



## General Damages Update for Whiplash, Orthopedic, and Psychological Injuries in Alberta and British Columbia

By Shad Chapman, Partner

### ALBERTA (January 2009 – September 2013)

INJURIES: ARM, CLOSED HEAD, HIP, LEG, SHOULDER, SPINE, WRIST; WHIPLASH; FIBROMYALGIA; LACERATIONS AND PSYCHOLOGICAL INJURIES.			
ARM, LEG			
Case and Judge	General Damages Award	Details	Reasons
<i>Johnston v. Hader</i>  2009 ABQB 424  Kenny, J.	One Claimant:  Johnston: \$200,000 general  Breakdown: -general \$200,000	MedMal: surgery to correct seizures left Plaintiff paralyzed DOL: September 30, 2002  Johnston: female, 49 years old	The court found no liability and the doctors met the standard of care. However, the court assessed damages in the alternative.  Past loss of income was reduced by 20% as the court determined the Plaintiff would

	-past loss income \$204,935 -future loss income \$120,781 Total: \$525,716 (past and future loss of income reduced by 20%; reduced amount above)	Plaintiff's right side arm and leg were paralyzed during surgery when retractor blade knife slipped in too far.	wait a year before returning to work after the surgery.  Future loss of income was reduced by 20% as the court found the Plaintiff would have returned to work on an 80% basis.
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#### ARM, WRIST

Case and Judge	General Damages Award	Details	Reasons
<b><i>Hutton v. General Motors of Canada Ltd.</i></b>  2010 ABQB 606  Jeffrey, J.	One Claimant:  Hutton: \$35,000 general  Breakdown: - general \$35,000 - loss of income \$1,820	Defective airbag deployed  DOL: March 15, 2003  Hutton: female, suffered a severe fracture to her dominant left wrist, more than one surgery was required to repair	She was unable to perform yard work or housework for some time after the accident. She missed a full season of participating in her preferred leisure activities, such as baseball and golf. Seven years after the accident the plaintiff continued to suffer pain in her wrist after strenuous activity or when the weather changed, and her wrist clicked and snapped. However, she was not left with any ongoing disability.

#### ARM, SHOULDER, WRIST, HAND

Case and Judge	General Damages Award	Details	Reasons
<b><i>Park v. Jordan</i></b>  [2010] A.W.L.D. 2892  Mahoney J.	One Claimant:  Park: \$79,000.00 general  Breakdown: - General: \$79,000.00 (\$4,000.00 Minor + \$75,000.00 for Arm) - Earning Capacity: To be calculated	MVA: Plaintiff was a passenger in Defendant's vehicle. Defendant missed a turn and went off the road and down a cliff on an unfamiliar and icy road.  DOL: January 18, 2006  Park: Male, 41 years old	10% Contributory Negligence on the part of the Plaintiff for failing to wear his seatbelt.  Plaintiff had pre-existing back and neck problems which were aggravated in the accident. The general damages were capped at \$4,000 for those injuries.  Court found that the <i>Minor Injury Regulation</i> was such that damages for

		<p>Plaintiff had to be extricated from the vehicle by paramedics. He fractured his right humerus and sustained a radial nerve injury. He had ongoing pain and dysfunction in his right arm with lack of feeling throughout the distribution of the radial nerve. Also has wasting in his arm and continued to have pain near fracture and in right shoulder. Permanent impairment 10% to right upper extremity – 6% whole person.</p>	<p>“minor” injuries that would have been assessed at more than \$4,000.00 prior to the cap will be reduced to \$4,000.00.</p>
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#### ARM, NECK

Case and Judge	General Damages Award	Details	Reasons
<p><i>Loffler v. Cosman</i></p> <p>2010 ABQB 117</p> <p>Mahoney J.</p>	<p>One Claimant:</p> <p>Loffler: \$85,000.00</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>- General: \$85,000.00</li> <li>- Future Care: \$2,000.00</li> <li>- Total: \$87,000.00</li> </ul>	<p>Chiropractor Negligence</p> <p>Plaintiff sustained herniated disc and radiculopathy following chiropractic treatment for degenerative disc disease. Underwent spinal fusion and long recovery. Prognosis was guarded.</p> <p>Had permanent residual problems including numbness in right hand and arm.</p> <p>DOL: January 19, 2001</p> <p>Loffler: Male, 40 years of age</p>	<p>The action was dismissed, but Justice Mahoney assessed damages in any event.</p> <ul style="list-style-type: none"> <li>• Plaintiff failed to establish that the Defendant fell below the standard of care that may be expected from an ordinary, careful and competent chiropractor;</li> <li>• The manipulation at C6-7 was a necessary contributory cause of the disc herniation; however, the Plaintiff's pre-existing degenerative disc disease predisposed him to having an increased risk of developing disc herniation.</li> <li>• General Damages = \$85,000.00 because the Plaintiff underwent</li> </ul>

			spinal fusion surgery and a long recovery and continued to have residual problems,
<b>ARM, LEG, SPINE</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<i>Prosser v. 20 Vic Management Inc.</i>  2009 ABQB 177  Cairns, J.	One Claimant:  Prosser: \$100,000 general  Breakdown: -general \$100,000 -loss of earning capacity \$50,000 -special \$54,500 -housekeeping \$36,500 -cost of future care \$90,000 Total: \$331,000 Entitled to half: \$165,500	Trip and fall: tripped over construction fence in parking lot  DOL: February 29, 2000  Prosser: female, 39 years old  Pre-existing back pain; had been attending chiropractor in mall for shoulder, neck pain; after fall back, arm, leg pain – serious musculo-ligamentous, soft tissue, disc injuries.	No serious pre-existing back pain complications; however, the trip and fall contributed to current condition and changed lifestyle. Symptoms were likely to get worse.  There were some credibility problems surrounding the Plaintiff's recollection of the accident. She was not sufficiently cautious as she left the mall and the court found each party equally liable. Plaintiff received half of damages awarded.
<b>HEAD</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<i>Black v. Dugo</i>  2012 ABQB 553  Burrows, J.	One Claimant:  Black: \$14,000 general  Breakdown: -punitive: \$5,000  Total: \$19,000	Assault with glass beer mug  DOL: April 17, 2009  Black: male, 34 years old  Plaintiff suffered significant bleeding and a fractured nose; Required reduction surgery to repair the nose; After surgery, plaintiff was left with	No serious pre-existing injuries.  Nose would not be returned to appearance pre-assault.

		significantly displaced left nasal process and crushed dislocation of nasal septum; Plaintiff experienced continued reduced breathing and nasal drip.	
<b><i>Fandrick v. Reitberger</i></b>  2009 ABQB 703  Romaine, J.	One Claimant  Frandrick: \$75,000 general damages  Breakdown: <ul style="list-style-type: none"> <li>- General \$75,000</li> <li>- Future Care: \$5,000</li> <li>- Earning Capacity: As per expert calculations.</li> <li>- Special Damages: \$4,402.66</li> </ul>	Vehicle-Motorcycle Collision.  DOL: September 12, 2002  Fandrick: Male, late 30s  Sustained injuries to his left knee, right shoulder, neck, left wrist, and right cheek and jaw. The contusion to his face and head resolved, but he was left with ongoing knee and jaw pain, and mobility issues with his neck. Remained off work for 10 months.	Liability was admitted prior to trial  Plaintiff admitted that he had a slight problem with arthritic joints in his hands, right leg and left knee prior to the DOL. <ul style="list-style-type: none"> <li>- 3% whole person impairment for knee;</li> <li>- 4% upper extremity impairment (2% whole person)</li> <li>- 5% whole person impairment for neck pain.</li> <li>- Overall 10% whole person impairment.</li> </ul>
<b>HEAD, JAW, NECK, SPINE, SHOULDER, FIBROMYALGIA, CHRONIC PAIN</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Meehan v. Holt</i></b>  2010 ABQB 287  Sullivan, J.	Two Claimants, Meehan settled, Hogan continued  Hogan: \$90,000.00 in general damages  Breakdown: <ul style="list-style-type: none"> <li>- General: \$90,000</li> <li>- Earnings: \$50,000</li> <li>- Future Care: \$27,265</li> <li>- Past Housekeeping:</li> </ul>	Motor-Vehicle Collision: Minor  DOL: September 8, 1998  Meehan: Female, 42  Plaintiff had pre-existing degenerative disease in her cervical spine.  Following the collision, she	Court found that the Plaintiff suffered from pre-existing degenerative disc disease to the cervical spine and accepted that such changes can go on to produce spontaneous pain syndromes. Also accepted that her pre-existing hypermobility may have negatively affected her recovery.  The Court also accepted the evidence that the Plaintiff had asymptomatic TMJ condition prior to the collision. This made

	<p>\$5,000</p> <ul style="list-style-type: none"> <li>- Future Housekeeping: \$1,000.00</li> <li>- Past Care: \$39,570.14</li> </ul>	<p>complained of neck, back, jaw, and shoulder pain, along with associated headaches.</p>	<p>her more susceptible to injuring her jaw. Her shoulder condition (rotator cuff tear) was found to have been collision related.</p> <p>The Court found that she suffered acute injuries immediately following the collision which slowly resolved with the passage of time. Her back, shoulder, and headaches resolved prior to trial, as had her neck symptoms. While her jaw had greatly improved, it continued to bother her and would likely continue to bother her into the future. She also suffered from occasional numbness sin her hands which would likely continue.</p> <p>The Court found that she suffered a musculoligamentous strain injury to the neck and back as well as headaches, hand numbness and a shoulder and jaw injury.</p>
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#### **KNEE, HEAD, JAW, CHRONIC PAIN SYNDROME**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Chisholm v Lindsay</i></p> <p>2012 ABQB 81</p> <p>Kenny, J.</p>	<p>One Claimant:</p> <p>Chisholm: \$90,000 general</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-general \$90,000</li> <li>-past loss of house keeping \$4,250</li> <li>-future loss of house keeping \$35,000</li> <li>-cost of future care</li> </ul>	<p>MVA: Plaintiff's vehicle struck from behind.</p> <p>DOL: April 22, 2005</p> <p>Chisholm: female, 31 years old</p> <p>Plaintiff's injuries included a strained right knee, TMJ, chronic pain and fatigue.</p>	<p>Liability for the accident was admitted by the defendant.</p> <p>Chisholm had an anxious personality prior to the accident. However, the Court held that her difficulty in coping with non-accident stressors following the accident was affected by the accident. No pre-accident history was found to relate to her symptoms or dysfunction.</p>

	\$136,105 -loss of earning capacity \$125,000 Total: \$390,355		
<b>NECK, SHOULDER, BACK</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Chokka v. Hanson</i></b>  2011 ABQB 99  Hawco, J.	One Claimant  Chokka: \$30,000 general  Breakdown: <ul style="list-style-type: none"> <li>- General: \$30,000</li> <li>- Lost Income: \$30,000</li> <li>- Loss of housekeeping: no sufficient evidence led to make a finding</li> </ul>	Vehicle-Motorcycle Collision  DOL: May 10, 1999  Chokka: Female, age unspecified  Following the collision, she complained of pain in her shoulder, neck and back.	The Court found that she had pre-existing conditions in her neck and shoulder. The collision may have aggravated the shoulder, but it was always going to be a problem for her, regardless of the collision.  The Court found that her pre-existing injuries were much, if not entirely, to blame for her inability to return to work 1 ½ years post-collision.
<b><i>Do (Next Friend of) v. Sheffer</i></b>  2010 ABQB 86  Lee, J.	One Claimant  Do: \$85,000 in generals  Breakdown: <ul style="list-style-type: none"> <li>- General: \$85,000</li> <li>- Future Earnings: \$571,300</li> <li>- Past Income: As calculated, with adjustments.</li> <li>- Special Damages: \$500</li> </ul>	Motor vehicle collision. Defendant entered uncontrolled intersection when it was unsafe. Was 100% liable.  DOL: November 16, 2002  The Plaintiff had pre-existing history of back pain due to degenerative disc disease and several work-related accidents. The pre-existing conditions caused radiating pain and numbness into left leg and foot. However, the court found that he had sufficiently recovered from	The collision caused aggravated or exacerbated his pre-existing conditions as well as new injuries to his neck and shoulder.  Court accepted Dr. Lavoie's assessment (2% impairment at cervical spine) and found that the Plaintiff was unlikely to see much, if any, further improvement with his lower back condition.  Justice Lee noted that the general damages award reflected the continuing and permanent nature of the Plaintiff's lower back pain, which has rendered him unable to resume his pre-Accident employment as

		<p>his pre-accident spinal surgery and had returned to full-time work as a machinist a few weeks prior to the accident.</p> <p>He was assessed with between 2 – 10% permanent impairment relating to his cervical spine.</p>	a machinist and will most likely prevent him from working in any occupation involving medium or heavy labour.
<b>NECK, SHOULDER, LOWER BACK, HIP, LEG, CHRONIC PAIN, WHIPLASH</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Schuppli v. MacLean</i></p> <p>2010 ABQB 521</p> <p>Browne, J.</p>	<p>Two Claimants:</p> <p>Schuppli: \$30,000 general</p> <p>Breakdown:            - General: \$30,000            - Housekeeping: \$10,000</p> <p>Schuppli: \$40,000 general</p> <p>Breakdown:            - General: \$40,000            - Loss of income: \$20,160</p>	<p>MVA: Car struck from behind</p> <p>DOL: April 23, 2001</p> <p>Schuppli: female, 77 years old, passenger, injuries to neck, shoulder lower back, hip, problems with right leg collapsing, moderate whiplash</p> <p>Schuppli: male, 50 years old, driver, injury to neck, back, both hands, moderate whiplash</p>	<p>Plaintiff's pre-existing degenerative disc disease in her lower back likely prolonged the time required to recover. She was told by her doctor and physiotherapist that there was nothing more that they could do for her. Many of her symptoms continued over the nine years since the accident with variation in intensity. Her injuries affected her ability to do housework, care for her grandchildren, and enjoy recreational activities. Her pre-existing spinal condition, age at the time of the accident, and the natural aging process over time had contributed to her disabilities.</p> <p>He was diligent in following the recommended treatments, and followed up with a number of specialists and treatments, but there was only limited success in reducing his symptoms. He was unable to take a job as an auto mechanic because of his physical limitations. At the time of trial, nine years post-accident, his injuries</p>



			continued to affect his head and neck movement, and continued to cause lower back pain, numbness in his hands, and dizziness. His ability to bicycle on long-distance rides was significantly impaired, and he was limited in his ability to participate in rock climbing and martial arts.
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#### ARM, SHOULDER, SPINE; PSYCHOLOGICAL INJURIES

Case and Judge	General Damages Award	Details	Reasons
<i>Egglestone v. Cox</i>  2009 ABQB 584  Wilkins, J.	One Claimant:  Egglestone: \$75,000 general  Breakdown: -general \$75,000 -housekeeping \$2,000 -special \$2,302 Total: \$79,302	MVA: T-boned  DOL: July 1, 2004  Egglestone: male, 51 years old Neck fracture; muscular ligamentous injuries to neck, upper back, shoulders, and arm; serious and frequent headaches. -discomfort lasted for two years -chronic pain lasted beyond -exacerbated untreated depressive illness	The court found no injury to the Plaintiff's lower back and spine. The ear, nose and headache pain was pre-existing and not related to the accident. The Plaintiff's depression was exacerbated by the accident.

#### HEAD, EAR, BALANCE

Case and Judge	General Damages Award	Details	Reasons
<i>Kobzey v. Paziuk</i>  2009 ABQB 695  Lee, J.	One Claimant  Kobzey: \$50,000 in general damages  Breakdown: - General: \$50,000	Assault: Plaintiff rendered unconscious by a punch to the left ear when he attempted to prevent the intoxicated Defendant from driving.  DOL: April 8, 2000	The Plaintiff suffered major trauma to his left ear which effectively resulted in a permanent loss of balance. He had no whiplash or brain injury. His symptoms represent a long term impairment of some type.

	<ul style="list-style-type: none"> <li>- Future Income: \$25,000</li> <li>- Past Income: \$28,894.71</li> </ul>	Suffered from acute vertigo for 1 month followed by persistent sensation of nausea and motion sickness. Had a permanent 85% low of balance and was unable to return to his pre-accident job as a floor installer. Diagnosed with a left vestibular injury secondary to blunt trauma to the left ear.	<p>Court awarded \$25,000 in future income loss, notwithstanding the fact that the Plaintiff had continued to earn roughly the same income doing something different based on the fact that he lost the ability to continue in a trade in which he was qualified:</p> <ul style="list-style-type: none"> <li>- He was rendered less capable overall of earning income from all types of employment;</li> <li>- He is less marketable or attractive as an employee to potential employers;</li> <li>- He lost the ability to take advantage of all job opportunities which might otherwise have been open to him; and</li> <li>- He is less valuable to himself as a person capable of earning income in a competitive labour market.</li> </ul>
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#### **CLOSED HEAD; WHIPLASH**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i><b>Pedherney v. Jensen</b></i></p> <p>2011 ABCA 9</p> <p>Rowbotham, McDonald, Bielby, JJ.A</p>	<p>One Claimant</p> <p>Pedherney: \$90,000 in general damages</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>- General: \$90,000</li> <li>- Past Income: \$75,000</li> <li>- Attendant Care: \$51,000</li> <li>- Special Damages:</li> </ul>	<p>Motor Vehicle Collision</p> <p>Pedherney: Female, 49 years old</p> <p>DOL: September 9, 1995</p> <p>Suffered from a moderate to severe whiplash injury (perhaps even meeting a diagnosis of chronic pain prior to 2000, but no fibromyalgia), and the</p>	<p>Liability was conceded.</p> <p>Pedherney suffered from extensive injuries. She has been unable to work or enjoy life since the collision and has been the recipient of Assured Income for the Severely Handicapped since 1996.</p> <p>The trial judge and Court of Appeal accepted, relying on the Defendant/Respondent's expert, that</p>

	<p>\$75,000</p> <ul style="list-style-type: none"> <li>- Pre-judgment interest: \$88,660</li> </ul>	aggravation of a pre-existing psychiatric condition known as Conversion Disorder.	<p>Pedherney's injuries were caused by a mental condition known as Conversion Disorder, which, based on her history, would have manifested even without the collision.</p> <p>Pedherney was entitled to damages for pain she experienced for 6 years post-collision.</p> <p>The trial judge found there was an aggravation of her underlying psychiatric condition, and that the collision probably caused it to present itself as a full blown condition sooner than would have happened without trauma. He founds aggravation was not an insignificant issue.</p>
<p><b><i>Schmolzer v. Higenbottam</i></b></p> <p>2009 ABQB 522</p> <p>Romaine, J.</p>	<p>One Claimant:</p> <p>Schmolzer: \$75,000 general</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-past and future loss of income \$196,817</li> <li>-general damages \$75,000</li> <li>-special damages \$1,912</li> <li>-cost of future care \$2,400</li> </ul> <p>Total: \$276,129</p>	<p>MVA: 2 vehicle; Defendant ran red light.</p> <p>DOL: November 1, 2000</p> <p>Schmolzer: male, 35 years old</p> <p>Airline pilot</p> <p>Brain injury, soft-tissue injuries including whiplash.</p> <ul style="list-style-type: none"> <li>-brain injury ended career as pilot</li> <li>-soft-tissue injuries resolved within 10 to 12 months</li> </ul>	<p>The court followed the earlier case of <i>Willeson v. Calgary</i>, 2007 ABQB 117 and the assessment of damages in that case. The court found that the Plaintiff's injuries were more severe, lasted longer, and had more effect on his life than the plaintiff in <i>Willeson</i> and so increased the award of general damages.</p>
<b>CLOSED HEAD, JAW, SHOULDER, INTERNAL</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><b><i>Ward (Next Friend of) v. Ward</i></b></p> <p>2010 ABQB 654</p>	<p>One Claimant:</p> <p>Ward: \$205,000 general</p>	<p>MVA: Plaintiff was a passenger, driver turned left into the path of another vehicle travelling approx. 81 km/h</p>	<p>Required rehabilitation and therapy for speech, daily living, bowel and bladder. Not able to resume normal school program or live independently. Severely disabled. His</p>

Moen, J.	Breakdown: - general \$205,000 - past loss of income \$30,000 - future cost of care \$730,351.07 Total: \$1,597,411.07	DOL: March 14, 2002  Ward: male, 16 years old, extensive internal and external injuries, coma for 19 days, multiple brain hemorrhages, diffuse axonal injuries, skull fractures, mandible, shoulder blades, ribs, pelvis, lacerations to liver, punctured and bruised lungs	memory continued to be poor, and the prognosis for future improvement was poor. He was left with significant cognitive and behavioral deficits. Neuropsychological testing revealed that he was borderline mentally retarded, with reading skills at a Grade 6 level, and with attention, visual, and verbal memory skills scoring below the 5th percentile. It was recommended that the plaintiff be declared a dependent adult and have a Trustee appointed. Regardless of the accident, the plaintiff would likely not have graduated from high school, and would likely have pursued a trade. Given his injuries, there was some doubt as to whether he could now get and keep a job for an extended period of time. It would take a special place and a special employer for the plaintiff to obtain and keep employment. The plaintiff would require substantial ongoing care items, medication, and counseling.
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#### **HIP, LEGS, SPINE**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<i>Norminton v. B&amp;B Electronics Ltd.</i>  2009 ABQB 18  Manderscheid, J.	One Claimant:  Norminton: \$55,000 general  Breakdown: -general \$55,000 -housekeeping loss \$20,000 -income loss \$194,428 -special \$9,409	MVA: pinned between garage and car when car suddenly lurched forward DOL: January 28, 2000  Norminton: female, 61 years old Bruising, tenderness and swelling in calves and ankles; pain in legs and lower back up to cervical area	The court accepted that the injuries were caused by the accident. However, the court noted that there was no expert evidence stating that the Plaintiff would have recovered earlier; questioning if her symptoms were related to another cause; and considering if she would have suffered osteoarthritis pain symptoms to some extent had accident not occurred.

