IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hunter v. Yuan,*
2010 BCSC 1526

Date: 20101029
Docket: M082326
Registry: Vancouver

Between:

Melissa Hunter

Plaintiff

And

Tung Yuan and North Shore Taxi (1966) Ltd.

Defendants

Before: The Honourable Madam Justice Morrison

Reasons for Judgment

Counsel for the Plaintiff:	Irina Kordic
Counsel for the Defendants:	Diane Weinrath
Place and Date of Trial:	Vancouver, B.C. September 27-30 and October 1, 2010
Place and Date of Judgment:	Vancouver, B.C. October 29, 2010

Authorities Considered:

Brown v. Golaiy (1985), 26 B.C.L.R. (3d) 353 (S.C.)

Crichton v. McNaughton, 2008 BCSC 556

Gordon v. Palmer (1993), 78 B.C.L.R. (2d) 236 (S.C.)

Jackman v. All Season Labour Supplies Ltd., 2006 BCSC 2053

Lidher v. Toews, 2009 BCSC 1055

Mayenburg v. Lu, 2009 BCSC 1308

Mendoza-Flores v. Haigh, 2010 BCSC 740

Millala v. Shaw-Smith, 2008 BCSC 1481

Orrell v. Lynch, 2008 BCSC 1696

Perren v. Lalari, 2010 BCCA 140

Rizzolo v. Brett, 2010 BCCA 398

Jezdic v. Danielisz, 2008 BCSC 1863

Nandan v. Ambrosio, 2001 CarswellBC 3087 (P.C.)

Price v. Kostryba (1982), 70 B.C.L.R. 397 (S.C.)

Way v. Frigon, 2001 BCSC 573

Yount v. Prospect Electric Ltd., 2005 BCSC 322

Holder v. MacLean, 2001 BCSC 1474

Nicholson v. Pham, 2005 BCSC 1527

[1] The plaintiff, Melissa Hunter, is a 32 year old woman who was injured in a motor vehicle accident October 20, 2006 in North Vancouver, British Columbia.

[2] She was in her 1990 Mazda Miata convertible around 4:00 in the afternoon at the intersection of Berwicke Street and 3rd in North Vancouver, waiting in line to turn left at the intersection. The light changed from green to amber, so she remained stationary.

[3] The defendant, Tung Yuan, a taxi driver for the other defendant, North Shore Taxi (1966) Ltd. ("North Shore Taxi"), rear ended the plaintiff's vehicle, causing minor damage to both vehicles. The defendant North Shore Taxi owns the vehicle driven by Mr. Yuan.

[4] Liability is not in issue. The plaintiff seeks damages for her injuries arising from the accident. The parties agree the accident was minor in nature.

Background

[5] The plaintiff said the impact was strong. She had her seatbelt on and the headrest was appropriately adjusted. Ms. Hunter testified she was thrown forward and then backwards, and her sunglasses flew off her head. No airbags were deployed. Mr. Yuan said he felt little impact.

[6] Ms. Hunter's evidence is that her car moved ahead on impact, about one-half a car length. She felt surprised and shocked, but not hurt.

[7] The damage to both cars was slight. The plaintiff proceeded on home after the accident. Around 6:00 p.m. that evening, a Friday, she and her fiancée, Stephen Robinson, left North Vancouver to drive to the plaintiff's family's cabin near Kamloops. Mr. Robinson was driving his vehicle.

[8] Toward the end of the drive to the cabin, the plaintiff said she felt a bit stiff in her neck and upper back, and had a headache. During the weekend at the cabin, she testified that she felt tired, which was not usual, and she was not as active as she might normally have been. She had a sore throat and felt stiff.

[9] On returning home at the end of the weekend, Ms. Hunter said her headache was still there.

[10] On Monday, October 23, the plaintiff went to see her doctor, Dr. John Lebrun; he had been her family doctor for eight years at that time. He recommended heat, ice and rest, noting in his clinical records that it was a grade one soft tissue injury.

