SUPREME COURT OF QUEENSLAND

CITATION:	*Young v. Bayliss & Anor* [2005] QSC 152
PARTIES:	**RHONDA GAYE YOUNG** (plaintiff) **v.** **KYM BAYLISS** (first defendant) and **SUNCORP METWAY INSURANCE LIMITED (ACN 075 695 966)** (second defendant)
FILE NO:	BS 10783 of 2003
DIVISION:	Trial
PROCEEDING:	Claim
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	3 June 2005
DELIVERED AT:	Brisbane
HEARING DATE:	28 February and 1, 2 and 3 March 2005
JUDGE:	Helman J.
CATCHWORDS:	DAMAGES - PERSONAL INJURIES – QUANTUM OF DAMAGES - where plaintiff's stationary vehicle struck from behind – where plaintiff had had previous motor vehicle accident in the United States – whether the court could be satisfied the second collision caused more than minor aggravation of previous injuries
COUNSEL:	Mr W.D.P. Campbell for the plaintiff Messrs P.V. Ambrose S.C. and M.P. Kent for the defendants
SOLICITORS:	K.M. Splatt & Associates for the plaintiff Jensen McConaghy for the defendants

[1] The plaintiff's claim in this proceeding arises from a motor vehicle collision that took place at or about 2.00 p.m. on 20 February 2001 at Zillmere, Brisbane. The plaintiff was the driver of a Jeep car that was stationary at traffic lights when a Ford car owned and driven by the first defendant and insured by the second defendant collided with another vehicle which was stationary behind the Jeep. The collision pushed the vehicle behind the Jeep into the rear of the Jeep causing injury to the plaintiff. The defendants admit that the collision was caused by the negligence of the first defendant, leaving only the quantum of the damages to which the plaintiff is entitled as the only question for my determination. The plaintiff, who receives a single parent's pension and is at present not employed, claims she suffered the

following as results of the collision: a whiplash injury to the neck and mid-back, fractures to vertebrae, eczema, and a psychological injury. At the trial it was conceded on behalf of the defendants that the plaintiff suffered some minor injury in the collision, but on her behalf her injuries were asserted to be severely and permanently disabling.

[2] The plaintiff was born on 8 January 1972 in French Polynesia. She attended the Sandgate High School until she had completed Year 10. She later made an attempt to further her studies but did not succeed in completing them. She left her parents' home at the age of fifteen or sixteen years and gained employment in a fruit shop and in other positions in the retail trade. In August 1995 she began working at a duty-free shop at Brisbane airport. In 1996 she went to the United States for a holiday and there met a submariner in the United States Navy whom she married on 24 July of that year. She became a permanent resident of the United States, and was granted legal permanent-residence ('green card') status on 30 August 1996. She lived in San Diego. She then endeavoured to pursue a career as a model, undertaking courses offered at a modelling college in San Diego and by an organization called the International Model and Talent Association. Beginning in November 1996 she obtained various jobs associated with the sale of cosmetics, beer, and cigarettes. Those jobs did not involve her being photographed, but rather required her physical presence as a means of enticing customers to buy a product. The plaintiff also pursued other work as a model which required her to be photographed and as a makeup artist. Her earnings in the United States before the February 2001 collision were only modest: $384 in 1996, $16,511 in 1997, $10,821 in 1998, $6,237.80 in 1999, and $2,260 in 2000.

[3] The plaintiff's marriage to the submariner failed in January 1999. They separated and her husband began divorce proceedings in late May or early June 2000. They were divorced in April 2001. The plaintiff continued to reside in the United States after the failure of her marriage.

[4] On 27 May 2000 in San Diego the plaintiff was injured in a motor vehicle collision similar to the one that is the subject of this proceeding. A car she was driving was hit from behind after she had stopped to give way to another vehicle. The impact in that collision was greater than that of the later collision. It was, she said, a huge bump, her body 'snapped' forward and her chest came into contact with the steering wheel of the car she was driving. The plaintiff suffered pain in the back and neck. When examined at the Naval Medical Center in San Diego she was found to have cervical strain and chest-wall contusion. Later investigations in the United States were carried out by means of X-ray, bone scan, and magnetic resonance imaging. Painkilling drugs were prescribed. The pain persisted, became unremitting, and she became confused and disoriented by the painkillers.

