IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kathuria v. Wildgrove,*
2014 BCSC 1274

Date: 20140710
Docket: M135909
Registry: New Westminster

Between:

Taranjit Singh Kathuria

Plaintiff

And

Ian Wildgrove & Sarah Wildgrove

Defendants

Before: The Honourable Mr. Justice Williams

Reasons for Judgment

Counsel for Plaintiff:	P.G. Kent-Snowsell and P.S. Tung
Counsel for Defendants:	G. Murphy and J.D. Barnes
Place and Dates of Trial:	New Westminster, B.C. March 18-22, 2013
Place and Date of Judgment:	New Westminster, B.C. July 10, 2014

[1] The plaintiff Taranjit Singh Kathuria brings this action for damages incurred in a motor-vehicle accident. The other vehicle involved was co-owned by both of the named defendants, Ian Wildgrove and Sarah Wildgrove. Mr. Wildgrove was driving the vehicle at the time of the collision. Any reference to "the defendant" in these reasons will be to Mr. Wildgrove.

Issues

[2] Liability for the collision is disputed and will have to be determined.

[3] As well, the plaintiff's entitlement to recover damages under certain of the heads of damages claimed is disputed by the defendants as is the quantum of damages sought.

[4] The components of the damage claim are as follows:

1. Non-pecuniary damages.
2. Past wage loss (two parts to claim).
3. Future income loss (two parts to claim).
4. Cost of future care.
5. Future housekeeping costs.
6. Special damages.

Liability

[5] The evidence on this issue is the testimony of three witnesses: the plaintiff, the defendant Mr. Wildgrove and a third party who was present at the scene and witnessed the event. As well, there are photos of the scene and the vehicles.

[6] The accident occurred shortly after 4:00 p.m. on July 21, 2009 at the intersection of 101 Avenue and 152 Street in Surrey. At that point, 152 Street is comprised of three lanes of travel southbound and three lanes northbound. For each

direction, there are two through lanes and one left-turn lane. 101 Avenue at that location is four lanes wide. There is a through lane and a left-turn lane for both eastbound and westbound traffic.

[7] Traffic is controlled by lights. The intersection is a busy one and that was especially so at the time of the collision.

[8] The plaintiff's evidence is that he was driving northbound on 152 Street, intending to turn left onto 101 Avenue. He was alone in his vehicle, a 2006 Buick. He had positioned his vehicle in the left-hand turn lane. The light facing him was green. He entered the intersection and stopped, waiting for an appropriate break in the oncoming traffic in order to make his turn safely.

[9] The plaintiff described the green light turning to amber and, following that, seeing vehicles in each of the two oncoming lanes nearest the centre line come to a stop. He was not able to observe any vehicle approaching in the curb lane. He concluded that the oncoming traffic was clear and that it was safe to make the turn. He moved forward into his turn, cautiously. As the front of his vehicle entered the third of the southbound lanes, that is, the curb lane, he suddenly saw the defendants' pick-up truck coming toward him at a substantial speed. He testified that he had no time to react and there was no opportunity to take any evasive action. The collision was virtually instantaneous. His vehicle was hit hard. The photographic evidence shows that substantial damages resulted, and that the principal point of contact for the plaintiff's vehicle was the left front. The photo also shows that the airbags on that vehicle deployed.

[10] The defendant testified that he was travelling southbound on 152 Street, driving his Toyota Tacoma pick-up. He was travelling in the curb lane, at a speed of approximately 50 km per hour. As he approached the intersection at 101 Avenue, he said that the light was green but, by his recollection, when he was approximately three vehicle lengths from the intersection, the light turned to amber. In the circumstances, he made the decision not to stop, but to continue through at the speed he was travelling. As he entered in the intersection, he saw the plaintiff's

vehicle in front of him. From his perspective too, the collision was virtually instantaneous and unavoidable.

[11] The third party witness to the event was Mr. Boyarski. He was driving in his automobile, and was at the relevant time in the left-hand lane of travel on 101 Avenue, facing eastbound. He had stopped because the light was red; he was first in line at the intersection, waiting for the light to change so that he could proceed.

[12] He testified that the traffic to his left slowed and came to a stop. He says that he was watching the Buick as it began to proceed when he heard an engine sound from his left. He saw the defendants' truck come through the curb lane and collide with the Buick. The truck did not come to an immediate halt but continued to move, striking a post before coming to rest on the southwest corner of the intersection.

[13] The essence of Mr. Boyarski's testimony is that, when these events occurred, the light facing him was red, but that he looked up a very short while later and saw that the light facing him was now green.

[14] The plaintiff says that the evidence is clear that he was lawfully in the intersection, properly waiting for traffic to clear so that he could proceed safely through his turn. In his submission, he was entitled to proceed as he did, once the light had changed from green to amber and the southbound traffic which was visible to him had stopped. He says the defendant was negligent in entering the intersection as he did, at or about a speed of 50 km per hour, with the light having turned from green to amber while he was some distance away from the intersection stop line.

[15] The defendant says that he was only about 30 or 40 feet from the intersection when he noticed the light change from green to amber, and he also testified that he was concerned that a blue Mazda automobile was following closely behind him. In the circumstances, he says that he made an appropriate decision to continue through the intersection. In his submission, he constituted an "immediate danger" to the plaintiff and accordingly, the plaintiff ought not to have to move forward as he did.

[16] I note that, in the course of trial, a statement was put to the defendant. It was a statement that he made to the insurance adjuster, shortly after the collision, wherein he appears to have stated that the light had turned red just immediately before the moment of actual collision. Although he offered an explanation at trial as to the apparent discrepancy, I am not satisfied that his explanation for the discrepancy is entirely convincing. In the circumstances, I have some reservations as to the reliability of his testimony with respect to the precise timing of the light.

[17] The provisions of the *Motor Vehicle Act,* R.S.B.C. 1996, c. 318 which have relevance to the matter are these:

> **Yielding right of way on left turn**
>
> **174** When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.
>
> **Yellow light**
>
> **128** (1) When a yellow light alone is exhibited at an intersection by a traffic control signal, following the exhibition of a green light,
>
> > (a) the driver of a vehicle approaching the intersection and facing the yellow light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, unless the stop cannot be made in safety,
>
> **Passing on right**
>
> **158** (1) The driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle, except
>
> > (a) when the vehicle overtaken is making a left turn or its driver has signalled his or her intention to make a left turn,
> >
> > (b) when on a laned roadway there is one or more than one unobstructed lane on the side of the roadway on which the driver is permitted to drive, or
> >
> > (c) on a one way street or a highway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and is of sufficient width for 2 or more lanes of moving vehicles.
>
> (2) Despite subsection (1), a driver of a vehicle must not cause the vehicle to overtake and pass another vehicle on the right

> (a) when the movement cannot be made safely, or
> (b) by driving the vehicle off the roadway.

