

Case Name:
Sra v. Zhu

Between
Amarjit Singh Sra, Plaintiff, and
Ziaolei Zhu and Yi-Chan J. Lin, Defendants

[2007] A.J. No. 706

2007 ABQB 426

159 A.C.W.S. (3d) 522

Docket: 0503 16029

Registry: Edmonton

Alberta Court of Queen's Bench
Judicial District of Edmonton

D. Lee J.

Heard: June 19, 2007.

Judgment: June 25, 2007.

(75 paras.)

Damages -- General damages -- For personal injuries -- Calculation -- Aggravating factors -- Considerations -- Aggravation of pre-existing injury -- The plaintiff was awarded \$23,098 in total damages for injuries to his lower back, neck and jaw sustained in a motor vehicle accident for which liability was admitted -- The cost of future jaw-related costs was reduced as the plaintiff had failed to wear a night splint, and the second accident had aggravated the condition.

Damages -- Physical injuries -- Body injuries -- Back -- Head injuries -- Jaws -- Age of claimant -- 46 to 55 -- Non-pecuniary award -- \$5,001 to \$20,000 -- The plaintiff was awarded \$23,098 in total damages for injuries to his lower back, neck and jaw sustained in a motor vehicle accident for which liability was admitted.

In this claim for damages for injuries sustained in a motor vehicle accident, liability was admitted -- At the time of the accident, the 54-year-old plaintiff was a driver for the Edmonton Transit Service Disabled Adult Transportation System -- Post-accident, the plaintiff complained of headaches, pain in his neck and jaw and an exacerbation of existing lower back pain -- HELD: The plaintiff was awarded \$23,098 in total damages, plus pre-judgment interest and costs -- The video surveillance evidence established that seven months post-accident, the plaintiff showed no signs of any neck or shoulder injury -- The plaintiff was awarded \$13,000 in general damages, \$337 in special damages for out-of-pocket expenses, \$1,200 for cost of future TMJ care, \$2,400 in WCB medical aid costs, \$3,496 in WCB rehabilitation costs, and \$2,665 in lost income -- The cost of future jaw-related costs was reduced as the plaintiff had failed to wear a night splint, and the second accident had aggravated the condition -- The WCB costs were reduced as the plaintiff had a significant lower back history.

Counsel:

Brij Mohan for the Plaintiff.

Robin Everett, Workers' Compensation Board.

Sharon R. Stefanyk for the Defendants.

[Editor's note: A corrigendum was issued on July 10, 2007; the corrections have been made to the text and the corrigendum is appended to this judgment.]

Memorandum of Decision

1 D. LEE J.:-- This litigation arises out of a motor vehicle accident that occurred on September 22, 2004. On that date, the Plaintiff was travelling westbound on Calgary Trail when the Defendant, travelling westbound on Whitemud Drive, failed to note a red light and proceeded into the intersection. The liability of the Defendant Xiaolei Zhu is admitted.

2 The Plaintiff claims general damages, special damages, loss of housekeeping capacity, the cost of future care, and loss of income.

3 The Plaintiff was 54 years of age at the time of the accident, and is currently 56 years old. He is married and lives with his wife. They reside in a house in the Millwoods area. At the time of the accident, the Plaintiff worked approximately 60 hours a week as a driver for the Edmonton Transit Service Disabled Adult Transportation System ("DATS").

Plaintiff's Medical History Prior to September 22, 2004

4 Prior to the accident, the Plaintiff had a history of related medical problems. On April 6, 2001, he suffered a W.C.B. work-related low back strain and right sacroiliac joint strain while tying up a wheelchair and missed 6 weeks of work. From April 9, 2001 to May 23, 2001 the Plaintiff received 28 physiotherapy treatments at Burnewood Physiotherapy Ltd.