[11] The plaintiff had trouble sleeping, a lot of headaches and back pain, plus discomfort if she sat for any length of time.

[12] At the time of the accident, the plaintiff was doing secretarial and office administration work for her father's insurance claims adjustment firm. She had begun working part-time at the firm while still in high school, and then worked full-time for the firm while attending Capilano and Simon Fraser University for her Bachelor of Arts degree, which she obtained in 2005.

[13] The plaintiff lost approximately three weeks of work after the accident, due to her injuries. She lost no pay, as the firm continued her salary. She was working part-time, but also taking quite a bit of time off to seek treatment and therapies for her injuries.

[14] The lifestyle of the plaintiff before the motor vehicle accident was that of an energetic, active and social young woman. Her activities included daily walks with her dog, early morning workouts at the gym five times a week, extending one to one and a half hours, yoga, dancing, golf and skiing. She had no prior history of any neck, shoulder or back injuries.

[15] One week after first seeing Dr. Lebrun following the accident, Ms. Hunter returned to see him again on October 30, 2006. In that intervening week she was not getting better. She was tired and concerned that the pain had become worse. She was feeling constant pain and fatigue, as noted by Dr. Lebrun in his clinical notes. There was pain in her left neck and shoulder areas and left-sided headaches. The over-the-counter Tylenol she was taking was not helping.

[16] As Ms. Hunter has asthma and certain allergies, she was unable to take any anti-inflammatory medications.

[17] Dr. Lebrun noted that the plaintiff had marked pain with flexion and rotation of her cervical spine, and inflamed tender muscles in the area of her left trapezius, rhomboid and paravertebral muscles from T-4 to T-10. He also noted tenderness in the right trapezius muscle. Dr. Lebrun diagnosed a grade two soft tissue injury with muscle spasms to the cervical and thoracic spine. He referred Ms. Hunter to physiotherapy, and also prescribed a muscle relaxant.

[18] The plaintiff then began a rigorous series of medical and related treatments, as recommended by her doctor and later, the physiotherapist. In the last two months of 2006, following the referral by Dr. Lebrun on October 30, the plaintiff had 17 physiotherapy sessions, from October 31 to December 29.

[19] In 2007, Ms. Hunter had 50 visits to the physiotherapist and 36 massage therapies. In mid-March 2007, the plaintiff advised her family doctor that she "felt 65 years old." It was also in early 2007 that Ms. Hunter was referred to KARP, a six week program that focuses on rehabilitation after injury. She attended in March and April. The KARP report was issued on April 26, 2007.

[20] On a visit to Dr. Lebrun on October 3, 2007, Ms. Hunter was referred to a chiropractor, Dr. Brock Potter by Dr. Lebrun. She was also prescribed an anti-depressant medication, Desipramine, in the hopes that it might assist with her sleeping problems. In 2007, the plaintiff attended the chiropractor on 20 occasions.

[21] In 2008, Ms. Hunter saw the physiotherapist 12 times, the chiropractor 28 times, had massage therapy 16 times, and had two sessions of acupuncture on July 16 and July 24.

[22] In May of that year, the plaintiff also ran a half marathon, 22 kilometres. She had commenced training for this marathon in December 2007. By the time of her June 9, 2008 visit to Dr. Lebrun, she reported that she felt 85% recovered. But she was still complaining of pain and flare-ups, particularly with some activities. On

November 14, 2008, the plaintiff was referred to Dr. Andrew Travlos, a specialist in physical medicine and rehabilitation.

[23] By 2009, the plaintiff was no longer having massage therapy or seeing the physiotherapist. She did, however, have 18 visits with the chiropractor that year, 2 of which were for unrelated matters, on October 9 and October 16. In February 2009, she was still reporting flare-ups to Dr. Lebrun.

[24] In 2010, up to September first of this year, Ms. Hunter has been to the chiropractor 11 times, 9 of which were related to her injuries following the accident, according to the plaintiff; the two unrelated visits were on March 10 and July 12, 2010. She also saw Dr. Iain Dommisse, an orthopaedic surgeon, on July 27, 2010, at the request of the defence.

