IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Ghataurah v. Fike,***
2008 BCSC 533

Date: 20080303
Docket: M033224
Registry: Vancouver

Between:

Tajinder Ghataurah

Plaintiff

And:

Albert Jesse Fike

Defendant

and

Docket: M044551
Registry: Vancouver

Between:

Tajinder Ghataurah

Plaintiff

And:

Michael Ka Ming Cheng and Anna Kalina Kolodziejska

Defendants

Before: The Honourable Madam Justice Martinson

Oral Reasons for Judgment

March 3, 2008

Counsel for the Plaintiff	D. McGregor and K. L. Simon
Counsel for the Defendants	K. M. M. Baldwin
Place of Trial:	Vancouver, B.C.

A. Overview

[1] Mr. Ghataurah was involved in two motor vehicle accidents, one on August 6, 2002, and one on May 19, 2004.

[2] The evidence of all of the experts shows that Mr. Ghataurah sustained musculoligamentous injuries with prolonged symptoms of some functional significance.

[3] It is agreed that the first accident caused injury to his neck, left trapezius/shoulder, low back and intermittent headaches. The preponderance of the evidence is that the second accident caused soft tissue injury to his cervical spine and further aggravation of pre-exiting soft tissue injury to his neck and shoulder and some aggravation of his low back pain.

[4] The defendants have described him as “in many ways … a remarkable young man. He appears extremely focused, highly ambitious and willing to put in the time and effort to succeed in achieving his goals.” They do not deny that he was injured. However, they submit that the evidence does not show that the symptoms that he has experienced and claims to still be experiencing are as severe as he indicates.

[5] I am going to state my conclusions now, and then explain the reasons for those conclusions. Before giving my reasons under each category of damage, I will summarize the submissions of the parties.

[6] I assess general damages at $70,000; loss of income to the date of trial at $12,129.05; loss of future earning capacity at $90,000; special damages at

$3,321.84; and cost of future care at $35,870.52. The claims for damages for delayed graduation and loss of housekeeping capacity are dismissed.

B. General Damages

1. The Plaintiff's Submissions

[7] Mr. Ghataurah submits that the first accident caused injuries to the intravertebral discs of his cervical and lumbar spines. He argues that because of his age, lack of history of lower back pain and history of a healthy lower back, it is more likely than not that the first accident was the precipitating trauma that compromised the L5-S1 annulus fibrosis. He says that the case of ***Bedwell v. McGill***, 2003 BCSC 451 sets out the principles applicable to causation from ***Athey v. Leonati***, [1996] 3 S.C.R. 458.

[8] The intermittent symptoms are explained by the dynamic nature of the condition. He criticizes the opinion of Dr. Crossman because it was largely based on document review, the opinion of Dr. McGraw because it was coloured by his review of Dr. Crossman's report and was superficial, and the opinion of Dr. Teal because he did not look at the MRI and did not acknowledge that it is not uncommon for there to be a delay between injury and symptoms.

[9] He submits that the evidence of Dr. Sahjpaul should be preferred.

[10] He says that he continues to suffer from headaches, neck pain, shoulder pain, mid back pain, and lower back pain. These are aggravated by participation in

physical activities and standing or sitting in static positions for long periods of time. His future is not likely to be as enjoyable because the injuries continue to affect him.

[11] He submits that the award of non-pecuniary damages should be $85,000 and has provided a number of cases supporting that conclusion. The initial symptoms caused by the first accident were compounded and made worse by the second accident.

2. The Defendants' Submissions

[12] The defendants submit that Mr. Ghataurah suffered only soft tissue injuries. The first accident caused injuries to the neck, left trapezius/shoulder, low back and intermittent headaches. The second accident caused an exacerbation of the neck, shoulder and right low back soft tissue injuries and the additional injury to the left low back and anterior left neck.

[13] They suggest that there was steady improvement after the first accident and Mr. Ghataurah was considerably improved before the second accident. The second accident set him back.

[14] They argue that the medical legal reports filed in support of his claim are inferior in detail, accuracy, independent confirmation of information provided by him and extent and quality of reasoning supporting the opinions. The defendants submit that less weight should be given to his reports.