5 On November 30, 2001, the Plaintiff was involved in a motor vehicle accident at 9:55 p.m. on Stony Plain Road eastbound near 123rd Street in Edmonton, Alberta, when his vehicle struck a car that was in his path in the intersection. His vehicle's airbags deployed, and he struck his left leg on the dashboard. He attended at the Emergency Department of the Royal Alexandra Hospital, x-rayed his left tibia and fibula and was prescribed Tylenol #3. He developed pains between his shoulder blades and in his lower back. He also suffered left ankle pains and an open wound on his left leg and could not weight bear. From December 5, 2001 to December 24, 2001 he received 9 physiotherapy treatments at Burnewood Physical Therapy Centre Ltd. He was disabled for 5 weeks.

6 On December 7, 2001 the Plaintiff suffered a W.C.B. work-related dorsolumbar strain. From December 7, 2001 until May 22, 2002 the Plaintiff received treatment through the W.C.B., including 3 physiotherapy treatments.

7 On January 15, 2004, the Plaintiff suffered a W.C.B. work-related injury when he slipped and fell while walking on a driveway to pick up a customer. He injured his right hand, right shoulder and trapezius. From January 16, 2004 to February 12, 2004 he received 12 physiotherapy treatments at Burnewood Physical Therapy Ltd. to improve his cervical spine and bilateral shoulder range of motion. He was disabled from work for 4 weeks.

8 From February 12, 2004 until the September 22, 2004 accident, it appears that the Plaintiff was symptom-free. Further, the Plaintiff did not have any jaw problems prior to the accident. The Plaintiff argues that although he had other health problems prior to the accident, he was not symptomatic at the time of the accident in question.

The September 22, 2004 Subject Accident

9 Following the accident in question, on September 22, 2004 the Plaintiff's general practitioner Dr. Rai diagnosed the Plaintiff with:-

1. Cervical strain;
2. Dorsal strain;
3. Scapular strain;
4. Left shoulder strain

10 From September 23, 2004 to October 19, 2004, the Plaintiff attended 13 physiotherapy treatments at Burnewood Physical Therapy Ltd. Upon his discharge the therapist noted that his cervical spine mobility was at 90%. However, he demonstrated poor cervical muscle endurance, and was instructed not to do bending or lifting for 3 to 4 weeks from the date of physiotherapy

discharge.

11 On September 27, 2004 the Plaintiff saw Dr. Rai, who noted tenderness at his trapezius and paraspinal muscles, and from the sub-occiput to the cervical-dorsal and lumbar-vertebral muscles down to L5, with moderate spasm.

12 On September 29, 2004 he revisited Dr. Rai with complaints of head heaviness, pulling at the back of his head with neck movements, recurrent thoughts of the accident, fear of driving and poor sleep. He was also having problems with left jaw joint pains while chewing food. Dr. Rai observed moderate pains in neck, shoulder blades, mid and lower back with stiffness. He prescribed Elavil, gave the Plaintiff a dental referral and instructed him to continue physiotherapy.

13 Dr. Rai continued to treat and monitor the Plaintiff's injury recovery on October 8, 13, 16 and November 8 and 18, 2004.

14 On October 19, 2004 at the request of the W.C.B., the Plaintiff saw Dr. A. Esmail for the purpose of a W.C.B. Independent Medical Examination. Dr. Esmail opined that the Plaintiff did suffer injury in the September 22, 2004 motor vehicle accident as follows:-

- * Cervical spine strain;
- * Lumbar spine strain;
- * Left trapezius strain; TM Joint Dysfunction,
- * Left Chondromalacia, and;
- * Anxiety.

15 Dr. A. Esmail prescribed admission to the (W.C.B.) Millard Health Centre for further therapy and reconditioning.

16 From October 21, 2004 to November 12, 2004, the Plaintiff attended at the Millard Centre. He received three weeks of treatment, including a work stimulation program to improve tolerance to job demands, psychological intervention to reduce anxiety, and a home exercise program to restore normal function.

17 Upon his discharge from the Millard Centre program, the Plaintiff was ready to resume regular work hours and regular work duties effective November 15, 2004.