[25] If my totals are correct, since the motor vehicle accident, the plaintiff has gone to see a physiotherapist 79 times, a chiropractor 73 times, a massage therapist 52 times and an acupuncturist twice. Those totals do not include visits to medical professionals for problems unrelated to injuries arising from the motor vehicle accident.

[26] Not all doctors may agree with passive treatments such as these, but the plaintiff's general practitioner was sending his patient by referrals to these professionals, and the therapies were giving the plaintiff some relief from pain.

[27] It should be noted that initially on being referred to a chiropractor, the plaintiff was reluctant. She had never been to a chiropractor, and was hesitant about manipulation and/or other treatments by chiropractors. However, she testified that she does have relief from these visits, and these are being done with the continued approval of her own doctor.

The Evidence at Trial

[28] In addition to the plaintiff and the defendant, Mr. Yuan, testifying, three doctors testified: Dr. Andrew Travlos, an expert in physical medicine and

rehabilitation, Dr. Iain Dommisse, an expert in orthopaedic surgery, and Dr. John Lebrun, an expert in family medicine. All three were qualified to give opinion evidence in their respective fields.

[29] Dr. Travlos provided a medical assessment of the plaintiff, based on his examination of her on November 14, 2008, together with medical records provided to him for the purpose of his evaluation.

[30] By that date, Ms. Hunter advised that she still had symptoms between her shoulder blades, in her upper back, on the right side, the tops of her shoulders and her neck. The upper back pain was of most concern to her. The pains in the tops of the shoulders and neck occurred only on a weekly basis, lasting for the day. The upper back symptoms were present daily and never go away, and tended to worsen at the end of a workday. The plaintiff advised the doctor that she felt better when she exercised regularly.

[31] It was the opinion of Dr. Travlos that Ms. Hunter had maximized her recovery and had participated in full treatments, yet she remained symptomatic. He felt it was reasonable to expect that her symptoms would settle further over the course of the next year; but it would not be surprising if she were left with intermittent symptoms in the upper neck or back at different times, depending on her activities. He believed the symptoms would not be functionally restricting, but more of a nuisance. Dr. Travlos saw no reason to limit Ms. Hunter in her usual activities and recommended she return to all her activities without limitation. He also recommended that she focus on strength training routines to strengthen the postural upper back muscles and that she may require three or four more sessions with the trainer to go over a specific exercise routine.

[32] It was the opinion of Dr. Travlos at that time that Ms. Hunter was symptom-free prior to the accident, and that the symptoms that followed the accident were a direct result of the accident; that her symptoms were residual from those injuries. He found that she would be capable of participating in work around the home, but

she might have to pace out certain activities or change the manner in which she does those, to compensate for symptoms that are still present.

[33] At trial, Dr. Travlos agreed that the accident was minor in nature, but stated that it was still possible to have the type of injuries that Ms. Hunter is claiming from such an accident, and it would be difficult to say what amount of force would be required to cause such an injury or injuries. He commented that vehicles with today's technology may not show much damage but the force of impact could be transferred to a body in the vehicle.

[34] When asked about the plaintiff's complaints from everyday activities, Dr. Travlos testified that everyday activities should not cause continuous aches and pains of that nature. Because the clinical records did not indicate that Ms. Hunter was having similar complaints of aches and pains before the accident, he felt it was more likely that the aches and pains were due to the accident.

[35] Dr. Dommisse saw Ms. Hunter on July 27, 2010. He recorded that the plaintiff had said that her symptoms are somewhat better, but that the symptoms have plateaued since the accident, and that her pain is activated by inactivity.