	-future care \$20,102 Total: \$298,939 (income loss includes pre-judgment interest)	-aggravated osteoarthritis in lower back, hips, and thighs	
<b>LEG</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>McNulty v. Edmonton (City)</i></b>  2011 ABQB 297  Lee, J.	One Claimant:  McNulty: \$85,000 general  Breakdown: - loss of income: \$260,364.27 - general \$85,000  (Cost of future care to be calculated)  The above were reduced by 50% for contributory negligence	Fall from deck  DOL: August 19, 2000  McNulty: Male, welder, suffered tears to three of four quadriceps muscles in his right leg. Underwent surgery and was placed in a thigh to toe cast	Prior to the accident plaintiff was an avid soccer player and former professional soccer player. Following the accident he never resumed participation in soccer at his pre-accident level. His inability to play soccer as he had before affected him emotionally.  Plaintiff was found to be contributory negligent for not looking forward when he walked off the deck
<b><i>DeWaard v. Capture the Flag Indoor Ltd.</i></b>  2010 ABQB 571  Strekaf, J.	One Claimant:  DeWaard: \$50,000 general  Breakdown: - general \$50,000 - housekeeping loss \$2,000 - past and future loss of income \$352,600 - future cost of care: \$82,341	Suffered significant injury to foot after stepping in a hole during indoor laser tag  DOL: December 19, 2003  DeWaard: suffered fractured dislocation of his left ankle articulation, acute pain, swelling, post-traumatic osteoarthritis	His ongoing symptoms limited his ability to engage in physical activities and his ability to work as an electrician. It was likely that that his condition would worsen and he would have to go back to school to retrain. The plaintiff would also require ongoing medication, mobility aids, and ongoing treatment.  The claimant was found contributory negligent for climbing on the island wall.

	- special \$3180.85  The above amounts were reduced by 25% for contributory negligence		This was contrary to the rules he was informed of before playing the game.
<b>SHOULDER, WRIST; WHIPLASH</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Morrow v. Zhang</i></b>  2009 ABCA 215  McFadyen, J. O'Brien, J. Rowbotham J.  Reversed: 2008 ABQB 98 Wittmann, J.	Two Claimants:  Morrow: \$4,000 general Reduced from: \$20,000 + \$1,000 special damages  Pedersen: \$4,000 general Reduced from: \$15,000	(facts from lower court decision)  MVA: Two accidents Morrow: T-boned in passenger side Pedersen: rear-ended  DOL: Morrow: October 21, 2004 Pedersen: March 22, 2005  Morrow: female, 30 years old Grade 2 whiplash May have aggravated pre-existing back and neck pain, TMJ, and migraines. -pain improved but not resolved by trial  Pedersen: female, 29 years old Soft tissue injury to neck, shoulders, and back and injury to wrists. -soft-tissue injuries resolved a month after the accident, wrists still have pain	At trial, found entitled to damages higher than cap amount. The Court of Appeal found the cap was valid and reduced damages to the cap amount.  This case reversed the lower court decision striking down the cap on soft-tissue injuries as violating the Charter. The Court of Appeal determined that the cap did not infringe the Charter and restored the cap on damages.  An application for leave to appeal to the Supreme Court of Canada was filed August 28, 2009. The Supreme Court has not yet confirmed whether it will consider the appeal.

<b>SPINE; PSYCHOLOGICAL INJURIES</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Diakow v. Hughes</i></p> <p>2009 ABCA 206</p> <p>Côté, J. Conrad, J. Rowbotham, J.</p> <p>Upheld, varied only on interest awarded: 2008 ABQB 567 Yamauchi, J.</p>	<p>One Claimant: (award from lower court upheld on appeal, interest calculation changed)</p> <p>Diakow: \$70,000 general</p> <p>Breakdown: -housekeeping \$5,480 -general \$70,000 -past loss of income \$118,896 -future loss of income \$100,773 -special \$910 Total: \$296,059</p>	<p>Slip and fall: walking to hospital to attend therapy session DOL: November 7, 2002</p> <p>Diakow: female, 47 years old Fractured ribs, sacrum, pelvis, compression fracture L2 lumbar vertebra. Pre-existing psychological problems; anxiety and depression -physical injuries resolved in a year, but delayed in returning to normal position.</p>	<p>Plaintiff's psychological weakness delayed her return to normal even after her physical injuries had healed. She had residual physical and psychological disability.</p> <p>The Defendants argued that the trial judge erred in awarding damages; after finding that the injuries were resolved in a year, damages should have only been awarded for a year. Appeal dismissed.</p> <p>Plaintiff appealed, arguing that damages should be higher and the interest calculation was wrong. The court agreed on interest, but dismissed the Plaintiff's appeal, as the amount was in the appropriate range for the injury.</p>

## **SPINE**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Moens v. Homberg LP Management Incorporated</i></p> <p>2009 ABQB 35</p> <p>Gill, J.</p>	<p>One Claimant:</p> <p>Moens: \$24,000 general</p> <p>Breakdown: -general \$24,000 -special damages awarded not itemized -housekeeping \$2,000 Total: \$26,000</p>	<p>Slip and Fall: fell down outside snowy stairs at work. DOL: October 29, 2003</p> <p>Moens: female, no age given Soft tissue injuries to lower back. Pre-accident condition 2 years after accident. Accident did not aggravate pre-existing weight gain, rosacea, shingles, and depression.</p>	<p>The court found no negligence, but determined appropriate damages in case they were later recovered on liability by the Appellate Court. The Plaintiff had complained of lower back pain after the accident, but the court determined that the pain did not occur at the time of the accident. Her injuries resolved and she was back to normal in 2 years.</p>

<b><i>Olsen v. Campbell Jones</i></b>  2009 ABQB 371  Crighton, J.	One Claimant:  Olsen: \$20,000 general  Breakdown: -general \$20,000 -past loss of income \$6,697 -housekeeping \$14,380 -subrogated claim \$1,130 Total: \$42,207	MedMal: chiropractor negligent when adjusted spine DOL: November 6, 1997  Olsen: male, 50 years old Pain in back, headaches, ringing ears, sleep disruption, neck grinding. Pre-existing degenerative disc disease of the spine.	The court found that the chiropractor was not negligent, but assessed damages in case they were overturned on liability by the Court of Appeal. The Plaintiff further aggravated symptoms with a fall off a grain truck on December 29, 1998, so damages were assessed only for the period between November 6, 1997 to December 29, 1998.
<b><i>Malinowski v Schneider</i></b>  2012 ABCA 125  Berger, JA Paperny, JA Rowbotham, JA	One Claimant:  Malinowski: \$158,000 general  Loss of future earning capacity, cost of future care, and loss of housekeeping capacity to be calculated.  Total: \$158,000	MedMal: chiropractor negligent when adjusted spine DOL: May 14, 1997  Malinowski: male, 30 years old, suffered injury at work; suffered greater injuries as a result of medical malpractice; chiropractor aggravated the injury suffered at work; aside from the injury at work, plaintiff spine was healthy; experienced impaired sensory function in legs, chronic back pain, ongoing bladder and bowel incontinence; partial sexual dysfunction; condition was permanent, no further improvement expected.	Plaintiff had not worked for 7 months after the accident; Given employment history, it was not likely he would have worked full time; Plaintiff was no longer realistically employable (court rejected failure to mitigate damages argument);
<b><i>Sidorsky v. Lowry</i></b>  2009 ABQB 68  Lutz, J.			



<b>SPINE, SHOULDER, PSYCHOLOGICAL INJURIES</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Mahe v. Boulianne</i></b>  2010 ABCA 32  Slatter J. Watson J. Martin J.  (Varying 2008 ABQB 680)	One Claimant:  Mahe: \$125,000 general  Breakdown: - general \$125,000 - loss of income \$653,100 - loss of housekeeping \$67,500  The above amounts were reduced by 60% for contributory negligence.	Fell from ladder  DOL: October 12, 1998  Mahe: male, 41 years old, multiple spinal fractures, fractured ribs, torn shoulder blade muscles.  Accident also caused substantial emotional and mental deficits.	The injury deprived him of the ability to raise his arms above his head and thus he was unable to perform overhead work. His ability to work as an electrician was severely compromised and he would have to train for a new career. The plaintiff would have permanent problems with his cervical and thoracic spine and in addition, there was a 5%-10% possibility that he may become a paraplegic  Contributory negligence was found on the basis of an unreasonable failure to use safety devices.
<b>WHIPLASH; FIBROMYALGIA, PSYCHOLOGICAL INJURIES</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Russell v. Turcott</i></b>  2009 ABQB 19  additional reasons: 2009 ABQB 236 (corrected pecuniary damage awards from first judgment)  Rooke, J.	One Claimant:  Russell: \$115,000 general  Breakdown: -general \$115,000 -pecuniary \$451,400 -past loss of income \$155,000 -future loss of income \$100,000 -future cost of care \$111,500 -past housekeeping \$43,300	MVA: rear-ended. DOL: December 16, 2001  Russell: female, 21 years old Moderate to severe whiplash, TMJ injury, headaches.  Pain developed into possible chronic pain syndrome or fibromyalgia.	Plaintiff was not a crumbling skull, but a thin skull. Plaintiff had pre-existing vulnerability which led to development of chronic pain. She did not suffer from a pre-existing chronic pain condition.  General damage award was based upon similar fact cases. Plaintiff did not fail to mitigate and only failed to pursue other treatments for reasonable health or financial reasons.

	-future housekeeping \$25,000 -special damages \$16,600 Total: \$566,400		
<b><i>Schwass v. Vanderveen</i></b>  2012 ABPC 310  Higa, Prov. J.	One Claimant:  Schwass: \$3,000 general  Only general damages awarded	MVA DOL: November 10, 2009  Female plaintiff suffered headaches and whiplash; Underwent chiropractic treatment, massage and acupuncture.	Prior to MVA, plaintiff had been involved in another MVA where she experienced soft tissue damage and sought similar treatment.  There was a significant lack of medical evidence, minimal treatment sought and plaintiff's evidence was confusing and highly contradictory.

#### **FIBROMYALGIA, PSYCHOLOGICAL INJURIES**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Duncalf v. Capital Health Authority</i></b>  2009 ABQB 80  Crighton, J.	One Claimant:  Duncalf: \$85,000 general  Breakdown: -general \$85,000 -past loss of income \$383,012 -future loss of income \$0 -housekeeping \$152,550 -loss future care \$23,475 -special \$5,375 Total: \$649,412  Plaintiff's husband: -consortium \$13,500 -loss income \$6,853 Total: \$20,353	MedMal: unnecessary surgery DOL: August 20, 1995  Duncalf: female, 46 years Sepsis, adult respiratory distress syndrome, and pneumonia after surgery. Post-traumatic stress disorder (PTSD), depression developed due to stay in hospital.  Court found the Plaintiff had pre-existing fibromyalgia although not diagnosed until after the surgery. The PTSD resolved after 5 years.	The Plaintiff argued that failure to diagnose bowel obstruction led to unnecessary surgery. The court disagreed and found that while the doctor was negligent in one aspect of her treatment, he was not responsible for her complications. The court considered damages in the alternative.  If the doctor had been negligent, the negligent treatment would not have aggravated the Plaintiff's pre-existing injury, but the Court stated that the damage award would have been discounted by 10% to account for the pre-existing fibromyalgia.

<p><b><i>Williams v. Oleary</i></b></p> <p>2011 ABQB 229</p> <p>Thomas, J.</p>	<p>Two Claimants: Heather and Fred Williams</p> <p>Fred: Loss of consortium claim resolved prior to trial</p> <p>Heather: \$145,000 general</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>- general \$145,000</li> <li>- past loss of income \$70,885.00</li> <li>- future loss of income \$306,061 less certain deductions</li> <li>- loss of housekeeping .88 hours per day @ \$14.27 per hour minus 3% discount rate</li> </ul>	<p>Motor Vehicle Collision</p> <p>DOL: August 5, 2004</p> <p>Heather: Female, age unspecified</p> <p>Suffered from a fractured right heel. Damage to her subtalar joint resulted in arthritis and developed into fibromyalgia.</p>	<p>Defendant's admitted liability, but disputed the extent of the injuries.</p> <p>The Court concluded Heather was a credible witness and relied on 3 experts to conclude fibromyalgia emerged due to the chronic pain arising from the damaged subtalar joint and the progressive post-traumatic osteoarthritis, combined with the stress caused by Ms. Williams' being unable to continue her work as a hairdresser, her limited domestic housekeeping abilities, and restricted recreational options.</p> <p>The Court found Heather was no longer employable in any setting.</p>
<p><b><i>Murray v. Hanson</i></b></p> <p>2012 ABQB 547</p> <p>Brooker, J.</p>	<p>One Claimant:</p> <p>Murray: \$2,500 general</p> <p>(only general damages awarded)</p>	<p>Alleged assault by police officer.</p> <p>DOL: May 19, 2006</p> <p>Male plaintiff, aged 31, arrested and placed in holding cell; Got involved in altercation with another inmate and was forcibly removed and handcuffed; Held down by police officers to remove the handcuffs; During removal, given 3 distraction blows to his torso; Experienced bruising for 1 week and had pain for 2-3 weeks.</p>	<p>Plaintiff's claim dismissed, but judge provisionally assessed general damages in amount of \$2,500.</p>

<b>FIBROMYALGIA, CHRONIC PAIN, PTSD, SPINE</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>McLaren v. McLaren Estate</i></p> <p>2010 ABQB 471</p> <p>Sisson, J.</p>	<p>One Claimant</p> <p>McLaren: \$140,000 in general damages</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>- Generals: \$140,000</li> <li>- Past Income: \$49,138</li> <li>- Past Housekeeping: \$6,186.32</li> <li>- Future Housekeeping: \$13,800</li> <li>- Special: \$18,294.21</li> <li>- Future Care: \$26,393</li> </ul>	<p>Motor Vehicle Collision: Plaintiff's daughter lost control of vehicle of HWY 2. Daughter was killed. Mother was passenger and was severely injured.</p> <p>DOL: February 10, 2004</p> <p>McLaren: Female, 43 years old.</p> <p>Plaintiff sustained the following injuries:</p> <ul style="list-style-type: none"> <li>- Left proximal humeral fracture</li> <li>- Left distal radius fracture</li> <li>- A right ulna fracture</li> <li>- A right distal radius fracture</li> </ul> <p>Plaintiff also alleging to suffer from PTSD, Fibromyalgia and Chronic Pain as a result of the accident.</p> <p>Plaintiff was diagnosed with a 24% permanent whole body impairment.</p>	<p>Plaintiff is 25% contributorily negligent for failing to adequately supervise her daughter, who was 16 and operating the vehicle with a learner's permit in bad weather.</p> <p>On a balance of probabilities, she suffered, and will continue to suffer from PTSD caused by the MVA. The Court applied the "but for" test and there was no evidence that she suffered from prior PTSD.</p> <p>The Plaintiff failed to establish that she suffered from Fibromyalgia. Her physicians were unable to confirm a diagnosis and the tests did not support such a condition. However, the Court found that she suffered from chronic pain.</p> <p>The evidence available is that the collision "may have exacerbated the problem" and "may" is not sufficient to find on a balance of probabilities that the plaintiff's TMJ condition was caused or made worse by the motor vehicle collision (although I note the defendants did agree to pay for a TMJ splint as part of the special damages).</p>
<b>LACERATIONS</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>

<b><i>Cory v. Bass</i></b>  2012 ABCA 136  Cote, J.A. O’Ferrall, J.A. Paperny, J.A.	One Claimant  Cory: \$90,000 general  Breakdown: -past loss of income: \$21,000 - special damages/past loss of care: \$18,200  Total: \$129,200	MedMal: during an endoscopic procedure; during procedure, plaintiff suffered perforation of her duodenum and developed severe necrotizing pancreatitis and sepsis; resulted in necessary surgery to drain her abdomen; continued to have problems with pancreas, ongoing pain, bowels, and significant scarring.  DOL: September 19, 2005  Cory: female, aged 43	Plaintiff did not provide informed consent and Standard of Care was not met (failed to explain all material risks associated with surgery, as well as any alternate options).  Plaintiff was unable to perform many everyday activities as she once could.  Plaintiff was susceptible to future risks including: herniation from midline scar and risk of pancreatitis.  Damages reduced by 10% for failure to mitigate by taking prescribed enzymes.
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#### PSYCHOLOGICAL INJURIES