Temporomandibular Joint Dysfunction

18 According to the dental chart of Dr. R.E. Hass, the Plaintiff does not have a dental history of Temporomandibular Joint problems.

19 On September 30, 2004, the Plaintiff was referred to Dr. Kherani for assessment and treatment of his accident-generated jaw pain. Dr. Kherani concluded that the Plaintiff "did develop Temporomandibular dysfunction as a direct result of the motor vehicle accident" [of September 22,

2004].

20 Dr. Kherani also carried out a further, comprehensive TMJ assessment on October 25, 2004 which confirmed:-

- * Jaw joint pain & noises;
- * Muscle pain & stiffness;
- * Limited mouth opening: 30mm/33mm;
- * Dizziness;
- * Neck aches;
- * Headaches;
- * Back pain;
- * Compromised sleep pattern;
- * Pain is 8+/10;
- * Musculature = 2/3 for pain.

21 Dr. Kherani diagnosed the Plaintiff with moderate to severe myalgia of the masticatory and cervical muscles and moderately severe right and left Temporomandibular joint capsulitis. Dr. Kherani's initial report advised that TMJ treatment commenced on October 25, 2004 and was expected to conclude "some time in late 2005".

22 On November 2, 2004 Dr. Kherani commenced occlusal splint therapy. A splint adjustment was done on November 4, 2004. On November 8, 2004, Dr. Kherani sent the Plaintiff for radiographs and Tomographs by Dr. C.G. Baker who noted objective evidence of TMJ injury as follows:-

"There is evidence of condyle/disk dislocation consistent with bilateral TM joint/disk dysfunction."

Subsequent December 9, 2004 Accident

23 On December 9, 2004 the Plaintiff was involved in a subsequent motor vehicle collision when his DATS vehicle was rear-ended while driving Fox drive & Fort Edmonton Park Road in Edmonton, AB. Following this collision the Plaintiff saw Dr. Rai and complained of pain and stiffness in his back and neck and a headache.

24 On January 6, 2005 the Plaintiff attended upon Dr. Kherani for a further occlusal splint adjustment. In his report of March 22, 2006 Dr. Kherani opined:-

"The subsequent motor vehicle accident of December 9, 2004 aggravated his TMJ condition and increased the time required for his treatment."

25 As noted above, Dr. Kherani' initial report advised that, in the absence of the December 9,

2004 accident, occlusal splint therapy relative to the September 22, 2004 accident was expected to complete "some time in late 2005".

26 The Plaintiff continued to receive TMJ occlusal splint therapy from Dr. Kherani and attended at his office for splint adjustments on:-

1. March 9, 2005
2. April 23, 2005
3. April 25, 2005
4. April 23, 2005
5. April 25, 2006
6. September 1, 2005
7. September 22, 2005
8. October 27, 2005
9. December 14, 2005

27 On December 14, 2005 Dr. Kherani adjusted the Plaintiff's splint and re-evaluated his TMJ injury and function. He noted the Plaintiff's current complaints and function as:-

- * Bilateral muscle pain;
- * Limited mouth opening: 38mm/41mm
- * Earaches sometimes behind the ears;
- * Has difficulty chewing meat;
- * Headaches sometimes;
- * Low backaches.

28 Dr. Kherani felt that the Plaintiff required continued TIVIJ occlusal splint therapy, which he quantified as follows:-

3 yrs occlusal splint (\$750/yr): \$2,250.00

5 yrs night splint (\$500/yr): \$2,500.00

8 yrs adjustments (\$187.50/yr): \$1,500.00

TOTAL: \$6,250.00

29 On June 15, 2006 and January 2, 2007, Dr. Kherani adjusted the Plaintiff's occlusal splint at each 6-month visit.

Analysis

30 The Plaintiff submits that he has endured pain and suffering, as well as inconvenience in a restriction of activities due to the injuries he suffered in the September 22, 2004 vehicle accident. He continued to have headaches and pain in his neck and jaw and experienced an exacerbation of pre-existing low back pain. Treatment included TMJ splint therapy, physiotherapy visits, work stimulation, job tolerance reconditioning, time off work, home exercises, and medication. It is submitted that the Plaintiff has had difficulty working, sleeping, sitting, driving, walking, and lifting. Chewing causes pain so that he has to eat softer foods. He has had difficulty carrying moderate to heavy housekeeping activities such as exterior maintenance and repairs.