[36] On testing her range of motion, it was Dr. Dommisse's opinion that the restriction of cervical spine flexion and extension "is likely voluntary." Other range of motion tests and the neurological examination showed as normal. Dr. Dommisse found a mild right paravertebral muscle tenderness within the mid thoracic spine area, but no spasm in that area. His opinion was that it was unlikely that Ms. Hunter sustained an injury in the accident beyond a minimal nature. That she was temporarily partially disabled from work and recreational and other activities for three weeks following the accident. It should be noted that Dr. Travlos disagreed with this opinion, particularly as it referred to recreational activities.

[37] Dr. Dommisse opined that Ms. Hunter had recovered from the accident, and that her present alleged symptoms were probably not causally related to the accident, as there were no objective signs of injury; that she does not have any

ongoing symptoms related to the accident; that it is unlikely she would require any prolonged treatment following the accident. Further, that Ms. Hunter would not require any ongoing passive modalities of treatment such as chiropractic adjustments, massage therapy, or other such treatments, as these would not be of any lasting benefit.

[38] Dr. Dommisse found no evidence of any tight muscle knots in the back of the plaintiff's neck, her shoulders or upper back. He felt she was unrestricted in terms of her housework, although agreed that some of that housework may cause some pain. He felt that the plaintiff would be unrestricted in her travel, carrying luggage, turning her head to carry on a conversation, washing her car, skiing, dancing or doing yoga. There may be some pain, but she would be unrestricted.

[39] In the opinion of Dr. Dommisse, Ms. Hunter's "disabilities" are not permanent. It was his opinion that she had recovered from the accident. He also disagreed that she was at any increased risk of degenerative arthritis. That she is unlikely to deteriorate and is not at any increased risk of such degeneration, as Dr. Lebrun had suggested.

[40] In his testimony, Dr. Dommisse said that the force of the impact of an accident is a factor to consider when assessing injuries, but it is not the determinative factor. Other factors such as age, health, predisposition of a particular person may play a role in the extent of an injury.

[41] The final report of Dr. Lebrun was June 25, 2010. In that report he stated that the plaintiff continues to demonstrate tender tight muscle knots and trigger spots in certain areas of her back, shoulders and neck. He found she had a moderate limitation in the range of motion on her neck. He felt there was little hope for much improvement for her, that her recovery had reached "a steady plateau".

[42] Dr. Lebrun believed that the plaintiff's disabilities are now likely permanent. He felt there was a likelihood that there could be deterioration in her future, and that she is at risk for more troubles with any future trauma or strains. Any future vocation

for Ms. Hunter would be unlikely to involve any kind of physical labour. Finally, it was his belief that all of the troubles for the plaintiff have been the direct result of her being involved in the motor vehicle accident of October 20, 2006.

[43] One of the issues raised was whether or not there were any pre-existing injuries to the plaintiff. Ms. Hunter denied any previous injuries and denied any previous treatment such as physiotherapy, therapeutic massage treatments, or any chiropractic or other medical treatments. Although she did acknowledge having a broken ankle when she was in Grade 8 and may have received physiotherapy at that time.

[44] Ms. Hunter was questioned closely by counsel for the defence about an essay she wrote for the Lang Institute of Canine Massage, in which she indicated that she had had six to ten massages and some physiotherapy for aches and pains in her neck and back. This was in conjunction with her explaining to the Institute why she felt that massage was beneficial, that it would be as applicable to dogs as it would be to humans. The plaintiff testified that all the massages that she had ever had were in a spa setting, and never by referral to a registered massage therapist. Because spas do not keep records, there would be no records of those spa treatments. There were no clinical records to suggest any therapeutic massages having been ordered or undergone. She was never sent for massage therapy, but would go for relaxation for casual pain or stress in the normal way that someone would go to a spa.

[45] In spite of very firm and professional cross-examination on this issue of pre-existing injuries, Ms. Hunter was steadfast and credible with regard to this issue of no pre-existing injuries. She testified to the usual aches and pains that most people might get from sitting at a desk too long or working at a computer without a break.