[5] In September or October 2000 the plaintiff formed a new intimate relationship with a composer, Bryan Senatore. She went to live with him in Los Angeles. She continued to work intermittently. On 8 December 2000 Mr Senatore found her after she had taken an overdose of painkillers. She was taken to hospital where it was found that she was pregnant. After her discharge from hospital three days later, she came back to Queensland to stay with her parents for four weeks, but intending to return to the United States, which she did on 18 January 2001.

[6] While the plaintiff was in Brisbane in December 2000 and January 2001 she consulted a number of doctors about the condition of her back, the drugs she had been taking, and her pregnancy.

[7] On 22 December 2000 she attended the Bracken Ridge 7 Day Medical Centre where she was seen by Dr Janet Tsang, general practitioner. She gave Dr Tsang a history of having had three terminations of pregnancy and said she was uncertain as to whether she wanted to continue her pregnancy. She told Dr Tsang of depression 'possibly earlier than the motor accident on and off for possibly a couple of years and previously'. She said she had gained weight, had suffered from 'some acne problems', and was taking fairly high doses of analgesics (aspirin and Mersyndol). Dr Tsang prescribed an anti-depressant (Zoloft), and referred her to the Royal Women's Hospital, Brisbane to enable her to see an obstetrician.

[8] On 28 December 2000 the plaintiff was seen by Dr Paul Bretz, obstetrician and gynaecologist at the Royal Women's Hospital. She told Dr Bretz that her back pain had been unchanged since May 2000 despite the drugs she had been taking. By a letter dated the same day Dr Bretz referred her to the pain clinic for management of her back pain and listed the many analgesics she had taken. She saw Dr Bretz again on 10 January 2001. Her first appointment at the pain clinic was to have been on 14 February 2001, but she was not in Australia then.

[9] The plaintiff was seen, however, by Dr John Linnane, consultant psychiatrist, at the Royal Women's Hospital on 16 January 2001. Dr Kate Sugars was also present. The plaintiff gave an account of her extensive use of analgesics and related compounds, and her overdose. She denied taking painkillers, apart from aspirin, since her overdose. She said she had taken a drug for acne and other skin disorders. She said that she had had depressive symptoms over the previous two years. She described a binge alcohol-abuse pattern for most of her adult life. She said that following the motor vehicle collision in 2000 she had been drinking to excess three times a week. Dr Linnane recorded his view that the plaintiff 'would/will need follow-up for her mental health'.

[10] When the plaintiff returned to the United States on 18 January 2001 she intended to continue living there, but changed her mind and returned to Brisbane on 19 February 2001. A chance conversation at Brisbane airport just before her departure with Mr John Crossland, sales manager of the duty-free shop at which she had worked, led her to reconsider her position once she returned to the United States. She interpreted what Mr Crossland had said to her as an offer of a position in the shop. In this I find she was mistaken: although there was discussion of her returning to employment at the shop Mr Crossland did not go so far as to offer her a job but told her that she could apply for a position.

[11] The plaintiff decided to come back temporarily to Brisbane to earn some money to improve her finances.

[12] The plaintiff was on her way to the Royal Women's Hospital on 20 February 2001 when the collision the subject of this proceeding occurred. She had abdominal and back pain after the collision and was seen at 5.10 p.m. by Dr Annabelle Sellbach at the emergency department of the Royal Brisbane Hospital after she had been checked at the Royal Women's Hospital. Dr Sellbach found the plaintiff had no neurological symptoms, and had had no head injury or loss of consciousness. There

was some mild to moderate tenderness in the cervical spine at C2-3, but a good painless range of movement. No complaint was made of neck pain and neither X-ray nor hard collar was warranted. The plaintiff had been walking and moving freely since the collision. Dr Sellbach concluded that it was unlikely that the plaintiff had suffered any bony injury and that it was more likely that her pain was the result of a soft- tissue injury at approximately the same site as the injury suffered in May 2000. Dr Sellbach recommended rest but not confinement to bed.