Case and Judge	General Damages Award	Details	Reasons
<b><i>Prabhakaran v. Fort Macleod (Town)</i></b>  2010 ABPC 35  LeGrandeur, Prov. J.	One Claimant  Prabhakaran: \$3,000 general  Breakdown: - constructive dismissal \$17,129.16 - generals \$3,000	Plaintiff wrongfully dismissed from being the district coordinator of Family and Community Support Services  Prabhakaran: female, locked out of employment premises, reasons for dismissal not given, constructively dismissed without just cause	The plaintiff, after being locked out and denied notice and any explanation, became significantly worried and concerned for her position, her honour, and her future. In this context, she prepared and delivered a letter of resignation within 24 hours of learning she had been locked out. The plaintiff was constructively dismissed without just cause, and was therefore wrongfully dismissed. The plaintiff's role as FCSS Coordinator was a significant and important role in her community, and she viewed it as such and worked very hard, recognizing its importance. The manner in which she was dealt with in this circumstance caused her to suffer significant stress, embarrassment,

			and humiliation. Although these events occurred some time ago, it was clear when she testified that she continued to be emotionally impacted by these events. She was entitled to damages to provide some solace for the bad faith and insensitivity of the defendant in effecting her dismissal, and the stress, humiliation, embarrassment and emotional trauma she suffered as a consequence thereof.
<b><i>Brentwood Veterinary Clinic Inc. v. Adamson</i></b>  2009 ABQB 719  Kenny, J.	Two Claimants  Belford: \$10,000 general  Belford: \$5,000 general  (only general damages awarded)	Plaintiff's, husband and wife, suffered mental distress as a result of the defendant lawyer's misappropriation of funds, efforts to thwart the plaintiffs' attempts to get compensation from the assurance fund for their loss, and ongoing failure to repay the misappropriated funds thereafter. The defendant, through misrepresentations to the plaintiffs, convinced the plaintiffs to invest \$150,000 in a business venture. The defendant assured the plaintiffs that they did not need to seek independent legal advice. The defendant actually intended to use, and did use, the plaintiffs' money to invest in a failed real estate transaction for which he required money. The defendant tried to hide his actions by falsifying documents.	The plaintiff's were entitled to summary judgment for the return of the funds. The evidence established that The plaintiff wife became physically ill and clinically depressed when she learned about the defendant's deceit. She was prescribed anti-depressant medication by her doctor. She also suffered physical symptoms as a result of the stress and depression. The plaintiff husband also suffered mental distress. He was extremely upset when he found out what happened. There was considerable strain on the parties' marriage, as the plaintiff wife blamed him for the loss. The loss of the money also resulted in additional distress due to the delay of the plaintiffs' retirement plans, something that the defendant knew would happen due to his misappropriation of their money. The plaintiffs suffered mental distress as claimed as a result of the defendant's actions. The distress was of a serious and prolonged nature. The plaintiffs had to endure the additional stress of ongoing

		DOL: September 27, 2000	litigation to recover their funds.
<b><i>M. (A.) v. Matthews</i></b> Shelley, J. 2012 ABQB 185	Two Claimants (husband and wife)  Husband: \$11,500 general  Wife: \$1,000 general  (only general damages awarded)	Plaintiffs suffered mental distress after the police wrongfully trespassed on his property and arrested him on charges of sexual assault  DOL: January 11, 2001	There were no reasonable or probable grounds to charge the plaintiff for sexual assault; Investigation was negligent; Complainant was driven primarily by desire to injure the plaintiff.  No evidence of any long-term physical or psychological injury to either plaintiff.

**BRITISH COLUMBIA (2011 – August 2013)**

<b>BRAIN INJURY, PRE-EXISTING CONDITIONS, WHIPLASH, TRAUMATIC NEUROSIS</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Burdett v. Eidse</i></p> <p>2010 CarswellBC 361 (BCSC)</p> <p>Loo J.</p>	<p>One Claimant</p> <p>Burdett: \$200,000 generals</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-generals: \$200,000</li> <li>-earning capacity: \$900,000</li> <li>-future care: \$6,720</li> </ul>	<p>Two MVAs</p> <p>DOLs: June 26, 2005, January 7, 2006.</p> <p>Burdett: Male, 53, was employed as a construction contractor. In first MVA, the defendant turned left in front of his vehicle. He was rendered unconscious and had no memory of the collision. He had a change in personality immediately. Confused, garbled speech, slurring words. Diagnosed with Stage 2 concussion and soft tissue injuries to neck and back. Second accident was roughly 6 months later. This resulted in aggravation of soft tissue injuries.</p> <p>In addition to neurological problems, he developed symptoms of anxiety and depression – which were likely complicating his cognitive dysfunction.</p>	<p>Likely that the Claimant would be left permanently and significantly partially disabled as a result of his ongoing cognitive dysfunction.</p> <p>Prior to the first accident the plaintiff was an extremely high-functioning individual who was able to efficiently prioritize, multitask, make decisions, and get the job done. He woke early, worked hard, was socially active, enjoyed physical recreational activities, was an avid reader, had an excellent memory, and was a successful and in-demand contractor. His injuries left him virtually competitively unemployable, or at best only minimally employable. Nothing in the plaintiff's pre-accident history or clinical presentations prior to the accident suggested that he was suffering from cerebrovascular disease prior to the first accident. Plaintiff's ongoing cognitive difficulties were caused by the first accident, and were not related to his pre-existing problems. Plaintiff's anxiety and depression were a result of the accident and the realizations that he was no longer a high functioning successful businessman. This condition was permanent. Plaintiff's social life and relationships with his wife and family were negatively affected. He became socially withdrawn, and worried about how he would survive economically. His condition was not likely to improve, but plaintiff might benefit from psychological counseling, vocational</p>



			rehabilitation services, and consulting services.
<b><i>Thornber v. Campbell</i></b>  2012 BCSC 1449  Greyell, J.	One Claimant.  Thornber: \$125,000  (Only general damages awarded)	Assault  DOL: March 24, 2007  Plaintiff, male, 44 years old, was punched in the head multiple times.  Plaintiff suffered multiple contusions, lacerations, a concussion, fractured jaw, fractured and misaligned teeth, and frequent and severe headaches. He had difficulties sleeping and was easily disturbed.  Plaintiff was also diagnosed with depression, anxiety and PTSD.	Prior to the assault, the plaintiff had suffered depression and PTSD that had been in remission. They were then triggered by the assault.  Plaintiff's mental and physical capabilities were impaired.  Plaintiff was unable to work because of his ongoing emotional and psychological difficulties.
<b><i>Clark v. Bullock</i></b>  2013 BCSC 944  Barrow, J.	One Claimant.  Clark: \$120,000  (only general damages awarded)	MVA; head on  DOL: March 14, 2005  Plaintiff, male, 58 year old, commercial pilot, was involved in a head on collision.  Plaintiff suffered mild traumatic brain injury, fractured sternum, fracture T2, V1, L2 vertebrae, fracture of right rib, soft tissue damage, pain in knees, chest contusion, and tinnitus.	Prior to the accident, plaintiff was generally in good health but did have some arthritis that gave him issues with his knees, ankles, shoulders and hands. His knee and shoulder condition amounted to an aggravation of his pre-existing injury.  After his body brace was removed, he was able to perform daily activities, but was in pain while doing so.  It was 2 years before he recovered most of his pre-accident physical abilities.  Brain injury lead to reduced tolerance for frustration and he became more susceptible to

			<p>anger</p> <p>He was unable to return to work as an airline pilot, however, it was likely that in any event, he would have underwent surgery on his pre-existing knee problem and would have ended his employment at that time.</p>
<p><b><i>Madill v. Sithivong</i></b></p> <p>2012 CarswellBC 224</p> <p><i>Chiasson J.A., Garson J.A., Ryan J.A.</i></p>	<p>One Claimant:</p> <p>Madill: \$110,000 general</p> <p>Breakdown: -general \$225,000.00 -earning capacity \$650,000</p>	<p>MVA</p> <p>DOL: June 28, 2004</p> <p>Plaintiff's head struck the interior of the vehicle. He felt immediate pain, dizziness, and his neck felt pinched. Plaintiff was extracted from the vehicle and taken to hospital with complaints of pain, disorientation, and confusion. He was diagnosed as having suffered a concussion and soft tissue injuries. He suffered headaches after the accident that were different than the headaches he suffered prior. His mood and personality changed after the accident. He was left suffering chronic headaches, loss of balance, ongoing neck pain, and memory problems. He was only able to return to work after the accident because of significant accommodation and help from his wife, who worked alongside him. His mild traumatic brain injury</p>	<p>The trial judge found that the Plaintiff suffered a significant loss of his enjoyment of life. His ability to work and to participate in social and recreational activities was severely curtailed. His relationship with his wife was impacted. Plaintiff's limitations were expected to continue on an ongoing basis.</p> <p>Defendants appealed, arguing that the trial judge erred in finding that the accident was the cause of plaintiff's ongoing symptoms and made palpable and overriding errors in her assessment of plaintiff's credibility. Defendants sought a new trial. The Court of Appeal dismissed defendant's appeal. The trial judge clearly explained his findings of credibility of the plaintiff, his wife, and the other witnesses. The judge was entitled to conclude from the evidence presented that the plaintiff's post-accident condition was different from his pre-accident condition. After reviewing the medical evidence in detail, the trial judge accepted the evidence that plaintiff suffered a concussion or mild traumatic brain injury that left him with permanent deficits.</p>

		resulted in headaches that had virtually stopped him at times from either work or social activities. His balance, focus, ability to concentrate, memory, and mood, temperament, and personality had all been impacted by his injuries.	
<b>CHRONIC PAIN, THORACIC OUTLET SYNDROME</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Bransford v. Yilmazcan</i></b>  2010 CarswellBC 1437 (BCCA)  Groberman J.A., Hall J.A., and Kirkpatrick J.A.	One Claimant:  Bransford: \$225,000 general  Breakdown: -general \$225,000.00 -earning capacity \$436,000 -housekeeping \$8,800 -loss future care \$409,600	MVA DOL: May 6, 2005  Bransford: female, 21 years Neck pain on DOL, becoming worse over time. Diagnosed with thoracic outlet syndrome. Surgery 3 years post-collision, short-term disability 4 years post-collision.	Appeal from trial decision of October 28, 2009. Jury awarded \$327,500 in general damages, passed loss of earning capacity of \$27,500, future earning capacity: \$436,000, future care: \$409,600, housekeeping: \$8,800, and special damages: \$5,600. The Defendants appealed.  The Court of appeal found that the award for general damages was to be revised to \$225,000. No further amounts were amended.
<b><i>Marchand v. Pederson</i></b>  2011 BCSC 852  Cole, J.	One Claimant  Marchand: \$65,000 general  Breakdown: -general \$65,000 -earning capacity \$140,000 -cost of future care \$11,000 -special damages \$1,500. -loss of past wages \$8,000	MVA: rear-ended  DOL: July 13, 2007  Marchand: 21 year-old female  Complained of low back pain, upper back pain, wrist discomfort, neck pain, leg numbness, headaches and chest pain. Dr. Apel noted thoracic outlet syndrome, whose evidence was accepted by the Court.	The Claimant was physically fit, attended a gym, enjoyed swimming, running, hiking, and snowboarding prior to the collision. Save and except for the gym, which she continued to attend, she was restricted with respect to the other physical activities she once enjoyed.  The Court accepted the Claimant as a credible witness and that she continued to suffer pain as a result of the collision.

## SOFT TISSUE INJURIES, CHRONIC PAIN

Case and Judge	General Damages Award	Details	Reasons
<b><i>Lorenz v. Gosling</i></b>  2011 BCSC 1250  Verhoeven, J.	One Claimant  Lorenz: \$80,000 general  Breakdown: -general \$80,000 -special \$5,267.73. -cost of future care \$5,250.	MVA: Hit vehicle that ran stop sign  DOL: July 7, 2008  Lorenz: Female, 52 years old  Claimant suffered from daily and practically constant head and neck pain as well as frequent pain in her arms. She also had elbow pain in both elbows and weakness of grip, particularly in the left hand. Her injuries resulted in significant ongoing limitations of function.	The defendants admitted liability.  The medical evidence was not clear, but the Court concluded that there was a substantial risk the Claimant would not improve, and there was no doubt the complaints arose from the MVA.  The Claimant could not establish a real and substantial possibility of a future event leading to an income loss, and therefore no award of loss of earnings or earnings capacity was established on the evidence.
<b><i>Ward v. Klaus</i></b>  2010 CarswellBC 2278 (BCSC)  Rice J.	One Claimant  Ward: \$150,000.00 general  Breakdown: -general \$150,000 -earning capacity \$168,000 -cost of future care (to be calculated) -housekeeping (to be calculated)	MVA: Rear-End DOL: February 4, 2002  Ward: Part-time cashier on the DOL, suffered neck pain and headaches, and migraines. Narcotic medication led to addiction. Surgery provided only partial relief.	At the time of trial (8 years post-accident), the Claimant continued to complain of ongoing neck pain and ongoing headaches with severe migraine headaches. However, plaintiff's demeanor in court, inability to answer many questions on the basis that she could not remember, and videotaped evidence of the plaintiff led to questions on the reliability of her evidence. Prior to the accident, plaintiff had chosen to work part-time to allow her to attend to child care duties, and she had never worked full-time before or since the accident. There was no substantial possibility that plaintiff intended to ever pursue any career other than part-time waitressing or working as a cashier. Plaintiff would benefit from medication to age 75,

			treatment with a neurostimulator, and a pool pass, and would require housekeeping assistance to age 65.
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#### CHRONIC PAIN, ARM/SHOULDER

Case and Judge	General Damages Award	Details	Reasons
<b><i>Legault v. Brock Shopping Centre Ltd.</i></b>  2010 CarswellBC 1223 (BCSC)  Meiklem J.	One Claimant  Legault: \$110,000  Breakdown: -generals: \$110,000 -earning capacity: \$90,000 -future care: \$73,734  The above amounts were to be reduced by 50% for the Claimant's contributory negligence.	Slip and Fall  DOL: December 6, 2005  Legault: Male, 49, fell through a plate glass window and fractured his left humerus, his shoulder, and sustained lacerations to his lip, arm, hand, and knee. Prior to the incident, he suffered from major depression, morbid obesity, diabetes, high blood pressure, and was prone to infection. He was diagnosed with suffering from post-traumatic osteoarthritis of the shoulder that caused ongoing pain in his arm and shoulder (chronic). The arm/shoulder injury left him with a permanent partial disability.	The Claimant was left unable to lift heavy car parts and tools required to return to his self-employment car restoration business. His pre-existing major depression was aggravated by the fall, but he was used to living with depression prior to the fall and his apparent lack of motivation to try to overcome the effects of the slip and fall could not be entirely attributed to the fall.  Contributory negligence found because the Claimant was a large obese man, walking with his boots loosely and insecurely half-tied. Having crossed an extremely icy parking lot "gingerly", he did not pay any attention to the ground at his feet.

#### SOFT TISSUE INJURIES (NECK, SHOULDER, LOWER BACK), DEGENERATIVE DISC DISEASE

Case and Judge	General Damages Award	Details	Reasons
<b><i>Gosselin v. Neal</i></b>  2010 CarswellBC 827 (BCSC)	One Claimant  Gosselin: \$100,000 generals  Breakdown:	MVA: Rear-End  DOL: January 5, 2006  Gosselin, female, 39 years old.	Prior to the accident plaintiff was an extraordinarily active person in her work and in her leisure activities, participating in motorcycling, skiing, water sports, biking, and hiking. She was extremely fit, and was not

Silverman J.	-generals: \$100,000 -housekeeping: \$20,000	Employed as an elevator repair supervisor. Sustained soft tissue injuries to neck, shoulder, and lower back (with associated headaches). She had degenerative disc disease of the cervical spine, but had no symptoms prior to the collision.	<p>symptomatic prior to the accident.</p> <p>As of the time of trial, plaintiff's condition had not improved for more than a year. She suffered ongoing pain, limitation, difficulty sleeping, difficulty with heavy work, difficulty participating in her formerly very athletic lifestyle, and resulted in weight gain due to inactivity.</p> <p>Given the stark differences between her level of functioning before and after the accident, and her immediate and continuous pain, the accident was the clear cause of her injuries and her ongoing symptoms. She had lost the ability to follow a career path and job that she loved, which greatly affected her quality of life. Although plaintiff's ongoing symptoms would prevent her from returning to a role as an elevator adjuster, given her earnings and promotions after the accident, there was no substantial possibility that her lost capacity would result in an income loss, now or at any time in the future. However, the fact that she had lost the capacity to return to a position that she loved was taken to account in assessing her general damage award. Plaintiff was also left less able to repair and renovate her home and the rental property that she purchased after the accident.</p>
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#### LOWER BACK

Case and Judge	General Damages Award	Details	Reasons
<i>Peers v Bodkin Leasing Corporation</i>  2011 BCSC 271	One Claimant:  Peers: \$85,000 general	MVA: plaintiff's vehicle struck from behind.  DOL: February 11, 2009	The plaintiff suffered from significant changes in his life as a result of the accident. He had to quit his job, move and could not participate in the same sports and physical activities that he enjoyed

Humphries, J.	Breakdown: -general \$85,000 -past wage loss \$76,000 -future earning capacity \$375,000 -special damages \$3,732.11 -cost of future care \$10,000 -pension loss \$20,748 Total: \$760,000	Peers: male, 50 years old  Plaintiff suffered from pain in his neck, mid-back and lower back. His attempts to return to work resulted in a worsening of his back pain and he chose to leave his work as a forest industry boom boat operator. The physical pain and loss of his job resulted in depression.	prior to the accident.  While a specific job that the plaintiff would be able to find in his new community was not identified by the defendant, the defendant was not required to do so. It was unlikely that the plaintiff would have been able to work full time at a high income bracket, however, it could not be said that he would never be able to work again. Therefore, loss of future earning capacity was reduced for this contingency.  The plaintiff also tried to claim costs for his move to a new community. However, it was held that this was done for personal reasons to be closer to family, and could not be attributed to the accident.
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#### LOWER BACK, TRAUMATIC NEUROSIS, CHRONIC PAIN SYNDROME

Case and Judge	General Damages Award	Details	Reasons
<i>Simmavong v Haddock</i>  2012 BCSC 473  Greyell, J.	One Claimant:  Simmavong: \$75,000 general  Breakdown: -general \$75,000 -future earning capacity \$150,000 -lost wages \$38,000 -cost of future care \$61,936.50 -future care costs \$7,243.65 Total: \$332,179.15	MVA: head on collision  DOL: June 24, 2007  Simmavong: female, 28 years old  Plaintiff was pregnant at the time of the accident and suffered a placental separation which required a caesarean section to deliver her daughter. As a result of the accident, the child suffered medical difficulties which contributed to the anxiety and	Prior to the accident the plaintiff was an energetic and lively person, but following the accident she became anxious and depressed. The plaintiff suffered from ongoing back and neck pain that limited her ability to participate in daily activities. She worked as a waitress following the accident on a part time basis because she could not handle being on her feet and carrying heavy trays full time. She was required to work at least part time in order to supplement her husband's income.