[46] I am satisfied from all the evidence that there were no instances of therapeutic massage treatments in the meaning of a medical treatment for any type of pre-existing injury. I accept that they were ordinary massages in the spa type of setting to which the plaintiff was referring. I also note that by the time of trial, the

plaintiff's family doctor, Dr. Lebrun, had been seeing her for the past 12 years, and there was nothing in his clinical notes to indicate any such type of referrals or treatment.

[47] The plaintiff's evidence is that now she experiences flare-ups which cause tension and muscle knots between her shoulder blades, affecting her shoulders and her neck, and she often has headaches. It is uncomfortable for her to sleep at times, and she has sleep disruptions. She stated that this was not constant, but only when flare-ups occurred. If she is doing nothing out of the ordinary, she might have a flare-up once every week or two. But if she has a longer day, or is travelling, or doing something that requires more strenuous activity, then the flare-ups will be more often. Following a flare-up, the plaintiff testified she was sore for a few days after. She does stretches, exercises, and her fiancée gives her back rubs; she takes medication, and will stop work.

[48] Ms. Hunter acknowledged that she voluntarily restricts herself on some activities now. She is capable of doing the activities, but the ones that cause her pain, she chooses not to do. She said she is "unable to do anything strenuous." She is physically able to do the activities, but they cause her pain.

[49] Stephen Robinson has lived with the plaintiff for almost five years, and they were to get married the week after the trial. They began dating five and a half years ago. He was attracted to her because she was pretty, ambitious, energetic, very active, "a bit of a go getter". Mr. Robinson described the slow recovery of the plaintiff following the accident, where she would go to the gym, and then complain afterwards.

[50] At the present time, he says that they do the usual things as before, but there are some activities that Ms. Hunter does not do. If she is in pain on a particular day, he says she becomes irritable and snappy. She will microwave hot packs and exercise around the house. He testified he rubs her back quite a bit. He carries the groceries always, as the plaintiff finds that that activity will cause pain in her back.

Nor has the plaintiff resumed doing the usual cleaning of bathrooms and vacuuming that she did before the accident.

[51] In 2008, the couple moved from a home of 650 square feet with one bathroom to a home approximately 2,500 square feet with four bathrooms. They have hired a cleaner to come in once a week, for $50 a week.

[52] Mr. Robinson does quite a bit of travelling in his job. He described his fiancée as a positive person, who laughs easily and has a positive outlook.

[53] When he gives his frequent back rubs, Mr. Robinson indicated it is in the area to the right of the spine, between the spine and the scapula, and sometimes up towards her neck.

[54] He described the plaintiff as someone who sometimes works long hours. She takes their dog for walks, two times a day, 15 to 30 minutes at a time, and she is at the gym four to six times a week. She is a person who has a lot of drive. He said if she overdoes some activity, there is pain after. Therefore, she does not do some things because she knows what it will cause her.

The Position of the Plaintiff

[55] The plaintiff seeks non-pecuniary damages for pain and suffering in the amount of $40,000. She further seeks damages for loss of capacity and loss of opportunity. Prior to the accident, she was in the process of qualifying as someone trained in canine massage, so that she could open her own canine massage business. She had enrolled in the Lang Institute of Canine Massage in Colorado in the spring of 2006, paying the initial course cost of $3,500. She then attended a six-day practicum as part of the course in June 2006 in Colorado.

[56] The plaintiff claims that because of the accident, she was unable to open her canine massage business and seeks an award of $10,000 to $15,000 to compensate for being unable to provide herself with the addition income that her own business would have allowed.

[57] By way of cost of future care, the plaintiff seeks $1,000 for future chiropractic treatment, and $2,500 for hiring a weekly housekeeper at $50 a week to assist with portions of housework that aggravate her symptoms, namely vacuuming and cleaning four bathrooms.

[58] Finally, she claims special damages in the amount of $8,363.54 for payments for physiotherapy, massage therapy, chiropractor and acupuncture, together with mileage.

The Position of the Defendants

[59] Counsel for the defendants points to the minor accident which resulted in a minimal injury only. Relying on the opinion of Dr. Dommisse, the defence contends that any injury sustained by Ms. Hunter was minimal, and that she has long since recovered.