[15] If the court finds that the accidents caused or materially contributed to the lumbar disc protrusion, the defendants submit that it has caused only two or three

days of acute pain and Mr. Ghataurah does not require further investigations or surgery.

[16] Mr. Ghataurah has been told to keep active and do strengthening exercises. The defendants submit that there is a clear correlation between performing active exercises and improvement. Choosing to spend time furthering his education and career may have hindered or delayed improvement but his recent resolve to attend to his physical needs bodes well for the future.

[17] The defendants submit that general damages should be in the range of $35,000 to $50,000 and provided a number of cases supporting that conclusion.

3. Analysis - General Damages

(a) Disc Injuries

[18] As I have just noted, an issue has arisen with respect to disc damage that has implications for general damages, future care and future earnings. An MRI in March 2006 showed injuries to the intravertebral discs of the lumbar and cervical spines.

[19] The question is whether the accidents caused the injuries. Mr. Ghataurah says they did and the defendants say they did not.

[20] I will deal with this issue now.

[21] The Supreme Court of Canada considered the principles that apply to causation in ***Resurfice Corp. v. Hanke***, 2007 SCC 7, [2007] 1 S.C.R. 333. The “but for” test applies, except in very limited circumstances. The plaintiff bears the burden of showing that, but for the negligent act, the injury would not have occurred.

However, in special circumstances, the law has recognized exceptions to the basic "but for" test, and applied a "material contribution" test.

[22] Broadly speaking, the cases in which the "material contribution" test is properly applied involve two requirements. First, it must be impossible for the plaintiff to prove that the defendant's negligence caused the plaintiff's injury using the "but for" test. The impossibility must be due to factors that are outside of the plaintiff's control; for example, current limits of scientific knowledge. Second, it must be clear that the defendant breached a duty of care owed to the plaintiff, thereby exposing the plaintiff to an unreasonable risk of injury, and the plaintiff must have suffered that form of injury. Neither requirement is met in this case. The "but for" test applies.

[23] The British Columbia Court of Appeal recently considered this issue in ***Bohun v. Segal***, 2008 BCCA 23, a medical malpractice case. The Court of Appeal said it is not appropriate, if the “but for” test fails, to then resort to the “material contribution” test.

(i) *Cervical Spine*

[24] I will consider the cervical spine first.

[25] The MRI of March 17, 2006 shows a relatively small central annular tear at the C3-4 level without associated disc protrusion, nerve root or spinal cord compression.

[26] Mr. Ghataurah says this was caused by the motor vehicle accidents.

[27] Dr. Sahjpaul's opinion is that this sort of injury in a young man, with no immediate history of some other traumatic event and complaint of symptoms, suggests it is caused by the August 6, 2002 motor vehicle accident. He says it is difficult to ascribe all of the clinically reproducible symptoms of cervical neck pain to the tear itself because of the muscular ligamentous injuries to the region. Because the annulus fibrosis is innervated, it is not unreasonable to believe that the tear is contributing to the cervical spine sequela.

[28] Dr. Hershler thinks that the tear is related to one of the two motor vehicle accidents.

[29] Dr. Teal is of the opinion that there is no evidence of a cervical radiculopathy, symptomatic cervical disc herniation, or nerve root compression.

[30] I am satisfied that it is more likely than not that the injury to the cervical spine was caused by the first motor vehicle accident and aggravated by the second. But for the motor vehicle accidents, the injury would not have happened.

[31] I accept the evidence of Dr. Sahjpaul that this sort of injury in a young man with no immediate history of some other traumatic event and complaint of symptoms, suggests that it was caused by the August 6, 2002 motor vehicle accident. As he says, it is difficult to ascribe all of the clinically reproducible symptoms of cervical neck pain to the tear itself because of the musculoligamentous injuries to the region. However, I agree with him that because the annulus fibrosis is innervated, it is more likely than not that the tear is contributing to the cervical spine sequela.

(ii) *Lumbar Spine*

[32] I turn next to the lumbar spine.