[18] With respect to the meaning of “immediate hazard” in s. 174 and the duties imposed upon a left-turning driver such as Mr. Kathuria, the plaintiff accepts that he is not permitted to turn when there is an immediate hazard present. He relies upon the decision of *Raie v. Thorpe* (1963), 43 W.W.R. 405 at 406, [1963] B.C.J. No.14 (QL) (B.C.C.A.) as authority for the proposition that an immediate hazard exists when an approaching vehicle is so close to the intersection that when the other driver attempts to make a left turn, a collision threatens. He does not dispute that, as a left-turning driver, he is obliged to ensure that the turn can be made safely, even when the signal light facing oncoming traffic turns amber or red: *Pacheco (Guardian of) v. Robinson* (1993), 75 B.C.L.R. (2d) 273, 1993 CanLII 383 (C.A.) However, he contends that the defendant was not in such proximity to the intersection that he (the plaintiff) was able to see him and recognize him as a hazard.

[19] He submits that the defendant was obliged to stop in the face of the amber light, and that there is no reason to conclude that the stop could not be made in safety. Furthermore, he says that s. 158 has application because of the fact that the defendant was, immediately before the collision, overtaking another vehicle driving in the lane to his left, and that movement could not be made safely.

[20] In my view, the defendant is liable for this collision.

[21] While no witness can be said to have a description of the event which is absolutely 100% reliably accurate, upon a careful assessment of the testimony of the three eye witnesses and the photographic evidence of the scene and aftermath, I conclude that the defendant entered the intersection on a light that was decidedly stale – amber and on the verge of turning red. It follows that it had turned from green to amber when he was at least three full vehicle lengths back from the stop line, and probably more. I also find that he was driving at or near the speed limit (50 km per hour in the curb lane).

[22] The defendant elected to proceed, to run the light. It is relevant that one or possibly two automobiles that were driving alongside him or slightly ahead of him were able to safely stop at the intersection. Evidently his decision was informed in part by his view that another vehicle was following him closely. However, I am not able to conclude that he was unable to make his stop in safety.

[23] At the time the light changed from green to amber, the plaintiff was in the intersection, positioned to turn left. As he began to move forward, I am satisfied that he did so in a cautious fashion and, in accordance with what was there to be seen, properly believing that the way was safe. Based upon the damage, I believe that the nose of the plaintiff's vehicle was just into the curb lane, but not by a great deal. I do not believe that the defendant vehicle was so close that it was there to be recognized as an immediate hazard.

[24] In the plaintiff's submission, the following statement of Madam Justice Newbury in *Kokkinis v. Hall* (1996), 19 B.C.L.R. (3d) 273, 1996 CanLII 2404 (C.A.) is apposite of the situation:

> 10 … An amber light is not, as the current witticism suggests, a signal to accelerate or to pass traffic that is slowing to a stop. Indeed, as Mr. Justice Esson noted in ***Uyeyama***, in a busy city like Vancouver and at a busy intersection like 25th and Granville, an amber is likely the only time one can complete a left turn. Drivers approaching intersections must expect that this will be occurring. Putting a burden on a left-turning driver to wait until he or she sees that all approaching drivers have stopped would, in my view, bring traffic to a standstill. We should not endorse such a result.

I agree. In my view, the reference is entirely apt.

[25] To conclude, in the circumstances, I find that the defendants' manner of driving was negligent and was the cause of the collision. The plaintiff was not negligent.

The damage claims

[26] Before analyzing the damage claims advanced by the plaintiff, there are certain related matters to be explained and examined. Those include a review of the

specific injuries he said he sustained; an examination of one particular injury, his right knee; and some explanation of the plaintiff's ordinary activities at and around the time of the collision.

The plaintiff's injuries

[27] The principal evidence of Mr. Kathuria's injuries is his own testimony at trial, together with the evidence of two medical doctors whose reports were tendered, and the cross-examination of each. The plaintiff relies on Dr. Tarazi, an orthopedic surgeon who examined him in 2012 and prepared a report. The defence expert was Dr. McKenzie, also an orthopedic surgeon. Although he did not examine the plaintiff, he prepared a report based on his examination of a number of medical records. Essentially, his report was in the nature of a critique of Dr. Tarazi's opinion.

[28] There are two other points to be noted in this regard. One is that the plaintiff's general practitioner, whom he saw on a number of occasions after the accident, did not prepare a report and was not called to testify at trial. His charts relating to his dealings with the plaintiff were available and were referred to in the course of cross-examination. The other point is that the defendants arranged for the plaintiff to be examined by a specialist that they appointed, Dr. Grypma. No report was provided by him and he was not called as a witness. I will address each of these matters later in these reasons.

[29] The plaintiff claims he suffered bodily injury as a consequence of the defendant's negligence. The specifics are as follows:

a. He says there was bruising to his left hand and forearm. Those injuries resolved quite shortly after the accident and were fully resolved within two months. There is no controversy regarding this.

b. Following the accident, he claims to have experienced pain in his neck and says that carried on for some time. I accept there was such injury and find that it was substantially resolved within a year and was fully resolved by the time of the trial. The plaintiff's testimony confirms that.

Curiously, I note that in the report of Dr. Tarazi, he states this: “in my opinion, the motor-vehicle accident of July 21, 2009 has most likely caused neck and lower back myofacial tissue injuries. This injury has affected the muscles and ligaments in his neck and back regions.” Later in his report, he says the pain is “now chronic and will likely continue on a permanent basis despite some further improvement within the next year”. I am not certain that the second passage necessarily relates to neck injury. The first passage does, and it is at stark variance with the evidence of the plaintiff. It is the plaintiff’s evidence which informs my finding.

c. The plaintiff says he sustained injury to his left shoulder in the accident and that has not resolved. He says that discomfort was persisting at trial. In his report, Dr. Tarazi expresses his opinion that the accident most likely caused a left shoulder myofacial soft tissue injury. As at the time of his examination, he found that the stiffness in the shoulder had resolved but that the plaintiff had pain with certain overhead activities, heavy lifting, and some repetitive movements. Dr. Tarazi expresses the view that the left shoulder pain is likely now chronic and will most likely continue on a permanent basis. He opined that the injury is not associated with any significant increase in the future risk of osteoarthritis in the joint. I note there are no objective indicia to confirm this injury. The evidence of the injury is essentially subjective, relying upon the plaintiff’s description.

d. The plaintiff says that he sustained an injury to his low back in the accident and that injury continues to cause him discomfort. He testified that it limits his mobility and that at the end of the day he feels soreness and tiredness.

Earlier I made reference to the opinion contained in the report of Dr. Tarazi, and particularly where he expressed the opinion that the

accident had caused both neck and lower back myofacial tissue injuries.

e. The plaintiff says that his left knee was injured in the course of the accident. In his description of the effects of the accident, he made mention of it. Somewhat oddly, mention of this injury to other treating health care professionals seems to be scant. There appears to be no further mention of it until September 8, 2009, when he attended at his family doctor and the clinical record makes reference to a complaint of discomfort in the knee. There is also a note of an examination of the knee on October 13, 2009 with the notation that the left knee was normal.

