SUPREME COURT OF QUEENSLAND

CITATION:	*Walker v Allen & Anor* [2011] QSC 131
PARTIES:	**SIOBHAN MARY WALKER** (plaintiff) **v** **DOUGLAS CECIL ALLEN** (first defendant) and **AUSTRALIAN ASSOCIATED MOTOR INSURERS LTD (ABN 92004971744)** (second defendant)
FILE NO:	6894 of 2010
DIVISION:	Trial Division
PROCEEDING:	Trial
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	25 May 2011
DELIVERED AT:	Brisbane
HEARING DATE:	19 and 20 May 2011
JUDGE:	Daubney J
ORDER:	**There will be judgment for the plaintiff in the sum of $238,798.50. I will hear the parties as to costs.**
CATCHWORDS:	DAMAGES – GENERAL PRINCIPLES – GENERAL AND SPECIAL DAMAGES – where liability for the accident has been admitted – where the applicant seeks damages – where the quantum of damages is to be determined *Civil Liability Act* 2003 (Qld), ss 59, 60 *Civil Liability Regulation* 2003 (Qld), Schedules 3, 4
COUNSEL:	M Grant-Taylor SC for the plaintiff T Matthews for the defendant
SOLICITORS:	Neilson Stanton & Parkinson for the plaintiff Eardley Motteram for the defendant

[1] On 3 January 2007, the plaintiff, who was born on 23 March 1988 and was therefore 19 years old at the time, was injured when the motor vehicle she was driving was struck by a vehicle driven by the first defendant. Liability for the accident has been

admitted, and it remains only for me to determine the quantum of damages recoverable by the plaintiff.

[2] In her statement of claim, the plaintiff claimed to have sustained the following injuries:

(a) Injury to the cervical spine;

(b) Injury to the thoracic spine;

(c) Injury to the low back;

(d) Injury to the left upper limb;

(e) Injury to the left knee;

(f) Abrasions, contusions and bruising.

[3] In the defence, the defendants admitted that the plaintiff sustained an injury to the cervical spine region in the form of a minor soft tissue injury, but otherwise denied the nature and extent of that injury and also denied that she had sustained any ongoing disability, impairment, loss or damage from that injury. The allegation of injury to the thoracic spine was denied, but the defendants did admit that the plaintiff had sustained a minor soft tissue injury to the lower back region, saying again that this had now resolved and also denying the nature and extent of that injury and that the plaintiff had sustained any ongoing disability, physical impairment, loss or damage. The defendants denied that the plaintiff had suffered an injury to her left upper arm or an injury to her left knee, saying that there was no evidence of her having sustained such injuries. It was admitted that she sustained superficial abrasions and bruising, but the defendants said these resulted in no ongoing impairment, disability, disfigurement, loss or damage.

[4] In evidence, the plaintiff identified that the parts of the body she was conscious of having injured after the accident were her neck and her back and that she had troubles with her left knee. She said that initially it was her neck that was her main concern, but her lower back then became more of an issue for her. She spoke of the injury to her neck being a "whiplash that affected me", said she had bruising "in my lower back" which gave her problems, and said that she had problems with her left knee as well. The problems with her left knee improved. The plaintiff said in evidence that her neck still continued to give her some trouble, saying "It gets tight and can sometimes give me headaches". She said that after the initial "whiplash" her neck "calmed down and then it just kind of plateaued from there". She claimed that she has symptoms in her neck every day, and has daily headaches. The plaintiff said, however, that her main ongoing problem is with her back. She takes Nurofen on a weekly basis to deal with her headaches and back pain. One pack of Nurofen can last up to two weeks.

[5] After the accident on 3 January 2007, the plaintiff attended at the emergency department of the Gympie General Hospital. According to the hospital's triage assessment sheet, her chief complaints when she arrived were of pain to the right arm and left hip. On initial assessment, she was noted to have abrasions to the left hip and right upper arm and tenderness around the cervical spine. On medical

examination, she was observed to have the hip and arm abrasions, and she complained of a "clicky" neck. She was noted to be suffering from muscle spasm around the neck, and the superficial abrasions and bruises to the hip and arm were observed. She was diagnosed as having suffered a soft tissue injury. Simple analgesics were prescribed, and she was told to return to the emergency department if neck stiffness or pain developed.