[33] Mr. Ghataurah says that it is more likely than not that this injury at L5-S1 was attributable to the first motor vehicle accident and aggravated by the second. The defendants say that it is unrelated to the motor vehicle accidents and even if it were caused or materially contributed to by the motor vehicle accidents, there were only two, or at most three, episodes of acute pain, one at the end of October 2002 and one at the beginning of December 2004. Mr. Ghataurah says there was a third but does not remember the date. Dr. Thakorlal's notes only refer to two, though he said he went to see Dr. Thakorlal each time. In any event, no further investigation or surgery is required.

[34] Mr. Ghataurah relies on the evidence of Dr. Sahjpaul, Dr. Hershler and Dr. Cameron. He says that little weight should be accorded to the evidence of Dr. Crossman, Dr. Teal and Dr. McGraw. The defendants rely on the evidence of Dr. Crossman, Dr. Teal and Dr. McGraw and say little weight should be accorded to the evidence of Dr. Sahjpaul, Dr. Hershler and Dr. Cameron.

[35] The disc injury to the lumbar spine can properly be called a disc protrusion. I am satisfied that it was likely caused by the first motor vehicle accident and aggravated by the second motor vehicle accident. But for the motor vehicle accidents, the injury would not have happened.

[36] Dr. Sahjpaul, Dr. Hershler and Dr. Teal all agreed that such an injury can be dynamic in its clinical presentation. Much was made of the raking and yard work

done by Mr. Ghataurah at the end of October 2002. There was a difference of opinion among the medical experts as to whether that episode could have caused the disc protrusion. The defendants' experts felt it could, while the plaintiff's experts and Dr. Sahjpaul in particular, thought that the protrusion was not likely caused by the raking and yard work he did. He called these low risk activities for an L5-S1 disc bulge.

[37] It is, of course, for the court to make the decision as to causation with the assistance of the medical evidence in areas outside the court's expertise. I agree with Mr. Ghataurah that before the August 2002 accident he was a young, healthy man with no history of low back pain. He had a history of doing a lot of physical work.

[38] I need assistance in determining whether the injury could have been caused by the first motor vehicle accident and did not manifest itself until almost three months later. I need assistance in determining whether raking and yard work could cause this disc protrusion. I need assistance with respect to the nature of a disc protrusion like this.

[39] With respect to the first question, I have concluded that the answer is yes. I have relied particularly on the evidence of Dr. Sahjpaul. In my view, he is most qualified to assist because of his experience and expertise, though I am not satisfied that actually viewing the MRI made a difference.

[40] I have considered the arguments raised by the defendants that: Dr. Sahjpaul did not review Dr. Crossman's report or Dr. Teal's report; he had erroneous

information with respect to when the left leg pain first developed; he found a normal neurological examination with no nerve root tension signs; he did not conduct an examination when the symptoms first arose; and he was not advised of the complete history. He, they say, made no distinction between symptoms, no consideration of the normal neurological examination and no consideration of the delay of time between the accidents and complaints.

[41] He was, however, in a position to advise the court on the issues upon which the court required assistance. Much of the difference of opinion among the doctors was based on a combination of their medical expertise and their fact finding conclusions. The former is within their purview. The latter is not.

[42] Given the likely dynamic nature of the disc, it is more likely than not in all of the circumstances that the vigour of the raking and yard work resulted in the enlargement of the existing disc protrusion such that it irritated his sciatic nerve. The principles set out in ***Bedwell v. McGill*** apply equally to this situation.

[43] I find it compelling that in March 2006, at the time of the MRI, the disc protrusion was still large enough to be of concern.

[44] The injury was likely aggravated by the second motor vehicle accident.

[45] In reaching this conclusion, I have not relied upon the opinion of Dr. Hershler. As the defendants point out, he did not differentiate between the accidents, and changed his opinion after he completed his first report, without an adequate explanation as to why he did so.

[46] I have placed little weight on the evidence of Dr. Cameron because of the circumstances relating to his evidence. I have not concluded that Dr. Teal was under a misapprehension as to the nature of the disc injury. I have considered the evidence of Dr. Crossman that disc herniation commonly occurs spontaneously between ages 20 to 40 in the general population.

