Citation: McKelvie v. Ng, et al.
2000 BCSC 121

Date: 20000121
Docket: B962843
Registry: VANCOUVER

# IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**RONALD MCKELVIE**

PLAINTIFF

AND:

**KAM YIN ALICE NG AND DHI TO OTTO NG**

DEFENDANTS

**REASONS FOR JUDGMENT**

**OF THE**

**HONOURABLE MADAM JUSTICE MORRISON**

| | |
|---|---|
| Counsel for the Plaintiff: | Timothy J. Delaney<br>Sheila Minnie |
| Counsel for the Defendants: | Edward Montague<br>Gurprit Bains |
| Date and Place of Trial: | August 16-20, 23-25, 1999<br>VANCOUVER, BC |

[1] The plaintiff, now 39 years of age, was injured in a motor vehicle accident on July 27, 1994. Liability is not in issue; causation and the quantum of damages are in issue.

[2] Thirty-three years of age at the time of the accident, the plaintiff, Ronald McKelvie, was an active and enthusiastic athlete, who took part in a great number of sports. He had been employed with Canadian Pacific Airlines, and at the time of trial continues with Canadian Airlines, employed as a mail clerk. His duties include the sorting and delivery of mail. The plaintiff claims that the motor vehicle accident has profoundly changed his life, confining him to a sedentary lifestyle.

[3] The defendants contend that the evidence, particularly the medical evidence, indicates that the plaintiff suffered only moderate soft tissue injuries in the accident, and that his pre-existing conditions of ankylosing spondylitis (AKS) and fibromyalgia, together with some degenerative arthritis in both knees, pre-existed the accident for some time and it is these conditions that have caused the limitations to the life and lifestyle to the plaintiff, not injuries as a result of the accident.

[4] AKS is a chronic progressive disease, an inflammatory spinal condition for which there is no cure. Symptoms may wax or wane over time. Fibromyalgia (FM) is a pain condition, with chronic pain in the muscles and soft tissues surrounding the joints. The American College of Rheumatology has established certain criteria to assist in the classification of fibromyalgia. There is apparently no cure for fibromyalgia either, and it too can wax and wane in severity.

## PLAINTIFF’S MEDICAL HISTORY

[5] Mr. McKelvie’s medical history is significant. It was dealt with in detail at the trial, and a number of experts in the medical field were called to give evidence. At the age of 22, in March 1983, the plaintiff was first diagnosed with AKS. A few months prior to that, he had

developed pain in his joints and was unable to continue working as a sheet metal apprentice. Mr. McKelvie remained off work roughly from the end of 1982 to 1986, initially due to AKS, and later due to some personal tragedies when a son died in the fall of 1984, and then his mother died in 1985, following cancer. From approximately 1985 to the time of the accident, the plaintiff claims that his AKS was quiescent, with only occasional and mild flare-ups of pain, none of which interfered with his ability to work or enjoy his active recreational life.

[6] By mid-1985, it was apparent that Mr. McKelvie was back active in sports, with sports-related injuries showing up on his medical records. For example, three baseball injuries, in July 1985, April 1988, and May 1989, a soccer injury in July 1989, and two hockey injuries in April and May 1981. There were two other injuries related to activities in September 1992 and January 1994. He had arthroscopic surgery on his left knee in August 1985, following a baseball injury, and again in April 1988.

[7] There was a flare-up of AKS in October 1985, again in January 1987, and in April 1989. After a referral to Dr. Koehler, there was a possible diagnosis of fibrositis syndrome. Right knee pain was first diagnosed in April 1990, and that seemed to recur in mid-1991 after a fall at a pool party.

[8] There was no mention of AKS or fibromyalgia from May 15, 1989 until June 22, 1994, when the plaintiff reported pain in his neck, lower back and right hip, and some stomach and bowel problems. The doctor noted “AKS flare-up”. It was the only record in Dr. Varley’s clinical records of AKS in the five years prior to the accident. Mr. McKelvie, in testifying, said that this was a minor flare-up and he continued to work and play baseball at the time, and did not attend at physiotherapy or have the prescription filled out that he had been given by the doctor.