The plaintiff says this injury was a source of persistent discomfort and pain, and particularly in the context of his efforts to return to ball hockey. His evidence on the point was to the effect that the knee was consistently sore, weak, unstable and had a tendency to give out. The testimony of the plaintiff at trial was that both of his knees are now painful (which I take from his testimony to be a consequence of his right knee injury) and together with his lower back, result in him being sore and tired at the end of the day.

[30] In addition to the physical injuries which I have described, the plaintiff testified that he experienced some headaches as a consequence of the accident. By the time of trial, he described those as being only occasional.

[31] The plaintiff says that these physical injuries (plus an injury to his right knee, which I will discuss momentarily) had the effect of making it very difficult for him to sit for any significant length of time. He says that there was an accompanying anxiety which adversely affected his ability to concentrate. He also says that the physical injuries he sustained made him less mobile and one consequence of that is that he gained approximately 25 pounds. That too, it would seem, resulted in a further diminishment of his activity level.

[32] With respect to medical steps taken by the plaintiff to deal with his injuries, in his special damages schedule, he indicates that he attended upon his family doctor on approximately 30 occasions. In fact, the clinical records with which he was presented at trial suggest that there were 11 visits between the date of the accident and December 30, 2010 – a period of some 18 months. As well, he took chiropractic, massage therapy, and physiotherapy treatments. His doctor prescribed both painkilling and anti-inflammatory medication and, he says, recommended that he stay off work until September 2009. Additionally, there seems to have been some further suggestion of restriction with respect to his job, although that is not perfectly clear.

Right knee injury

[33] There is also the matter of the right knee. The essence of the plaintiff's position is that he sustained a serious injury to his right knee while playing ball hockey in July 2010. The basis upon which he attributes the right knee injury to the defendant's negligence is that, because of the tenderness and weakness in the left knee (which was injured in the accident), while playing ball hockey, he placed an inordinate amount of weight and force upon the right knee, and that caused the injury.

[34] To be clear, there is no claim that the knee was injured in the motor-vehicle accident. The plaintiff does not suggest that it was. However, he says it is an injury for whose effects he should be awarded damages because it was indirectly caused by the defendant's negligence which resulted in the accident.

[35] Before analyzing that claim, there is some relevant background information that is necessary to enable an understanding of the situation.

[36] The analysis begins with the proposition that the onus lies upon the plaintiff to prove that the defendants' negligence caused his injury. The applicable standard of proof is on a balance of probabilities.

[37] The issue must be examined with some care, particularly because the causal link alleged is indirect and because of the significant gap in time between the occurrence of the motor-vehicle accident and the right knee injury.

[38] The evidence offered to prove the causation is the opinion of Dr. Tarazi, an orthopedic surgeon called by the plaintiff. He states that, in his view, the left knee injury was a material contributing factor to the right knee injury.

[39] The defendants respond with the opinion of Dr. McKenzie, also an orthopedic surgeon, who disagrees with Dr. Tarazi's opinion. The plaintiff objects to that evidence being received.

[40] In support of his objection, the plaintiff relies on a number of deficiencies which he alleges, collectively, render Dr. McKenzie's conclusions and opinion of virtually no reliable value. Among the concerns is the fact that Dr. McKenzie did not make any assumptions for the purpose of his report, as the rules of court require. The concern is also raised that he did not examine the plaintiff or take an oral history from him, and those are important elements of the process.

[41] The plaintiff relies upon the observations of Walker J. in *Ruscheinski v. Biln*, 2011 BCSC 1263, where a number of concerns that attend such a "records review" are summarized, with the conclusion that reliance on an opinion resulting from a process of that nature is questionable.

[42] In my view, those considerations have application in this matter, such that I decline to admit or take into account the opinion of Dr. McKenzie with respect to the causal connection (or more specifically, the lack thereof) between the two knee injuries.

[43] I turn now to the evidence of Dr. Tarazi.

[44] The critical component of Dr. Tarazi's opinion that the right knee injury is causally related to the motor-vehicle accident is stated in his report:

> Mr. Kathuria was trying to increase his physical activity level in 2010. As he was trying to get back to playing ball hockey he was still limping and was placing increasing weight on his right leg during running and twisting movements. In my opinion, the fact that he was favouring his left knee by overloading his right knee has increased the load on his right knee which likely significantly contributed to his right knee injury. If it were not for the left knee pain and limp, he likely would not have suffered his right knee injury and anterior cruciate ligament tear. Therefore, in my opinion, the left knee injury that was caused by the motor vehicle accident of July 21, 2009 was a material contributing factor to his right knee anterior cruciate ligament tear. In the injury to his right knee, he also suffered a medical collateral ligament injury. …
>
> [Emphasis added].

[45] With respect to his understanding of the surrounding circumstances, as explained to him by the plaintiff, he said this:

> With conservative therapy, his overall symptoms were gradually improving, to a point where he tried to get back to playing sports. He tried playing ball hockey. He was still having pain in his left knee, and therefore, was applying more pressure on his right leg while running and twisting. While he was trying to play on July 5, 2010, he made a sudden turn and applied most of his weight on his right leg due to his left knee pain. Suddenly, he felt his right knee buckle and fell down.

[46] Dr. Tarazi was cross-examined concerning his opinion. The relevant portions of the cross-examination, with respect to the right knee injury, are as follows:

> Q Okay. And -- and that limping suggests to you -- to you that that's -- he was placing increased weight -- so let me just break this down. You understood him to be limping when he was playing ball hockey, correct?
>
> A That's what I understood.
>
> Q Okay. And because of that understanding, you felt that that limping would be placing greater weight on his right knee as he went through his manoeuvres playing ball hockey?
>
> A Yes.
>
> Q And that greater loading made it more probable that he would pop his right knee?
>
> A Yes.
>
> Q And I am following that correctly?
>
> A Yes.

Q Okay. But people pop their ACL's all the time, even absent injuries to the opposing leg, correct?

A Yes.

Q And when you are running, I am not really clear on the mechanism of how you put extra load on one leg when the other leg is off the ground.

A Well, you would have decreased stance face on the one side -- on the painful side. Stance face means the time when your leg is -- your foot is in contact with the ground during a running gait or a walking gait. So if you have less time on your -- or if he had less time on his left foot in the running, or in turning, he would be putting more time and shift his load more to the right knee and spend more time on the right leg --

Q All right.

A -- in that activity.

Q So if I have this right, then you would expect him to be sort of having an abnormal gait where his left knee would come down and just basically touch down long enough to be there and then he would go to his right and spend more time on his right leg?

A Basically.

Q All right. So he would be limping while running?

A Yes.