[6] On 5 January 2007, the plaintiff attended on her then general practitioner, Dr Byrnes, complaining of increasing pain in the neck, left hip and right upper arm. Dr Byrnes' examination revealed that she had a full range of movement of the cervical spine, with discomfort at the extremes. She was tender on both sides of the spine and on the right upper arm. She had a full range of movement of the right shoulder and of both elbows and wrists. She had a full range of movement of the left hip, with some discomfort at the extreme. No other abnormalities were noted by Dr Byrnes. He sent the plaintiff for x-rays of the spine, pelvis and hip, and prescribed an anti-inflammatory medication.

[7] The plaintiff saw Dr Byrnes again on 11 January 2007. His notes of that attendance record that she had not taken the anti-inflammatory medication because her condition was improved during the day, but she still had a stiff and sore right neck in the morning and her right shoulder was sore to sleep on.

[8] The x-rays ordered by Dr Byrnes revealed no abnormalities.

[9] Dr Byrnes last saw the plaintiff on 19 January 2007, by which time it was reported there had been considerable further improvement in her condition. He considered her fit to return to work on alternative duties.

[10] The plaintiff attended numerous physiotherapy sessions in the period February - May 2007.

[11] On 8 May 2007, by which time she was living on the Sunshine Coast, the plaintiff attended on Dr Wolstencroft, a general practitioner, complaining of upper back and neck pain, lower back pain, and of having suffered left knee pain for the previous four to six weeks. In a note to Dr Wolstencroft from the plaintiff's physiotherapist (as recorded in his attendance note of 8 May 2007), reference is made to the plaintiff having presented to the physiotherapist in early mid-February "with classic whiplash symptoms in the neck and upper back" and complaining of some lumbar spine pain. The physiotherapist reported to Dr Wolstencroft that the upper thoracic spine and cervical spine symptoms "resolved as you would expect" but the lumbar spine had "continued to cause some grief", and the plaintiff had developed pain in her left knee some six weeks previously. The reason for the plaintiff's consultation with Dr Wolstencroft on 8 May 2007 was recorded as the left knee pain. He prescribed anti-inflammatories for that condition. It would appear that the left knee pain resolved after a period of time.

[12] In August 2007, Dr Wolstencroft referred the plaintiff for further physiotherapy particularly related to her lower back pain. He also referred her to Dr Russell Bourne, orthopaedic surgeon, who saw the plaintiff on 22 October 2007.

[13] Dr Bourne subsequently provided a report dated 3 December 2007 to the second defendant insurer.

[14] Dr Bourne summarised the plaintiff reporting to him that she had no back pain immediately after the accident, but she started seeing a physiotherapist in March because of knee pain and lower back pain which had developed. She described this to Dr Bourne as being in the mid to lower lumbar spine with no associated radiation down her leg and no associated paresthesia or anaesthesia and no problems with bladder or bowels. She reported that, if anything, the pain was worse on the left than the right side, and told Dr Bourne that she was "finding things difficult with the activities involved with her course [i.e. the course of study in which she was then engaged] which aggravates the pain".

[15] Dr Bourne examined the plaintiff, noting mild tenderness in the mid-point of her lumbar spine with no major tenderness at either facet joints. He referred her for further investigations, which included an MRI which showed no significant abnormalities of the discs in the region of the pain.

[16] Dr Bourne concluded that the plaintiff had lower back pain which was probably musculoskeletal in origin, saying that some of it might arise from the pseudarthrosis on the left side (which was unrelated to the accident). He thought some of the symptoms "may be related to her accident but there are no objective investigations to base this on". He noted she had undergone physiotherapy, and the only other options he could see for her would be to undergo remedial massage "as required" and continue with home pilates and yoga. There was no indication for any surgery.

[17] Dr Bourne noted that the plaintiff felt that she could not manage her course of study, and it was unknown how long it would take for her to recover to the point where she could. He reviewed her again on 26 November 2007 with regards to her investigations, and said he would still be hopeful that she had a good prognosis, but thought she would be left with some pain in the long term. He concluded:

> "I consider this young lady may always have some minor ongoing symptoms similar to someone who has whiplash in the neck and I consider from the overall symptoms she has she probably is plateauing at present. It would be appropriate for her to have a disability assessment by a medico legal/rehabilitation specialist, as I do not normally do this in my role as a clinical orthopaedic surgeon at present."

[18] The plaintiff was seen for a medico legal consultation and report by Dr Greg Gillett, orthopaedic surgeon, on 8 April 2008. In his report of that date, Dr Gillett recounted a summary of the accident, the injuries suffered by the plaintiff, and her subsequent treatment. He also referred to Dr Bourne's report.