[9] The accident then occurred on June 27, 1994. Following the accident, the plaintiff went to see his doctor two days later, complaining of neck and low back pain, as well as stomach tenderness. Throughout August and September he made several visits, where mostly neck and back pain were noted. He began going to a physiotherapist, Rob Hofmann, around September 1994. He was off work full-time from July 27, 1994, until September 12, 1994. He then resumed work for four days a day for the first week, and worked his way back to full-time work within a fairly short time, and then, unrelated to the accident, the plaintiff was laid off at Canadian Airlines at the end of 1994.

[10] Since the accident, Mr. McKelvie has complained of persistent neck and back pain, periodic migraine headaches, left knee pain, right hip pain, and a sore left shoulder. Clinical notes make references to arthritis, AKS and fibro-myalgia, following the accident, and he has also had two work related injuries and WCB claims, a WCB injury to his back on September 28, 1988, and an injury at work to the top of his head on June 29, 1999. There was no lost time on the latter injury.

**PLAINTIFF’S EMPLOYMENT HISTORY**

[11] Following high school graduation, Mr. McKelvie enrolled in a programme at BCIT to qualify as a construction sheet metal worker, and went to work in that industry in 1979. After his first year in construction sheet metal he transferred into the new aircraft sheet metal programme and completed six months of that four year programme in early 1981, failing to pass one of the courses. He declined an offer to work in the industry in Alberta at that time, in order to remain close to his mother who had been diagnosed with cancer. He worked in the construction sheet metal industry, completing the second year of that programme at BCIT in 1982, and until the end of 1982 worked in the industry as a sheet metal apprentice. It was at the end of 1982 that he first experienced the chronic pain which was later diagnosed as AKS. He remained off work for health and personal reasons until 1986, working at short-term jobs until he was able to obtain a job with Canadian Airlines, where he had been trying to get work for a year and a half. He testified that he liked the benefits connected with employment with that company, where his mother had worked. He has worked for Canadian Airlines since 1986, where he still remains employed. At the time of the accident, he was employed as an accounting clerk.

[12] The plaintiff testified that some time after the accident occurred, he had an opportunity to work as a bindery operator in the printing department of Canadian Airlines, but he was unable to qualify physically for the job because of injuries that he sustained in the accident. He testified he thought it was possible that he might have pursued a trade operating the printing presses within that company. He also said there were other job opportunities that he could not pursue because of his medical condition. Canadian Airlines has been hiring aircraft sheet metal apprentices, and the plaintiff felt if he had not been involved in the motor vehicle accident, he could have pursued re-training in that industry, which might have made it possible for him to move into an apprentice position by 1996 or 1997. He seeks compensation based on those lost opportunities. There was also evidence from a vocational consultant who assessed Mr. McKelvie and testified that there might be a position available within Canadian Airlines if he were to upgrade in the field of computer drafting.

[13] The defendants firmly contest the plaintiff’s claims for any loss of opportunity or damages for any decreased earning capacity, saying that such claims are not supported by the evidence at trial. The defendants argue that the plaintiff could not have done the job of a sheet metal worker because of his pre-existing medical problems, and would not have been able to qualify for the physical demands of that industry before the accident, let alone after the accident. They

apply a similar argument to the job as a bindery operator.

**THE ACCIDENT**

[14] The accident occurred on July 27, 1994, as Mr. McKelvie was driving himself and his girlfriend, Kym McClymont, to Tulameen, B.C. for a vacation at the cottage of the plaintiff's father. The accident occurred in Richmond when the defendant, Alice Ng, driving a vehicle owned by Otto Ng, ran a stop sign, striking the front driver's side of Mr. McKelvie's vehicle. Mr. McKelvie testified he knew he was injured, and remained in his car until the paramedics arrived. He could feel his left arm twitching, and said that his left arm or chest struck the steering wheel, and that his left knee was sore from hitting the steering column. A neck brace was placed on him by the paramedics who helped him from the car. He said he began to fall as his left knee gave out as he was exiting the car. Mr. McKelvie stated that he felt pain in his neck, back, left shoulder, his pelvis and left knee. He was x-rayed at the Richmond General Hospital and discharged after a few hours.