[13] In February 2001, Dr Sarah Lindsay, anaesthetist then working as a final-year registrar at the anaesthetics and pain management department of the Royal Brisbane Hospital, saw the plaintiff at the pain clinic at some time in the week following the collision, probably no later than 26 February 2001. That consultation resulted from Dr Bretz's referral of 28 December 2000. Dr Lindsay did not record anything regarding the second collision 'in terms of symptoms', although it was mentioned as having happened 'last Tuesday'. The plaintiff gave an account of constant and intense pain beginning on 27 May 2000. She said she had pain relief from Naprosyn. Dr Lindsay saw the plaintiff again on 7 March 2001, 4 April 2001, and 20 July 2001 when the plaintiff complained of pain in her right subscapular region. Dr Lindsay made no note at any time of the plaintiff's making any complaint of symptoms said to have arisen from the collision of February 2001, and no note of any history of almost recovering from the effects of the collision in the United States in 2000 before the collision in February 2001. On 6 June 2001 the plaintiff was referred to the orthopaedic clinic at the Royal Brisbane Hospital.

[14] The plaintiff gave birth to a daughter, Teah, on 19 June 2001. On 20 June 2001 the first X-ray investigation of the plaintiff's thoracic spine in 2001 took place, and on 20 August 2001 a computerized tomography scan. On 27 August 2001 the plaintiff was seen by Dr Gregory Day, orthopaedic surgeon. On 8 November 2001 an MRI examination was carried out, and Dr Day saw her again on 19 November 2001, but not again. He furnished four reports: dated 12 February 2002, 19 February 2002, 8 October 2003, and 7 May 2004. Dr Day was a very important witness in the case: he was the only expert in orthopaedics called at the trial and the plaintiff's claim of bony injury to her thoracic spine was her chief complaint. (There is a reference to a report dated 2 January 2002 by another orthopaedic surgeon, Dr Greg Gillett, in a report dated 21 July 2003 by Mr David Lawson, orthopaedic occupational therapist, but Dr Gillett was not called to give evidence.)

[15] Dr Day examined the reports of the investigations in the United States and those carried out in Australia. He could not recall seeing any 'actual imaging' produced in the United States, and was able to say that he had not seen a scan dated 17 August 2000. It is very difficult, he said, to compare what he saw on a film produced at the Royal Brisbane Hospital with another radiologist's report.

[16] In Dr Day's report of 8 October 2003 he gave the opinion that the plaintiff appeared to have suffered 'two separate thoracic spine fractures as a result of two separate injuries'. Referring to the plaintiff's capacity for work he said it appeared that pain and disability from the accident in the United States was 'a determinant' in the plaintiff's 'inability to continue her normal working capacity' and that was compounded following the second accident in Australia. He added that the situation 'may remain unchanged for another 2 years'.

[17] Dr Day's latest and most comprehensive report was that of 7 May 2004 provided to the solicitors for the defendants. Formal parts omitted, it was as follows:

> **BACKGROUND AND HISTORY**
>
> Rhonda Biviano (Young) was referred to the Spine Clinic at the Royal Brisbane Hospital by Professor Crammond from the Multi-Disciplinary Pain Management Clinic.
>
> I note in the provided reports that Professor Crammond initially reviewed Rhonda Biviano on 14.2.2001 following referral from the Department of Obstetrics at the Royal Women's Hospital. At the time of review by Professor Crammond, Rhonda Biviano was 23 weeks pregnant. She stated that she had mid thoracic pain which commenced on 27.5.2000 following a motor vehicle accident in San Diego in the United States. She was assessed as having a fractured 8th thoracic vertebral body although a bone scan following the injury demonstrated no increased in uptake. It was therefore felt that the abnormality detected on plain imaging of the thoracic spine was either developmental or old. Nevertheless, Rhonda Biviano complained of very severe pain in the mid-thoracic spine. Rhonda Biviano had been involved in a second motor vehicle accident a week prior to initial Pain Management review. She subsequently had increase in mid thoracic pain.
>
> A CT scan of the thoracic spine in early August 2001 had demonstrated abnormalities of the inferior and superior end plates of the 8th vertebral body and the superior end plate of the 7th vertebral body.
>
> MRI of the thoracic spine on 8 November, 2001 demonstrated the same end plate abnormalities at T7 and T8 with minor wedging of the vertebral bodies. There was no evidence of a prolapsed intervertebral disc.
>
> The summary was of "a normal thoracic spine. No cause was found for the patient's radiculopathy." The report was signed by Dr Rajah of the Royal Brisbane Hospital.
>
> **OPINION**
>
> A radiological abnormality had been demonstrated in the body of T8 following the motor vehicle accident in the United States on 27.5.2000.
>
> Radiological abnormalities were demonstrated in the bodies of T7 and T8 following the motor vehicle accident in Australia on 20.2.2001. The abnormalities in the end plates of the vertebral bodies left minor deformity of the vertebrae.
>
> There is little doubt that a fracture of the 7th thoracic vertebra was sustained in the motor vehicle accident on 20.2.2001. Whether a second fracture was sustained in the body of T8 in the same motor vehicle accident is immaterial as an abnormality had already been demonstrated in that vertebral body and the end result of the abnormalities is that there was no increase in deformity or wedging of the vertebral body and therefore no demonstrable increase in impairment.

> **IMPAIRMENT ASSESSMENT**
> The abnormality demonstrated in the body of T8 has been attributed to an incident which occurred prior to 20.2.2001. Rhonda Biviano (Young) was symptomatic as a result of an injury in 2000 attributed to this anatomical area. Using the **American Medical Association Guides to the Evaluation of Permanent Impairment (5th edition),** she would normally be assessed as having a DRE Type 2 injury and therefore have a Permanent Impairment assessment of between 5-8% whole body.
>
> Using the **American Medical Association Guides to the Evaluation of Permanent Impairment (5th edition),** I feel that Rhonda Biviano (Young) has a DRE Type 2 injury as a result of the fracture of T7. This would imply a permanent impairment of between 5 and 8% whole body. Because the fracture in the body of T7 is adjacent to the abnormality demonstrated in the body of the 8th thoracic vertebra, then the combined values chart on page 604 must be used. With two impairments of 5%, the combined value is 10% whole person and with two impairments of 8%, the combined value is 14%. Therefore, I believe that as a result of the fracture of the 7th thoracic vertebra, that Rhonda Biviano (Young) has a whole person impairment of between 5 and 6%. This impairment is permanent in nature.

The date given for the visit to the multi-disciplinary pain management clinic is wrong in that report. It was later than 14 February 2001. In his oral evidence Dr Day corrected the figure of six per cent. appearing in the last paragraph of his report to seven per cent.

[18] In his oral evidence Dr Day explained that the radiological abnormality demonstrated in the body of T8 after the first accident in the United States was a superior end-plate infraction. After the second accident there were end-plate infractions in both the inferior and superior end plates at T8 and an inferior end-plate fracture at T7, the latter looking acute. Asked why a person with fractures in the thoracic spine would be suffering pain some years later, Dr Day said that the raw nerve endings at the junction of the intervertebral disc and the end-plate are sensitive to pressure, so when someone fractures an end-plate it can cause quite severe pain and that is, he said, often independent of the deformity. It was the plaintiff's case that the serious consequences of the collisions were caused by fractures of T7 and T8.

[19] Had Dr Day's opinion and assessment remained as set out in his last report, that evidence, being the only evidence concerning causation of the plaintiff's condition, would have supported the plaintiff's case that she suffered a severe aggravation of her condition in the collision of February 2001. But Dr Day did modify his assessment when cross-examined by Mr Ambrose S.C. on behalf of the defendants. Questions and answers were as follows:

> Yes. Alright, now, it is very, very difficult as I understand your evidence to quite understand exactly what may have been injured in the May 2000 accident as a consequence of the radiological reports? – Yes.