31 The Plaintiff seeks \$25,000 to \$30,000 in general damages, \$2,000 for loss of housekeeping capacity following the accident, a total loss of income claim in the sum of \$4,440.41, cost of future TMJ care in the sum of \$4,093.60, and out-of-pocket expenses and mileage in the sum of \$1,317.31.

32 There is also a Workers' Compensation Board claim for benefits that the Plaintiff received through the Workers' Compensation Board for which the Board is advancing a claim of \$3,201.31 for medical aid costs, pre-judgment interest on the medical aid costs of \$293.01, rehabilitation costs of \$4,660.76 and Workers' Compensation Board pre-judgment interest on rehabilitation costs of \$113.65.

Loss of Housekeeping Capacity

33 The medical evidence shows that the Plaintiff was disabled from his employment until November 15, 2004, a period of approximately two months. It follows according to counsel for the Plaintiff that he would have also experienced pain and limitation in carrying out home-based chores until that date.

34 The Plaintiff did not hire a housekeeper or handyman, but it is submitted that this is still a claimable item:-

What happens from a theoretical standpoint, is that, by not hiring replacement services for homemaking tasks in the post-accident scenario (frequently through financial inability to do so), the plaintiff converts a potential pecuniary loss into a non-pecuniary one - the pain and discomfort of doing the work, and the discomfort of functioning without the usual amenities and living conditions.

Personal Injury Damages in Canada, Cooper-Stephenson, 2nd Edition, p. 147.

35 In *Gould v. Holton*, [2000] A.J. No. 1387 the plaintiff was awarded \$10,000.00 in additional compensation for loss of housekeeping capacity.

36 It is submitted that the Plaintiff suffered a loss of housekeeping capacity following the accident, and is entitled to an award of \$2,000.00 to compensate him for this loss.

Past Loss of Income

37 At the time of the accident, the Plaintiff worked 10 hours per day, 60 hours per week as a Driver for Edmonton Transit Service DATS, earning an hourly wage of \$10.623/hr Net and a daily wage of \$106.23 Net.

38 From September 22, 2004 to November 2, 2004, the Plaintiff was fully disabled from the essential duties of his employment; a period of 36 working days at a net loss of \$3,824.28.

39 From November 3, 2004 up to and including November 13, 2004, the Plaintiff gradually returned to work with the assistance of the W.C.B. and his employer, The City of Edmonton. During the graduated return to work he lost a further 58 hours of work at a rate of \$10.623/hr Net for an additional past loss of income of \$616.13.

40 The Plaintiff's past income loss due to his graduated return to work schedule is calculated in the spreadsheet below:-

SRA Millard Health Graduated RTW Program - Income Loss

Date Worked	Normal Worked Day	Hrs. Lost	Net Hourly Rate	Net Loss
Nov 03/04	10 4	6	\$10.623	\$63.74
Nov 04/04	10 0	10	\$10.623	\$106.23
Nov 05/04	10 4	6	\$10.623	\$63.74
Nov 06/04	10 6	4	\$10.623	\$42.49
Nov 08/04	10 6	4	\$10.623	\$42.49
Nov 09/04	10 0	10	\$10.623	\$106.23

Nov 10/04	10	8	2	\$10.623	\$21.25
Nov 11/04	10	6	4	\$10.623	\$42.49
Nov 12/04	10	0	10	\$10.623	\$106.23
Nov 13/04	10	8	2	\$10.623	\$21.25
Nov 15/04	10	10	0	\$10.623	--
Totals	110	52	58	\$10.623	\$616.13