[60] In contending that the plaintiff leads a full and active life, the defence points to someone who can run a half marathon, has taken several vacation and business trips to places such as Hawaii, Las Vegas, London, England, Costa Rica and Palm Springs. In addition to the extensive training that the half marathon dictated, the plaintiff is extremely active in working out at the gym most days of the week, goes on hikes with her fiancée for an hour or two, works at a demanding job for long hours at times, and generally leads an active and healthy lifestyle.

[61] According to the defence, Ms. Hunter has suffered little if any loss of enjoyment of life, nor pain and suffering resulting from this minor accident. It is argued that there is evidence to suggest that the plaintiff had previously experienced back and/or shoulder pain sufficient to seek massage therapy treatment, which would support Dr. Dommisse's opinion that any symptoms experienced by her now would be related to causes other than the accident.

[62] If the court were to award damages for non-pecuniary loss, the defence suggests that an award should be very modest. That the plaintiff has not discharged her burden of proof. Counsel cited the *Jezdic v. Danielisz* decision and also the

Nandan v. Ambrosio decision where the courts in both cases found the plaintiffs had not discharged the burden to prove on a balance of probabilities that the plaintiff was injured because of the car accident, and the actions were dismissed in both those cases.

[63] The *Price v. Kostryba* decision of Chief Justice McEachern, as he then was, was cited, which reminds that the court should be careful where there is little or no objective evidence of continuing injury. Non-pecuniary damages in the amount of $1,500 from a first minor accident and $2,000 from a second accident were awarded in *Way v. Frigon*. In that case Mr. Justice Smith, as he then was, stated at paragraph 33 of the judgment that "...juries have been telling trial judges for the past few years that trial judges have been awarding too much money in non-pecuniary damages for minor soft tissue injuries." The court there took into account "the instructive value of jury verdicts" in assessing non-pecuniary damages in that case.

[64] On the issue of loss of earning capacity, the defence points to authorities which confirm that a plaintiff must show a substantial possibility that the lost capacity will result in a pecuniary loss. The defence contends that the plaintiff has failed to prove, on a balance of probabilities, that there is a real and substantial possibility that she will sustain a financial loss in the future due to injuries arising from the accident. Counsel for the defence points to the absence of evidence about any typical earnings of a canine massage therapist, nor was there any evidence with regard to Ms. Hunter's potential loss of earnings from her own canine massage business. Also, the evidence indicates Ms. Hunter has increased her income from 2007, when it was $33,000 to 2009, where her income was somewhere between $52,000 and $57,000.

[65] I am in agreement with the position of the defendants on the claim for lost capacity to earn. There is little evidence to sustain the plaintiff's claim that she has suffered a loss of earning capacity.

[66] As for the plaintiff's claim for special damages, any such claim should be limited to treatments from the date of the accident to December 16, 2006, according

to the defendants. That would be 13 physiotherapy treatments from October 31, 2006 to December 15, 2006, $20.00 for each session, for a total of $260. As for the rest of the many treatments following mid-December 2006, the defence relies on the evidence of Dr. Travlos and Dr. Dommisse in contending that there is no medical benefit to ongoing passive therapy. Dr. Dommisse felt that the plaintiff's present symptoms were not related to the accident.

[67] As for cost of future care, the defence claims the plaintiff is capable of doing all of her housekeeping duties, according to the medical evidence, and that hiring a cleaner is simply a lifestyle choice.

Conclusion

[68] First, I found the plaintiff to be entirely credible. She did not seek to exaggerate, and gave her evidence in a very direct manner. She was responsive to questions, and did not seek to avoid or be defensive with the tough questions posed on cross-examination. I certainly accept her evidence with regard to her symptoms, past and present. There is no credible or reliable evidence of any pre-existing injuries or conditions, and her injuries and ongoing symptoms are due to the accident of October 20, 2006.