> It is certainly difficult because you don't know, as you said, what type of machine they were using and what sort of technique they were applying? – Yes, that's correct.
>
> And it is certainly apparent through those reports that there was reference to possible degeneration at a level T-6? – T-6.
>
> Yes. You remember that? – Yes.
>
> But, again, that is not possible to be certain of unless you have got the images and you can count down the thoracic vertebrae? – That's quite right.
>
> Indeed, it is not uncommon for mistakes to be made and you would have to be satisfied yourself that it was T-6 rather than T-7? – Yes, it is often very difficult even for trained radiologists to get it right every time.
>
> What I am getting at is this. In this case it is certainly possible that the injuries that we can see at T-8 and T-7 may indeed all have been caused in the May 2000 accident? – That is – yeah, that's a hypothesis that, it is impossible to say either way, isn't it.
>
> Thank you.

[20] Since Dr Day resiled from his previous opinion by admitting there were two possible explanations for the condition of the plaintiff's spine one favourable to her case and the other not, and since his was the only expert evidence on the cause of the plaintiff's back condition, it is not possible to be satisfied that it is more probable than not that the collision in February 2001 was the cause of more than a temporary soft-tissue aggravation which was conceded by the defendants. That aggravation would have been acute for about four weeks and after that would have diminished until after another four weeks she would have been able to resume normal activity, according to Mr Lawson whose evidence I accept. (For another case of two possibilities as to causation, see *Hallmark-Mitex Pty Ltd v. Rybarczyk*, unreported Court of Appeal decision of 4 September 1998 (Appeal no. 11009 of 1997).)

[21] Of the remaining injuries alleged by the plaintiff only the mental injury is of any moment. As I have related, Dr Sellbach recorded some tenderness in the cervical spine when she examined the plaintiff on 20 February 2001, but in the course of his submissions on behalf of the plaintiff Mr Campbell conceded that the whiplash injury was minor and its effects had passed. The plaintiff claims to be suffering from eczema as a result of the collision of February 2001. Dr Jaikumar Jhinku, general practitioner, who saw her many times at the Bracken Ridge 7 Day Medical Centre beginning on 10 July 2001 treated her for acne, but even if she is suffering from eczema there is no evidence that it is causally related to the collision. (It is convenient to record here that she did not specifically mention the collision of February 2001 to Dr Jhinku until 17 July 2002.) The records of the Naval Medical Center in San Diego show that on 1 June 1999 the plaintiff was found to have multiple areas of cystic acne on her face, neck, and chest. Dr Tsang noted acne on

22 December 2000. Dr John Chalk, psychiatrist, who assessed the plaintiff's mental condition on 30 July 2003, was asked about eczema but disclaimed any expertise on the subject, pointing out that it was a matter for a dermatologist. He added, however, that there is some evidence that stress can bring on eczema. He found her to be suffering from a 'mild psychiatric impairment' (ten to twenty per cent.) affecting her thinking, perception, judgment, mood, and behaviour, twenty-five per cent. of which was caused by the collision in February 2001. There was clearly little doubt, Dr Chalk found, that the plaintiff had been 'psychiatrically symptomatic' over a lengthy period of time and that predated at least the collision of February 2001. Prior to that she had been suffering from depression, had taken an overdose and her life was in turmoil: she was having 'significant problems' long before that collision. She had features of a personality disorder 'with significant narcissistic traits'. In Dr Chalk's opinion the plaintiff required treatment and would benefit from 'some antidepressants'.

[22] The plaintiff has remained in Australia since the collision in February 2001 and has no United States re-entry permit. Absence in the United States for more than one year without a valid re-entry permit meant that she was deemed to have abandoned her legal permanent-resident status.