[19] Dr Gillett noted that the plaintiff had some ongoing anxieties with car travel as a consequence of the accident, but her dominant physical problem when he examined her was the lower back pain which she indicated was in the mid lumbar region. She described it as "a constant ache" which was aggravated with tasks such as extension of the back. She told Dr Gillett that it was affected by sitting, standing, and walking distances and inclines. She said bending and lifting tasks cause discomfort and it can take her an hour to settle for sleep. She said there was no referred pain to the legs, that she lives with the condition and is careful with it. She told Dr Gillett that her neck was "pretty good" and that symptoms of the knee clicking and "locking out" had reduced with time. She showed Dr Gillett an x-ray of the knee, which was normal. Dr Gillett examined the plaintiff. At the time of examination, she had a full range of motion of the neck with no recorded pain. In relation to the lumbar spine,

she had a normal range of motion with pain recorded in the extremes, particularly in extension. Pain was limited by a few degrees in extension. There was no guarding, spasm or asymmetry, nor was there any neurological deficit in the lower limbs. Straight leg raising was 70 degrees bilaterally. He also reported on his examination of the left knee. Dr Gillett reviewed the radiological and other reports which had been provided.

[20] Dr Gillett concluded that, as a consequence of the traffic accident, the plaintiff has had a mechanism of injury consistent with producing the injuries regarding her neck, left knee and lower back. He described them as a musculo ligamentous strain injury involving the cervical spine, lumbar spine and a soft tissue injury to the left knee. He did not consider that surgery was necessary, but said that ongoing treatment modalities "involves the principles of living with the condition, modifying activities to accommodate the condition and persist with exercise and strengthening modalities". He observed that whilst the plaintiff had had no time off work, she had had limitation associated with work at "The Warehouse" after the accident, as well as physical aspects of her tertiary studies. He said:

> "In the future she will have difficulties associated with physical activities where stress and strain is applied to the back. In general terms she is best suited to lighter work rather than hands-on impact type activities that a personal trainer might undertake. That is she should undertake in this capacity more education rather than demonstration. Using her current level of education to do other techniques in this industry might be appropriate and vocational redirection should be considered. As part of that process an occupation therapy assessment should be considered."

[21] In relation to the cervical spine, Dr Gillett was of the opinion that the plaintiff had no measured impairment using AMA5 methodology.

[22] In relation to the lumbar spine, Dr Gillett noted that the plaintiff has ongoing symtomatology. He said that her clinical examination findings place her in DRE1 impairment. With reference to Table 15-3 (of the relevant assessment criteria) with her good range of motion symtomatology, however, her impairment to the lumbar spine was, in Dr Gillett's opinion, measured at 0 per cent. He went on to say, however, that this did not "adequately express her impairment". He referred, therefore, to Chapter 18 of AMA5, and expressed the opinion that the plaintiff has a three per cent impairment of whole of person function.

[23] Dr Gillett concluded that there was no measured impairment in relation to the plaintiff's left knee.

[24] The plaintiff received further physiotherapy treatment in 2008-2009, and was also referred for some psychological counselling, particularly in relation to the anxiety associated with driving. It is unnecessary for present purposes to go further into those matters.

[25] In approaching an assessment of the plaintiff's damages, I note that the accident in question occurred on 3 January 2007, and accordingly the assessment must be made in accordance with the provisions of the *Civil Liability Act* 2003 (Qld) ("CLA") and the *Civil Liability Regulation* 2003 (Qld) ("the Regulation") (particularly Schedule 4).

General damages

[26] It is clear, from the medical evidence to which I have referred, that the plaintiff's low back injury should be regarded as her "dominant injury", as that term is used in Schedule 3 Part 2 of the Regulation. Dr Gillett has quantified a three per cent impairment of whole person function. I accept, for the purposes of the present case, that the starting point for assessment of this plaintiff's injury is to allocate an ISV of 4 under Item 94 ("minor thoracic or lumbar spine injury"). I also accept that a combination of the plaintiff's age (she was only 18 when injured), the relative severity of her symptoms, and the interference the symptoms had on her amenity of life at that stage warrant, in the circumstances of this case, an uplift of 25 per cent under Schedule 3 Part 2 Division 1 of the Regulation. That yields a final ISV of 5. The quantum recoverable for general damages is, therefore, $5,000.

[27] No interest is recoverable on that amount, pursuant to s 60(1) of the CLA.