[47] I have also considered Dr. Crossman's evidence that low back pain was almost always on the right side, not the left side. However, I agree with Mr. Ghataurah that there is evidence from Dr. Thakorlal and the pain diagram that there was, in fact, low back pain bilaterally.

[48] I have kept in mind that Dr. Thakorlal noted on December 1, 2004 that the left sided pain and numbness extending down the lateral aspect of his left leg appeared spontaneously and resolved spontaneously. He did not, however, have the benefit of seeing the MRI.

[49] Having concluded that causation has been proven, I must still consider the impact of this injury on Mr. Ghataurah. As noted, there were at best three episodes. I agree with the defendants that the preponderance of the evidence is that further investigations are not required. It is not likely that surgery will be necessary. At the same time, given the fact that the protrusion likely still exists, and is dynamic in nature, Mr. Ghataurah could suffer from further sciatic episodes.

(b) General Damages - Quantum

[50] I assess general damages at $70,000 for the following reasons.

[51] Mr. Ghataurah is a highly talented young man who has been, and continues to be, driven to do well professionally. He excelled at Keen Engineering and now at Stantec, a large international company, doing much better than many employees who have been there much longer. According to his bosses, Mr. Ulker and Mr. Siddiqui, he has a bright future with Stantec.

[52] While there were differences among the medical professionals, particularly as it related to the disc injuries, there were also many points of consensus. Dr. McGraw, an orthopaedic surgeon who conducted an independent medical examination for the defence, is of the opinion that the plaintiff suffered a Grade II soft tissue injury to the cervical spine, aggravation of a pre-existing neck and shoulder complaint, and a Grade II injury to the thoracolumbar spine in the first accident. The second accident caused a further Grade II soft tissue injury to the cervical spine, an aggravation of pre-existing soft tissue injury to the neck and shoulders, and a Grade I injury to the lumbar spine. This is consistent with all of the medical opinions.

[53] I am satisfied that the headaches he has suffered and continues to suffer are caused by the first accident, and aggravated by the second. But for the accidents, he would not suffer from the headaches. That is in accord with the preponderance of the medical evidence.

[54] In addition, he continues to suffer from some neck pain, shoulder pain and low back pain. I have concluded that there is a real possibility that he could suffer from sciatic episodes in the future, though they would occur infrequently. I agree with him that the conditions are aggravated by participation in physical activities and

standing or sitting in static positions for long periods of time. I also agree with him that his future is not likely to be as enjoyable because the injuries continue to affect him.

[55] The preponderance of the medical evidence is that the injuries are chronic and are unlikely to resolve completely.

[56] I am satisfied that the ongoing symptoms are not attributable to all of the time he spends both on his full-time job and on furthering his education. It should not be overlooked that before the first accident he was driven to do well and managed to do "double duty" without consequence. He was a relatively healthy man. In my view, but for this accident, he would likely have continued to be able to carry on in that manner. His ability to do so since the accidents and into the future has been compromised. I have considered the video surveillance evidence. It does show actions consistent with feeling pain.

[57] At the same time, he showed improvement after both accidents. Exercising and attending massage therapy helps.

[58] I have concluded that, in the particular circumstances of this case, it is not appropriate to draw an adverse inference because people who could have been called were not.

C. Lost Income to Date of Trial

[59] Mr. Ghataurah claims past wage loss for his job at Visions from August 6, 2002 to December 31, 2004. He was absent from work, took reduced shifts, worked less, and earned less when he did work. The claim for past wage loss is $12,129.05.

[60] The defendants argue that there is no evidence that Mr. Ghataurah had to quit his Visions job in October 2002. The defendants submit that the reduction in hours and eventual quitting after returning to Visions in 2003 make sense because the job became redundant given his professional position. On a balance of probabilities, there is no evidence that it was necessary to leave the job at Visions because of accident related injuries. Alternatively, they submit that there is no convincing and cogent evidence as to what income Mr. Ghataurah would have had at Visions between October 2003 and April 2004.

[61] In my opinion, there is a real and substantial possibility that Mr. Ghataurah would have worked more had he not been involved in either motor vehicle accident. Doing so is consistent with his past work patterns.