[23] At the trial the plaintiff claimed that although she had been in pain from the injury suffered in the collision of 27 May 2000 her condition worsened considerably as a result of the collision on 20 February 2001. She also claimed that for a short time – about two months – after she discovered she was pregnant and before 20 February 2001, she was able to cope with the pain. But on 28 December 2000 she told Dr Bretz her back pain had been unchanged since May 2000 despite all therapy. The absence of any evidence by way of notes of the plaintiff's complaining to Dr Lindsay of symptoms said to have arisen from the collision of February 2001 or of her history of almost recovering from the effects of the earlier collision is also inconsistent with her present account of the course of her symptoms. So too was her failure to complain to Dr Jhinku about the latter collision until 17 July 2002. On 8 January 2002 she wrote a letter to Dr Jhinku in which she asked for 'CERTIFICATES OR STATEMENTS OF DISABILITY' to be dated back to 27 May 2000. She referred to the 'EXTREME PAIN' she had been in, that it had been constant, and then even worse, since 27 May 2000. In a letter dated 14 January 2002 to Dr Day containing a similar request she said that her life had been 'COMPLETELY RIPPED APART' as a result of the accident of 27 May 2000. A response given on 22 May 2002 to an interrogatory (no. 10.3) directed to the plaintiff concerning a claim against her insurer in respect of the earlier collision was to the effect that at no time after that collision had she sustained injuries of the kind for which she was then claiming damages. The plaintiff's verification of her responses was, however, dated 26 April 2002 and she denied seeing the final form of the responses, which were prepared by her attorneys in Los Angeles. An undated hard copy of an e-mail tends to show that the plaintiff did notify her attorneys of the later collision, but does not show what details, if any, she gave of it or what she then claimed to be its effect on her.

[24] In Mr Campbell's final address he submitted that the plaintiff should be awarded $44,381 for past impairment of her earning capacity, from 1 March 2001 but excluding the period of 1 May 2001 to 31 December 2001 to allow for preparation for the birth of her daughter and for the baby's care after the birth. The figures he used to arrive at that sum were derived from a report dated 11 July 2003 prepared

by Mr Mark Thompson, forensic accountant. Ancillary to that claim were claims to interest calculated after deduction of an estimated sum of Centrelink payments and to a sum for loss of superannuation benefits. Also claimed was $243,916.17 for future impairment of earning capacity and ancillary to that claim was a further claim for loss of superannuation benefits. The success of the ancillary claims depends of course on the success of the claims for impairment of earning capacity: the ancillary sums claimed are simply the results of calculations based on the sums claimed for impairment of earning capacity.

[25] I am not satisfied that the plaintiff has established that as a result of the collision of February 2001 she suffered any impairment of her earning capacity in March and April 2001 for which she is entitled to damages. I am not satisfied that there was paid work available for her in that short period. The effects of the collision on 20 February 2001 probably did affect to some degree her earning capacity in that period but I am not satisfied she would have obtained a position at the duty-free shop at the airport, or elsewhere. As to the period from 1 January 2002 there are two insurmountable obstacles to her recovery on my assessment of the facts. In the first place, by then the effect of the soft-tissue aggravation of her condition caused on 20 February 2001 had ended, so that any effect on her earning capacity from 1 January 2002 was attributable to the injuries suffered on 27 May 2000. The plaintiff's claim proceeded on the premiss that any impairment of her earning capacity after 20 February 2001 was attributable to the effects of the collision on that day and that the effects of the earlier collision were largely spent, but that premiss is inconsistent with the history given to Dr Bretz, the omission of references to the later collision in the histories given to Drs Lindsay and Jhinku, and the contents of her letters of January 2002 to Drs Jhinku and Day. Furthermore, it is relevant also to note that documents concerning the plaintiff's earnings in 2000 after the collision in that year from employers called Intuition Photography and California Exports bear these notations by her: 'This was a permanent position in which I couldn't continue due to pain/injuries/medical obligations due to these' (Intuition Photography, July to October 2000) and 'Due to pain/painkillers I could not continue this position' (California Exports, December 2000). I conclude then that in 2002 there probably was some impairment of earning capacity but that it was attributable to the continuing effects of the collision of 27 May 2000.