41 The Plaintiff returned to his pre-accident, regular work hours on November 15, 2004.

42 The Plaintiff claims a total last loss of income in the amount of \$4,440.41.

Out-of-Pocket Expenses & Mileage

43 The Plaintiff's out-of-pocket expenses are itemized as follows:-

* PL PROD 020 - Dr. Rai Form Fee: \$20.00

* PL PROD 038 (Reply to UT #9): \$1,197.31

* Dr. Kherani TMJ Tx Jan 02/07: \$100.00

Total Out-of Pocket Expenses: \$1,317.31

44 The Plaintiff's mileage claim is calculated as expressed in the Plaintiff's Reply to Undertaking

#6 times the number of visits to each treatment facility:-

Destination	Round Trip Kms	Visits	Kms
Dr. Rai	12.39194 kms	8 visits	99.13552
Dr. Kherani	21.40426 kms	15 visits	32.10639
Burnewood Physiotherapy	2.47838 kms	13 visits	32.21894
Millard Centre	31.3822 kms	15 visits	470.73300
			Total Kms: 634.19385

Rounded to: 634.19 kms

Total kilometres travelled = 634.19 Kms x \$0.4051 km* = \$256.85

*40.5 cents per kilometre is the government-accepted rate for claimed mileage expenses.

Cost of Future TMJ Care

45 According to Dr. Kherani, as of December 2005 the Plaintiff required \$6,250.00 in future TMJ occlusal splint therapy. He last saw Dr. Kherani on January 2, 2007 for a splint adjustment and is to have a further splint adjustment in 6 months' time.

46 It is submitted that the current value of Dr. Kherani's cost of future TMJ care can be calculated

as follows:-

3 yrs occlusal splint (\$750/yr; \$62.50/month):	\$2,250.00
5 yrs night splint (\$500/yr; \$41.67 month):	\$2,500.00
8 yrs adjustments (\$187.50/yr; \$15.63/month):	\$1,500.00

Total: \$6,250.00

Time adjustment:
[-18 months to June 2007]

18 x \$62.50 = \$1,125.00

18 x \$41.67 = \$750.06

18 x \$15.63 = \$281.34

Total Deduction for Time
Elapsed: -\$2,156.40

Current Cost of Future TMJ Care at June 2007:	\$4,093.60
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Workers' Compensation Board Claim

47 The Plaintiff received benefits through The Workers' Compensation Board for which The Workers' Compensation Board is advancing a claim in the following amounts, which are current to April 13, 2007:-

Medical Aid:	\$3,201.31
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Pre-Judgment Interest on Medical Aid:	\$293.01
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Rehabilitation Costs:	\$4,660.76
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Pre-Judgment Interest on Rehabilitation Costs:	\$413.65
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Summary of Total Claim

General Damages Range:	\$25,000.00 to \$30,000.00
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Past Loss of Housekeeping Capacity:	\$2,000.00
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Past Loss of Income:	\$4,440.41
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Out-of-Pocket Expenses:	\$1,317.31
Mileage:	\$256.85
Cost of Future TMJ Care:	\$4,093.60
W.C.B. Medical Aid Costs	\$3,201.31
W.C.B. Pre-Judgment Interest on Medical Aid:	\$293.01
W.C.B. Rehabilitation Costs:	\$4,660.76
W.C.B. Pre-Judgment Interest on Rehabilitation Costs:	\$413.65
TOTAL:	\$45,676.90 to \$50,676.90

Plus PJI and Taxable Costs and Disbursements.

Conclusion

48 This litigation arises out of a motor vehicle accident which occurred on September 22, 2004. The only issue before the Court is the quantum of the Plaintiff's Damages.

49 On September 22, 2004, the Plaintiff was travelling southbound on Calgary Trail. The Defendant, Zhu, was travelling westbound on the Whitemud Drive, when she failed to note a red light and proceeded into the intersection.

50 The liability of the Defendant, Zhu, is admitted. What general damages, special damages, housekeeping capacity, cost of future care, and loss of income is the Plaintiff entitled to?