		<p>distress that the plaintiff suffered. The plaintiff also suffered from whiplash-type soft tissue injuries, multiple bruises, along with injuries to both knees, her ankle and elbow. She also fractured and dislocated her pinky, which was left deformed resulting in pain and discomfort. She suffered from chronic back pain which interfered with daily activities. She also suffered from anxiety resulting from the uncertainty of her daughter's life and wellbeing following the accident. She also experienced flashbacks to the time of the accident.</p>	
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#### CHRONIC PAIN, SOFT TISSUE INJURIES (NECK, BACK), KNEE INJURY

Case and Judge	General Damages Award	Details	Reasons
<p><i>Poirier v. Aubrey</i></p> <p>2010 CarswellBC 1308 (BCCA)</p> <p>Rowles, Lowry, Neilson JJ.A.</p>	<p>One Claimant</p> <p>Plaintiff: \$100,000 generals</p> <p>Breakdown:            -generals: \$100,000            -earning capacity: \$350,000            -housekeeping: \$15,000</p>	<p>MVA: Rear End</p> <p>DOL: September 2006</p> <p>Plaintiff was 35 years old on date of loss. She sustained soft tissue injuries to her neck, back, and a minor injury to her knee. She missed 6 weeks of work, and then returned ½ times for 2 months. Thereafter, she resumed full time duties/hours. Roughly 2.5 years after the collision, she was no longer able to work due to neck</p>	<p>Court of Appeal allowed the Plaintiff's appeal of the trial judge's awards for general damages and the loss of future earning capacity, and the trial judge's failure to make a separate award for housekeeping. The Court of Appeal revised the trial awards as follows:</p> <ul style="list-style-type: none"> <li>- General Damages: From \$60,000 to \$100,000.</li> <li>- Earning Capacity: From \$100,000 to \$350,000 and</li> <li>- Housekeeping: From \$0 to \$15,000.</li> </ul> <p>Plaintiff was a credible witness who was not shown to have suffered from any significant pre-</p>



		and back pain.	<p>existing conditions. Her persistent, consistent, and ultimately chronic pain and suffering did not arise until immediately after the accident, and the accident was the cause of these symptoms.</p> <p>Her chronic symptoms left her unfit to return to the insurance adjusting position she had been working at before the accident. Plaintiff might also be able to retrain for a position that better suited her ongoing problems. The evidence established that there was a real and substantial possibility that the plaintiff's injuries would be permanent.</p>
<p><b><i>Farand v. Seidel</i></b></p> <p>2013 CarswellBC 518</p> <p>Savage J.</p>	<p>One Claimant</p> <p>Plaintiff: \$130,000 generals</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-generals: \$130,000</li> <li>-earning capacity: \$400,000</li> <li>-future care: \$95,867</li> </ul>	<p>MVA: pedestrian struck by vehicle</p> <p>DOL: August 7, 2009</p> <p>Plaintiff, aged 28, suffered multiple significant injuries when she was struck by defendant's vehicle. She was found to have suffered a fractured tibia, fractured pelvis, inferior and superior rami fractures, and an undisplaced sacral fracture, as well as multiple soft tissue injuries to her neck, back, and other areas. She underwent open reduction and internal fixation surgery on her tibia. Her pelvic fractures were treated conservatively. She spent 12 days</p>	<p>She had ongoing pain and limitation from her fractures and soft tissue injuries, with related headaches. Her chronic pain interfered with activities of daily living and was aggravated by her favouring her right leg. She required significant assistance with personal care tasks including medical care, tasks of daily living, errands, and household tasks. It was likely that she would require knee replacement surgery at some point in the future. She complained of ongoing chronic pain and limitation. Plaintiff had not worked full time for any sustained period after the accident. Her injuries and chronic limitations created a real and substantial possibility of a future income loss. Plaintiff would benefit from ongoing work with a personal trainer or kinesiologist, ongoing physiotherapy, psychological counseling for two years, orthotics, and housekeeping assistance.</p>

		in hospital. When she was released she had significantly restricted mobility. She used a wheelchair when released, four months later was using crutches without the wheelchair.	
<b>SOFT TISSUE INJURIES (NECK, LOWER BACK), HERNIATED DISC, BULGING DISC</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<i>Smusz v. Wolfe Chevrolet Ltd.</i>  2010 CarswellBC 138 (BCSC)  Loryl D. Russell J.	One Claimant.  Smusz: <b>\$90,000</b> generals  Breakdown: -generals: \$90,000 -housekeeping: \$9,000 -earning capacity: \$193,590 -future care: \$23,040  (all were reduced by 10% to account for the Claimant's failure to mitigate)	MVA: Head-on  DOL: October 8, 2006  Smusz, female, 43 years of age and employed as seasonal landscaper. She sustained physical and psychological injuries. She had neck and lower back pain. Neck pain radiated into arms and hands. Suffered from herniated discs in neck and bulging discs in lower back. She also had headaches for roughly 6 months post-collision. At time of trial, she continued to have chronic left-sided neck, arm, and low back pain. Her PTSD largely resolved over time, but she continued to suffer from insomnia, occasional nightmares and depression. Also had change in personality.	Although the Claimant began to undergo counseling sessions with a psychologist, she stopped after completing five of 12 sessions, largely because of concerns of how she would pay for the sessions. The Claimant had also failed to follow the exercise recommendations of her physicians. However, her financial circumstances were very poor, and her difficulties understanding the English language made it extremely difficult for her to understand her physician's recommendations. These factors were part of the Claimant at the time of the accident, and the defendant had to take the plaintiff as he found her. However, the Claimant's failure to seek an interpreter to better understand her treatment recommendations did amount to a failure to mitigate her damages that warranted a reduction in her awards by 10%. As a result of her injuries and ongoing symptoms, it was likely that the Claimant was no longer employable.

### AGGRAVATION OF PRIOR CONDITIONS, SPINAL INJURIES, BURST FRACTURE (L5), PTSD

Case and Judge	General Damages Award	Details	Reasons
<b><i>Pham-Fraser v. Smith</i></b>  2010 CarswellBC 615 (BCSC)  Greycliff J.	One Claimant  Pham-Fraser: \$95,000 general  Breakdown: -general: \$95,000 -earning capacity: \$225,000 -future care: \$78,969 -housekeeping: \$3,120  TOTAL: \$402,089.00	MVA: Broadside, airbag deployment DOL: January 13, 2006  Pham-Fraser: female, 32 was a teacher on the DOL. Had significant pre-existing conditions, including: spinal degeneration, TMJ dysfunction, and carpal tunnel syndrome. Post-collision diagnosis included soft tissue injuries to neck, shoulder, and lower back, headaches, PTSD, exacerbation of pre-existing TMJ dysfunction and carpal tunnel syndrome, Also sustained burst fractures of L5, causing probable stenosis.	The Claimant's ability to participate in recreational and social activities and her ability to enjoy her work as a teacher continued to be impacted. Although she had returned to a light exercise regime, she had not returned to some other pre-accident physical activities. The Claimant's plans to return to school to complete her Master's degree had to be delayed due to her injuries. Her daily pain and loss of stamina affected her ability to work as a teacher and her participation in social and recreational pursuits. Although she had improved, her condition had likely plateaued, with a possibility that her symptoms would worsen over time, potentially requiring surgery. Her lower back symptoms had increased over time, and she was likely to miss work in the future. There was a possibility that her symptoms could worsen further, or that she would be required to undergo surgery with an unknown outcome. Plaintiff would require future dental treatment, massage therapy, physical therapy and kinesiology, and medication, and would require housekeeping assistance.

### SOFT TISSUE INJURIES (NECK, SHOULDER), PRE-EXISTING CONDITIONS, MIGRAINES

Case and Judge	General Damages Award	Details	Reasons
<b><i>Bouchard v. Brown Bros. Motor Lease Canada Ltd.</i></b>  2011 BCSC 762	One Claimant  Bouchard: \$160,000.  Breakdown: -generals: \$160,000	MVA: rear-ended  DOL: February 26, 2005  Bouchard: 26 year-old male suffered injuries to his neck, mid	Bouchard had a pre-existing degenerative condition of his lower back, which, when first detected in 2000, involved mild disc space narrowing at L5-S1. On June 11, 2005, an MRI showed signs of mild deterioration at L4-L5 and more moderate deterioration at L5-S1. He was

Pearlman J.	<p>-past loss of income \$264,000 -earning capacity: \$1,500,000. -cost of future care \$475,000. special damages: \$36,235.51.</p> <p>TOTAL: \$2,435,235.51 (before 40 percent reduction for degenerative condition)</p>	back and lower back, including an injury to the L4-L5 disc, which was largely asymptomatic until October 2007. Since then, the Claimant suffered intense low back pain with pain radiating to his lower legs.	<p>also involved in another MVA in 1998 that made him more vulnerable to injury to his lower back.</p> <p>The Court was satisfied the defendant established a measurable risk that the degenerative condition of the Claimant's lumbar spine would have detrimentally impacted affected the Claimant regardless of the collision. The damages were reduced by 40% as a result.</p>
<p><b><i>Gregory v. Penner</i></b></p> <p>2010 CarswellBC 29 BCSC</p> <p>E.A. Arnold-Bailey J.</p>	<p>One Claimant</p> <p>Gregory: \$95,000.00 general</p> <p>Breakdown: -general: \$95,000 -future care: \$6,383</p>	<p>MVA: rear-end</p> <p>DOL: September 11, 2006</p> <p>Gregory: female, 41, meat packer, felt immediate chest, neck, and head pain. She was diagnosed with soft tissue injuries to her neck, shoulder, arm, wrist, and an exacerbation of pre-existing chronic migraine headaches. Also sustained a ruptured breast implant, with the development of fatty necrosis. She received cortisone injections to dissipate the fat necrosis and would require surgery to replace the implant.</p>	For the first year the Claimant suffered considerable pain, discomfort, weakness, and limitations related to the soft tissue injuries to her neck, left arm, and shoulder, but she was substantially recovered from these injuries after one year. She also experienced considerable pain, discomfort, and emotional upset as a result of the injury to her left breast and the treatment for the fatty necrosis. However, plaintiff tended to exaggerate the level of pain and incapacity due to her injuries. It was not established that plaintiff would suffer a loss of future earning capacity. She was entitled to the cost of the replacement of her breast implant and for medications related to the breast implant replacement surgery.
<b>CHRONIC PAIN, SOFT TISSUE INJURIES (NECK, BACK)</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Juraski v. Beek</i></b>	One Claimant	MVA – rear-ended	Prior to the collision, she was a determined and

2011 BCSC 982  Humphries J.	Juraski: \$75,000  Breakdown: -generals: \$75,000 -past income: \$70,000 -earning capacity: \$50,000 -cost of future care: to be calculated -special damages: to be calculated	DOL: June 11, 2007  Juraski: 42-year-old female realtor suffered chronic pain in her shoulder and lower back and would continue to do so	energetic person, but the quality of her life was altered as she must cope with pain every day. The medical evidence established that there was some room for improvement, but she would have to learn to live with the pain.  No failure to mitigate.
<i>Kasidoulis v. Russo</i>  2010 CarswellBC 1839 (BCSC)  Sewell J.	One Claimant  Kasidoulis:\$90,000 generals  Breakdown: -generals: \$90,000 -earning capacity: \$500,000 -future care: \$250,000	MVA.  DOL: December 15, 2005  Kasidoulis, female, 35 years of age, employed as a substitute teacher. Pregnant at time of collision. Feared child would be injured. Sustained soft tissue injuries to neck, shoulders, back (with associated headaches). The pain was initially quite disabling. Her headaches declined over time, but she had no significant improvement in back pain (despite treatment). Left with debilitating back pain.	The Claimant's pain was chronic and would likely continue on a permanent basis. The claimant had suffered a significant degradation in the quality of her life, and she was entitled to a substantial award for general damages. Because of her injuries, it was likely that she would no longer be able to achieve her goal of becoming a full-time teacher, and would not likely be able to return to full-time employment. She would require a lengthy period of rehabilitation. There was consensus among the medical experts that Claimant would benefit from active rehabilitation and reconditioning, with a reconditioning program likely to take approximately one year to complete.
<b>CHRONIC PAIN, SOFT TISSUE INJURIES (NECK, BACK)</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<i>Taraviras v. Lovig</i>  2011 BCCA 200	One Claimant  Taraviras: \$200,000	MVA: rear-ended  DOL: February 28, 2002	The Court of Appeal found that this case was not one in which the victim suffered a catastrophic injury, and the Claimant's permanent disability

Huddart, Groberman, and Garson, JJ.A.	<p>Breakdown:</p> <ul style="list-style-type: none"> <li>-generals: \$200,000 (reduced from \$300,000)</li> <li>-earning capacity: \$347,000</li> <li>-housekeeping: \$3,750-</li> <li>special damages: \$27,000</li> </ul>	<p>Taraviras: 35 year old male, co-managed his father's business, Top's Restaurant, since 1972. He also owned and managed four small apartment buildings.</p> <p>Complained of primarily neck and back injuries with referred pain down his left leg.</p>	<p>was a moderate one.</p> <p>The jury awarded the Claimant \$300,000 general damages; the Court of Appeal asked, "taking Mr. Taraviras' case at its most favourable, is the award nevertheless so exorbitant that it would shock this Court's conscience and sense of justice?"</p> <p>The task on appellate review of an award alleged to be inordinately high is to assume that the jury found the facts most favourable to the plaintiff, and then to first compare the award to judge alone assessments in a generous way, and then to assess the appropriate "margin of deviation" applying the Moskaleva test – that is, whether the award would "shock the court's conscience and sense of justice".</p> <p>The Claimant's life had, in almost all respects, been affected by the accident. He could no longer work in the same robust way he had worked previously. His renovation and property acquisition business was limited by his inability to do the heavy maintenance and renovation work. He could no longer participate in his previous active sporting life. His personal relationships were affected by his short temper and more sedentary lifestyle. He complained of constant pain in his leg and back. He could no longer enjoy his employment.</p>
<p><b><i>Demarzo v. Michaud</i></b></p> <p>2010 CarswellBC 465 (BCSC)</p>	<p>One Claimant</p> <p>Demarzo: \$85,000 generals</p>	<p>MVA: Rear-End</p> <p>DOL: March 19, 2005</p>	<p>Prior to the accident, the Claimant suffered from an asymptomatic degenerative spinal condition. It was not established that Claimant's prior active lifestyle and physically demanding work had</p>

N. Brown J.	<p>Breakdown:</p> <ul style="list-style-type: none"> <li>-generals: \$85,000</li> <li>-earning capacity: \$150,000</li> <li>-housekeeping: \$44,000</li> </ul>	<p>Demarzo, female, was employed as a seasonal landscaper. Sustained soft tissue injuries to her neck, and back (with associated headaches). She later developed lower back pain and had sustained a significant injury to that region. Her symptoms did not improve with treatment. Her lower back pain was exacerbated when she attempted to lift two 20 lb dumbbells. Her symptoms had become chronic at the time of trial (5 years post-collision).</p>	<p>caused her degenerative spine condition or rendered it symptomatic, or that it would have become symptomatic but for the accident. Although the relative contributions of the accident, the dumbbell incident, and the pre-existing degenerative condition to her ongoing symptoms could not be precisely determined, the medical evidence established that the trauma of the accident substantially caused or contributed to her ongoing symptoms. The injuries affected the Claimant's employment, recreational life, and relationship with her husband. She was unable to return to her former work as a landscaper, and would have to find more sedentary employment. She was also no longer able to maintain the grounds around her home as she had prior to the accident.</p>
<p><b><i>R. (S.) v. Trasolini</i></b></p> <p>2013 CarswellBC 1933</p> <p>Ballance J.</p>	<p>One Claimant</p> <p>Plaintiff: \$130,000 generals</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-generals: \$130,000</li> <li>-earning capacity: \$95,000</li> </ul>	<p>MVA: Rear-End</p> <p>DOL: July 20, 2007</p> <p>Plaintiff: female, 45</p> <p>Plaintiff suffered injuries when her vehicle was struck from behind. After the accident plaintiff developed pain in her neck, shoulder areas, and upper back. She was diagnosed with soft tissue injuries to her neck, shoulders, and back with related headaches. Prior to the accident plaintiff had suffered a variety of pain and injuries and had also</p>	<p>Despite her prior complaints, it was not established that she had ongoing impairment or emotional symptoms prior to the accident.</p> <p>Plaintiff had endured years of suffering with fluctuating degrees of chronic pain that was severe at times, impacting most aspects of her life. The prognosis for recovery was poor. Plaintiff became more reclusive and reliant on her aging mother to help with household chores. She was left with a complex and incurable pain syndrome with an array of unwelcome physical, psychological, and cognitive impairments, disrupting her sleep and her life and having an adverse effect on her overall emotional and cognitive well-being. The prognosis for plaintiff's full recovery was guarded at best, giving rise to a real and substantial</p>



		sought treatment for emotional and depressive problems. She later developed fibromyalgia.	possibility that she would suffer a loss of income in the future due to her injuries. Defendant failed to establish that plaintiff failed to mitigate her damages.
<p><b><i>Bouchard v. Brown Bros. Motor Lease Canada Ltd.</i></b></p> <p>2012 CarswellBC 2336</p> <p>Newbury J.A., Saunders J.A., Tysoe J.A.</p>	<p>One Claimant</p> <p>Beaudry: \$128,000.00</p> <p>Breakdown: -generals: \$128,000 -earning capacity: \$264,000 -future care: \$380,000</p>	<p>MVA: Rear-End</p> <p>DOL: April 26, 1998</p> <p>Plaintiff: male, 22</p> <p>Plaintiff suffered injuries when his vehicle was struck from behind. Prior to the accident, plaintiff suffered from pre-existing degenerative changes to his lower back, and had also suffered a lower back injury in a prior accident seven years earlier. On the evening of the accident, plaintiff suffered pain in his lower back, shoulders, and neck, and he later developed pain in his mid-back and upper back with related headaches. Although most of his injuries improved or resolved in the three years following the accident, he continued to have progressively worsening lower back pain. Approximately 30 months after the accident, plaintiff developed intense lower back pain that radiated down his leg. He underwent spinal surgery in an effort to relieve the pain, but the</p>	<p>The trauma caused by the accident weakened and accelerated plaintiff's pre-existing degenerative condition, resulting in this onset of significant pain.</p> <p>It was likely that plaintiff would continue to experience ongoing chronic pain in his lower back and lower extremities that would be aggravated by increased physical activity. Plaintiff developed emotional difficulties. His wife gave evidence that plaintiff was almost unrecognizable as the man that she married. Their marriage ended. Plaintiff missed two months of work after the accident, but after he returned he was less and less able to work as a special effects technician, and ultimately became permanently disabled from being able to return to his chosen profession on a full-time or part-time basis. Even with retraining, his employment options would be limited. He was no longer physically active, and required a cane to walk. He was left with significant future care requirements.</p> <p>Given the negative contingencies related to plaintiff's pre-existing degenerative spinal condition, it was appropriate to reduce the assessed damages by 40%.</p> <p>The Court of Appeal allowed plaintiff's appeal in part, finding that the trial judge erred in finding</p>



		surgery was largely unsuccessful. Plaintiff continued to experience severe pain in his lower back that radiated into his legs, along with severe cramping. He was also found to have post-operative epineureal scarring around the nerve roots of his affected spinal discs.	that plaintiff's degenerative spinal condition would have deteriorated immediately after trial or soon thereafter, erred in reducing the awards by 40% which was excessive in the circumstances, and erred in reducing all heads of damages by 40% including those that referred only to past loss and expenses.
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#### CHRONIC PAIN, PRE-EXISTING INJURIES