Q And if it weren't for that limping you understood to have been in place, then this probably would have been a normal ACL tear?

A Hypothetically, if there was no symptoms in the left knee at all, it would have been considered a common ACL tear from ball hockey, yes.

…

Q That's what he told you. Does ball hockey, given what you understand about it, is not something you want to be playing if you have a lot of musculoskeletal injuries, you would agree?

A Well, some people play despite a lot of symptoms, whether at any level, including professional or recreational level. Some people play with injury, some people play with pain and they subject themselves to further injury --

Q Okay

A -- but it becomes their choice.

Q Yeah. But it is not something you would recommend?

A I wouldn't recommend if somebody is having a lot of pain, or a lot of swelling, or a lot of stiffness in a joint to play on that joint.

Q Right. Because it could worsen it?

A It could worsen it and cause other injuries.

Q Right. And, in fact, yeah, ball hockey can injure you in and of itself?

A Yes, it can.

Q An ACL injury, for instance?

A Yeah, they can occur.

…

Q Okay. And, hypothetically, if you were to learn that he played about 11 games between September 26, 2009, and December 13, 2009, that would have been information that would have been helpful to you in your assessment as well, correct?

A What would have been helpful also is whether he had symptoms while playing, not just the fact of playing.

Q Okay.

A Because we don't know how much of the game he played, whether he played as a sub or if he played on the main roster, and how much -- how full capacity he was playing at.

Q All right.

A We don't know that. So that's all information you want to know.

Q So you need to know whether or not he was scoring goals, scoring assists, getting penalty minutes, and having any complaints afterwards of -- of pain in those areas that he says he injured?

A Yeah. Especially complaints during and after --

Q Okay.

A -- the game.

Q And, similarly, if you were given to understand he played 14 games between January 2nd, 2010, and June 29th, 2010, would your -- would you have liked to have that in forming your opinion?

A Same thing, I would like to know whether he -- how much -- what intensity he played, and whether he had symptoms while playing.

Q Okay.

A We --I did know that he was having still symptoms around the time when he injured his right knee.

Q yeah, your understanding --

A Still having -- that was my understanding.

Q Yeah. Your understanding was he started sometime in 2010 and that --

A Yeah.

Q -- he was limping?

A Yes, correct.

Q But you don't know the vigour to which he had been playing, whether he had been playing on a regular basis?

A Yeah, I did not know that.

Q Okay, and, hypothetically, if you had found that he had been playing with full vigour from September of 2009, up until the time that he popped his ACL in July of 2010, would that have changed your opinion?

A If he was playing at full capacity, running, jumping, turning, with no pain, no symptoms at all with the left knee, then, yes, hypothetically it would have changed my opinion.

Q And in that --

A So, basically, if he had a left normally functioning knee, yes, it would have changed my opinion.

Q And you would be more likely to agree at that point then that the ACL injury resulted just as a simple matter of sports rather than being related to the motor vehicle accident?

A Yes, in that hypothetical --

Q Okay.

A -- case, yes.

Q Sorry, and just to clarify. The limping that he referred to, that was his information, correct?

A That was his reporting to me?

Q Okay. And the fact that he was favouring his left knee by overloading his right knee, that's, in fact, not a fact, that's your supposition, correct?

A That's -- I am relying on this information to be true, which I received from him.

[47] It is evident that his opinion is based, in substantial part, on the information that was provided to him by the plaintiff. Particularly, he appears to have accepted and relied upon the plaintiff's advice that, at the time of the right knee injury, the plaintiff's left knee was weak and unstable and that he was limping pronouncedly as he played. With respect to the plaintiff's involvement in ball hockey, he accepted the plaintiff's assertion that he was just getting back into the sport after some considerable time away.

[48] Accordingly, to assess the weight that should be attached to Dr. Tarazi's opinion, an examination of the veracity and reliability of the plaintiff's assertions to the doctor with respect to his ball hockey activities is warranted.

[49] The plaintiff testified that, at the time of the accident and for some considerable time prior, he had been an avid ball hockey player. He played in an organized competitive league in Surrey and was, by my understanding of the evidence, a fairly skilled player. His testimony at trial was that he enjoyed the game and that it was his passion. He said that, following the motor-vehicle accident, he tried to play ball hockey in September of 2009; he described playing a couple of shifts but he could not run so he sat on the bench. He testified that he went to see the doctor and arranged physiotherapy a few days later. His testimony was that after playing, his knee and shoulder were aching. He described that if he played more than a few shifts, the pain made it necessary to elevate and ice the knee and that he would have to apply topical analgesic. In total, he said that in 2009, after the motor-vehicle accident, he would estimate that he played approximately five games but not at his usual level of intensity - he was not able to get to the level of his ability. He testified that when attempting to play, his left side gave out, and that his knee would give out and he would have to take the weight off it. He said that he could not really run for the ball and stick handling was difficult. He said that he did not feel safe going into the corners.

[50] His testimony was that the following year, in 2010, he attempted to get back into the game. He said that he was playing “some ball hockey” and that he was hoping to qualify for a Western Canadian tournament. However, he described having the same issues then with his left knee: when he was running, he felt like the left knee would buckle or give out. He said he could not run as much or play as aggressively. He said that if he was running, he would feel a pinch or instability after a few strides and felt unbalanced.

[51] He then described the incident where the right knee was injured in July 2010. He was playing ball hockey, running for the ball, and had to change directions. He said that his left knee gave out and he heard a pop in the knee and fell to the ground. He was unable to play because of the pain and so he went home. The next day he went to hospital where the diagnosis was made.

[52] In cross-examination, the plaintiff was confronted with certain questions and answers from his examination for discovery in September 2012. There he was asked when he had returned to playing ball hockey, and particularly, in relation to the July 2010 event:

> Q When did you first get back to playing ball hockey?
>
> A I would like to say maybe three weeks prior to that accident or incident, or a month somewhere.
>
> Q So in June of 2010?
>
> A Yes.
>
> Q Had you attempted to play prior to that?
>
> A I don't believe so.
>
> …
>
> Q So you were playing in May of 2009?
>
> A Yes.
>
> Q Had your season concluded by the time of the accident?
>
> A I think it ended the week after that, or the end of the week before. Somewhere in there.
>
> Q You didn't play ball hockey in 2009 after the accident?
>
> A No.
>
> Q So you missed the first part of the season in 2010?
>
> A Yes.

[53] The plaintiff conceded that the answers he gave were not accurate. His explanation for the discrepancy was to the effect that he was confused and that "it" was jumbled up. He said he was mistaken and gave the wrong answer; he also said "I should have said I don't remember."

[54] Also in the course of cross-examination, the plaintiff was presented with a series of game records from his ball hockey league for games in which his team, the Surrey Assassins, played. Those sheets pertain to a time period commencing in September 2009 and ending at the end of June 2010.

[55] I wish to pause a moment to say something about those records and what reliance should be placed upon them.