[69] It is true that the force of the accident was not major, but the evidence points to no other cause of the injuries and symptoms experienced by the plaintiff, other than the accident of October 20, 2006.

[70] To say that the plaintiff experienced only three weeks of disability, or six or eight weeks at the most, is to ignore most of the evidence of the plaintiff, her family doctor, her fiancée, her father and Dr. Travlos.

[71] Although by the summer of 2008 the plaintiff felt she was 85% recovered, she testified that at the present time, the flare-ups occur frequently, sometimes once every week or two, or more often, if she does activities that cause such flare-ups. The flare-ups result in tension and muscle knots between her shoulder blades, particularly toward her right shoulder and neck area, and headaches occur. She has

sleep disruptions, difficulty getting to sleep, and voluntarily avoids some activities that she enjoyed prior to the accident; she avoids them rather than put herself in a position where pain or a flare-up will occur.

[72] The evidence would indicate that her recovery has plateaued. She takes Tylenol and Cyclobenzaprine on occasion, and she finds that she must remain active and exercise, as inactivity will make her symptoms worse.

[73] The plaintiff's pain is not chronic and continuous, but she suffers pain and increased pain with certain kinds of exertion. It has been four years since the accident occurred, and Ms. Hunter continues to have pain in her shoulders, particularly her upper right back, and neck. Ordinary daily activities such as carrying groceries, doing the laundry, vacuuming, and certain types of cleaning cause flare-ups, which result in pain.

[74] Counsel for the plaintiff, in addressing the issue of non-pecuniary damages, has cited six cases where non-pecuniary damages ranged from $30,000 to $50,000. Relying primarily on *Jackman v. All Season Labour Supplies Ltd.* and *Crichton v. McNaughton*, the plaintiff submits that an award of $40,000 would be reasonable for non-pecuniary damages.

[75] I agree that those two cases are helpful, given the evidence in this case, and I would award $35,000 for non-pecuniary damages.

[76] As I have already stated, I do not find that the plaintiff has satisfied the burden of proof to establish any loss of capacity with regard to her intention of opening a canine massage business. The evidence simply does not support this claim for loss of opportunity or loss of earning capacity.

[77] On the issue of cost of future care, I am satisfied that the passive therapy treatments prescribed for the plaintiff were reasonable, and that the relief that she obtains from ongoing chiropractic treatments from time to time is real, helpful and reasonable.

[78] The defence took issue with the number of times the plaintiff sought treatment from a physiotherapist, chiropractor, massage therapist and an acupuncturist. However, all of these were referrals by her family doctor or the physiotherapist. I am satisfied that those treatments and therapies were valid treatments for this plaintiff, who was trying to alleviate pain from flare-ups that were ongoing since the accident, and were due to injuries arising out of the accident.

[79] Pain that has occurred only since the accident cannot be pleasant for the plaintiff. If she finds some relief in chiropractic treatment from time to time, then under these circumstances, I view that as a reasonable cost of future care. The same can be said for assistance in housekeeping, given the evidence.

[80] The plaintiff seeks $1,000 for future chiropractic care. I find that a reasonable amount and so award.

[81] As for assistance with household tasks, the plaintiff seeks $50 per week for a period of one year, for a total of $2,500. I find that also a reasonable and modest award, and would make that award.

[82] Ms. Hunter did everything she could, everything that was recommended by her doctor, to try and get better following the accident. Her attendance for medical therapies including physiotherapy, chiropractic treatments and massage therapy were many, time-consuming and expensive. I consider the position taken by the defence on special damages to be unreasonable. In my view, the plaintiff has proven, on a balance of probabilities, special damages in the amount of $8,363.54.

Summary

[83] The plaintiff is awarded the following:

Non-pecuniary damages	$35,000.00
Cost of future care	3,500.00
Special damages	8,363.54
Total	$46,863.54

Costs

[84] Costs are awarded to the plaintiff, unless there are circumstances of which I am unaware.

"Morrison J."