Case and Judge	General Damages Award	Details	Reasons
<b><i>Beaudry v. Kishigweb</i></b>  2010 CarswellBC 1650 (BCSC)  Rice J.	One Claimant  Beaudry: \$85,000.00  Breakdown: -generals: \$85,000 -earning capacity: \$50,000	MVA: Rear-End  DOL: August 11, 2005  Beaudry, female, sustained injuries to her neck, back, shoulders, head, chest, tail bone, abdomen, pelvis, ankle, knee and foot. She suffered from pre-existing problems, including long history of ongoing pain to her leg and major depression. Also had a period of cocaine dependency, and history of sexual abuse.	At the time of the accident, the Claimant had largely recovered from her pre-existing problems. Prior to the accident she had not maintained steady employment. After the accident her ongoing chronic neck pain impacted her ability to return to work. She was off work for three years after the accident, and after that time was only capable of returning to part-time hours. At the time of trial, plaintiff complained of ongoing chronic pain and discomfort in her neck, back, and shoulders, as well as headaches. Although her ongoing symptoms were unlikely to present a very strong obstacle to plaintiff finding employment that she could manage, she was left unable to work at the pace she had prior to the accident, and had suffered a loss of future earning capacity.
<b><i>Cantin v. Petersen</i></b>  2012 CarswellBC 1404  Bruce J.	One Claimant  Cantin: \$150,000  Breakdown: -generals: \$150,000	MVA: Broadside Collision  DOL: June 10, 2004  Cantin, female, aged 44, sustained suffered soft tissue	There was also no medical evidence to support a conclusion that plaintiff's pre-existing joint hyper-mobility would have caused chronic pain to develop absent a soft tissue injury in her lower body region. However, her pre-accident condition was clearly compromised by the presence of

	-earning capacity: \$175,000 -future care: \$77,150	strain to her neck, shoulders, and upper back, strain to her lower back and hips which caused referred pain in both her legs and feet, and bruises to her hands, thumbs, right elbow, left knee, and right shoulder that resolved quickly. The accident aggravated pre-existing injuries to her neck, upper back, and shoulders, making these injuries worse than before the accident. She also suffered related headaches which were chronic and ongoing at the time of trial. She had some improvement in her symptoms but was left suffering from ongoing chronic pain that was caused in part by the injuries suffered in the accident.	significant neck, shoulder, and upper back pain that had an adverse impact on her functional capacity.  At the time of trial plaintiff was limited physically to very short walks and light exercise, was unable to carry out household chores without pain, was unable to drive except very short distances, and had no social or family life due to the emotional complications arising out of her chronic pain syndrome. Her upper back, lower back, hip, and leg pain was chronic and serious at the time of trial, eight-years post-accident. She suffered constant pain and mental distress. She was unable to achieve restful sleep, had suffered a cognitive decline in memory, and has become a social recluse. The medical prognosis was that there was very little chance that her condition would improve at all. She would require ongoing medical care and counseling.
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#### LOWER BACK, PRE-EXISTING DISEASE OR CONDITION

Case and Judge	General Damages Award	Details	Reasons
<i>Delgiglio v British Columbia (Public Safety and Solicitor General)</i>  2012 BCSC 480  Gropper, J.	One Claimant:  Delgiglio: \$80,000 general  Breakdown: -general \$80,000 -future earning capacity \$150,000 -Future care costs \$25,000 -loss past income \$74,291 -special \$2,577	MVA: police officer went through red light and struck plaintiff's car broadside  DOL: January 6, 2009  Delgiglio: male, 54 years old  Prior to the accident, the plaintiff had been involved in seven other motor vehicle accidents. He	The plaintiff was unable to return to work as a truck driver. He was not totally disabled, but only partially to the extent that he could not work as a truck driver.  The defendant argued that the plaintiff had been compensated for all future loss truck driving income following an accident in 1993. However, the plaintiff was still able to demonstrate that there was a real and substantial possibility of a future income loss, therefore, he was awarded damages

	Total: \$331,868	suffered from a back and disc condition, had lymphedema in his lower leg, a meniscus tear to his knee, was obese and suffered from sleep apnea. As a result of the accident at issue, the plaintiff suffered soft tissue injuries to his neck and lower back as well as minor injuries to his elbow and hand. The accident also served to aggravate his pre-existing neck and lower back pain.	as such.
<p><i>Stanikzai v Bola</i></p> <p>2012 BCSC 846</p> <p>Smith, J.</p>	<p>One Claimant:</p> <p>Stanikzai: \$85,000 general</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-general \$85,000</li> <li>-future earning capacity \$125,000</li> <li>-loss of past income \$10,000</li> <li>-cost of future care \$31,000</li> <li>-special damages \$2,000</li> </ul> <p>Total: \$189,750 (total reduced by 25% for contributory negligence)</p>	<p>MVA: Plaintiff struck the rear of the defendant's vehicle, though the details of the accident are not clear.</p> <p>DOL: August 25, 2007</p> <p>Stanikzai: male, 44 years old</p> <p>Plaintiff suffered from soft tissue injuries to his neck, shoulder and back. The back pain limited his ability to work, sleep and participate in recreational activities. The plaintiff had pre-existing back pain, but following the accident the pain was more severe and persistent.</p>	<p>The plaintiff did suffer from a pre-existing back condition and he would have suffered back pain either way, but the accident did contribute to his condition. If the plaintiff had not been found to have been at high risk for back problems, the Court would have assessed non-pecuniary damages of \$100,000. However, a 15% reduction was applied to account for the pre-existing condition.</p> <p>In regards to the assessment of damages for loss of future earning capacity, the plaintiff was previously a delivery truck driver. At trial, the plaintiff was not found to be completely unemployable, but his prospects were limited to unskilled sales and service positions. While the plaintiff was considered physically capable of jobs, his age and language difficulties placed him at a competitive disadvantage. These factors were taken into account when assessing an award.</p> <p>The total sum of damages assessed was reduced</p>

			by 25% for contributory negligence in creating the accident.
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**PERMANENT INJURY, FRACTURES (TIBIA, FIBULA), SOFT TISSUE INJURIES**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Falati v. Smith</i></p> <p>2010 CarswellBC 835 (BCSC)</p> <p>A. Saunders J.</p>	<p>One Claimant.</p> <p>Falati: \$85,000 generals</p> <p>Breakdown: -generals: \$85,000 -earning capacity: \$75,000</p>	<p>Pedestrian/Vehicle Collision</p> <p>DOL: February 13, 2007</p> <p>Falati, male, 30 years of age, aspiring restaurant entrepreneur and part-time photographer was struck by a vehicle while walking on a sidewalk. Suffered soft-tissue injuries as well as fractures to his tibia and fibula. He spent 4 days in the hospital. After his discharge, he continued to complain of leg pain and associate physical limitations. He also suffered from emotional distress suggestive of PTSD. His ongoing leg pain was expected to be permanent. He was not expected</p>	<p>Although there was a possibility that his pain would be permanent, the evidence did not establish this to be a probability. Although his physical injuries and limitations might continue, his income potential was less dependent on his physical condition than it was on his drive, energy, and imagination, and it was likely that he would be successful in the future.</p>

		to suffer any permanent disability and had a good prognosis for recovery.	
<b><i>Farand v. Seidel</i></b>  2013 BCSC 323  Savage, J.	One Claimant.  Farand: \$130,000 general  Breakdown: - general: \$130,000 - earning capacity: \$400,000 - future care: \$95, 867	MVA; pedestrian struck in crosswalk.  DOL: August 9, 2007  Plaintiff, female, 28 years old, struck by a vehicle while walking in a marked crosswalk. Suffered fractured tibia, pelvis, inferior superior rami fractures, undisplaced sacral fracture, and multiple soft tissue injuries.	Mobility extremely inhibited. Ongoing pain and limitation. Chronic pain interfered with everyday activities.  Would require assistance for everyday living.  Likely would require knee replacement surgery.  Injuries and pain created substantial possibility of future income loss.
<b><i>Hubbs v Escueta</i></b>  2013 BCSC 103  Ross, J.	One Claimant.  Hubbs: \$130,000 general  Breakdown: - general: \$130,000 - earning capacity: \$666,200 - future care: \$53,040	MVA; motorcycle collision with van  DOL: July 3, 2009  Plaintiff, male, 39 years old, journeyman electrician suffered injuries when his motorcycle collided with the defendants van. Injuries included: head, back, arm, shoulder, leg, knee, back, wrist, ankle.	All of the injuries were resolved within several months aside from his ankle. Surgery for the insertion of plates and screws was required.  Substantial interference with physically demanding job. He would no longer be able to discharge his job functions in a safe fashion. Would require training for another career.  Plaintiff faced with a lifetime of limitation and disability. His symptoms would be permanent  Plaintiff became depressed and his relations with his family was damaged.

ARMS			
Case and Judge	General Damages Award	Details	Reasons
<p><i>Taylor v. Grundholm</i></p> <p>2010 CarswellBC 1491 (BCSC)</p> <p>Maisonville J</p>	<p>One Claimant</p> <p>Taylor: \$81,000 generals</p> <p>Breakdown:            -generals: \$81,000            -earning capacity: \$180,000            -future care: \$4,000            -housekeeping: \$2,000</p> <p>(Damages were reduced by 10% for the Claimant's failure to mitigate)</p>	<p>MVA: Rear-End</p> <p>DOL: January 31, 2008</p> <p>Taylor, male, 56 years old and employed as a truck driver. He was standing outside of his vehicle, leaning in and holding the steering wheel when the collision occurred. At the time of the collision, he was off-work for an unrelated knee injury and he remained off work for a further 5 months post collision, due to the knee symptoms. As a result of the collision, he sustained a rupture left biceps tendon. The injury left him with reduced strength and range of motion and impacted his ability to perform his duties as a long-haul truck driver. 14 months post-collision, he stopped working entirely due to his injuries. He was left with ongoing deformity of his left upper arm and ongoing weakness and limitation in left upper extremity.</p>	<p>Although the Claimant would be capable of working in positions that involved light or sedentary duties, he would not be able to return to his position as a long haul trucker. He was left with ongoing deformity of his left upper arm and ongoing weakness and limitation in his left upper extremity. However, his enjoyment of life was also impacted by the effects of his many other unrelated and pre-existing health problems. In addition, his condition would likely have improved if he had undergone physiotherapy as recommended, and his failure to do so amounted to a failure to mitigate. After reducing the general damages award by 10% for failure to mitigate,</p>
WRIST			
Case and Judge	General Damages Award	Details	Reasons
<p><i>Jackson v Jeffries</i></p>	<p>One Claimant:</p>	<p>MVA: the Defendant's vehicle veered into the Plaintiff's lane,</p>	<p>Even though the plaintiff was not wearing his seatbelt at the time of the accident, the court found</p>

2012 BCSC 814  Greyell, J.	<p>Jackson: \$75,000 non-pecuniary</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-non-pecuniary \$75,000</li> <li>-past loss of income \$99,664</li> <li>-future loss of income \$250,000</li> <li>-future care \$7,500</li> <li>-special damages \$1,767.52</li> </ul> <p>Total: \$433,931.52</p>	<p>resulting in a head on collision. Plaintiff was not wearing a seatbelt at the time.</p> <p>DOL: May 23, 2008</p> <p>Jackson: male, 29 years old</p> <p>Plaintiff was diagnosed with soft tissue injuries right after the accident. Over time, the plaintiff complained of pain in the right wrist, neck and chest discomfort. He was later diagnosed with multiple soft tissue injuries of the cervical, thoracic and lumbar spine.</p> <p>Plaintiff was an apprentice plumber at the time of the accident, but was unable to continue in this line of work following the accident because of his inability to lift heavy items.</p>	<p>the defendant to be completely liable. This is because the defendant could not show that the injuries wouldn't have occurred if Jackson had been wearing his seatbelt at the time of the accident.</p> <p>In determining Jackson's future loss of income award, the Court used the capital loss assessment method because of the contingencies present (Jackson had not completed all his schooling at the time of the accident) and Jackson's young age.</p>
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#### **KNEE, PRE-EXISTING DISEASE OR CONDITION, HIP**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Tompkins v Bruce</i></p> <p>2012 BCSC 266</p> <p>Curtis, J.</p>	<p>One Claimant:</p> <p>Tompkins: \$200,000 general</p> <p>Breakdown:</p>	<p>MVA: drunk driver collided with plaintiff head on.</p> <p>DOL: June 3, 2006</p> <p>Tompkins: male, 50 years old</p>	<p>The court found the defendant to be 100% liable.</p> <p>Prior to the accident, the plaintiff had an extensive medical history, including prior problems with his knees, lower back, hip and a degenerative spinal condition. The plaintiff was also in a prior MVA</p>

	-general \$200,000 -past loss of income \$215,000 -future loss of income \$425,000 -future care cost \$87,450 -special damages \$35,771 -in trust for Beerstra (daughter in law) \$7,500 -in trust for Larkin (romantic relationship) \$10,000 Total: \$980,721	Plaintiff had several significant injuries including fractured ribs, a collapsed lung, a fractured hip, a fractured femur, a fractured patella, and an injury to his sternum. Other symptoms included headaches, ringing in ears with some memory loss, pain in left temporomandibular joint, eye cataracts and a partial tear of one of his retinas, neck and shoulder pain, low back pain, pain in thigh with spasms, anterior knee pain and hip pain. Plaintiff also suffered significant psychological mood change as a result of his injuries.	and had several WCB claims through his work as a tradesman.  Plaintiff was unable to return to work after the accident. Given the nature of his injuries, the multiple medical procedures required and the psychological changes, the plaintiff could not be expected to be gainfully employed. Despite his pre-existing medical conditions, there was a possibility that the plaintiff would have continued to work to age 65 if it wasn't for the accident. The plaintiff was going to require significant ongoing physical and psychological future care.
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#### **FRACTURED SPINE, PRE-EXISTING INJURIES, CHRONIC PAIN**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Smaill v. Williams</i></b>  2010 CarswellBC 111 (BCSC)  Loryl D. Russell J.	One Claimant  Smaill: \$80,000 generals  Breakdown: -generals: \$80,000 -earning capacity: \$112,000 -future care: \$15,241  (Damages were reduced by 20% due to the Claimant's failure to mitigate)	Two MVAs. 1 <sup>st</sup> : pedestrian/vehicle; 2 <sup>nd</sup> : Rear-End  DOLs: July and September 2006  Smaill, male, 30 years of age, was unemployed at time of collisions. Was struck by a vehicle and thrown onto the hood of a vehicle in 1 <sup>st</sup> collision. Sustained a brief loss of consciousness and sustained injuries to hip, back, and	The first accident caused the injuries to the Claimant's lumbar spine and caused his previously asymptomatic disc bulges and protrusions to become symptomatic. These injuries were aggravated in the second accident. As a result of these injuries the Claimant was left suffering from chronic pain. Prior to the accident his physical health was good, but he had a history of emotional problems. Plaintiff was not employed at the time of the accident, and prior to this time he had not consistently worked. However, as a result of his injuries and chronic pain, plaintiff would suffer a



		head. Two months later, he was involved in a rear end collision. His face struck the steering wheel and aggravated his pre-existing injuries. An exam revealed lumbar disc fracture, small disc protrusion, degenerative changes in lumbar spine, and cardiac arrhythmia.	permanent reduction in his functional capacity. The Claimant would need to seek treatment for his chronic pain, retrain, and find employment.
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**PRE-EXISTING CONDITIONS, SOFT-TISSUE INJURIES (NECK, BACK, SHOULDER, JAW)**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Ho v. Dosanjh</i></p> <p>2010 CarswellBC 1502 (BCSC)</p> <p>Silverman J.</p>	<p>One Claimant</p> <p>Ho: \$75,000.00 generals</p> <p>Breakdown: -generals: \$75,000 -earning capacity: \$60,000 -future care: \$8,000</p>	<p>MVA: Rear-End DOL: August 3, 2006</p> <p>Ho, male, 35, accountant, suffered pain in neck, back, shoulder, jaw, headaches, numbness in arm, and insomnia. Missed 3 months of work, and returned on a graduated basis thereafter. Prior to collision, had been injured in another accident and suffered from whiplash. As a result of subject collision, the Claimant had a significant flare-up of the pre-accident symptoms.</p>	<p>After the accident, he did not return to most of his pre-accident activities, and had complaints, primarily of ongoing headaches and ongoing TMJ problems. Claimant had gone for a sociable, outgoing person to someone who was moody, withdrawn, quiet, less social, and not as pleasant to spend time with. His symptoms affected his recreational and athletic activities which were an important part of his daily life. He continued to suffer ongoing discomfort and was unlikely to have further improvement, but he was able to function in a normal way. Although he may have suffered future flare-ups related to his pre-existing conditions, the recent accident was the primary cause of his ongoing symptoms. The Claimant's injuries would not prevent him from upgrading his accounting designation, but his discomfort would likely result in plaintiff requiring more time than he otherwise would have needed to obtain his designation. His ongoing discomfort would also likely reduce his attractiveness to employers. Plaintiff would benefit from future physiotherapy,</p>

			a fitness program, and help with chronic pain management.
<b>CHRONIC PAIN, SOFT TISSUE INJURIES (NECK, SHOULDER, BACK)</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Power v. Carswell</i></b>  2011 BCSC 1672  Gray J.	One Claimant  Power: \$70,000  Breakdown: -generals: \$70,000 -past income: \$ 31,000 -earning capacity: \$ 80,000 -housekeeping: \$ 40,000 -special damages: \$ 406.69	MVA (the Claimant was turning left when a driver ran a red light and hit her)  DOL: November 8, 2006  Power: 28, female, suffered moderate soft tissue injuries to her chest, left neck, left shoulder, lower back, and chronic pain	At the time of the accident, the Claimant was an enthusiastic, energetic, and talented hairstyling teacher who loved her job. She was required to spend most of her work day standing, much of it with her hands above her head cutting hair. After the accident, the Claimant was less able to take care of her family and herself.
<b><i>Raun v. Suran</i></b>  2010 CarswellBC 1384 (BCSC)  V.R. Curtis J.	One Claimant  Raun: \$75,000 generals  Breakdown: -generals: \$75,000 - earning capacity: \$75,000	MVA: Rear-End  DOL: July 12, 2005  Raun, male, 17 years of age and a student at the time of the collision sustained soft tissue injuries to neck, back, and shoulder. The collision was violent and the damage to his vehicle as beyond repair. He also had pain in his knee after it hit the dashboard. He missed one day of summer school. The injuries to his mid-back and knee resolved within 1-2 months, but the pain in his shoulder, neck and lower back continued up to an	Prior to the accident, plaintiff was a talented athlete. He was unable to return to his sporting activities when the school year resumed. The injuries to his shoulder, neck, and lower back continued to affect him at the time of trial (5 years post collision) and had become chronic in nature. Although the prognosis for improvement in his shoulder was good if the plaintiff continued with the appropriate exercises, the prognosis for improvement in his neck and back were guarded. The injuries and ongoing symptoms had significantly impacted his enjoyment of life. He continued to be prevented from pursuing athletic interests as he had before, something that was a big part of his life prior to the accident. However, he was able to perform normal functions of daily life, and could still participate in sports at a lower

		including the time of trial (5 years post-collision).	level. Given that Claimant was not academically inclined, the impact in his physical capacity resulted in a loss of future earning capacity.
<b>PRE-EXISTING CONDITIONS, WHIPLASH, SOFT TISSUE INJURIES (NECK, SHOULDER)</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Michal v. Begg</i></b>  2010 CarswellBC 212 (BCSC)  V.R. Curtis J.	One Claimant.  Michal: \$75,000.00  Breakdown: -generals: \$75,000 -earning capacity: \$50,000 -future care: \$5,000	MVA: single vehicle  DOL: December 18, 2003  Michal, male, 47 years old, construction business operator sustained Grade II Whiplash, headaches, injuries to knees, shoulder, wrist, chest, ankle, heel, ribs, elbow, buttock, and finger. Later diagnosed with plantar fasciitis. Most of the injuries resolved quickly. But the Claimant was left with ongoing problems in neck, knees, ankle, and foot. He had suffered from mild, but pre-existing, neck problems and knee problems.	The Claimant's ability to work in his construction business and to participate in martial arts training was impacted by his injuries. It was likely that his plantar fasciitis would resolve with treatment. Prior to the accident he had been in seven other motor vehicle accidents and had suffered injuries while participating in martial arts. Plaintiff suffered from a mild but recurring pre-existing neck problem. He also showed signs of pre-existing degeneration in all three compartments of both knees. The injuries suffered in the accident aggravated his pre-existing neck problem and his pre-existing but asymptomatic knee problems. However, it was likely that his knee problems would have eventually become symptomatic regardless of the accident. Any knee symptoms after his knee surgery three years after the accident were largely attributed to his pre-existing condition rather than the injuries suffered in the accident. His ongoing symptoms were likely to impact his earning capacity. He would require ongoing medication and would benefit from the use of orthotics and a professionally-guided exercise program.