A. Pre-existing History

51 Prior to the accident, the Plaintiff had the following relevant episodes which have affected his medical condition:-

- i) April 6, 2001: Acute Lumbar Strain (W.C.B.)

The Plaintiff was tying up a wheelchair, twisted his back, and had increased pain in his lower back. He was unable to get up from a sitting position. He was unable to sit for more than 15 minutes and had to use support to bend. The Plaintiff was in severe distress, had scoliosis and was walking with a cane, and had severe difficulty getting around. He also complained of dizzy spells. Physiotherapy lasted from April 9, 2001 - May 23, 2001, for a total of 28 treatments. The Plaintiff missed six weeks of work.

April 12, 2001: X-rays of the lumbar spine revealed degenerative disease.

- ii) November 30, 2001: Prior motor vehicle accident

The Plaintiff attended the Royal Alexandra Hospital Emergency Department with symptoms of left leg pain, back pain, stiff shoulders and neck.

The airbags deployed and the Plaintiff lost consciousness. He had complaints of pain between his shoulder blades, lower back, left leg - could not put weight on the same, and difficulty walking.

The Plaintiff attended physiotherapy and was off work for five weeks.

- iii) December 7, 2001: Dorso-lumbar strain (W.C.B.)

Moderate to Severe low back strain, unable to sit for more than 10 minutes, hard to get up from a sitting position, can't bend, kneel or crouch, pains in the left leg and ankle. He undertook 9 physiotherapy treatments.

- iv) January, 2002: Lower Back Strain (W.C.B.)

Pain in lower back. Neck and mid-back pains. Has to get up from sitting position with support of hands.

- v) April 10, 2002: Pain, Lower Back Pain Stiffness - sore with bending and sitting.
- vi) January 16, 2004: Fell on ice at work (W.C.B.)

Injury to shoulder and hand, undertook physiotherapy treatment. Hurts to lift arm, unable to touch in that area. Right shoulder strains - pain in right side of neck - sore to lift right arm.

Moderate to severe pain in left knee - swelling around knee cap. Worse with , walking - climbing, painful spinal pains neck - mid and lower back.

Unable to work for four weeks, underwent physiotherapy from January 16-February 12, 2004.

B. Post-Accident History

- i) December 9, 2004 Accident

52 On December 9, 2004, the Plaintiff was rear-ended. He sustained further injuries to his back, neck, headaches, and had a stiff body. "In this accident, he was stopped at a red light. At the time, he was driving a Chevy Caprice. An individual driving a Camry slammed into the back of his vehicle. His Caprice was a write off. He initially felt a bit dazed. After a few minutes, he was able to get out of the car. Since then, he has experienced ongoing problems of low back pain and stiffness, as well as mid and upper back and neck stiffness ..."

53 In Examinations for Discovery, the Plaintiff refused to acknowledge that this accident aggravated his damages, as he was already undergoing treatment and taking medication for injuries sustained in the September, 2004 accident.

- ii) April 12, 2006: Acute Lumbar Strain

54 The Plaintiff developed low back pain while pulling a wheel chair out of door. Felt pain in

lower back - aggravated due to bending. Mild scoliosis. Recommend physio. The Plaintiff was off work from April 11 - May 19, 2006.

iii) July 17, 2006 - low back strain,

55 Lower back strain due to sustained posture.

C. September 22, 2004 Accident

56 The Plaintiff testified that he had sustained neck and shoulder pain; back pain; left knee pain; and teeth and jaw pain.

57 Immediately after the accident, the Plaintiff noted that he had pain in his neck and shoulders. He also testified that it was not until the Fall of 2005 that he did not have pain in his neck and shoulders.

58 The Defendant's video surveillance however established to my satisfaction that by April, 2005, seven months post-accident, that the Plaintiff showed no signs of any neck or shoulder injury.