[15] After seeing his family doctor, Dr. Varley, the plaintiff and Ms. McClymont then went to Tulameen for a few days, but he was unable to take part in any activities, staying either in bed or sitting watching the activities around him.

**THE PLAINTIFF'S ACTIVITIES AND LIFESTYLE**

[16] Ms. McClymont, the former girlfriend and still a friend of the plaintiff's, testified that at the time of the accident, they were very close, seeing one another daily. She describes his personality before the accident as "high energy, a lot of fun . . . very active." She described him as "a typical jock", and spelled out all the various sporting activities in which she knew him to take part. The relationship later fell apart, in large part due to the profound changes to Mr. McKelvie's personality, moods, lifestyle and lack of activity following the accident.

[17] Mr. McKelvie has been playing sports since he was a child. His social life and lifestyle revolved almost totally around sports, and he testified that his friends still all play, but he does not. The list of sports in which he took part prior to the accident is a lengthy list: hockey, baseball, golf, water-skiing, jet-skiing, hunting, hiking, soccer, camping, canoeing, volleyball, basketball, European handball, floor hockey, skiing, knee boarding, tubing (behind a boat), motorcross biking, walking. He had previously had a number of sports injuries, none of which stopped him from continuing his participation in sports. He said that it was through sports that he met people, and he was described as someone who "played from the heart." He was described by his friends who testified as being extremely active, the organizer, very competitive, and one who did not appear to be slowed down in any way by his condition of AKS.

[18] His friends all testified at the trial that since the accident, his life has changed significantly. Mr. McKelvie testified to that as well. His social life has always revolved around sports, he was the quintessential jock. He did not watch sports, he played them.

[19] It was my impression from his testimony that Mr. McKelvie saw his job with Canadian Airlines as something that gave him much-needed security and benefits. He had been impressed by the benefits that his mother had received from that company during her illness with cancer, and it was my impression that he was doing everything he could to keep his job.

[20] The defence pointed out that he was back working full-time at his job not that long after the accident. That is true, but the job was not the centre of his life. His sporting and social activities were.

[21] Counsel for the defence suggests that the plaintiff has given up sports because of the previous medical problems that he has had with his knees. The evidence does not sustain that argument. The defence also says that Mr. McKelvie has returned to some activities, for example, he now takes walks. The evidence is that Mr. McKelvie now walks for approximately five minutes, as opposed to before the accident when he could hike or hunt all day, and outpace his friends.

[22] I think it is apparent from the evidence that while the plaintiff is able to keep his job, he has, in essence, lost his lifestyle, and that which gave him joy in his life, his active and competitive participation in many sports.

**THE MEDICAL EVIDENCE**

[23] Dr. John Varley, the plaintiff's family doctor prior to and at the time of the accident, supplied a report which was received in evidence. There was also the report as well as the testimony of Dr. Ki-Sun Kim, the plaintiff's family doctor from October 1, 1994, up to the present. The evidence and clinical records of the physiotherapist, Robert Hofmann, were helpful to the plaintiff in corroborating his complaints with regard to his right hip and left knee pain shortly after the accident. The initial treatment concentrated on the neck, back and left shoulder, where the pain was apparently most acute, but treatment was also given later to the right hip and left knee areas.

[24] Dr. Theo Van Rijn, specialist in physical medicine and rehabilitation, testified as to the plaintiff's various injuries. He also noted changes in the plaintiff's mood "as a result of

altered lifestyle" and noted that Mr. McKelvie was close to tears several times during the interview when he was describing his change in his capabilities. Dr. Van Rijn's report noted that "by history, Mr. McKelvie's ankylosing spondylosis was likely 'quiescent' at the time of the MVA." His conclusion was that the plaintiff would have difficulty in any job that would require heavy lifting or carrying, but that he could perform jobs of a sedentary nature where light work activity would be called for.