<b>WHIPLASH, PRE-EXISTING DISEASE OR CONDITION</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Morlan v Barrett</i></p> <p>2012 BCCA 66</p> <p>Frankel, JA, Lowry, JA and Neilson, JA</p>	<p>One Claimant:</p> <p>Morlan: \$125,000 general</p> <p>Breakdown:</p> <p>-general \$125,000</p> <p>-future earning capacity \$275,000</p> <p>-cost of future care \$42,953</p> <p>-special damages \$7,210</p> <p>Total: \$450,163</p>	<p>MVA: Two successive motor vehicle accidents</p> <p>DOL: January 6, 2007</p> <p>Morlan: female, 46 years old</p> <p>As a result of the accidents, the plaintiff suffered soft tissue injuries to her neck, shoulder, upper back, headaches and chronic pain (fibromyalgia). Following the accident, the plaintiff continued to suffer ongoing localized pain in her neck, shoulder and upper back areas, as well as occasional headaches. She was required to ingest large amounts of drugs to control her chronic pain.</p>	<p>The Court of Appeal reduced the award for loss of future earning capacity by \$175,000 to \$275,000. This was because the evidence at trial did not establish a real and substantial possibility of promotion if the plaintiff had remained at the job she had prior to the accident. Therefore, the trial judge was incorrect to not account for such negative contingencies.</p> <p>With regards to future care costs, the trial judge had made the award on the basis that the plaintiff would take the maximum number of physiotherapy treatments and the same amount of medication for the rest of her life. On appeal, the Court held that each of the awards for physiotherapy and medications should be reduced by 20% to account for the contingency that these amounts would change with time.</p>

<b>HEAD, WHIPLASH, CHRONIC PAIN SYNDROME</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Shapiro v Dailey</i></p> <p>2012 BCCA 128</p> <p>Ryan JA, Tysoe JA, Neilson JA.</p>	<p>One Claimant:</p> <p>Shapiro: \$110,000 general</p> <p>Breakdown:</p> <p>-general \$110,000</p> <p>-past loss of income</p>	<p>MVA: plaintiff's vehicle was forcefully struck broadside by the defendant's vehicle, which went through a red light.</p> <p>DOL: March 2, 2005</p>	<p>The Court of Appeal reduced the damages for future care costs by \$32,115 (from \$286,846 to \$254,731). The Court found that these damages, allotted for nanny services, were not justified. The plaintiff had indicated that she planned to work after having children and acquire a nanny even before she was in the accident. Therefore,</p>

	<p>\$128,764.78</p> <p>-loss of future income earning capacity \$900,000</p> <p>-future care costs \$254,731</p> <p>-special damages \$2,182.59</p> <p>Total: \$980,721</p>	<p>Shapiro: female, 23 years old</p> <p>Plaintiff was diagnosed with whiplash-type soft tissue injuries to her cervical, thoracic and lumbar spine with related headaches. Prior to the accident, the plaintiff was an outgoing, ambitious individual. Following the accident, she was no longer outgoing, and suffered from fatigue and daily chronic pain. Her work and personal life were drastically impacted.</p> <p>The plaintiff was left with cervicogenic headaches and periodic headaches; chronic pain disorder; depressive symptoms; mood disorder; mild cognitive difficulties in concentration and memory.</p>	<p>the cost of nanny services would have been incurred whether she was in the accident or not.</p>
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#### WHIPLASH, PRE-EXISTING DISEASE OR CONDITION, DEPRESSION, CHRONIC PAIN SYNDROME

Case and Judge	General Damages Award	Details	Reasons
<p><i>Tsalamandris v MacDonald</i></p> <p>2012 BCCA 239</p> <p>Levine JA, MacKenzie JA, Harris JA.</p>	<p>One Claimant:</p> <p>Tsalamandris: \$100,000 general</p> <p>Breakdown:</p> <p>-general \$100,000</p> <p>-future earning capacity</p>	<p>Two MVA: In the first accident, the plaintiff was struck from behind. In the second, the plaintiff's vehicle was parked and struck broadside.</p> <p>DOL: December 15, 2004 and October 23, 2006</p>	<p>On appeal, the defendant argued that the trial judge did not take account of negative contingencies when awarding damages for loss of future earning capacity. However, the Court of Appeal held that the trial judge is not required to take the step of assigning percentage probabilities to her estimates of the likelihood of certain events and did not have to expressly discount the award</p>

	<p>\$740,000</p> <p>-cost of future care \$76,503</p> <p>-special damages \$44,013.17</p> <p>-in trust \$8,000</p> <p>Total: \$968,516.17</p>	<p>Tsalamandris: female, 40 years old</p> <p>Prior to the two MVA at issue, the plaintiff had been involved in another MVA. The prior accident resulted in chronic neck pain that was manageable and had improved over time. Following the first accident at issue, the plaintiff's prior injuries were aggravated and she suffered from pain in her right scapular area. Two years later, in the second accident at issue, the plaintiff was seven months pregnant, and attempted to protect her unborn child during the accident. Due to her pregnancy, the plaintiff could not participate fully in rehabilitation. The plaintiff suffered from ongoing pain, irritability and anxiety. She was diagnosed with a major depressive disorder and chronic pain syndrome. With treatment it was expected that she would improve, but her improvement overall depended on the improvement of her mood disorder.</p>	<p>by a specific percentage. As long as the contingencies were taken into account, that is all that is required in the trial judge's decision.</p> <p>The trial judge also awarded the costs of a pilates program until the plaintiff was 80 years old, without applying any contingencies to reflect the consequences of aging and the resulting difficulties she would face in keeping up with the program on a consistent basis. Therefore, the court of appeal reduced the damages for cost of future care to \$76,503 from \$135,050.</p> <p>The trial judge also awarded damages for the cost of childcare. The Court of Appeal held that this cost was related to the accident as it would be incurred as part of being able to partake in rehabilitation programs that were required to recover from her injuries.</p>

<b>WHIPLASH, CHRONIC PAIN SYNDROME</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Mohan v Khan</i></b>  2012 BCSC 436  Bowden, J.	One Claimant:  Mohan: \$100,000 general  Breakdown: -general \$100,000 -past loss of income \$90,000 -future earning capacity \$400,000 -future care costs \$75,000 -special damages \$75,000 Total: \$740,000	MVA: plaintiff rear-ended by defendant's vehicle.  DOL: May 14, 2007  Mohan: female, 35 years old  Plaintiff suffered from whiplash type soft tissue injuries and pain in her neck, arm, jaw, hip and headaches. The pain did not go away with time, and the plaintiff was diagnosed as having chronic pain disorder.  The plaintiff was unable to return to her job as a mail sorter.	The plaintiff had failed to take the recommended medication, seek recommended psychological treatment and participate in a recommended exercise program. The Court held this was a failure to mitigate her damages and thus reduced the level of general damages as well as the level of her future earning capacity. Future earning capacity was decreased as it was impacted by her failure to mitigate her damages and her failure to obtain accommodation from her employer.
<b><i>Cantin v Petersen</i></b>  2012 BCSC 549  Bruce, J.	One Claimant:  Cantin: \$150,000 general  Breakdown: -general \$150,000 -cost of future care \$77,150 -past wage loss \$98,167 -special damages \$21,393 -future earning capacity \$175,000 Total: \$521,710	MVA: defendant turned left into plaintiff's path and the two collided.  DOL: June 10, 2004  Cantin: female, 44 years old  Plaintiff suffered from soft tissue strain to her neck, shoulders and upper back, strain to her lower back and hips which caused pain in her legs and feet, and bruises over her body. Following the	The Court held that there was insufficient medical evidence to support the conclusion that the plaintiff's pre-existing joint hyper-mobility would have caused chronic pain to develop absent a soft tissue injury in her lower body region caused by the accident. As well, even though pain or re-injury to her upper back and neck was an issue for the plaintiff prior to the accident, the defendant was still fully liable for the injury caused by her negligence, no matter how extreme.

		<p>accident she suffered from chronic pain.</p> <p>Prior to the accident, the plaintiff had a continuing and disabling back and shoulder condition that required medication and caused her to miss a lot of work.</p> <p>There was little chance that the plaintiff's condition would improve or that she would be able to be employed in a competitive market.</p>	
<p><b><i>R. (S.) v. Trasolini</i></b></p> <p>2013 BCSC 1135</p> <p>Ballance, J.</p>	<p>One Claimant.</p> <p>R. (S.): \$130,000 general</p> <p>Breakdown:            -general: \$130,000            -cost of future care: \$14,200            -future earning capacity: \$95,000</p>	<p>MVA; rear-ended</p> <p>DOL: July 20, 2007</p> <p>Plaintiff, female, 45 year old, part time teacher, was struck from behind in a MVA. She suffered pain in her neck, shoulders and upper back; diagnosed with soft tissue injuries.</p> <p>Also diagnosed with mood disorder, secondary to chronic pain and insomnia.</p>	<p>Injuries improved after massage therapy and physiotherapy but were not resolved.</p> <p>The pain was impacting everyday activities in her life.</p> <p>Prognosis for recovery was low.</p> <p>Plaintiff became more and more dependent on her aging mother to perform everyday activities.</p>
<b>KNEE, PRE-EXISTING DISEASE OR CONDITION, HIP</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><b><i>Tompkins v Bruce</i></b></p> <p>2012 BCSC 266</p>	<p>One Claimant:</p> <p>Tompkins: \$200,000</p>	<p>MVA: drunk driver collided with plaintiff head on.</p>	<p>The court found the defendant to be 100% liable.</p> <p>Prior to the accident, the plaintiff had an extensive</p>



Curtis, J.	<p>general</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-general \$200,000</li> <li>-past loss of income \$215,000</li> <li>-future loss of income \$425,000</li> <li>-future care cost \$87,450</li> <li>-special damages \$35,771</li> <li>-in trust for Beerstra (daughter in law) \$7,500</li> <li>-in trust for Larkin (romantic relationship) \$10,000</li> </ul> <p>Total: \$980,721</p>	<p>DOL: June 3, 2006</p> <p>Tompkins: male, 50 years old</p> <p>Plaintiff had several significant injuries including fractured ribs, a collapsed lung, a fractured hip, a fractured femur, a fractured patella, and an injury to his sternum. Other symptoms included headaches, ringing in ears with some memory loss, pain in left temporomandibular joint, eye cataracts and a partial tear of one of his retinas, neck and shoulder pain, low back pain, pain in thigh with spasms, anterior knee pain and hip pain. Plaintiff also suffered significant psychological mood change as a result of his injuries.</p>	<p>medical history, including prior problems with his knees, lower back, hip and a degenerative spinal condition. The plaintiff was also in a prior MVA and had several WCB claims through his work as a tradesman.</p> <p>Plaintiff was unable to return to work after the accident. Given the nature of his injuries, the multiple medical procedures required and the psychological changes, the plaintiff could not be expected to be gainfully employed. Despite his pre-existing medical conditions, there was a possibility that the plaintiff would have continued to work to age 65 if it wasn't for the accident. The plaintiff was going to require significant ongoing physical and psychological future care.</p>

<b>LEG/ANKLE, DEPRESSION, CHRONIC PAIN</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><b><i>Verge v Chan</i></b></p> <p>2012 BCSC 876</p> <p>Greyell, J.</p>	<p>One Claimant:</p> <p>Verge: \$125,000 general</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-general \$125,000</li> <li>-future earning capacity \$225,000</li> <li>-loss of past income \$45,000</li> <li>-cost of future care \$82,367</li> <li>-special damages \$4,257.39</li> </ul> <p>Total: \$481,324.39</p>	<p>MVA: Plaintiff was involved in a head on collision.</p> <p>DOL: December 6, 2006</p> <p>Verge: female, 34 years old</p> <p>Plaintiff suffered soft tissue injuries to her neck and back, a fractured talus, bruising to and pain in her chest from the airbag, pain in her shoulders, hips and knees, and a broken ankle. At the time of trial she continued to suffer from her ankle injury, sleep disturbance, headaches, stress, anxiety, depression and chronic pain.</p>	<p>The plaintiff was relatively young at the time of the accident. She and her husband were building a farm and cattle raising operation. While the plaintiff was employed as a receptionist, and therefore contributing financially to the household, she was also contributing to the farming operation. She was not able to do so to the same extent following the accident as before, therefore the Court awarded damages for loss of earning capacity in relation to the farm as well as for her regular employment.</p> <p>The Court also considered how the plaintiff would have limited occupational opportunities as a result of her accident and provided damages for vocational assessment and occupational therapy. This was intended to assist her in finding employment sooner rather than later.</p>
<p><b><i>Ahadi v. Valdez</i></b></p> <p>2013 BCSC 714</p> <p>Adair, J.</p>	<p>One Claimant.</p> <p>Ahadi: \$110,000</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-general \$110,000</li> <li>-future earning capacity \$140,000</li> <li>-cost of future care \$21,475</li> </ul>	<p>MVA; plaintiff struck in unmarked crosswalk</p> <p>DOL: December 31, 2005.</p> <p>Plaintiff, female, 16 years old, was struck by a vehicle in an unmarked cross walk. Plaintiff suffered fractured fibula as well as soft tissue damages. Plaintiff complained of constant pain and difficulty sleeping.</p>	<p>Plaintiff missed two weeks of school and felt the stress and pressure to catch up.</p> <p>She suffered disturbing nightmares and felt unrested. She complained of ongoing difficulties concentrating, headaches, sleep disturbance, frustration and distress.</p> <p>When she entered college she failed some of her courses as a result of the depression symptoms.</p> <p>At the time of the trial, she likely would face ongoing symptoms and reasonable chance of lost future income as a result.</p>

**PERMANENT INJURY, KNEE, LEG**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Stevanovic v. Petrovic</i></b>  2011 BCSC 2  Sigurdson J.	One Claimant.  Stevanovic: \$155,000 generals  Breakdown: -generals: \$155,000 -lost income: \$125,000 -earning capacity: \$600,000 -costs of future care: \$275,000	MVA – pedestrian  DOL: May 28, 2005  Stevanovic: 27-year-old male plaintiff suffered a serious right knee injury, which required surgery on four occasions, and a fractured fibula. Further, he suffered from chronic pain that would lessen over time, anxiety, headaches, sleep difficulties, mild traumatic brain injury, and multiple soft tissue injuries as a result of the accident.	<p>The plaintiff and defendant were good friends. On the date of loss, the defendant was driving to meet and pick the plaintiff up. The Court found the defendant saw the plaintiff standing on the roadway waiting for him well before the accident. The plaintiff was standing in the middle of the road, and the defendant struck him when he failed to stop for the plaintiff, who had taken his eye off the vehicle. Both parties attempted to avoid the collision but failed. However, the defendant was fully responsible for the collision as the plaintiff could not have done anything to avoid it due to the defendant's driving. The court did state that if it was wrong, then the plaintiff was 10% contributorily negligent.</p> <p>Under the <i>Motor Vehicle Act</i>, the defendant had an obligation to drive with due care and attention and reasonable consideration for others using the highway.</p> <p>No failure to mitigate was proven.</p>
<b><i>Haley v. Gust</i></b>  2010 CarswellBC 2126 (BCSC)  Dardi J.	One Claimant  Haley: \$75,000 generals  Breakdown: -generals: \$75,000 -earning capacity: \$100,000 -housekeeping: \$6,000	Motorcycle/Motor Vehicle Collision  DOL: March 4, 2007 Haley: Female, 35 years of age, employed as a deputy sheriff. She was operating a motorcycle when the Defendant's vehicle turned left into her path. She was struck	Despite exercising, her knee symptoms had plateaued and showed no improvement in the last year prior to trial. Her symptoms were aggravated by activity or by prolonged sedentary activity with her knee in a flexed position. It was probable that plaintiff would develop osteoarthritis and require a total knee replacement at some point in the future. Her enjoyment of life was significantly impacted, and she was left unable to return to work as a

		on the leg and went over the handlebars. She wore an air cast for 3-4 months. She was disabled from work for a period of 8 months and suffered from driving anxiety. It was later discovered that she also ruptured her posterior cruciate ligament. Surgical repair was not a viable option and she was left with a permanent and significant injury to her knee.	deputy sheriff. Because of her inability to return to a line of work that she clearly enjoyed, plaintiff suffered emotional consequences. Her pain and limitation would continue into the future.
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#### CHRONIC PAIN, SOFT TISSUE INJURIES (NECK, BACK, SHOULDER)

Case and Judge	General Damages Award	Details	Reasons
<b><i>Paradis v. Gill</i></b>  2011 BCSC 1414  Masuhara J.	One Claimant  Paradis: \$ 40,000 generals  Breakdown: -generals: \$ 40,000 -past earnings: \$3,330 -earning capacity \$ 40,000 -cost of future care: \$25,000 -special damages: \$ 4,908	MVA (liability admitted)  DOL: December 24, 2007  Paradis: 39, female, suffered soft tissue injuries to her neck, upper and lower back, an abrasion to her forehead, and chronic pain.	Since high school, the Claimant had neck and back problems and attended for chiropractic treatment. She participated in gymnastics and dance from an early age through high school. The Claimant was obese since high school.  The Court found the Claimant had fibromyalgia prior to the accident, but she did suffer some injuries.  The evidence established that the Claimant had a progressive employer who made accommodations for her and placed her in a position where she had a full-time job and earned more per hour than she did at the time of the accident.