[26] The plaintiff's earning capacity from 1996 to 2000 appears to have been modest, and, according to assessments made by the two occupational therapists who gave evidence, has been limited but not extinguished. Mr Cameron Fraser assessed her on 11 June 2002, and provided a report dated 13 June 2002 in which he reported that without significant amelioration of her symptoms her vocational options would be limited to sedentary occupations. Those occupations for which she was reasonably qualified and functionally capable included telemarketing, ticket selling and collecting, and operating a switchboard. Mr Fraser had not seen the plaintiff since 11 June 2002 and in his oral evidence disclaimed any ability to give an opinion as to more than the 'immediate future'. Mr David Lawson, whom I have mentioned before, assessed her about a year later, on 30 June 2003, and provided the report to which I have referred. Mr Lawson concluded that she was suitable for sedentary to light work: a rehabilitation program should, he thought, render her capable of considering a return to the kind of occupation she has pursued in the past both in Australia and in the United States. In the second half of 2001 or early 2002 the plaintiff applied for a position as an international flight attendant with the Royal Australian Air Force, but did not pursue her application. She did not proceed

to the medical examination. She has not applied for other employment. My assessment of the evidence is that the plaintiff's earning capacity was adversely affected by the effects of the collision of 27 May 2000 and it has not been established that it has not deteriorated further as a result of the proved effects of the collision of 20 February 2001. In any event the plaintiff has some remaining capacity for work of the kind she engaged in to 2000 but she has chosen not to use it.

[27] I should mention here that Dr Day was, he agreed, unable to express an opinion as to the plaintiff's capacity to return to the workforce any time after he saw her and certainly not on the day he gave evidence. Dr Day added that he had not seen her 'for some time' and he 'would be reticent about making any statement'. The evidence as to her earning capacity in the future is then deficient, and the expert evidence, such as it is, tends to show an improvement between June 2002 and June 2003.

[28] There is no evidence that the component of the plaintiff's mental condition attributable to the collision of 20 February 2001, or any of it, has prevented the plaintiff's using her remaining earning capacity.

[29] Accordingly I am not satisfied that the plaintiff is entitled to any damages for impairment of earning capacity, past or future, and it follows that her ancillary claims to which I have referred must also fail. She is, however, entitled to damages for pain and suffering and loss of amenities, both past and future. In the past she suffered from the temporary soft-tissue aggravation of the injury to her thoracic spine and the aggravation of her mental condition. The latter will continue into the future, at least until she completes the treatment recommended by Dr Chalk. I shall allow $25,000 for pain and suffering, and loss of amenities: $20,000 for the past and $5,000 for the future.

[30] A schedule giving details of the number of hours devoted by the plaintiff's mother in rendering voluntary assistance and services to the plaintiff was put before me. It showed many hours from February 2001 to January this year. As, however, the physical effects of the collision of 20 February 2001 were only temporary and there is no need for such assistance and services arising from the plaintiff's mental condition, not all of the claimed hours can be the subject of an award of damages. Mr Lawson gave what I consider to be an accurate assessment of the plaintiff's needs arising from the collision in his report. He arrived at ninety-four hours. Complete accuracy in such matters if of course difficult to achieve, and, making allowance for that, I conclude that it is reasonable to assess the plaintiff's damages under that head at $1,500: one hundred hours at the agreed rate of $15 per hour.

[31] The treatment recommended by Dr Chalk will require, according to Mr Peter Stoker, psychologist who gave a report dated 28 January 2003, twenty to twenty-five sessions at a cost of $176 for each session. I shall allow $2,000 for those sessions and the antidepressants, bearing in mind that not all of her mental condition is attributable to the results of the collision of 20 February 2001 and that on 16 January 2001 Dr Linnane had found she needed 'follow-up for her mental health', so that it was not that the effects of the collision of February 2001 caused a need for treatment that did not exist before.

[32] I shall allow $500 for medical and pharmaceutical expenses in the past.

[33] There will be judgment for the plaintiff against the defendants for $29,000. I shall invite further submissions on interest and costs.