[25] Dr. John Wade, a rheumatologist, felt that Mr. McKelvie's symptoms were in keeping with fibromyalgia because the plaintiff was functioning "at a fairly high level" prior to the accident. It was the opinion of Dr. Wade that if the fibromyalgia pre-existed the accident, "I do not think it was a significant problem." In commenting on AKS, Dr. Wade noted that patients cover a wide spectrum of symptoms, with some people unaware that they even have AKS, and on the other end of the spectrum, a few become seriously disabled. The majority would lead a reasonable quality of life, able to cope with AKS. Dr. Wade was of the opinion that three factors may have contributed to the fibromyalgia, the pre-existing AKS, the degeneration in the plaintiff's knee, and the motor vehicle accident. He was unable to say whether they contributed equally or which might have contributed more or less than the other. It was his opinion that a person with AKS who was involved in the trauma of a motor vehicle accident would be more likely to experience worse symptoms, and therefore take longer to recover.

[26] Finally, Dr. Marguerite Stolar, also a rheumatologist, testified and, without going into detail with regard to her testimony and report, I will say that I found her evidence most helpful in assessing the medical evidence with regard to this plaintiff. She felt that Mr. McKelvie would never return to the sports that had taken up such a great part of his life before the accident. It was also her opinion that the accident had aggravated the condition of AKS, and that that condition had been "fairly quiescent prior to the motor vehicle accident".

**THE ISSUES**

**No. 1 – Causation**

[27] Counsel for the defendants argue that Mr. McKelvie has largely recovered from the accident and that his continuing medical problems are not due to the motor vehicle accident, but due to his medical history, his pre-existing disease of AKS, the fibromyalgia, the degenerative condition present in both knees from former injuries and arthritis, and a bowel condition, all of which preceded the accident. Further, that the accident caused only moderate soft tissue injuries to the plaintiff, and that he has had injuries following the accident and aggravations to his medical condition that are in no way related to the accident.

[28] In substantiation of this, the defence points to injuries that the plaintiff suffered, including ones at the age of 14, when he had a left shoulder lump, and then at the age of 16, injuries and arthroscopy to his knee. In my opinion, given all of the evidence, the plaintiff was suffering fairly normal injuries throughout his adolescent and earlier years that might be expected of any active young male who plays the kind of sports that Mr. McKelvie did.

[29] The defence also emphasizes their argument that the plaintiff has not been credible, with regard to his evidence on all material issues. On the issue of credibility of the plaintiff, there were some occasions in his evidence where he had a tendency to exaggerate; for example, his evidence that he was crying and screaming in pain at the hospital, when independent evidence showed otherwise. But at other times, it was my opinion that Mr. McKelvie was not exaggerating. He has what might be considered by some, a brash type of personality, and clearly defence counsel was unhappy with Mr. McKelvie being cranky and aggressive at times during his cross-examination. But, in my view, he was, on the whole, credible in giving his evidence. As far as the defence suggestion that the plaintiff was deliberately not telling all, or careless about not telling all his history to doctors, in order to minimize and get a more favourable report, I do not find that is supported in any way by the evidence. When one goes to the clinical records before the accident, when clearly litigation was not in issue, they tell a story that was substantiated by Mr. McKelvie when he gave his evidence.