[56] The plaintiff submits quite adamantly that these records should be given very little weight. He says they are not business records in the classic sense and they are not reliable. He says the information contained within them is “circumspect”. In fact, I understand the submission to be that they are suspect. The plaintiff’s position is that the Court should not place much evidentiary weight upon them and that they cannot be used as proof that the plaintiff played every game where his name appears.

[57] The defendants accept that the records are not perfectly reliable, but say that, assessed in the context of the other evidence at trial, including the testimony of the two witnesses from the league, it is more likely than not that the plaintiff played in most of the games attributed to him by the games sheets.

[58] Each of these positions has some merit. On the basis of the testimony at trial, I accept that there were, from time to time, liberties taken with respect to the documentation of the roster. There may have been occasions where names were entered but the named individual did not play. Although I accept that may have been the case from time to time, I am satisfied that, for the most part, the records provide a fair reflection of what occurred at the games. I am not prepared to use the records to conclude that the plaintiff played in every game where his name is listed on the roster, but I am confident in concluding that he played a significant number of those games and that, taken in totality, the games sheets accurately depict a scenario which is quite at variance with the impression the plaintiff sought to leave. I believe he played in a good number of those games and that he played an active and contributory role.

[59] I return now to the records. To summarize, game sheets from a total of approximately 30 games between September 2009 and the end of June 2010 were adduced and put to the plaintiff. Each of those game sheets indicates that the plaintiff was one of the players on the roster for that particular the game. Obviously, there is no record of his time on the floor or his actual involvement in the play. However, the sheets record game activity in terms of goals, assists, and penalties incurred.

[60] For the time period between September 26, 2009 and December 13, 2009, the records indicate the plaintiff played in a total of 12 games. In 10 of those games, he scored, either goals or assists, or sometimes both, and in three of those games he incurred penalties.

[61] For the time period between January 2, 2010 and June 29, 2010 the sheets indicate that the plaintiff played in a total of 18 games. In eight of those games, he scored goals or assists, and in some instances both. As well, the records indicate that in eight of those games, penalties were imposed upon him.

[62] When he was asked about those sheets, on an individual basis, as to whether he had played in those games, his answers typically were to the effect of "I don't think so"; "I'm not sure"; "It could have been". To summarize, it is fair to say he did not specifically admit having played in any particular game, but seems to have accepted that some of the records were accurate in indicating that he had played.

[63] There is one further complication with respect to the situation of the plaintiff's right knee injury. It is this: in the course of pre-trial preparation, the defendants arranged for the plaintiff to attend upon Dr. Grypma, an orthopedic specialist, to be examined. In fact, the plaintiff did meet with Dr. Grypma and, according to the plaintiff, an examination was conducted.

[64] The defendants have not adduced any evidence from Dr. Grypma.

[65] The submission of the plaintiff is that the Court should draw an adverse inference, essentially concluding that the opinion of Dr. Grypma would have been favourable to the plaintiff. In support of that submission, the plaintiff relies upon the decision of *Eccleston v. Dresen*, 2009 BCSC 332. There is extensive reference in that case to the decision of the Court of Appeal in *Buksh v. Miles*, 2008 BCCA 318. The plaintiff says that is a proper articulation of the principles to be applied.

[66] The defendants make no submission with respect to this matter or Dr. Grypma's examination.

[67] I have considered carefully the relevant authorities to be applied to this matter, and particularly the Court of Appeal's decision in *Buksh*. Applying the considerations that the Court set out there, I find there is, in principle, no reason that the Court would not deal with the matter as the plaintiff urges, that is, to draw an inference adverse to the defendants and to conclude that Dr. Grypma's evidence would have been favourable to the plaintiff's position. I do, however, have a real reservation with proceeding in that fashion. My concern is based on the recognition that for Dr. Grypma to arrive at a conclusion with respect to the causal linkage would necessarily require knowing the plaintiff's actual ball hockey activities and the state of his left knee leading up to the right knee injury. Given my serious misgivings as to the reliability of the description Mr. Kathuria provided prior to trial (at the examination for discovery and in his consultation with Dr. Tarazi) I have significant doubt that any opinion that Dr. Grypma might offer might be one the Court could have confidence in. In other words, even if I were to infer that Dr. Grypma's report would have been supportive of the plaintiff as was Dr. Tarazi's report, the same concern with respect to the underlying information would have a similar effect.

[68] As can be seen, the matter is by no means straightforward.

[69] Nevertheless, for the purpose of this analysis, I will proceed on the premise that Dr. Grypma would have given evidence favourable to the plaintiff, with the caveat I have just explained.

[70] Finally, there is the matter of the plaintiff's family doctor- the practitioner that Mr. Kathuria went to see subsequent to the accident and for the time that followed - Dr. Bhatti. The plaintiff did not call Dr. Bhatti as a witness at trial nor did he tender a report containing Dr. Bhatti's opinion. His explanation for declining to call the doctor is that he claimed he is often away from British Columbia studying, and so he did not consider Dr. Bhatti his regular treating physician. Accordingly, the plaintiff says that the doctor would be limited in his ability to provide an opinion. The plaintiff also said that he did not have confidence in Dr. Bhatti. He testified that the visits were usually brief and the examinations were not well done.

[71] While this is a situation where the Court might consider drawing an adverse inference against the plaintiff, I decline to do so. My conclusion is informed to some extent by the fact that the clinical records of Dr. Bhatti were available to the defendants for cross-examination, and that the plaintiff offered some explanation for the decision not to call the doctor. While that explanation was not especially persuasive, it is, nevertheless, my view that no inference should be drawn.

[72] Thus it can be seen there are a number of complicating factors with respect to the issue of whether the plaintiff's right knee injury should be found to be caused by the left knee injury from the accident.

[73] I have concluded that the force of Dr. Tarazi's opinion, the centerpiece of the plaintiff's proof on the issue, is substantially diminished by my view of the evidence which indicates that the plaintiff was involved in a meaningful way in ball hockey between the date of the motor-vehicle accident and the date of the right knee injury, to an extent substantially greater than he caused Dr. Tarazi to understand. When I consider that evidence on that diminished basis, and even if I take into account some limited inference with respect to the evidence of Dr. Grypma, I am not persuaded that the plaintiff has proven his contention that the left knee injury was a causal factor in the injury of the right knee as the law requires him to do in order to establish that the defendants are liable for its effect.

[74] However, in the view I take of the matter, proof of a causal link between the two injuries is not determinative. Even if the plaintiff had proved that element, that linkage, it would be my conclusion that he cannot succeed in establishing that the defendant should bear responsibility for the right knee injury. The basis upon which I reach that finding is as follows.

