the average earnings of a cashier by a figure that approximates $232,000. On that basis, I find that his career earnings will be in the range of $1,300,000.

[187] Based upon that finding, the loss attributable to the Accident is approximately $450,000 ($1,756,000 less $1,300,000).

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[188] Although I have described this assessment through the means of a mathematical equation, I wish to be clear that my assessment is based upon the entirety of the evidence, including the positive and the negative contingencies.

[189] It follows that under the head of damage for loss of (future) capacity to earn income, I award $450,000.

Loss of Housekeeping Capacity

[190] The plaintiff makes a claim for diminished housekeeping capacity in the amount of $100,000.

[191] The plaintiff concedes that he continued to perform most of his routine housekeeping activities. He says he did this with increased pain. He concedes that his own expert evidence (Dr. Tarazi's First Report in 2019) indicates that, in future, he will be able to mow his own grass.

[192] The main portion of the plaintiff's claim under this head derives from his testimony that he had an intention to construct his own home. He testified that the expected cost-saving over having a house constructed is approximately $100,000. There is no evidence apart from his own estimate.

[193] The defence submits that the evidence indicates (as the plaintiff concedes) that he has performed out his own housekeeping after the Accident. The defence does not specifically address the home construction element of the claim.

[194] In *Matthews v. Wong*, 2021 BCSC 237, Justice Forth confirmed that housekeeping services have an economic value. The loss or impairment of a plaintiff's capacity to perform them is compensable. On the issue of construction work, Forth J. cited three decisions indicating that awards for future loss of home maintenance, repair, and renovation capacity are generally modest: *Chappell v. Loyie*, 2016 BCSC 1722 at para. 258; *Dubitz v. Knoebel*, 2019 BCSC 1706; and *Hastings v. Matthew*, 2020 BCSC 1418. In each of those cases, however, the

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plaintiff owned a property at the time of the subject accident, and their ability to fix-up or maintain the existing residence was diminished.

[195] I dismiss the claim for loss of capacity to perform housekeeping and construction tasks for the following reasons:

a) On the housekeeping side, as noted, he concedes that he has not needed assistance since the Accident.

b) On the construction side, I refer back to Mr. McNeil's FCE report in 2019. As of that date, the plaintiff could carry out a medium strength occupation. The plaintiff presented no evidence that the construction of a house would require greater strength than he had at the relevant time.

c) Further, on the facts of this case, the plaintiff lives in rental accommodation with roommates. His claim for future construction compensation is linked to a future event that is, in my opinion, merely speculative. Mr. Stang has no current plan to purchase bare land and build upon it. He testified that he had a goal, similar to a life goal, that he hoped to pursue at some future point in time. In my opinion, that evidence does not establish a sufficient factual basis for a claim under this head of damage.

[196] On the basis of my analysis above, I dismiss the claim for loss of capacity for future housekeeping and construction.

Cost of Future Care

[197] The plaintiff seeks an award for cost of future care in the range of $95,500.

[198] The defence submits that all future care is related to the WCB Injury and that the defendants are not liable for any of it.

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[199] The plaintiff relies upon the recommendations of Dr. Tarazi's Second Report (April 19, 2022), and, on the basis of that report, he seeks compensation for the following future expenses:

a) conservative treatments for his neck and back injuries;

b) a self-directed exercise program in a gymnasium setting on an ongoing basis;

c) anti-inflammatory medications such as Celebrex or Naprosyn to help control any flare-ups;

d) trigger point injections to potentially provide partial, temporary relief of myofascial pain.

[200] I note that he says that he will continue working out in his home gym, lifting free weights, riding the stationary bicycle, and exercising with TheraBands, all within his pain limits.

[201] The plaintiff also notes that Dr. Levin and Dr. Lari both recommend the following:

a) seeing a psychologist with experience with chronic pain for cognitive behavioural therapy;

b) a trial of anti-depressants; and

c) attendance at a chronic pain program at Jim Pattison Outpatient Care.

[202] The majority of the amount claimed by the plaintiff ($72,000) is described in the submission as "Symptom Management Treatments" which include physiotherapy, massage, and chiropractic treatments.