[30] Throughout the trial, it was clear that Mr. McKelvie was not comfortable seated nor standing. He shifted almost continuously, and came across as someone who is clearly devastated by the change in his lifestyle. With regard to the injury to his knee at the time of his accident, I accept the plaintiff's evidence that further injury did occur at the time of accident, even though it was not raised or treated until later. I do not believe the plaintiff was exaggerating with regard to his pain and inability to continue his sports and other activities. His history shows otherwise. The doctors have tried everything to overcome pain for him, including muscle relaxants and cortisone shots. Having been diagnosed with and suffered from AKS in the past, the plaintiff has shown in the past his capacity for positive thinking, and overcoming his problems with AKS sufficiently to continue a vigorous, sports-active life. I accept his evidence and those of his friends who say that he simply cannot overcome his disabilities at this time, and that has dated directly from the time of the accident. I find that the motor vehicle accident in July 1994 was a substantial cause of the injuries to the plaintiff, and the defendants are responsible for the injuries and loss suffered by the plaintiff.

[31] The decision in ***Athey v. Leonati*** (1996), 140 D.L.R. ($4^{th}$) 235, a decision of the Supreme Court of Canada, clearly disregards apportionment in a case such as this, where there is the

presence of pre-existing contributing causes, in this case, AKS and fibromyalgia, amongst others. It is my view that the negligence of the defendants aggravated and accelerated the existing conditions of AKS and FM, both of which had been largely quiescent for approximately five years before the accident.

**2. Damages**

(a) Non-Pecuniary Damages:

[32] Both parties cited a number of authorities in arguing what figure would be appropriate for non-pecuniary damages. Counsel for the plaintiff cited cases where non-pecuniary damages had been awarded in the range of $90,000 to $125,000. Counsel for the plaintiff urges damages in the amount of $125,000, while counsel for the defendants contends the award for damages for non-pecuniary loss should be in the range of $30,000 to $40,000, an appropriate award for moderate soft tissue injury where there are pre-existing and active conditions.

[33] I accept the plaintiff's evidence that he was living an extremely full and active life, with robust participation in a great number of active and even aggressive sports, and that now, he is no longer able to participate in the sports or lead anywhere near the same lifestyle. The plaintiff has been able to keep his job, but he has lost his lifestyle. The accident accelerated what would have been an eventual lessening of activity with age, together with further degenerative changes. But at the age of 33, Mr. McKelvie was showing no signs of slowing down. He seemed determined to keep his job with Canadian Airlines, motivated possibly by the security and benefits of that job. But he could no longer do the other activities in his life. His lifestyle centred around his participation in sports.

[34] To say that the plaintiff was able to return to work full-time within two or three months of the accident is not equal to saying that his life returned to normal. It did not. We do not work for most of our time. In a seven day week, we may work five days for approximately seven hours in each of those five days. That leaves a great deal of time for all of us to spend in our other activities, for sleeping, leisure, play, sports, housework, family time, meal preparation and general enjoyment of life. So while Mr. McKelvie is able to work his approximate 35 hours a week, it is all the other hours that have been interfered with by reason of his injuries.

[35] There was considerable attention given to the plaintiff's knee problems prior to the accident, but the medical evidence generally was that the condition prior to the accident likely would not have led to degenerative changes for probably 25 to 30 years. Also, that the plaintiff might have had mild pain in the knee, and problems later in life, but not the present pain and suffering which he finds so limiting and disabling following the accident. That and other pain continues.

[36] Taking all the evidence into account, I believe an appropriate award for damages for non-pecuniary loss is $110,000.

b. Past Income Loss

[37] Included in this category, the plaintiff claims for certain loss of opportunities prior to trial. The defence says that this claim should be limited to the wages lost by the plaintiff from the date of the accident to the date of his return to full-time work on September 26, 1994. There seems to be no issue certainly for some entitlement for that period of time. However, there is no agreement on the actual amount that should be paid, the defendants saying that the total wage loss from July 24, 1994, to November 25, 1994, is $3,986.64, less advances paid by the defendants in 1995 of $1,216.32 for a total net claim of $2,770.23. Counsel for the plaintiff puts that amount at $4,390.60. I will leave it up to the parties to agree on the exact amount, with liberty to return if agreement is not possible.