[62] I am satisfied that the method of calculation used on behalf of Mr. Ghataurah is a reasonable one. I assess his lost income to the date of trial at $12,129.05.

D. Loss of Future Earning Capacity

1. The Plaintiff's Submissions

[63] Mr. Ghataurah cites ***Palmer v. Goodall*** (1991), 53 B.C.L.R. (2d) 44 (C.A.); ***Downey v. Brousseau***, 2007 BCSC 149, 45 C.C.L.T. (3d) 231; and ***York v. Johnston*** (1997), 148 D.L.R. (4th) 225, 37 B.C.L.R. (3d) 235 (C.A.). He says that the cases cited by the defendants are fact based and do not change the law.

[64] He submits that he is less capable overall for all types of employment and less marketable or attractive as an employee to a prospective employer because he

will be limited in the future. He is less valuable to himself as a person capable of earning income. The award should be high for diminishment of earning capacity because he is a high income earner.

[65] There is, he submits, a real and substantial possibility that he will not be able to sustain the pace at which he is currently working. All the adaptations he has to make are taking a toll and are going to catch up with him. He is less competitive than he was.

[66] Also, when he overdoes it, he pays the price by not being able to come to work the next day, by missing meetings and by asking his partner to cover for him.

[67] He wants to be more hands-on. He finds it difficult to tell clients he is not going to be there.

[68] It is proper to compare him to himself before the accident. But for the accident, how much better would he have been? Now there are barriers that he did not face before. The range of employment opportunities is narrowed.

[69] He submits that an appropriate award in this case is $125,000.

2. The Defendant's Submissions

[70] Mr. Ghataurah, the defendants say, is focused, ambitious and successfully climbing the corporate ladder with the goal of being in senior management. The defendants state that all medical treatment providers, independent medical experts

and capacity evaluators agree that the plaintiff is functionally capable of continuing to work full-time as an electrical engineer.

[71] The applicable law with respect to the loss of future earning capacity is found, the defendants submit, in: ***Naidu v. Mann***, 2007 BCSC 1313; ***Nisbet v. Pare***, 2007 BCSC 1173; and ***Steward v. Berezan***, 2007 BCCA 150, 64 B.C.L.R. (4th) 152. Principles are enunciated in ***Palmer v. Goodall*** (1991), 53 B.C.L.R. (2d) 44 (C.A.); ***Parypa v. Wickware***, 1999 BCCA 88, 169 D.L.R. (4th) 661; and ***Brown v. Golaiy*** (1985), 26 B.C.L.R. (3d) 353 (S.C.).

[72] The defendants submit that to prove a loss of capacity to earn income in the future, Mr. Ghataurah must first establish that there is a substantial possibility, giving rise to compensation for diminished earning capacity. If this is found in the affirmative, then the court must give weight according to its relative likelihood.

[73] The defendants argue that there is no substantial possibility that the plaintiff will ever wish to engage in jobs requiring physical labour and there is no evidence that he will want to or need to change occupations to one that requires a higher level than his present functional capacity. The evidence, they say, shows that he likes to direct as opposed to actually doing the work: he was a foreman when working for his father and he directed others when the deck was built. There is, they say, no realistic alternative occupation that is impaired by his injuries relating to the motor vehicle accidents.

3. Analysis - Loss of Future Earning Capacity

[74] When determining what might happen in the future I must decide if the event is a real possibility, rather than merely guesswork. If it is a real possibility, I must then determine the actual likelihood of it occurring.

[75] Some of the considerations that can be taken into account in assessing whether there is a loss are (as originally set out in ***Brown v. Golaiy***):

1. whether the plaintiff has been rendered less capable overall from earning income from all types of employment;

2. whether the plaintiff is less marketable or attractive as an employee to potential employers;

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

4. whether the plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

[76] There is no reason why an injury which permits a plaintiff to continue in a particular occupation, but at a reduced level of performance and income, should not be compensated for through damages for loss of earning capacity (***Sinnott v. Boggs***, 2007 BCCA 267, 69 B.C.L.R. (4th) 276 at para. 15).