[75] If matters were as the plaintiff has emphatically testified, that is, the state of his left knee was so damaged and compromised, so unstable that it was repeatedly giving out on him when he ran or attempted to play ball hockey, then the consequences of that activity, and particularly, the injury to the right knee, must be seen as a result of an activity that he knew to be risky, but one in which he decided

to engage on numerous occasions nevertheless. Based upon his testimony, it seems clear that he must have realized that playing ball hockey put him at real risk because of the likelihood that his left knee would not support his weight; in the stress of the activity, it was likely to buckle and collapse. Notwithstanding that state of affairs, he elected to play ball hockey.

[76] I consider it telling that Dr. Tarazi, in the course of his cross-examination, agreed that such an activity in those circumstances was ill-advised and risky. He stated that he would certainly not counsel a patient to partake in such an activity.

[77] It is relevant too that the plaintiff, at the material time, had completed a course of training to become a medical doctor. It would seem to me that training, in conjunction with ordinary common sense, would quite compellingly lead a reasonable person to recognize that the ball hockey activity was quite risky and could well result in further and other injury. The plaintiff has the obligation to conduct himself reasonably and to avoid further injury or aggravation of his injury. To impose liability upon the defendant for the plaintiff's conduct in this situation would be unfair and improper.

[78] In the course of submissions, I was referred to a decision of Affleck J., dealing with a conceptually similar matter. In *Sandhar v. Rolston*, 2012 BCSC 495, Affleck J. said the following:

> [52] Even if the injury suffered from snow shovelling was indivisible, I would be inclined to assign fault for it to the plaintiff herself. The plaintiff's circumstances are not analogous to those of the plaintiff in *Athey v. Leonati*, *supra*. In *Athey* the plaintiff, on his doctor's advice, returned to his regular exercise regime and in so doing suffered a disc herniation. His injuries while exercising were indivisible in the sense they were a natural effect of the injuries caused by the defendant. Ms. Sandhar did not return to her regular exercise regime when she shovelled snow. In my opinion, her desire to manage all aspects of her household overcame prudence when she shovelled snow over several hours on three consecutive days in December 2008. I have little doubt that if she had asked Dr. Mason's advice on whether she should undertake that activity before she made the decision to do so, Dr. Mason, or any other doctor who was informed of the plaintiff's health history, would have recommended against shovelling snow.

[79] In my respectful view, the principle is the same in the matter at bar and I know of no reason that the outcome would be different.

[80] The alternative analysis, one which could be seen to emerge from what appears to be a substantial amount of ball hockey played by the plaintiff between September 2009 and the July knee incident, is that, in fact, his left knee was not causing a great degree of discomfort or difficulty, and that it was not in a state of meaningful instability and so that is why he was able to play so extensively. If that were so, and there is certainly a basis in the evidence to conclude it was the true state of affairs, then it follows that the causal link upon which he relies to connect the right knee injury to the left knee is substantially diminished. In those circumstances, the knee injury was an athletic injury – in the words of Dr. Tarazi, "a common ACL tear from ball hockey".

[81] In conclusion, it is my view that the defendant cannot be held liable for the injury to the plaintiff's right knee. Accordingly, the damage assessments which the Court is required to make in this matter will be adjusted and impacted by that finding.

The plaintiff's activities

[82] At the time of the motor-vehicle accident, the plaintiff was 21 years of age. Following his graduation from high school, he was admitted to the Windsor School of Medicine, a private medical school located in the Caribbean. His goal was and is to complete a program of studies that would lead to becoming a medical doctor and practicing in the US.

[83] Initially, the plaintiff was in the "pre-med" program at Windsor commencing in September 2006. He concluded that component of his training in April 2007 and then began the actual substantive course work. He finished that in August 2008.

[84] At the conclusion of the course work at Windsor, he relocated to Carbondale, Illinois to do a course of study intended to prepare him to write the necessary exams to obtain his certification in the US. He was at Carbondale doing that between September 2008 and April 2009.

[85] Mr. Kathuria testified that after finishing the exam preparation course in April 2009, it was his intention to return to his home in British Columbia and take a period of time off, from May 2009 until March 2010. His plan was to work part-time at a non-medical job and to study on his own, with the goal of doing the Step 1 examination in June 2010, followed by his clinical rotations. He then intended to write the two further exams which the Step 2 process requires in January 2011/May 2011. At that point, assuming he had been successful in those endeavours, he would be qualified to begin his internship; he anticipated that would commence in June 2012.

[86] In fact, the plaintiff did not carry through with his plans to write the Step 1 exam in June 2010. He says that, because of the effects of the injuries from his motor-vehicle accident, he was not able to start the necessary study and preparation until March 2010. Rather than follow his original plan, he elected instead to enroll in a review program (between September and November 2010), followed by further group study at Carbondale in 2011. Following that, in January 2012, he wrote the Step 1 examination, but did not obtain a passing grade.

[87] I note that as at the date of trial, the plaintiff had completed a portion of his clinical rotations which are part of the program and are required before admission to internship. As at the date of trial, he had completed 18 of the 72 weeks that are required.

Non-Pecuniary Damages

[88] The plaintiff seeks an award of damages for pain, suffering and loss of enjoyment of life resulting from the motor-vehicle accident and its effects. In his testimony he describes experiencing substantial pain and discomfort and also says that the discomfort impacted adversely upon his ability to study effectively. He was only able to sit for short periods of time and was simply unable to focus as the material required. In the result, he described being frustrated by the circumstances. He also described that he is ordinarily a fairly active person. As a result of the injuries, his ability to be active and mobile was diminished and he gained a

substantial amount of weight. That too contributed to his unhappiness and frustration.

[89] Mr. Kathuria says that these injuries continue as at the date of trial and it is reasonable to expect that they will continue into the future.

[90] In the plaintiff's submission, his injuries and the impact they have had upon him justify a substantial award of general damages because they have "resulted in serious permanent partial disability and chronic pain. Mr. Kathuria is at risk of early arthritis in both knees, more significantly on the right side which may require knee surgery, oblique replacement. He testified that he will be seeking knee surgery to repair the ACL tear at the next available opportunity".

[91] In support of his claim, the plaintiff has made reference to a number of decisions of this Court and the Court of Appeal. The awards in those cases vary between $75,000 and $150,000: *Peters v. Kay*, 2006 BCCA 42, aff'd 2004 BCSC 1160; *Williams v. Nekrasoff*, 2008 BCSC 1520; *Kasidoulis v. Russo*, 2010 BCSC 978, *Poirier v. Aubrey*, 2010 BCCA 266; *Ayoubee v. Campbell*, 2009 BCSC 317, *Mirisklavos v. Manhas* (1996) 65 A.C.W.S. (3d) 779; *Majer v. Beaudry*, 2002 BCSC 476; *Gill v. Probert* (1999), 92 A.C.W.S. (3d) 253; and *Al-Hendawi v. Sidhu*, 2006 BCSC 522.

[92] Mr. Kathuria submits that an appropriate award of non-pecuniary damages is in the amount of $125,000.