[38] The plaintiff has argued that in addition he could have earned income as a bindery operator or a stockkeeper in stores had he not been injured when he was laid off at the end of 1994. Those positions paid more than his position did at the time of lay-off, and counsel for the plaintiff contends that had he earned $36,000 per year for the last five years and eight months, the difference in the earnings would have been an additional $74,000. In addition, counsel for the plaintiff says that Mr. McKelvie could have worked some overtime, which he was unable to do, and his loss of overtime was estimated at 7.2 of his earnings. This would add an additional $2,592 annually to his income for a total loss of $14,688 over the last five years and eight months.

[39] I agree with counsel for the plaintiff that Mr. McKelvie would have been in a much better position at the time of his lay-off to apply for other positions, were it not for the injuries caused by the accident. I think $74,000 of additional earnings had he been a bindery operator is unduly optimistic, but I would assess an additional $45,000 for additional earnings had he been able to move to a better position at the time of his lay-off. The estimated loss of overtime is appropriate, as the plaintiff normally worked overtime before the accident, and was unable to after. There will be $14,000 as additional income for him from the time of the accident up to the time of trial in lieu of overtime wages.

c. Loss of Future Earning Capacity

[40] Counsel for the plaintiff highlighted the case of ***Pallos v. Insurance Corp. of British Columbia*** (1995), 100 B.C.L.R. (2d) 260, where our Court of Appeal dealt with the refusal of the trial judge to make an award for loss of opportunity, or loss of capacity to earn income in the future. At p. 268 of the judgment, Mr. Justice Finch quoted approvingly from the following cases:

> In addition to those cases cited by counsel, I would also refer to ***Kwei v. Boisclear*** (1991), 60 B.C.L.R. (2d) 393 (C.A.). There Mr. Justice Taggart quoted with approval from ***Brown v. Golaiy*** (13 December 1985) Vancouver Reg. No. B931458 (S.C.) as follows (at pp. 399-400):
>
> > "The means by which the value of the lost, or impaired, asset is to be assessed varies of course from case to case. Some of the considerations to take into account in making that assessment include whether:
> >
> > 1. The plaintiff has been rendered less capable overall from earning income from all types of employment;
> >
> > 2. The plaintiff is less marketable or attractive as an employee to potential employers;
> >
> > 3. 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. The plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market."
>
> In ***Palmer v. Goodall*** (1991), 53 B.C.L.R. (2d) 44 (C.A.), Madam Justice Southin said at p. 59:
>
> > Because it is impairment that is being redressed, even a plaintiff who is apparently going to be able to earn as much as he could have earned if not injured or who, with retraining, on the balance of probabilities will be able to do so, is entitled to some compensation for the impairment. He is entitled to it because for the rest of his life some occupations will be closed to him and it is impossible to say that over his working life the impairment will not harm his income earning ability.
>
> In ***Earnshaw v. Despins*** (1990), 45 B.C.L.R. (2d) 380, Madam Justice Southin said (at p. 399):
>
> > In my opinion, the true questions the jury must address in a claim such as this are:
> >
> > 1. Has the plaintiff's earning capacity been impaired to any degree by his injuries?
> >
> > ..2. If so, what amount in the light of all the evidence should be awarded for that impairment?
> >
> > As Dickson, J., as he then was, said in ***Andrews v. Grand & Toy (Alta.) Ltd.***, [1978] 2 S.C.R. 229 at 251 . . .
> >
> > "It is not loss of earnings but, rather, loss of earning capacity for which compensation must be made . . . A capital asset has been lost: what was its value?"
> >
> > In catastrophic injury cases, the whole of the capital asset is lost. But there may be much less serious injuries which cause permanent impairment although the loss cannot be determined with any degree of exactitude.

These cases all treat a person's capacity to earn income as a capital asset, whose value may be lost of impaired by injury. It is a different approach from that taken in ***Steenblok v. Funk*** (1990), 46 B.C.L.R. (2d) 133, and similar cases, where the court is asked to determine the likelihood of some future event leading to loss of income. Those cases say, if there is a "real possibility" or a "substantial possibility" of such a future event, an award for future loss of earning may be made. There is nothing in the case law to suggest that the "capital asset" approach and the "real possibility" approach are in any way mutually exclusive. They are simply different ways of attempting to assess the same head of damages, future loss of income.