[77] The court is tasked with assessing damages, not calculating them on some mathematical formula (***Mulholland (Guardian ad litem of) v. Riley Estate*** (1995), 12 B.C.L.R. (3d) 248, 63 B.C.A.C. 145 (C.A.)). The impairment of earning capacity as a capital asset must be valued. A starting point is the comparison of the likely future of the plaintiff if the accident had not occurred with the plaintiff's likely future after the accident and the difference between the amounts earned. However, the overall fairness and reasonableness of the award must also be considered (***Rosvold v. Dunlop***, 2001 BCCA 1, 84 B.C.L.R. (3d) 158 at para. 11; ***Reilly v. Lynn***, 2003 BCCA 49, 10 B.C.L.R. (4th) 16 at para. 101). Allowance must then be made for the contingency that the assumptions upon which the award is based may prove to be wrong (***Reilly v. Lynn*** at para. 101).

[78] I dealt with this issue in ***Downey v. Brousseau***.

[79] I conclude that Mr. Ghataurah is in a different position now, with respect to his future earning capacity, than he would have been in but for the accidents.

[80] I have taken into account here all of the factors I relied upon in the general damages analysis.

[81] The evidence, including the functional evaluation evidence, shows that Mr. Ghataurah will be able to continue as an electrical engineer. It also shows that he has some limitations that would prevent him from doing some heavy physical labour.

[82] There is no real possibility that he will engage in employment where physical labour is the primary focus. However, I accept Mr. Ghataurah's evidence that before

the accident, he was a more hands-on manager, letting the clients know that he, personally, was always there for them. He would always attend meetings, including meetings elsewhere, and attended at job sites. I accept Mr. Ghataurah's evidence that he is no longer able to keep up the pace he established before the accident. There is a real possibility that he will not be able to do that in the future and that his injuries will continue to take a toll. While he will no doubt continue to do very well, there is a real possibility that he will not be able to do all of the same things and at the same pace. I assess the likelihood at 75%.

[83] So far, he has been lucky with accommodating employers. His co-worker, Mr. Fung, has been prepared, on occasions, to cover for him when he has to leave early or misses a meeting. There is a real possibility that this will not always be the case. I assess that likelihood at 75%.

[84] While the evidence is that electrical engineering jobs are currently easy to come by, there is a real possibility that this will not be the case in the future. I assess that likelihood at 50%.

[85] I have taken into account the following points:

1. he has been rendered less capable overall from earning income from all types of employment;

2. he is less marketable or attractive as an employee to potential employers;

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

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

[86] I have used as a guide the methodology set out in the Peta Consultants April 24, 2006 report. I have used the two and one-half percent discount rate required under the ***Law and Equity Act***, R.S.B.C. 1996, c. 253. I have considered the contingencies of life.

[87] I assess damages for loss of future earning capacity at $90,000.

E. Special Damages

[88] Mr. Ghataurah claims $2,871.84 for transportation costs, fees for visits to medical practitioners, costs of the failed course and costs of medication and therapy. The plaintiff also claims $450 for an orthopaedic pillow and non-prescription medications. The total claim for special damages is $3,321.84.

[89] The defendants are prepared to pay any amounts properly attributable to the accidents.

[90] In my opinion, the amounts claimed are attributable to the accidents. Mr. Ghataurah is entitled to an award of $3,321.84.

F. Delayed Graduation

[91] Mr. Ghataurah argues that the failure of ELEX 7210 was because the injuries impacted on his ability to prepare adequately and properly focus on the exam. He submits that his testimony is consistent with this. The failure delayed graduation by one year and he claims the difference between expected future without accident income and expected future with accident income. This claim is for $30,000.

[92] The defendants submit that this case is different than other cases of delay of graduation. The defendants further submit that even if the symptoms played a part in the failure of the exam, delayed graduation was not caused by the defendants. The defendants state that if the episode was related to his L5-S1 disc protrusion, that was not caused by the defendants. Even if the court finds a causal relationship between the episode of sciatica and the accidents, the plaintiff did not act prudently to prevent or mitigate the situation. The defendants further submit that there is no evidence that the plaintiff suffered any damage or lost anything as a result of the delay in graduation.