<p><b><i>MacKenzie v. Rogalasky</i></b></p> <p>2011 BCSC 54</p> <p>Ker J.</p>	<p>One Claimant</p> <p>MacKenzie: \$75,000 generals</p> <p>Breakdown: -generals: \$100,000.00 -past earnings: \$71,974.93 -earning capacity \$200,000 -cost of future care: \$12,760 -special damages: \$9,175.44</p>	<p>MVA</p> <p>MacKenzie: 33, male. Sustained soft tissue injuries to his neck, shoulders, mid back, and lower back. Seven years after the accident he continued to suffer from chronic pain, manifested primarily in his mid and lower back area with flare ups in his neck and shoulder area.</p> <p>Prior to the collision, he was a promising head chef who led an active lifestyle. After the collision, he could not continue due to the long hours and physical demands of his job.</p>	<p>General damages were reduced by 10% due to the plaintiff's failure to mitigate by failing to maintain a physical exercise program.</p> <p>As a result of the collision, the plaintiff was forced to quit and find other employment. He was hired as a Purchaser for Albion. The Court found:</p> <p>Had Mr. MacKenzie remained with the Boathouse and continued in his positive performance as a Head Chef, his salary and compensation package would have continued to increase. Had Mr. MacKenzie been employed with the restaurant in 2009 he would have earned a gross salary of \$65,000 plus a bonus of about \$10,000. Nothing in the evidence adduced on this trial supports the inference that absent the chronic pain from the injuries sustained in the accident, Mr. MacKenzie would have quit his position as Head Chef with the White Rock Boathouse. Indeed, I find the weight of the evidence supports the opposite inference; but for the injuries sustained in the accident and the ongoing chronic pain he continues to experience, Mr. MacKenzie would have continued to work as a Head Chef either with the Boathouse or in some other restaurant for the foreseeable future.</p>
<p><b><i>Szymanski v. Morin</i></b></p> <p>2010 CarswellBC 5 (BCSC)</p> <p>Ker J.</p>	<p>One Claimant.</p> <p>Szymanski: \$75,000</p> <p>Breakdown: -generals: \$75,000</p>	<p>MVA: Rear-End</p> <p>DOL: December 7, 2004</p> <p>Szymanski, male, 50 years of age, employed as a hardwood flooring</p>	<p>The Claimant's symptoms continued to the time of trial (6 years post collision). His ongoing neck and trapezius pain was caused by these injuries and was not related to his pre-existing but asymptomatic degenerative condition. Although plaintiff's earnings continued to increase since the</p>

	-earning capacity: \$60,000 -future care: \$16,274	installer, sustained injuries to his neck, back, and shoulders. He missed roughly 1 week of work and thereafter worked through the continued pain. He was diagnosed with mild-moderate soft tissue injuries to neck and upper back.	accident, his evidence that he tired more quickly and was less capable of performing jobs that required him to move heavy bundles of flooring was accepted, and a loss of future earning capacity was established.

#### **SOFT TISSUE INJURIES (NECK, BACK), KNEE.**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Bradshaw v. Matwick</i></b>  2011 BCCA 111  Chief Justice Finch, Kirkpatrick, and Groberman JJ.A.	One Claimant  Bradshaw: \$70,000  Breakdown: -generals: \$70,000 -past wage loss: \$34,130 -earning capacity: \$160,551 -future care: \$2,000 -special: \$1,708	MVA – rear-ender  DOL: April 26, 2006  Bradshaw: the male plaintiff suffered soft tissue injuries to his neck and back. He also suffered a lateral meniscus and a medial meniscus tear in the left knee.	Defendant's appealed, claiming the trial judge erred:  a) in finding that a tear in the respondent's left knee medial meniscus was caused by the accident;  b) in finding that the respondent did not fail to mitigate his damages;  c) in awarding damages for past wage loss for a period when the respondent was absent from work for reasons unrelated to the accident; and  d) in the manner in which he assessed future income loss, and, in particular, in his treatment of capacity to earn overtime pay.  The Court upheld the trial judge on all grounds, except c) because he failed to omit a 4.5 week period where the plaintiff suffered losses that were unrelated to the accident. Past wage loss was reduced by \$3,735.

<p><b><i>Poulton v. Inderbosch</i></b></p> <p>2010 CarswellBC 1260 (BCSC)</p> <p>Sewell J.</p>	<p>One Claimant</p> <p>Poulton: \$70,000 generals</p>	<p>MVA: Broadside</p> <p>DOL: January 27, 2006</p> <p>Poulton, female, 33, employed as a residential care aide. Sustained injuries to her neck, back and left knee, and headaches/migraines. Took 13 months from work.</p>	<p>The Claimant missed 13 months o work, after which she was cleared by her doctor to return to work. She was left with ongoing neck, upper back, and knee pain that impacted her ability to participate in recreational activities. There was evidence that plaintiff suffered a contusion to her knee in the collision, and had a bruise over her knee cap. It was established that the accident caused the injury to plaintiff's knee. Despite the fact that plaintiff was found to be a credible witness, the lack of corroborating evidence of the effect of her ongoing knee problems and headaches on her overall physical capacity led to a cautious approach in the assessment of damages. Plaintiff failed to establish a substantial possibility of a loss of future earning capacity.</p>
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#### **MULTIPLE COLLISIONS, SOFT TISSUE INJURIES (NECK, SHOULDER, BACK)**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><b><i>Ruscheinski v. Biln</i></b></p> <p>2011 BCSC 1263</p> <p>Walker J.</p>	<p>One Claimant</p> <p>Ruscheinski: \$85,000 generals</p> <p>Breakdown:            -generals: \$85,000            -past wage loss: \$1,125            -earning capacity: \$70,000            -future care: \$2,500            -special: \$10,550.39</p>	<p>THREE MVAs (1<sup>st</sup> accident – struck by driver speeding up to catch a light; 2<sup>nd</sup> – rear-ended; 3<sup>rd</sup> – she was a passenger in a vehicle that rear-ended another vehicle)</p> <p>Ruscheinski, female, 17. Sustained neck, lower back, and shoulder injuries with chronic pain that interfered with her ability to work. She also suffered daily headaches</p>	<p>Defendants alleged a failure to mitigate, but the Court found they failed to prove a failure to mitigate.</p> <p>She was experiencing ongoing pain increased with each successive motor vehicle accident, involving headaches in the occipital and temporal areas, posterior shoulder pain together with trapezius muscle pain and tenderness and pain in the paraspinal muscles of the cervical, thoracic, and lumbar spine.</p> <p>The Court noted:</p> <p>[86] In my opinion, when dealing with cases</p>

			<p>where chronic pain is suggested or suspected, an examination of a patient that is designed to look for objective evidence of injury, such as muscle spasm, as opposed to feigned pain behaviour, coupled with an appropriate and thoughtful approach to taking a patient's history, will lead to a diagnosis and prognosis that is much more reliable than a records review. I accept Dr. Feldman's evidence that without a physical examination of Ms. Ruscheinski, it would not have been possible to detect the winging of her scapula.</p> <p>She gained significant relief from physiotherapy.</p>
<p><b><i>Singh v. Clay</i></b></p> <p>2011 BCSC 1172</p> <p>Greyell J.</p>	<p>One Claimant</p> <p>Singh: \$65,000 generals</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-generals: \$65,000</li> <li>-past wage loss: \$616</li> <li>-earning capacity: \$40,000</li> <li>-future care: \$600</li> <li>-housekeeping: \$5,000</li> </ul>	<p>FIVE MVA (liability admitted in 4; Claimant at fault in 1)</p> <p>Singh: 32 at the time of the 1<sup>st</sup> accident, male, suffered from thoracic outlet syndrome which caused him difficulty holding his hands above his head, caused his left arm and shoulder to go numb.</p>	<p>The defence argued the Claimant had not taken all reasonable steps to determine the identity of one driver and should be barred from recovery as a result. The Court found, however, as follows:</p> <p>In the present case, Mr. Singh might have been able to take down the licence plate number of the offending vehicle if he had done so immediately. However, he did not expect the vehicle to leave the scene of the accident. Once it became clear that the vehicle was not going to stop, his wife made an effort to write the number down, but only got two of the letters. Following the accident Mr. Singh took all reasonable steps to ascertain the identity of the driver. He spoke to two witnesses, he telephoned ICBC, attended the police, phoned his lawyer to obtain advice as to how to proceed, and, as a result, put up flyers seeking witnesses.</p> <p>Prior to the 1<sup>st</sup> accident, the Claimant was</p>



			generally healthy. He was found to be a credible witness.
<b><i>Perry v. Perry</i></b>  2011 BCSC 432  Melnick J.	One Claimant  Perry: \$85,000 generals  Breakdown: -generals: \$85,000 -past wage loss: nil -earning capacity: \$ 20,000 -future care: \$ 17,980 -loss of house-keeping: \$10,000 -special: \$ 949	TWO MVAs (liability admitted in both; 1 <sup>st</sup> accident – driver lost control of vehicle and left the road with the Claimant as a passenger; 2 <sup>nd</sup> accident – the Claimant was a passenger in a vehicle that rear-ended another vehicle.  1 <sup>st</sup> DOL: February 6, 2007  2 <sup>nd</sup> DOL: February 2, 2009  Perry: 52 at the time of the 1 <sup>st</sup> accident, female – claimed she was suffering from PTSD, neck, leg, and back pain.	The Claimant had a number of challenging health issues prior to the first accident. Those issues included PTSD, which related to her childhood abuse, and problems with her feet and legs. She sometimes suffered from depressive episodes and had a history of alcohol and heroin abuse. She had multiple areas of pain that she experienced at least as far back as 2003.  In the few years prior to the accidents, the Claimant had made real progress by putting her addictions behind her and engaging in life through education, volunteer work, and a small amount of employment. She was described as a “thin-skull” case: more at risk for emotional and psychological trauma than a normal person would be.  The Court was satisfied she suffered from chronic pain and was more disposed to PTSD. She was asymptomatic prior to the accident.
<b><i>Bern v. Jung</i></b>  2010 CarswellBC 1300 (BCSC)  R.E. Powers J.	One Claimant.  Bern: \$50,000 general  Breakdown: -general: \$50,000 -earning capacity: \$10,000	TWO MVAs (1 <sup>st</sup> auto/bicycle, 2 <sup>nd</sup> rear end).  DOL: June 21, 2007  Bern: male, 34 years, employed as a security guard. He was thrown over the handlebars of his bike in the first accident and suffered pain in his neck, shoulder, back, elbow,	Although plaintiff's psychological difficulties that developed after the first accident were largely related to workplace discrimination issues and the fact that his grandmother had passed away, the aggravation of his physical injuries in the second accident, together with problems that he had when exercising, added to his depression and anxiety. Although he suffered some driving anxiety as a result of the second accident, this did not stop him from driving. The injuries had a significant impact

		<p>wrist, hip, finger, knees and feet. He fractured a rib, his hand, and sustained 3 broken tooth crowns. He missed 10 weeks of work. 18 months post-collision, he was found to have been suffering from adjustment disorder and depression, resolved dorsal fracture, resolved radial head fracture and rib fracture. Second accident aggravated the soft-tissue injuries to his shoulder, neck and back. He was unable to return to security patrols on foot or by bike.</p>	<p>on the Claimant, but his ongoing symptoms were not as severe as claimed. Although it was more likely than not that his injuries would improve over time, his symptoms would continue into the future, and there was a real and substantial probability that his injuries would impact his ability to perform physical work. However, the impact would not be as significant as plaintiff claimed. Damages were apportioned 70% to the first accident and 30% to the second accident.</p>
<p><b><i>Geiger v. Schmidt</i></b></p> <p>2010 CarswellBC 1994 (BCSC)</p> <p>N. Brown J.</p>	<p>One Claimant</p> <p>Geiger: \$50,000 generals</p> <p>Breakdown:</p> <ul style="list-style-type: none"> <li>-generals: \$50,000</li> <li>-earning capacity: \$125,000</li> <li>-future care: \$4,000</li> <li>-housekeeping: \$6,000</li> </ul>	<p>Two MVAs</p> <p>DOL: December 1, 2007 and December 3, 2008.</p> <p>Geiger: female, aged 50. Prior to the first accident, she also had been injuries in two prior accidents that left her with chronic shoulder pain and ongoing migraines. First accident caused increase in neck pain, dizziness, headaches, shoulder pain, jaw pain, back pain and aggravation of groin pain. The conditions improved within one year. Defendant not found liable for 1<sup>st</sup> accident.</p> <p>Second accident (rear-end) caused</p>	<p>The Claimant's pre-existing symptoms had been aggravated, interfering with all aspects of her life, including her work, physical recreation, crafts, homemaking, social life, and intimate life. The second accident was the major contributor to her ongoing symptoms, which were expected to persist into the future.</p>

		immediate onset of headache, and pain in the hips and back.	
<b><i>Rizzotti v. John Doe</i></b>  Tindale, J.  2012 BCSC 1330	One Claimant.  Tindale: \$110,000  Breakdown: - general: \$110,000 - earning capacity: \$96,000 - future care: \$10, 375	Three MVAs; head on/rear-end/rear-end  DOL: June 25, 2005, December 29, 2006, and September 4, 2008.  Plaintiff, female, age 42.  First MVA: caused injury to neck, shoulders, chest, lower back, abdomen, hip, knee and tailbone.  Second MVA: caused back pain and bad memories from the prior accident.  Third MVA: no significant injuries.  Summary: soft tissue injuries, PTSD and depression	First MVA caused the majority of her difficulties. Second and Third MVA's aggravated those difficulties.  Plaintiff left with longstanding physical and psychological symptoms.  Plaintiff likely would not be able to function in a high stress work environment, leading to loss of future earning potential.

#### **LEG, BRAIN AND SKULL, ABDOMINAL CAVITY, CHRONIC PAIN SYNDROME**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Campbell v. Swetland</i></b>  2012 BCSC 423  Wong, J.	One Claimant:  Campbell: \$290,000 general  Breakdown: -general \$290,000 -special damages \$15,415.78	Vehicle – Motorcycle Collision: Defendant turned left into path of plaintiff's motorcycle as plaintiff was traveling at highway speed.  DOL: June 17, 2008  Campbell: female, 39 years old	The court found the defendant to be 100% liable.  Past wage loss was awarded based on the sales group category for lost wages. From this amount, social assistance and tort advances were deducted.  Campbell was in a relationship with Mr. Hart prior to the accident. Lost Opportunity of Family

	-replacement of motorcycle \$9,000 -in trust for Mitchell Hart \$15,000 -future care cost \$509,240 -future loss income \$739,043 -past income lost \$33,687.69 Total: \$1,611,389.20	Plaintiff's injuries include severe traumatic brain injury, cerebral atrophy and post-traumatic hypothyroidism; bilateral internal carotid artery dissection; open pelvic injury; bladder incontinence; left forearm degloving injury; right wrist fracture; left wrist fracture; open right tibial fracture; left clavicle fracture; closed right femur fracture with intra-articular extension; sacral nerve injury affecting bladder function; chronic pain, mostly pelvic; right foot drop with peroneal nerve and right thigh numbness; left greater trochanteric bursitis; post splenectomy requiring vaccinations; left thumb extensor tendon rupture; loss of range of motion in the right knee secondary to multiple intra-articular fractures; laceration of three quarters of her vagina and bruised perineum; exposed bone on the right obturator fossa; multiple contusions to neck, thorax and lower extremity; multiple soft tissue injuries; multiple scarring; anxiety; and major depression.	<p>Income was awarded based on Campbell's lost potential to receive family income when her relationship with Mr. Hart ended after the accident.</p> <p>Damages for interest incurred on loans post-accident in order to complete necessary renovations to Campbell's home and funds to cover living expenses were denied. The Court held that the loans were a result of the plaintiff's pre-accident indebtedness, not her injuries.</p> <p>The In Trust Claim for Mitchell Hart was awarded based on the time and assistance he provided to Campbell following her accident.</p> <p>Future Income Loss awarded based on Campbell's inability to work again.</p>
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<b>LEG (THIGH), BRAIN AND SKULL, THORACIC CAVITY, DEPRESSION, CHRONIC PAIN SYNDROME</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Jarmson v Jacobsen</i></b>  2012 BCSC 64  Meiklem, J.  (Trial decision confirmed by Frankel J.A., Neilson J.A., Hinkson J.A. in 2013 BCCA 285)	One Claimant:  Jarmson: \$230,000 non-pecuniary  Breakdown: -non-pecuniary \$230,000 CAD -special damages \$128,555.66 USD and \$16,310.35 CAD -in trust for Karen Jarmson \$110,000 CAD -future care cost \$110,000 CAD -future loss income \$400,000 USD -past income lost \$85,000 USD Total: \$466,310.35 CAD \$613,555.66 USD	Vehicle – Motorcycle Collision DOL: July 27,2008  Jarmson: male, 56 years old  Plaintiff’s injuries include traumatic brain injury, fractures to femur, fractures to left wrist, fracutres to right foot, chest trauma with a collapsed lung, contusion of left eye, facial lacerations and lacerations to toe and elbow.	The court found the defendant to be 100% liable. Plaintiff was severely injured and no longer able to live the active life he had prior to the accident.  Claim for a Loss of House Making Capacity was dismissed because of a house keeper that the plaintiff retained. As well, to the extent that a claim under this head of damages is intended to compensate non-pecuniary aspects of the loss of capacity to do some home making services would result in double recovery.  The housing costs contained in the plaintiff’s pension plan from the Dubai Art School where he taught prior to accident were reduced to reflect lower cost of living during years Jarmson was planning on living in Canada anyways.
<b>BRAIN AND SKULL, SKIN, DERMATITIS, SPINE (BELOW NECK), PRE-EXISTING DISABILITY OR CONDITION, TRAUMATIC NEUROSIS</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>C(J.F.) v Ladolcetta</i></b>  2012 BCCA 27  Levine JA, Lowry JA, Frankel JA.	One Claimant:  C(J.F.): \$120,000 general  Breakdown: -general \$120,000	MVA: head on collision.  DOL: October, 2005  C(J.F.): male, 32 years old	The Court of Appeal dismissed the appeal finding that the plaintiff had suffered a life-altering aggravation of his psoriasis, and the trial judge had not erred in determining the extent to which the plaintiff failed to mitigate his damages and the trail judge did not err in the assessment of the

	-future earning capacity \$275,000 -future care \$2,000 Total: \$397,000	Prior to the accident, the plaintiff suffered from psoriasis. Despite his condition, the plaintiff had been able to function well physically and mentally. Following the accident, the plaintiff suffered from soft tissue injuries to his neck, thoracic spine and lumbar spine, a compression fracture of his lumbar spine, a broken nose, lacerations to his face, injuries to his knee, elbow and shoulder, and a mild traumatic brain injury. The accident also aggravated the plaintiff's pre-existing psoriasis.	plaintiff's damage awards.
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#### **BRAIN AND SKULL, NECK (SPINE), ABDOMINAL CAVITY, BRAIN DAMAGE**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>O'Connell v Yung</i></b>  2012 BCCA 57  Kirkpatrick JA, Levine JA, Neilson JA.	One Claimant:  O'Connell: \$275,000 general  Breakdown: -general \$275,000 -cost of future care \$1,907,832 -loss of future earning capacity \$125,000 -past loss of income \$125,000 -in trust award \$150,000 -special damages \$5,000	MVA: car hit by tractor trailer.  DOL: November 27, 2007  O'Connell: female, 58 years old  Plaintiff's injuries included a severe traumatic brain injury with shear and surface injuries to her brain, fractures to her cervical spine, right femur, right ankle, left tibia, left fibula, ribs, toes, nose, sternum, and internal injuries.  Through rehabilitation, the	On appeal, the defendant argued that the trial judge erred by failing to make an adverse inference from the plaintiff's failure to testify and the failure of her husband to testify on material issues.  The Court of Appeal allowed the appeal in part. The question of whether an adverse inference should have been drawn was not a reversible error.  Given that the plaintiff and her husband did not want to accept the level of care recommended by the rehabilitation expert, the trial judge erred in awarding damages for the cost of future care based on those recommendations. The Court

	Total: \$2,587,832	plaintiff was able to recover from the majority of her physical injuries. She was still left with ongoing problems and partial disability resulting from the femur fracture that would require ongoing treatment and surgery. The plaintiff also suffered from a severe traumatic brain injury which resulted in difficulties with cognitive and executive functioning. The plaintiff had an increased risk of developing seizures or dementia in the future.	recognized that in the future, the couple would likely have to accept that level of care. The trial judge's award for the personal care portion of cost of future care was therefore reduced by 20% from \$2,248,592 to \$1,907,832.
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**MULTIPLE INJURIES: ANKLE, HEAD, NECK, SHOULDER AND COLLAR BONE, ARM, WRIST**

Case and Judge	General Damages Award	Details	Reasons
<b><i>Hubbs v. Escueta</i></b>  2013 CarswellBC 177  Ross J.	One Claimant:  Plaintiff: \$130,000 general  Breakdown: -general: \$130,000 -earning capacity: \$666,222 -future care: \$53,040	MVA: Motorcycle/vehicle collision; Vehicle pedestrian collision  DOL: July 3, 2009, November 30, 2011  Hubbs: male, 39 years old  First accident: Mr. Hubbs injured his head, neck, right arm and right shoulder, his right leg and right knee, his back, left wrist and his left ankle as a result of the collision. All of his injuries except for the scar on his left wrist and the injury to his left ankle	The Court found that the plaintiff's symptoms would be permanent. Plaintiff's ability to earn income was significantly impaired by his injuries. He was not truly capable of discharging his job functions in a safe fashion at present, and his condition was expected to deteriorate and he would likely no longer be able to cope with his employment in the future. It was likely that he would have to retrain for another career.