[203] I have reviewed Dr. Tarazi's reports. I have found the damages resulting from the Accident and the WCB Injury are divisible. Hence, in theory, any

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recommendations made in Dr. Tarazi's Second Report (2022) that were not included in his First Report (2019) should, by inference, be related to the WCB Injury.

a) In both reports, Dr. Tarazi recommends "conservative treatments". However, his recommendation in that regard is that the plaintiff "continue to be as active as he can" including working out in his home gym.

b) In the First Report, Dr. Tarazi:

   i. recommended that the plaintiff continue with acupuncture, chiropractic, and massage treatments "over the next one year";

   ii. recommended the plaintiff take anti-inflammatory medications to address his pain which would allow him to exercise more and gain better control of his pain.

[204] I note that the plaintiff's submission claims for future medications. However, despite Dr. Tarazi's recommendation, the plaintiff's testimony at trial indicated that he chooses not to take medications. On that basis, I award no amount for medications.

[205] Based upon Dr. Tarazi's recommendations, I am unable to link any continuing need for passive treatments (acupuncture, massage, chiropractic) to the Accident. Dr. Tarazi was clearly recommending those treatments (four years ago) for a temporary period to assist the plaintiff through his re-strengthening. That period has long expired.

[206] On the other hand, I accept that the plaintiff requires some degree of psychological intervention. The plaintiff claims a total of $4,950 for a psychological assessment and intervention. I consider that the assessment has already taken place (in the form of the two psychiatric reports). Hence, I award $2,700 for psychological treatments.

[207] I also accept that the plaintiff would benefit from a pain program. I do not see a specific amount or cost ascribed to the program at the Jim Pattison Outpatient

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Care and Surgery Centre in Surrey. If that program is not funded through the medical services plan, then Mr. Stang is entitled to the equivalent amount of the cost as damages for future care.

[208] I dismiss the other claims for future care. Specifically, I note that the plaintiff does not need a gym membership. Dr. Tarazi recommends that he continue with his weight lifting exercises at home. I do not accept that his exercise equipment (including weights) require replacement every five to seven years. I decline to make award for the various stools, brushes, mops, and lightweight vacuum claimed by the plaintiff. In my opinion those items simply stand in the place of other household items that all adults are required to purchase.

[209] Hence, my total award for cost of future care is $2,700, plus the undetermined cost of the pain clinic.

Special Damages

[210] The plaintiff claims $36,005.28 in special damages. In response, the defendants submit that an award of $12,731 would be appropriate.

[211] The defence position is that expenses incurred after the WCB Injury should be deducted from the plaintiff's claim.

[212] I accept the defence submission that rehabilitation and treatment expenses incurred after the WCB Injury cannot be attributed to the Accident. In addition to the effect of the WCB Injury, I note the comments of Dr. Tarazi, above, indicating the limited time during which he would recommend passive treatment. That recommendation would have expired in April 2020. The WCB Injury occurred in March 2020. In particular, I do not accept the following expenses as being special damages:

a) $8,700 for St. John's Chiropractic, incurred after January 12, 2020;

b) $1,286.75 for a Rogue Bicycle, incurred May 18, 2021.

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[213] I do not accept the $5,838.70 claim for the Saatva bed that was purchased in December 2018.

[214] The plaintiff claims mileage of $2,169.10 for travelling to and from 189 therapy visits. I reduce that figure by one third (to $1,445) to account for the visits that occurred after March 2020.

[215] The remainder of the amounts claimed are, in my opinion, reasonable. By my calculation that figure is $19,458, and I award that amount as special damages.

Summary and Conclusion

[216] Based upon my findings above:

a) I find the defendants 100% liable for the Accident.

b) I award the plaintiff damages in the following amounts under the following heads:

i.	Non-Pecuniary Damages:	$130,000.00
ii.	Past Loss of Capacity:	$38,000.00
iii.	Future Loss of Capacity:	$450,000.00
iv.	Loss of Housekeeping:	$0.00
v.	Cost of Future Care:	$2,700.00
vi.	Special Damages:	$19,458.00
	Total:	**$640,158.00**

[217] As noted above, the future care damages may also include the cost of the pain program.

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[218] The plaintiff has been successful in his claim. Absent any offers or deductions of which I am not aware, the plaintiff is entitled to his costs at Scale B.

"A. Ross J."

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