Economic loss

[28] The plaintiff completed Year 12 in 2005. At that time, she applied through QTAC to become enrolled in a combined Diploma of Sport and Recreation and Bachelor of Business course. She was offered a position in this course for 2006, but deferred enrolment for a year. The Diploma of Sport and Recreation is a formal tertiary qualification for personal trainers. During the 2006 calendar year, the plaintiff worked in a business called The Warehouse at Gympie. Her duties consisted of attending to the checkout and stock. At the time of the accident, she was about to commence her deferred university course. She had made arrangements to obtain work at The Warehouse on the Sunshine Coast (in the vicinity of the university where she was studying). As it transpired, after the accident she did not work at The Warehouse.

[29] In her evidence in chief, the plaintiff referred only to having initially been enrolled in the personal training course. It emerged, however, that she was enrolled in the dual qualification course, and in fact commenced that course in 2007. She discontinued the business part of the course after one semester because, as she said under cross-examination, it was not what she thought it would be and didn't interest her. She was, however, given credit for the business subjects she had studied in her subsequent tertiary studies. In any event, the plaintiff continued with the Diploma in Sport and Recreation studies. She completed that course, and became qualified as a personal trainer at the end of 2008. Rather than using those qualifications to embark full time on a career as a personal trainer, the plaintiff enrolled in the course of study for qualification as an occupational therapist. She said, and I accept, that she was particularly influenced in making the decision to embark on this further course of study by Dr Gillett's opinion, as expressed in his report of 8 April 2008 that in general terms the plaintiff "is best suited to lighter work rather than hands on impact type activities that a personal trainer might undertake" and that, in her case "vocational redirection should be considered". Evidence was put before me as to the nature of the vocational duties involved in a career of occupational therapy. It is unnecessary to descend into the detail – it is clear that, in general terms, an occupational therapist can be expected to have a range of lighter duties than those expected of a personal trainer. Having regard to the nature of the injuries suffered by the plaintiff, the fact (as assessed by Dr Gillett) that she suffers ongoing pain from those injuries, and the stage of life she was at when injured, I think it was

reasonable for the plaintiff to have embarked on the further course of study for occupational therapy in order to obtain professional qualifications more suitable for her condition. It follows that I consider that the necessity to embark on this further course of study was causally related to the accident.

[30] The plaintiff commenced studies in occupational therapy at the beginning of 2009, and expects to complete those studies at the end of 2013. I should also note that, on any view of the evidence before me, she can expect to earn considerably more as an occupational therapist, once qualified, than she would ever have earned as a personal trainer.

[31] Despite having made the arrangements to have a job at The Warehouse on the Sunshine Coast, the plaintiff did not take up this employment after she started her studies in early 2007 (i.e., after the accident). Indeed, she did not engage in any paid employment until late 2008, when she had completed her qualifications as a personal trainer. The reason for her not working during this period was not explored in evidence. I am prepared to infer, however, that her protracted period of pain from the injuries suffered in the accident is the explanation for her not working during this period.

[32] After receiving her qualification as a personal trainer, she worked, on a part time casual basis, as a personal trainer and in other related tasks at the Fernwood gym. More recently, she worked as a receptionist in another gym on the Sunshine Coast for some four months from October 2010 to February 2011. Her employment there ceased when that gym was placed into receivership.

[33] I have already referred to the fact that the plaintiff commenced studies in occupational therapy in early 2009. There was some debate before me as to the catalyst for the plaintiff having embarked on this further course of study. In particular, as a consequence of matters recorded in a report by Ms Lesley Stephenson, occupational therapist, there was investigation as to whether, as had been recorded by Ms Stephenson, Dr Gillett had advised the plaintiff that she was unsuited for personal training because of the lifting involved. Dr Gillett denied having given advice in those terms to the plaintiff. The plaintiff herself said in evidence that Dr Gillett had not advised her that she had to change her career. At the end of the day, however, it is clear enough from Dr Gillett's own evidence (quoted above) that he considered the plaintiff would have limitations in pursuing the vocation of personal trainer. A note of a conference between Dr Gillett and the plaintiff's advisers records that the doctor was asked about his observation that "vocational redirection should be considered" and continues:

> "Dr Gillett said he was now aware that Ms Walker had in fact, since seeing him, embarked on studies towards qualifying as an occupational therapist instead of pursuing a career as a personal trainer, and Dr Gillett went on to say that he regarded this as quite a reasonable decision".

[34] Having regard to Dr Gillett's opinion with respect to the limitations under which the plaintiff could have expected to labour if she had continued as a personal trainer, and having regard also to her age and the reasonable opportunity available to her to obtain alternative vocational qualifications, I confirm that I find that the necessity for her to embark on the course of study of occupational therapy was occasioned by the injuries suffered in the accident, and that it was reasonable for her to undertake that course of alternative study.