		<p>resolved within several months. His ankle suffered a serious fracture, and he required surgery on the day after the accident with the insertion of plates and screws. He missed four months of work, and upon his return his ankle injury caused pain and interfered with his physically demanding job.</p> <p>Second accident: suffered soft tissue injury to his neck and upper back. He had contusions on both elbows, knees, thumbs and wrists, and thumb pain with gripping.</p>	
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#### **MULTIPLE INJURIES, THORACIC CAVITY, NECK, SPINE BELOW NECK, WHIPLASH**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Power v. White</i></p> <p>2012 CarswellBC 1309</p> <p>Hinkson J.A., Kirkpatrick J.A., Rowles J.A.</p>	<p>One Claimant:</p> <p>Power: \$135,000 general</p> <p>Breakdown: -general: \$135,000 -earning capacity: \$200,000 -future care: \$15,000</p>	<p>Plaintiff, a 50-year-old paper mill employee, suffered injuries when his vehicle was struck from behind. Plaintiff suffered injuries to the soft tissues in his right shoulder, back, spinal area, the base of his neck, and his right buttock area, as well as his most significant injury, a torn right pectoral muscle. No surgical repair was possible for his torn pectoral muscle. The right side pectoral muscle is only partially attached to plaintiff's right arm.</p>	<p>Following the accident plaintiff could no longer go running, ride his bicycle, or go hunting. He had been able to engage only in very limited house and yard work. His discomfort was constant. He also continued to suffer from pain in his mid-back, spinal area, and in his right side upper shoulder. Pain and discomfort interfered with his sleep. He took pain medication daily. He had suffered a very significant and permanent loss to the lifestyle he previously enjoyed. Virtually all of his previous physical activities had been severely curtailed. Prior to the accident his physical vigour was central to his life and lifestyle. In addition to his physical injuries, he also suffered emotional</p>



		<p>Right-hand dominant plaintiff was left with significant and permanent limitation of function and disability relating to his right arm and shoulder.</p>	<p>effects. It was reasonable to infer that this may affect his health long term. It was likely that plaintiff would have to sell his five acre property and move into a residence that did not require so much effort to maintain. Plaintiff's employer was facing financial difficulties, and it was possible that he would lose his job. He was no longer suited to performing manual labour. However even without the injury, plaintiff faced a risk of unemployment if the mill were to close.</p> <p>The Court of Appeal dismissed defendant's appeal on the issue of liability, finding that defendant failed to show that the trial judge made palpable and overriding errors of fact in assessing liability evidence, or erred in fact or law in holding the defendant to an inappropriately high standard of care.</p>
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**MULTIPLE INJURIES, ANKLE, CHRONIC PAIN SYNDROME (HEAD, NECK, SHOULDER, BACK, HIP), DEPRESSION,**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Verge v. Chan</i></p> <p>2012 CarswellBC 1750</p> <p>Greyell J.</p>	<p>One Claimant:</p> <p>Verge: \$125,000 general</p> <p>Breakdown:</p> <p>-general: \$125,000</p> <p>-earning capacity: \$225,000</p> <p>-future care: \$82,637</p>	<p>MVA: head-on collision</p> <p>DOL: December 6, 2006</p> <p>Verge: female, 34 years old</p> <p>The Plaintiff suffered injuries as a result of a head-on collision. Plaintiff was struck in the face with the air bag, her knees struck the dashboard, and she was trapped in the vehicle when her</p>	<p>It was likely that plaintiff would be left with permanent disability due to her ongoing ankle symptoms. She was also found to be suffering from post-traumatic stress disorder and depression. Her emotional difficulties were significant, affecting her ability to work at gainful employment, work on the farm, and her relationship with her family and her friends. She rarely socialized with friends and harboured feelings of guilt and inadequacy, and such feelings impacted on her relationships. Plaintiff's injuries significantly impacted all facets of her life, having a significant effect on her physical and mental</p>

		fractured ankle was wedged between the brake and gas pedals. In addition to her fractured ankle, plaintiff suffered injuries to her neck and back, bruising to and pain in her chest, and pain in her left shoulder, both knees, and hip. A few weeks after the accident plaintiff returned to her receptionist job, but had difficulties with pain. She later lost her job due to restructuring, and was not working at the time of trial. She was unable to return to most of her pre-accident farm tasks due to her injuries, particularly her ankle injury. While the pain in her neck improved, she continued to get frequent headaches, backaches, and pain in her knees, shoulder, hip, and wrist. She was later diagnosed as suffering from chronic pain, with ongoing headaches and sleep disturbance.	health. She was left suffering virtually constant pain with an unstable ankle, and could no longer perform the tasks she used to perform on the farm and about the house or enjoy the hobbies and recreational pursuits she used to enjoy pre-accident. Her mental health issues would require a significant course of treatment before she could return to work. Her ankle problems were unlikely to improve. She had lost the farming lifestyle she enjoyed and her family, marital, and social relationships had been impaired. Defendants failed to establish that plaintiff failed to mitigate her damages.
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#### **MULTIPLE INJURIES, BRAIN AND SKULL, SPINE BELOW NECK, PRE-EXISTING DISABILITY**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<i>Clark v. Bullock</i>  2013 CarswellBC 1600	One Claimant:  Clark: \$120,000 general	MVA: head-on collision  DOL: March 14, 2005	It was approximately two years before he had recovered most of his pre-accident physical abilities. His fractures had since healed, and he no longer suffered pain from the fractures, but he was

G.M. Barrow J.	<p>Breakdown: -general: \$120,000</p>	<p>Clark: male, 66 years old</p> <p>Plaintiff suffered injuries as a result of a head-on collision. Prior to the accident plaintiff was generally in good health, but he did have some problems with psoriatic arthritis that gave him difficulties in his knee, ankles, shoulders, and hands. As a result of the accident plaintiff suffered a mild traumatic brain injury, a fractured sternum, a fracture of the T2 vertebrae, a fracture of his right rib at the T12 level, a fracture of the L1 vertebrae, and a fracture of the L2 vertebrae. He also experienced soft tissue injuries to his neck and back, dizziness, pain in his knees, a chest contusion, and was left suffering from tinnitus. Plaintiff was significantly disabled for four months after the accident, and had to be in a body brace except when lying down. He frequently used a wheelchair. After the brace was removed he was able to perform activities of daily living, but with pain. He had to hire contractors to complete renovation work on his house. He never returned to work as an airline pilot. He remained fairly sedentary for approximately</p>	<p>at risk for developing arthritis. He no longer read or did the daily crossword puzzle due to the mild brain injury caused by the accident. His brain injury also lead to a reduced tolerance for frustration and an increased susceptibility to anger, in addition to preventing plaintiff from returning to work as an airline pilot. His knee and shoulder problems amounted to an aggravation of his pre-existing condition. Although he was unable to return to work as a pilot, it was the case that even if the accident had not happened it was likely that plaintiff would have had surgery on his pre-existing knee problem and likely would have ended his employment at that time, and no award for loss of future earning capacity was warranted.</p>
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		one year, during which time he endured significant pain. It was approximately two years before he had recovered most of his pre-accident physical abilities.	
<b>MULTIPLE INJURIES, HEAD, WHIPLASH, CHRONIC PAIN SYNDROME</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<p><i>Shapiro v. Dailey</i></p> <p>2012 CarswellBC 559</p> <p>Neilson J.A., Ryan J.A., Tysoe J.A.J.</p>	<p>One Claimant:</p> <p>Shapiro: \$110,000 general</p> <p>Breakdown:</p> <p>-general: \$110,000</p> <p>-future earnings: \$900,000</p> <p>-future care: \$254,731</p>	<p>MVA: broadside collision</p> <p>DOL: March 2, 2005</p> <p>Clark: female, 23 years old</p> <p>She was diagnosed with whiplash-type soft tissue injuries to her cervical, thoracic, and lumbar spine with related headaches. Prior to the accident plaintiff was a happy, intelligent, energetic, talented, and active young woman of sunny disposition, with an ambitious and outgoing personality. No medical expert suggested that plaintiff had suffered anything less than significant injuries. Her injuries had a profound effect on every aspect of plaintiff's life. As a result of the accident, plaintiff was left with disabling cervicogenic headaches and</p>	<p>At trial, it was established that her pre-accident earning capacity had been significantly impaired by her ongoing chronic pain syndrome and fatigue. Plaintiff would require significant ongoing future care, including physical therapies, emotional, sexual, and vocational counselling, nanny services, and housekeeping help. Defendant failed to establish that plaintiff had exaggerated the extent of her injuries or that she had not followed a reasonable course of treatment. No failure to mitigate was established.</p> <p>The Court of Appeal allowed defendant's appeal in part. Defendant failed to show that the trial judge erred in determining that plaintiff was not contributorily negligent in causing the accident, failed to show that the trial judge erred in assessing plaintiff's loss of future earning capacity, and failed to show that the trial judge erred in assessing plaintiff's loss of housekeeping capacity. However, the portion of the award for cost of future care for separate nanny services was not warranted, and accordingly the cost of future care award was reduced by \$32,115 to \$254,731.</p>

		<p>periodic headaches of a migraine nature; chronic pain disorder, manifesting itself as myofascial pain syndrome and post-traumatic fibromyalgia syndrome; depressive symptoms that fell short of depressive disorder; mood disorder including resolving post-traumatic stress disorder, anxiety disorder and panic attacks; and mild, but not insignificant, cognitive difficulties in concentration and memory</p>	
<p><b><i>Thornber v. Campbell</i></b></p> <p><i>2012 CarswellBC</i> 2974</p> <p>Greyell J.</p>	<p>One Claimant:</p> <p>Thornber: \$125,000 general</p> <p>Breakdown: -general \$125,000</p>	<p>Assault</p> <p>DOL: March 24, 2007</p> <p>Plaintiff suffered injuries as a result of an unprovoked assault. Plaintiff suffered multiple contusions, lacerations and abrasions, a concussion, a fractured jaw, fractures of eight or nine teeth, misalignment of teeth, and frequent and severe headaches. He suffered dizzy spells from time to time. He had difficulty sleeping and was easily disturbed by noise. He was unable to chew or eat solid foods for 12 months because of pain and because he could not afford the dental work required to address his injuries. At the time of trial he</p>	<p>Prior to the assault plaintiff had suffered PTSD and Major Depressive Disorder that had been in remission. As a result of the assault both of these conditions were triggered. His Major Depressive Disorder remained severe at the time of trial, and his PTSD remained very active and disabling. He had still not undergone dental treatments to address his injuries. Witnesses gave evidence of significant personality change in the plaintiff after the assault. The injuries significantly impacted plaintiff's life. His physical and mental abilities had been impaired. He was unable to work due to his ongoing emotional and psychological difficulties. His family and social relationships had suffered. Plaintiff failed to establish that exemplary or punitive damages were warranted.</p>

		was able to eat some solid food but couldn't eat meat. The most significant lingering effect of the assault was depression and anxiety brought on by Post Traumatic Stress Disorder ("PTSD").	
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#### **JAW, WHIPLASH, TRAUMATIC NEUROSIS, CHRONIC PAIN SYNDROME**

<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Olson v Ironside</i></b>  2012 BCSC 546  Josephson, J.	One Claimant:  Olson: \$100,000 general  Breakdown: -general \$100,000 -past wage loss \$32,000 -loss of earning capacity \$450,000 -cost of future care \$75,000 -special costs \$397.55 Total: \$657,397.55	MVA: vehicle struck from behind and pushed into vehicle in front.  DOL: October 24, 2008  Olson: female, 19 years old  The plaintiff suffered from whiplash injuries to her neck, upper back and lower back. At the time of trial she was suffering from ongoing pain in the back and neck, headaches, migraines, anxiety and depression. She also became socially isolated and inactive.  She took about three months off work following her accident, and only returned to lighter duties in her work as a cook. She suffered from a jaw disorder that required treatment. She lost a number of jobs because of absenteeism. It	The plaintiff was successful in the restaurant business as a cook prior to her accident. Based on the evidence provided by her employers, she was likely to continue to work her way up in the restaurant business. Though the plaintiff had expressed an interest in potentially becoming a dental assistant or hygienist the possibility of that was low. Therefore future income loss was based primarily on the restaurant industry.  The accident had a dramatic effect on all aspects of the plaintiff's life because of her inability to work consistent hours and her decreased social abilities. The difficulties associated with this were reflected in the non-pecuniary award.

		was unlikely that the plaintiff would recover from her injuries and she would continue to suffer losses.	
<b>WHIPLASH, PRE-EXISTING CONDITIONS</b>			
<b>Case and Judge</b>	<b>General Damages Award</b>	<b>Details</b>	<b>Reasons</b>
<b><i>Dempsey v. Oh</i></b>  2011 BCSC 216  Myers J.	One Claimant  Dempsey: \$20,000 generals  Breakdown: -generals: \$20,000. -special damages: \$629.96	MVA – cyclist struck by van  DOL: March 31, 2007  Dempsey: 57, male, suffered minor whiplash	<p>The Claimant had complaints of low back pain in November 7, 2001 and January 30, 2002. In 2006, he was referred to a doctor to consider his options to treat his back pain.</p> <p>In 2004 an X-ray was done of the Claimant's lumbar spine and sacroiliac joints which showed early disc space narrowing from the L2-3 to L4-5 levels and considerable degenerative disc disease at the L5-S1 level. On July 12, 2004, the Claimant had a CT scan of his lumbar spine which showed disc bulges at all but one level. the Claimant underwent another CT scan on July 26, 2006 which showed changes consistent with severe degenerative disc disease. The CT scans showed narrowing of the neural foramina (where the nerve root exits the vertebrae) for the exiting lumbar nerve roots at several levels.</p> <p>The Court found that the Claimant was not credible and awarded damages for only minor whiplash.</p>
<b><i>Dial v. Grewal</i></b>  2010 CarswellBC 1335 (BCSC)	One Claimant  Dial: \$50,000 generals	MVA  DOL: October 3, 2006	<p>A number of her symptoms resolved, including:</p> <ul style="list-style-type: none"> <li>- Dizziness persisted for a few months, and then gradually resolved over the following six</li> </ul>

Mackenzie J.	<p>Breakdown:</p> <ul style="list-style-type: none"> <li>-general: \$50,000</li> <li>-housekeeping: \$5,000</li> <li>-future care: \$3,735</li> </ul>	<p>Dial: female, 32 year old security guard. She suffered from pre-existing problems with her lower back caused by injuries on her prior job as a labourer. Also had pre-accident headaches, diabetes, thyroid condition, and high blood pressure. On DOL, she was on maternity leave. The MVA aggravated her pre-existing lower back problems and caused soft-tissue injuries to her back, neck, and shoulder, and injuries to her ribs.</p>	<p>months.</p> <ul style="list-style-type: none"> <li>- The pain in her rib area resolved within two to three months.</li> <li>- Her lower back injury had likely returned to its pre-accident state within 18 months.</li> </ul> <p>However, her neck pain, shoulder pain, low back pain, and headaches continued. Her shoulder problem would likely continue regardless of treatment. Her neck injury would likely continue to cause her pain on an intermittent basis, but would likely improve significantly with treatment.</p> <p>Although plaintiff would suffer some ongoing symptoms, given the extent of her pre-existing symptoms and the other demands in life that plaintiff was expected to face, including the demands to care for four young children, the severity of her pre-existing low back problem, the frequency of her pre-existing headaches, and her other pre-existing health problems, there was no real and substantial possibility of a future event leading to income loss due to the injuries suffered in the accident, and no award was made for loss of future earning capacity.</p> <p>Because of her injuries, plaintiff required help in taking care of her home, and her ongoing neck and shoulder problems justified an award for loss of future housekeeping capacity. Although the medical evidence did justify some award for cost of future care, there was an unsatisfactory lack of specific evidence of future care needs to justify the extent of the plaintiff's claims.</p>
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<p><b><i>Morlan v. Barrett</i></b></p> <p>2012 CarswellBC 327</p> <p>Frankel J.A., Lowry J.A., Neilson J.A.</p>	<p>One Claimant</p> <p>Morlan: \$50,000 generals</p> <p>Breakdown:            -general: \$125,000            -future earnings: \$275,000            -future care: \$42,953</p>	<p>MVA: two motor vehicle accidents in quick succession</p> <p>DOL: January 6, 2007</p> <p>Morlan: 46 year old female</p> <p>Prior to the accident plaintiff was full of energy and was a very active individual. The parties agreed that as a result of the accidents plaintiff suffered soft tissue injuries to her neck, shoulder, upper back, headaches, and was left suffering from widespread chronic pain that was diagnosed as fibromyalgia. In addition to her fibromyalgia, plaintiff also continued to suffer ongoing localized pain in her neck, shoulder, and upper back areas, as well as occasional ongoing headaches. The evidence established that she was a different woman after the accident. Her energy was significantly impacted. She had to ingest vast amounts of drugs to control her chronic pain. She also took over-the-counter medication, prescription anti-inflammatory medication, and underwent physiotherapy, massage, kinesiology, exercising,</p>	<p>The Court considered the fact that the prognosis for improvement was guarded, and her condition was expected to be permanent. The possibility of plaintiff's condition improving barely rose above mere speculation, and the possibility of her condition remaining the same or worsening were both great. Even if she remained in her current position to the end of her career, it was likely that her career would end earlier than it otherwise would have, but for the accidents. There was also a real and substantial possibility that her fibromyalgia would worsen, further impacting her energy level. The evidence established a real and substantial possibility that plaintiff would suffer a future income loss. Plaintiff would benefit from cognitive behaviour therapy and would require ongoing prescription drugs and physiotherapy.</p> <p>The Court of Appeal allowed defendant's appeal in part, reducing the award for loss of future earning capacity by \$175,000 to \$275,000, reducing the award for cost of future care to \$42,953, but affirming the award for general damages, which while generous was not so excessive as to warrant appellate intervention.</p>
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		acupuncture, and psychological counseling. The medication caused side effects. Plaintiff moved to a smaller home with fewer stairs, and left her executive secretary job for a less demanding job. Her ongoing symptoms continued to significantly affect her energy level, ability to work, and quality of life.	
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