[93] The defendants take a different view of the matter. They submit that the plaintiff is entitled to recovery non-pecuniary damages for soft tissue injuries to his neck, left shoulder, right hand, low back, and left knee. They say that the award should reflect that the injury to the right hand resolved within a week of the collision, that the injury to the neck completely resolved within a year, that the plaintiff's complaints of ongoing left shoulder weakness, ongoing low back pain, and ongoing left knee pain have no mechanical features that support the injuries, and so it is very much a matter of relying upon the subjective report of the plaintiff. In the defendant's

submission, there is reason to be wary of placing great reliance on the plaintiff's description of his injuries, considering that his evidence at the examination for discovery was not truthful. They note as well that the plaintiff has not sought medical treatment for any of the injuries which he attributes to the accident since December 2010.

[94] With that considered, the defendants contend that an appropriate award of damages under this head is in the range of $30,000 to $40,000, representing three months of acute soft tissue injury pain, followed by "diminishing sequel which have resolved to a nominal level by December 2010".

[95] The defendants rely upon three decisions, two of this Court and one in which the Court of Appeal upheld a $10,000 jury award: *Genge v. Cimon*, 2004 BCCA 102; *Everett v. Solvason*, 2012 BCSC 140; and *Lee v. Hawari*, 2009 BCSC 1904.

[96] I accept that the injuries caused the plaintiff not insignificant discomfort and pain which continued for a time. I also accept that there is probably some residual discomfort, in accordance with the opinion of Dr. Tarazi. At the same time, in accordance with my discussion earlier in these reasons, I have some real reservations as to the reliability of the plaintiff's evidence. Given my findings with respect to the ball hockey activity and his testimony at the examination for discovery, I tend to believe that the plaintiff has somewhat overstated his condition.

[97] My view of the appropriate quantum of damages is also informed by my conclusion that the right knee injury is not one for which he is entitled to compensation by these defendants.

[98] With respect to the effect of the injury upon his ability to study and prepare to write his examination, I propose to deal with the matter of delay of his study and career qualifications at a subsequent point in these reasons. However, the difficulty of being able to study and the attendant frustration are considerations to be taken into account in respect of this head of damages. It is also relevant to me that the plaintiff had, at time of trial, completed 18 of the 72 weeks of clinical rotations, and

that he reported having found parts of that to be quite uncomfortable on account of low back and knee discomfort.

[99] In the final result, and having considered the authorities to which I have been referred, it is my conclusion that an appropriate award of damages for Mr. Kathuria's pain, suffering, and loss of enjoyment of life is $75,000.

Past Wage Loss

[100] The plaintiff advances his claim under this head in two components. The first is with respect to the fact that, because of the accident and its injuries, Mr. Kathuria was not able to work at his part-time summer job for some time following the date of the accident. That loss has been quantified, and is, in effect, admitted by the defendants. Accordingly, Mr. Kathuria is entitled to recover an award of damages to compensate him for that loss of income. That is in the amount of $9,984.

[101] The plaintiff advances a second claim under this head, namely, that because of the delay to his course of study and embarkation upon his professional career, there was a quantifiable loss which he sustained up to the date of trial.

[102] Upon reflection, I have chosen not to deal with this particular claim in this format. It is my view that the matter is more appropriately dealt with separately and I will do so in conjunction with the claim he has made for delay in entering his profession.

Loss of Capacity to Earn Income

[103] As his submissions are structured, Mr. Kathuria asks the Court to make an award of damages to compensate him for the delay in completing his medical studies and embarking upon his career. He also seeks an award that is in keeping with the usual loss of capacity analysis.

[104] I will deal with the delay of his medical career first.

[105] The essence of Mr. Kathuria's claim is that he planned to start his residency (internship) in June 2012. He says that as a result of the accident and the resultant

delay in preparing for and completing the necessary steps leading to that, he is now projected to start his residency in June 2014, that is two years later. In support of this claim, he relies upon the evidence of an economist, Robert Carson. Mr. Carson has compared the present value of the future wages and benefits the plaintiff can expect to earn, assuming completion of medical school and commencement of residency in mid-2012, with the value of those wages and benefits if the plaintiff completed medical school and began residency one year later, in mid-2013. In his opinion, the present value of that difference, that is, the cost of a one year delay, is $212,800.

[106] He has also done a calculation to value a further year of delay.

[107] The submission of the plaintiff is that there has been a two year delay in his medical career because of the accident and that he is entitled to a compensatory award in the amount of $424,112.50 . As well, he seeks to recover an award in the amount of $38,700 to compensate him for the pre-trial delay in pursuing his profession. The grand total sought is $462,812.50.

[108] The defendants take the position that there should be no award of damages granted for this particular claim because the plaintiff has not made out the necessary proof. They say that the plaintiff's injuries are not so extensive as to have had an appreciable impact upon his progress.

[109] In the course of analyzing this claim, reference must be had to the evidence of two witnesses called by the plaintiff, Mr. Gill and Mr. Bedi. Each of these are persons who have pursued a similar course of study, through Windsor School of Medicine and the subsequent related venues of training. At trial, each of them described careers that had, for the most part, moved along effectively and successfully. Each of them were, at time of trial, in positions significantly advanced as compared to the plaintiff.

[110] There are a number of considerations which impact upon this claim. First among those is my conclusion that the defendants are not liable for the effects of the

plaintiff's right knee injury. Accordingly, to the extent that that can be meaningfully factored in, the matter of career delay must be considered in that light. In my view, when the matter is considered, but with that specific injury excluded from the analysis, the plaintiff's claim that the defendant's conduct has caused him a delay in excess of two years is not tenable.

[111] A second consideration which must be taken into account is that each of the persons that the plaintiff called and held out as comparable students are, in fact, quite materially different than Mr. Kathuria. Each of them had substantial related post-secondary education before they arrived at the Windsor program. Both of them were reasonably successful in the program. On the other hand, and intending no disrespect to Mr. Kathuria, he arrived at Windsor with no post-secondary academic experience whatsoever. The records which were tendered at trial indicted that he struggled quite significantly in terms of his academic pursuits at Windsor. That applies both with respect to his "pre-med" component and his substantive studies. Accordingly, I am not satisfied that the expected progress and success of Mr. Kathuria would track the experience of the other two students. The comparative approach that the plaintiff urges has very real limitations.

[112] All that said, I accept that the injuries and their effect, as I have found them to be attributable to the defendants, did have some impact upon Mr. Kathuria's pursuit of his academic goals. I do not however, accept that the effect is of the magnitude that he asserts.

[113] Obviously, this is not a matter which lends itself to calculation. It is very much a matter of assessment, based upon the totality of the evidence. Here, I have taken into account that Mr. Kathuria was, at the time of the accident, for his own reasons, committed to taking a period of time away from the active pursuit of his medical qualification, although he intended to continue to study on his own schedule over that time. I have also accepted that the injuries impacted meaningfully on his ability to do that. Of course, to the best extent I can, I must make the assessment without regard to the right knee injury.