[35] The period of past economic loss really encompasses two periods:

(a) From the date of the accident to the time when she qualified as a personal trainer (late 2008);

(b) From late 2008 to the present.

[36] The first of these periods is that when she was undertaking the course of study to qualify as a personal trainer and otherwise would have had part time work at The Warehouse. I accept that over this period she would have worked 20 hours per week for 48 weeks per year (to allow for holidays). Having regard to the rates at which she was previously paid when working at The Warehouse in Gympie, and also allowing for uplifts over time to reflect increases in pay to match her age, I will round the hourly rate for this calculation up to $15 gross. Allowing this hourly rate for 20 hours per week for 48 weeks for the calendar years 2007 and 2008 yields a total of $28,800 gross (which I calculate would have been $26,280 net of tax).

[37] I note in passing that the defendants sought to offset against this amount a sum received by the plaintiff by way of a bursary for her tertiary studies. A bursary is a gift provided specifically to assist a student. It is not income from personal exertion. I do not consider it appropriate to make a deduction of the amount of the bursary.

[38] The second period under consideration is from the end of 2008 (by which time the plaintiff was qualified and had started working part time as a personal trainer) to the present. It was submitted for the plaintiff that if she had commenced full-time work as a personal trainer after completing her qualification, she would have worked at least 25 hours per week at an hourly rate of $28.51 (gross). Evidence from the proprietor of the Fernwood gym in which the plaintiff worked confirmed the availability of work and rates of pay, and also the difference between the theoretical possibility of a personal trainer working 40 hours per week and the practical reality of a personal trainer actually working fewer hours, depending on client demand, seasonal variations and other such factors. I am, however, satisfied that the basis of the plaintiff's calculations in this regard (i.e. 25 hours per week for 48 weeks each year) is reasonable. On a gross annual basis, that would have yielded her $34,212 (or $658 gross per week over 52 weeks, which equates to $576 net per week). Allowing this amount from, say, 1 December 2008 to date (129 weeks) yields $74,304. From that needs to be deducted the amounts actually earned by the plaintiff during that period at Fernwood, Maroochydore and the Kawana Fitness Centre. This totalled $13,363. The past economic loss for this second period is, therefore, $60,941.

[39] The total past economic loss is, accordingly, $26,280 plus $60,941, totalling $87,221.

[40] Interest should be allowed on this at the appropriate rate (see s 60(2) and (3) of the CLA). Allowing interest at 2.755 per cent on the past economic loss since the date of the accident yields $10,535.

[41] The plaintiff should also recover for past lost superannuation contributions by her employers. Calculated at the notional rate of 9 per cent, this will be $7,850. There will be interest allowed on this, yielding a further $900.

[42] In relation to future economic loss, there are also two periods to consider:

(a) The period to the end of 2013, when it is reasonable to expect the plaintiff will qualify as an occupational therapist, and

(b) The period after she qualifies as an occupational therapist.

[43] In the first of these periods, the base calculation of her loss is to refer to what she would have earned as a personal trainer. Adopting the same basis for calculation as above (i.e. 25 hours per week for 48 weeks per annum), the net weekly amount ($576) she could have expected to earn over the next two years and seven months (132 weeks), adopting for ease of calculation a multiplier for the whole period under the five per cent discount rates of 125, yields some $72,000. The plaintiff, however, clearly has a residual earning capacity, and the award should be discounted to reflect her ability to work on a part time basis while studying. To take account of that residual earning capacity, I will therefore allow the sum of $50,000 economic loss for the period to the end of 2013.

[44] There is, then, the period after she qualifies as an occupational therapist. There was some attempt to lead evidence from Ms Stephenson to indicate the difficulties which this plaintiff might have in obtaining work as an occupational therapist. I do not accept that she would be significantly disadvantaged in that respect. According to vocational documents volunteered by Ms Stephenson, the work activities associated with occupational therapy are generally characterised as having "sedentary to light physical demand". It was not in contest that the plaintiff would earn significantly more as an occupational therapist than she would have earned as a personal trainer. At worst, her ongoing pain will render her at some modest disadvantage on the open labour market. I will allow her $20,000 as a global sum to reflect that disadvantage in the future.

[45] The award for future economic loss is, therefore, $50,000 plus $20,000, totalling $70,000.