[93] I am satisfied that Mr. Ghataurah's injuries contributed to the failure of the exam, particularly given the very low mark he received, the fact that the mark was inconsistent with his other exam performances, and his study habits. I am not, however, satisfied that the failure of the exam caused a delay in his graduation.

G. Costs of Future Care

[94] The claim for future care costs is $38,870.52. The basis for the claim is set out at Appendix C of Mr. Ghataurah's written submissions. The headings are: massage therapy, $19,506.60; kinesiologist, $750 plus $3,251.10; Pulsed Signal Therapy, $3,000; gym membership, $8,669.60; medications, $650.22; chair for working at home, $530; foot rest for working at home and work, $228; laptop riser for working at home, $100; wireless keyboard and mouse for working at home, $80; high back (Obusforme) back support with replacement every five years, $575; orthopaedic pillow with replacement every three to four years, $800; angled document holder with replacement every three to five years, $730.

[95] He relies on his functional evaluation report.

[96] Dr. Hershler recommended ongoing massage therapy assistance and Pulsed Electromagnetic Field Therapy. Mr. Ghataurah submits that Pulsed Electromagnetic Field Therapy is a reasonable form of therapy and cites cases where the Supreme Court has recognized awards for the cost of this therapy: ***Marchand v. Dunstan***, 2000 BCSC 1887; ***Tino v. Kirson***, 2004 BCSC 878; ***Stone v. Ellerman***, 2007 BCSC 969; ***Delgado v. Parra***, 2002 BCSC 1345; and ***Carter v. ICBC***, [1999] B.C.J. No. 1530 (S.C.) (QL).

[97] The defendants say that the need for an ergonomic work chair has already been fulfilled. They suggest that further sessions with a kinesiologist are reasonable for $750.

[98] They submit that Mr. Ghataurah does not need funding for a gym pass because there is a gym program at BCIT and at SFU for enrolled students. They say that massage therapy for future flare-ups at a cost of $50 for 12 sessions is reasonable. They argue that further physiotherapy would be redundant in addition to massage therapy and sessions with a kinesiologist. They suggest that the need for a drafting table and ergonomic computer accessories has already been met.

[99] The defendants say that Pulse Signal Therapy is inappropriate because the efficacy of it is not widely accepted. Further treatment can be achieved with a Corticosteroid combined with local anaesthetic injection under fluoroscopic guidance combined with physiotherapy. Injections are covered by MSP. The defendants point to the case of ***Zaruk v. Simpson***, 2003 BCSC 1748, 22 B.C.L.R. (4th) 43, where the claim for future Pulse Signal Therapy treatments was denied because there was no evidence that the technique had gained general acceptance and the evidence did not meet the test for admissibility of novel science.

[100] I am satisfied that all of the claims are appropriate, with the exception of the claim for Pulse Signal Therapy. I agree with the position of the defendants in this respect.

H. Housekeeping Capacity

[101] Mr. Ghataurah's continuing limitations and easily aggravated symptoms do not allow him to do all of the home maintenance tasks that he knows how to do. He suggests that it is well established that a plaintiff whose ability to perform housekeeping services, including home maintenance, is diminished in part ought to

be compensated for that loss. He cites ***Tombe v. Stefulj***, 2002 BCSC 154. Mr. Ghataurah states that a plaintiff need not prove he will hire someone to perform tasks in order to be compensated for the loss and thus an award for loss of housekeeping capacity is appropriate.

[102] He claims that the value of assistance that he would not otherwise pay for at $500 per year to age 70 is $20,500.

[103] Mr. Ghataurah also claims for his lost ability to contribute since the first accident in 2002. This claim is for $500 per year for five years, totalling $2,500.

[104] He cites ***Marchand v. Dunstan*** (*supra*).

[105] The defendants say that there is no evidence to support this claim. Mr. Ghataurah is in no different position than any other householder with a good income. The evidence is that until he moved into the house, he literally did not do anything while living with his family.

[106] I agree with the defendants' submissions in this respect.

I. Apportionment Between the Accidents

[107] For each head of damages, the award is attributable 55% to the first accident and 45% to the second.

"Martinson J."