[114] In my view, it is reasonable to conclude that the motor-vehicle accident and its effects delayed Mr. Kathuria's progress for approximately one year.

[115] Accordingly, the award of damages to which I find Mr. Kathuria entitled is $210,000.

[116] In addition, Mr. Kathuria advances a claim under the more standard head of damages, that is a loss of capacity, relying upon the well-established line of authorities which have application to such claims in this province. Specifically, he relies upon the decision of Court of Appeal in *Perren v. Lalari*, 2010 BCCA 140.

[117] The submission of the plaintiff is that, according to the evidence of Dr. Tarazi, Mr. Kathuria will experience chronic pain into the future, that he will have ongoing pain, disability, and future risk of knee surgeries, and that as a result, there is a real and substantial risk of future loss and down time from the practice of medicine. He also submits that his failure to pass his Step 1 examination on his first attempt will adversely affect his residency opportunities. He says that too is a loss which is significant and must be factored into the analysis.

[118] Relying upon a number of cases, Mr. Kathuria claims that he should be awarded the sum of $500,000 for "loss of a capital asset and/or loss of capacity to earn future income". His submission in support of that position is he has chronic pain in his left shoulder and low back, he has the increased risk of arthritis in his knee and is facing ACL surgery and time missed in the future for that surgery and the recovery post-surgery. He says as well he will not be able to sit for long periods and his ability to practice medicine in the future has been compromised by his chronic pain and compromised knees.

[119] I note that the claim as it has been articulated and advanced by the plaintiff is premised upon the proposition that Mr. Kathuria will pursue a career as a medical doctor and there are no alternative scenarios included in the submissions. I will deal with the matter on that basis. That is in keeping with the jurisprudence from the Court of Appeal which establishes that the onus is on the plaintiff to prove the

elements of the claim. The court will then attempt to quantify the financial harm to the plaintiff's working career.

[120] In assessing the merit of this claim, I note that Dr. Tarazi testified that none of the injuries which he found present for Mr. Kathuria would meaningfully impact upon his ability to practice any particular branch or speciality of medicine. Furthermore, my assessment of this claim must take into account my conclusion that the right knee injury is not a matter for which the defendants are liable and so any consequence of that cannot form part of the basis for this award.

[121] In my view, the claim as advanced simply is neither reasonable nor viable.

[122] I accept that the consequences of the injuries which I find to have been caused by the defendants' negligence may have some relatively minor implication for the plaintiff's earning capacity going forward – presumably some soreness and discomfort that he will experience from time to time in the performance of his duties as a doctor. However, in my view, the value of that asset diminishment is quite modest. I consider that, even taken over the duration of his career an award of $100,000 will provide all of the compensation that the circumstances warrant. In arriving at that conclusion, I have taken into account the evidence that, because of the shoulder, low back and left knee injury, if he does not continue in the field of medicine and is required to find another occupation, there will be some restriction in that he would be limited to work in the category of light or medium, and that heavy lifting or tasks involving significant impact would not be suitable for him.

Cost of Future Care

[123] The plaintiff claims $87,846 for future cost of care, which would cover rehabilitation services, medical equipment, medications, and knee surgery/replacement. A report written by occupational therapist, Edgar Emnacen was tendered in support of this claim. The report is based on the risks and recommendations made by Dr. Tarazi. Mr. Carson also prepared a report to assess the present value of the expenses, which accounts for treatments in Canada and the US.

[124] An award under this head of damage is based on what is "reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff" (*Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33, 30 A.C.W.S. (2d) 257 (S.C.)).

[125] I find that the plaintiff has established that some of the expenses listed are reasonably necessary, but not to the extent that he claims. Certain contingencies must be taken into account. For example, Dr. Tarazi opined that there is only a 10% chance that the plaintiff will need a knee replacement in the future if he develops osteoarthritis. The claim as advanced appears to have rested on the proposition that the plaintiff could expect to require knee replacements for each leg and that there would be a need for successive treatments. That does not accord with the conclusions I have taken from the evidence.

[126] I accept that there is proper basis to make some reasonable provision for Mr. Kathuria to have a modest amount of kineseologist counselling in conjunction with access to a fitness facility. I also agree that there is a basis to expect that there may be some need for anti-inflammatory medication from time to time.

[127] Taking into account the needs that I consider have been established and the probability that certain future events will occur, I find that the following awards will adequately promote the mental and physical health of the plaintiff by covering his future costs that are reasonably necessary: $4000 for treatments, including physiotherapy, the services of a kineseologist and access to fitness facilities; $500 for medications; and $2500 for the care of his left knee. That is a total of $7000.

[128] The plaintiff also claims, under a separate head of damage, an award for loss of future housekeeping capacity. I am not satisfied that a basis for an award under such a head has been made out. Accordingly, I would deny this claim.

Special Damages

[129] The plaintiff has filed a claim in the amount of $2,221.54 for special damages. The particulars of the claim are set out in detail in the schedule which was tendered at trial.

[130] It is my conclusion that only a portion of the special damages are properly compensable. A number of receipts for attendance at Optimal Chiropractic are included; the dates of service are between August 4, 2009 and December 11, 2009. I am satisfied that those are related to the injuries sustained in the accident.

[131] Another group of claims are based on services received at Coastal Health Arts. I note that those treatments commenced on July 29, 2010 and ran through September 15, 2010. All of these services were provided after the right knee injury was incurred. I conclude that these services are related to that injury. Because I have found that the defendants are not liable for that injury, these are not sums that the plaintiff is entitled to recover.

[132] In addition, there is a claim for the purchase of a knee brace. That, as I understand, relates to the right knee injury and accordingly it too will not be compensated.

[133] Finally, there are a variety of claims for mileage incurred in the course of attending for medical services. I am satisfied that the costs incurred to attend upon Optimal Chiropractic and to attend at the offices of Dr. Tarazi and Dr. Grypma are properly compensable under this head. The claim for 30 visits to Dr. Bhatti does not accord with the clinical records of his attendances there – 11. No basis has been provided to explain why more than that should be recovered. The remainder of the sums claimed will not be awarded.

[134] The total amount to be compensated under this head is $743.20.

Conclusion

[135] I find that the plaintiff has sustained injuries as a result of the motor-vehicle accident and he is entitled to be compensated. The awards of damages are as follows:

Non-pecuniary damages:	$75,000
Past wage loss:	$9,984

Loss of future earning capacity:	$310,000
Cost of future care:	$7,000
Special damages:	$743.20
Total:	**$402,727.20**

[136] Unless there are considerations I should be made aware of, the plaintiff shall recover his costs of this action. If necessary, the parties are at liberty to make arrangements through the New Westminster Supreme Court Scheduling office to provide further submissions on that issue.

"The Honourable Mr. Justice Williams"