[41] The plaintiff argues that there was a possibility that he could have been hired as a sheet metal apprentice, reviving his initial training in construction and aircraft sheet metal, training many years ago that was never completed. I agree with counsel for the defence that the evidence does not establish that this would have been a possibility or a probability. Mr. McKelvie has not shown consistent interest to continue in that field. At the time of the accident, he was more interested in his leisure activities than his ambitions on the job. But I would emphasize that he had tried for a year and a half to get employment with Canadian Airlines, and he had every intention of staying with the company. But he was making no attempt to get back into the sheet metal construction industry.

[42] Did the plaintiff lose out on an opportunity to obtain a job as a bindery operator in the printing department of Canadian Airlines? The plaintiff applied for this job, but was turned down as he could not meet the medical and physical requirements, particularly as they pertained to lifting up to 40 lbs. He would have earned more as a bindery operator, and I think he should be compensated for the loss of that job opportunity. I do not accept that there should be a limitation on the period for that job as suggested by defence, due to the bindery department being sold off later to private ownership in 1997. The job opportunities continue to exist, either in other positions with Canadian Airlines or working for the new company. Based on the evidence, counsel for the plaintiff estimated that if Mr. McKelvie had worked as a bindery operator, his earnings would have been $615,817 for a loss of $206,685. It was estimated that even if he retrained as a computer design operator, he would still lose about $225,000 income, not including the cost to retrain.

[43] The evidence establishes that the plaintiff, by reason of injuries that occurred in the accident, has become less capable of moving into other job categories; that he is less marketable, and there are now occupations no longer open to him, to paraphrase some of the language quoted approvingly by Finch, J.A. In my view, it has been established that Mr. McKelvie's earning capacity has been limited by the injuries he suffered from the accident.

[44] Because Mr. McKelvie is now restricted to a sedentary job, he will require compensation for retraining. The total retraining costs for a computer design position have been estimated to be between $10,000 and $11,000.

[45] I find retraining costs of $10,000 to be appropriate, and the plaintiff is entitled to $10,000 for retraining. In addition, the plaintiff is also entitled to $200,000 for assessed loss of future earning capacity.

d. Special damages

[46] Special damages are awarded in the amount of $2,309.56.

e. Cost of future care

[47] The evidence of Mr. McKelvie is that he spends approximately $350 a year on medications, including prescriptions. He also has expenses for a knee brace, and attending physiotherapy. Counsel for the plaintiff suggests $500 per annum for future care costs is reasonable, and I agree. Using the multiplier of the expert called by the plaintiff, the cost of future care is assessed at $10,286.50.

**CONCLUSION**

[48] The plaintiff is entitled to the following damages:

| | | |
|---|---|---|
| (a) | Non-pecuniary damages | $110,000 |
| (b) | Past income loss | |
| 1. | Loss of Income | $ 45,000 |
| 2. | Lost overtime | $ 14,000 |
| 3. | Lost earnings from July 27 to Sept.24 1994 | to be determined |
| (c) | Loss of future earning capacity | |
| 1. | Retraining | $ 10,000 |
| 2. | Loss of opportunity | $200,000 |
| (d) | Special damages | $ 2,309.56 |

(e) Cost of future care $ 10,286.50.

[49] The parties may arrange to speak to costs, as requested, at their convenience.

"N. Morrison, J."
Madam Justice N. Morrison

January 25, 2000 – ***Corrigendum to the Reasons for Judgment*** issued by Madam Justice N. Morrison advising that the names of counsel for the defendants were incorrectly shown on page one of my reasons for judgement in this matter, which were handed down on January 21, 2000.

The names of counsel for the defendants are now correctly shown on page 1.