59 The Plaintiff testified that by the time he arrived at his doctor's office on the day of the accident, he was experiencing back pain and he advised Dr. Rai this. I note in Dr. Rai's chart notes however that the Plaintiff denied back pain at the initial visit. The Plaintiff at Discoveries could not advise as to when his back pain came, only advising that his back pain had come to an end by 2007. The surveillance completed in April, 2005 does not show that the Plaintiff, at that time was bothered by back pain.

60 The Plaintiff only complained of knee pain in mid-October, 2004 and as such, it is doubtful that the same was caused by the motor vehicle accident. The Plaintiff testified that the knee pain resolved, and is no longer an issue.

61 Shortly after the motor vehicle accident, the Plaintiff noted that he was having difficulty chewing meat. He was referred to Dr. Kherani on September 30, 2004. Dr. Kherani fitted the Plaintiff with an occlusal splint, which the Plaintiff initially wore day and night. By Christmas, 2004, he was wearing the splint on and off during the day at night.

62 Dr. Kherani initially expected that the Plaintiff's treatment would be completed by late, 2005. The Plaintiff was then involved in the December 9, 2004 accident, which aggravated his condition and increased his treatment time. Now, Dr. Kherani's estimate of future treatment includes an occlusal splint until 2009, a night splint until 2011, and radiological assessment and splint adjustments to 2004. It is relevant to note that the Plaintiff has only ever had one splint, and has never had a separate night splint fabricated for him.

63 Even though the Plaintiff had prior injuries to his back, shoulders and leg, he could not recall these injuries at Examinations for Discovery. The Plaintiff now says that because he was involved

in Discoveries for the first time in his life, his mind went blank at various times that day. Given that the Plaintiff has had a significant pre-existing medical condition, the Plaintiff's lack of recall calls his credibility into issue.

64 The Plaintiff attended the Millard Health Centre from October 21, 2004 - November 12, 2004. Upon Discharge, the Plaintiff reported that he was feeling 110%:-

Subjective: The Plaintiff reports that he feels 110%. All symptoms of pain, discomfort, and dizziness initially reported, have resolved ... range of motion ... range of motion: this client has full range of motion of his neck and back.
strength: The Plaintiff has full strength in all major muscle groups of his extremities.

Analysis: The Plaintiff appears to have returned to pre-injury range of motion and strength. No residual difficulties were noted.

65 The Plaintiff says that his reference to feeling 110% referred to the period of time just after receiving his treatments, however I do not find this caveat on his statement(s) to be credible. Based upon a reasonable interpretation of the Plaintiff's comments at the Millard Health Centre, and the other information before the Court, I conclude that the Plaintiff's soft tissue injuries healed within three to four months of the motor vehicle accident.

D. Case Law

66 General damages for injuries of this nature in Alberta will range between \$10,000.00 - \$30,000.00. The higher range of damages appears reserved for those cases where there is some permanent partial disability results, or there is a long period of recovery or chronic pain:-

Case Name	Injury and Duration	Non-Pecuniary Damages Awarded
Pulak v. Sunshine Village Corp., [2004] A.J. No. 857.	Tow rope bar came down on plaintiff's head - mild soft-tissue injury to neck and shoulders, pain in neck and shoulder.	\$5,000.00

Substantially resolved within three and a half months with ongoing intermittent pain.

Pugsley v. Wong, [2001] A.J. No. 1391.	Motor vehicle accident wherein Plaintiff sustained a sore knee, bruised knee, chest and abdomen, cervical strain, stiff neck, pain in chest and abdomen, limp, leg contusions.	\$12,000.00
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Injuries should have healed within 12-24 months.

Singh v. Terna, [2003] A.J. No. 334.	Motor vehicle accident with mild soft tissue injuries to neck, shoulder, and back.	\$15,000.00
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Injuries lasted approximately 6 months.

Newlands v. Nielsen, [2001] A.J. No. 534.	Motor vehicle accident - headaches, neck pain and stiffness, chest and upper abdominal pain, multiple hematomas, cervical neck strain, chest wall contusions, fractured ribs, abdominal muscle wall contusions, transient left jaw strain, degenerative changed in the neck, 2% permanent partial disability.	\$18,000.00
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Koziak v.	Assault battery - struck on	\$18,000.00
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Koziak, [2001] jaw with a fist - TMJ disorder,
A.J. No. 689. 8% permanent partial disability,
headaches.