[46] Loss of future employers' superannuation contributions should be awarded. Using the conventional figure of nine per cent, that will be $6,300.

Future HECS liabilities

[47] In view of my acceptance of the causal relationship between the accident and the plaintiff undertaking the further course of study for occupational therapy, it seems reasonable to me to allow the plaintiff to recover the fees associated with that further study. During the time of her study, however, the plaintiff will receive Commonwealth scholarship payments which will largely, but not completely, cover the cost of the education expenses.

[48] I will allow the plaintiff to recover the difference between those amounts, which is calculated at $3,614.

Gratuitous care and services

[49] In light of evidence which fell at trial which meant that the plaintiff would not be able to meet the "six hours/six months" threshold required by s 59(1)(c) of the CLA, the plaintiff did not maintain a claim for either past or future gratuitous care and services.

Future commercially-sourced services

[50] The plaintiff did, however, persist with a claim for future commercially-sourced services. The basis for this claim, albeit limited to "heavy shopping" and "heavy cleaning", was calculations contained in the report of Ms Stephenson. Ms Stephenson allowed the commercial cost of four hours shopping per month and four occasions per month of three hours cleaning.

[51] The difficulty with reliance on Ms Stephenson's report, however, is that it appears that Ms Stephenson's opinions were based on two problematic assumptions. The first assumption concerned the accuracy of matters reported to her by the plaintiff and her family concerning the amount of time required to be allocated to matters of care for the plaintiff. The divergence between the matters recorded by Ms Stephenson as having been reported to her and the evidence which actually emerged at trial (which led, as I have noted, to the plaintiff abandoning her claim for gratuitous care and services), leads me to have significant concern about the basis on which Ms Stephenson has estimated the extent of the plaintiff's need for commercially-sourced services in the future. In the course of giving her evidence, Ms Stephenson confirmed that the opinions she expressed in her report were based largely on matters that had been reported to her. The other assumption, as emerged in Ms Stephenson's evidence, was that her interpretation of the three per cent whole of body disability suffered by the plaintiff was that this was a physical impairment. It would seem that she did not appreciate, as was made clear from Dr Gillett's evidence, that the plaintiff had no measured physical impairment and that the impairment of whole person function assessed by Dr Gillett related to the symptoms of pain.

[52] At highest, I would accept that the plaintiff will in the future require what Dr Gillett's accurately described as "ongoing intermittent assistance". For that purpose, I will allow the plaintiff one hour paid care per week. The parties were at one in adopting a future figure of 40 years for that purpose. Adopting the higher hourly rate of $39.50 per hour for one hour per week will yield (discounted on the five per cent tables for 40 years) $36,261.

Past special damages

[53] Medical expenses of $766.50, physiotherapy expenses of $240 and travelling expenses of $836 were agreed.

[54] The plaintiff claimed a further $1,090 for massage expenses. Some of these massages appear to be related to providing relief from the pain symptoms from which the plaintiff has suffered. Others, such as relaxation massages, appeared more tenuously connected with the plaintiff's injuries. I will allow one half of the claimed expenses, yielding $545.

[55] I will allow the osteopath expenses of $395.

[56] I will not allow the home maintenance expenses of $340. These related to items of expenditure which the plaintiff was required to incur as a consequence of the tenancy of her unit.

[57] After allowing interest on the amounts of out of pocket expenses (taking account of those items paid for by Medicare), I will round the amount recoverable to the plaintiff for past special damages (including interest) to $2,700.

Future out of pocket expenses

[58] The plaintiff has claimed for the cost of one remedial massage per month for the next 40 years. As I have said, I accept that some of the massage treatments are to provide her with relief from the pain symptoms from which she suffers. I will therefore allow half of the amount claimed, and round that to $7,500 to allow also for some travelling expenses for that purpose. I will also allow the plaintiff the $917.50 that she claims for the cost of purchasing analgesics in the future.

[59] The total for future out of pocket expenses is, therefore, $8,417.50.

Conclusion

[60] In summary, I assess the plaintiff's damages as follows:

General damages	$5,000.00
Past economic loss	87,221.00
Interest on past economic loss	10,535.00
Lost past superannuation	7850.00
Interest on past superannuation	900.00
Future economic loss	70,000.00
Future lost superannuation	6,300.00
Future university fees	3,614.00
Future commercial services	36,261.00
Past specials (including interest)	2,700.00
Future specials	8,417.50
	$238,798.50

[61] There will be judgment for the plaintiff in the sum of $238,798.50. I will hear the parties as to costs.