The injuries were ongoing 6 years after the date of the injury.

Johnson v. Tan, [2004] A.J. No. 1309.	Injuries to neck, back, and temporomandibular joint, pain in back, jaw, shoulder and hip, bursitis in shoulder, shoulder impairment 3% full person.	\$18,000.00
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Jaw pain lasted 2 years, back pain 1 year, hip pain, shoulder
impairment ongoing and permanent.

Barriffe v. Janiten, 2003 ABQB 1042.	Moderate soft tissue injury to neck and back, mild TMJ, aggravation of pre-existing chronic back pain.	\$30,000.00
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Most injuries resolved within 10 months.

67 I award the Plaintiff herein \$13,000.00 in general damages.

Loss of Income

68 The Plaintiff makes a claim for loss of income from September 22, 2004 - November 15, 2004 as follows:-

September 22, 2004 - November 2, 2004 (36 days x \$10.623/hour) = \$3,824.84

November 3-November 13, 2000
(58 hours x \$10.623/hour) = \$616.13

69 However the Plaintiff was an independent contractor at the time of the motor vehicle accident and, as such, had a number of expenses including gas, insurance, maintenance, registration, and a

vehicle which must be deducted. The Plaintiff does not have any documents to establish what these expenses would be and, as such, I will reduce the loss of income claim by 40%.

WCB Claims

- a. WCB Medical Aid Costs: \$3,201.31
- b. WCB Rehabilitation Costs: \$4,660.76

70 The WCB calculation of these costs are not in dispute however, given that the Plaintiff has a significant lower back history, and degenerative features, I conclude that these claims should be reduced by 25%. The Plaintiff himself, after proceeding through the Millard Health Centre, acknowledged that he was feeling 110%, which implies he was feeling fine and perhaps even better than he did prior to the accident.

Specials

71 The Court accepts the following Special Damages:-

Dr. Rai \$20.00

Mileage \$317.00

Total \$337.00

Cost of Future Care

72 According to Dr. Kherani, the Plaintiff's treatment would have ended in December 2005. As such, the Defendants argue that all treatment costs incurred as a result of the September 2004 accident have been incurred by December 2005. Any additional costs for the TMJ injury are arising from the December 2004 accident which has aggravated the Plaintiff's injuries.

73 However I conclude that the September 2004 accident is partly responsible for some cost of care items. In this regard, the Plaintiff has never worn a night splint, and as such there should be no

allowance for the same; and the second accident aggravated the TMJ condition, and as such the December 2004 accident would be required to bear at least a portion of the cost of future care.

74 I conclude that the \$4,093.60 cost of future TMJ costs should be reduced to \$1,200.00.

Loss of Housekeeping Capacity - Past and Future

75 It appears as though the more recent decisions of our Court have not allowed for a separate loss of housekeeping amount. Rather, this amount is lumped into the general damages claim. In any event, there is insufficient evidence to support a future loss of housekeeping capacity in this case.

Disposition

A. General Damages: \$13,000.00

B. Out of Pocket Expenses: \$337.00

C. Cost of Future
 TMJ Care: \$1,200.00

D. WCB Medical Aid Costs: \$2,400.98

E. WCB Rehabilitation
 Costs: \$3,495.57

F. Loss of Income: \$2,664.58

Total: \$23,098.13

Plus Pre Judgment Interest and Costs.

D. LEE J.

* * * * *

Corrigendum of the Memorandum of Decision

Please note that paragraph [54] has been corrected to read as follows:

[54] The Plaintiff developed low back pain while pulling a wheel chair out of door. Felt pain in lower back - aggravated due to bending. Mild scoliosis. Recommend physio. The Plaintiff was off work from April 11-May 19, 2006.