SUPREME COURT OF QUEENSLAND

CITATION:	*Hobbs v Wapshott & Anor* [2005] QSC 359
PARTIES:	**DEBBIE LOUISE HOBBS** **(plaintiff)** **v** **RAIFE BRIAN WAPSHOTT** **(first defendant)** **RACQ INSURANCE LIMITED (ACN 009 704 152) (FORMERLY KNOWN AS RACQ-AMP GENERAL INSURANCE LIMITED [ACN 009 704 152])** **(second defendant)**
FILE NO/S:	BS10991 of 2004
DIVISION:	Trial Division
PROCEEDING:	Trial
DELIVERED ON:	8 December 2005
DELIVERED AT:	Brisbane
HEARING DATE:	6-7 September 2005
JUDGE:	Mullins J
ORDER:	**Judgment for the plaintiff against the second defendant in the sum of $126,670.70**
CATCHWORDS:	DAMAGES - MEASURE AND REMOTENESS OF DAMAGES AND ACTIONS FOR TORT – MEASURE OF DAMAGES – PERSONAL INJURIES – METHOD OF ASSESSMENT – GENERALLY – the plaintiff was 29 years old when injured – assessment of general damages where whole person impairment was between 10% and 15% due to cervical and thoraco-lumbar injuries and where depression and anxiety suffered for a short period – where injuries resulted in some physical restriction on the plaintiff's capacity to work which manifested itself in making the plaintiff careful in choice of employment and otherwise vulnerable on the open market – where there was not a sufficient past earnings history to support a purely mathematical calculation of loss of future earning capacity – how global assessment for loss of future earning capacity should be made where the loss was more than nominal *Motor Accident Insurance Act* 1994 *Ball v Monaghan* [2002] QDC 124 *Calvert v Mayne Nickless Limited* [2004] QSC 449 *Campbell v Jones* [2003] 1 Qd R 630

	Hopkins v WorkCover Queensland [2003] QSC 257 *Walker v Durham* [2003] QCA 531
COUNSEL:	B F Charrington for the plaintiff K S Howe for the defendants
SOLICITORS:	McKays for the plaintiff Quinlan Miller & Treston for the defendants

[1] **MULLINS J:** The plaintiff was 29 years old when she was injured in a motor vehicle accident on 20 December 2001 for which liability is admitted by the defendants. The issue at trial was the quantum of damages appropriate to the plaintiff's injuries.

Treatment

[2] The plaintiff's car was written off in the accident. Although the plaintiff recalls that she immediately suffered from an aching arm, she refused to go to hospital and went home. She then felt pain in her neck and back and headache. The plaintiff had experienced no problem with back and neck pain prior to the accident. She consulted her general medical practitioner the day after the accident and was prescribed pain killers and anti-inflammatory medication. In the weeks and months after the accident, the plaintiff continued to suffer pain in her neck which she described as stiffness and headaches and pain in her back which she described as "a very severe ache" or "a dull ache". In January 2002 the plaintiff commenced physiotherapy treatment and underwent about 32 sessions but found that gave only limited relief. Activity would aggravate the back pain and that would occur on average 3 or 4 occasions per week in the first year after the accident. Aggravations of the neck pain and headaches during the same period would occur on average 2 or 3 occasions per week. The plaintiff moderated her activities to reduce the instances of aggravating the pain in her back or neck. The plaintiff continued to be treated with various medications.

[3] When the plaintiff consulted her general medical practitioner on 8 March 2002, she was complaining that her back pain was still very severe and that Panadeine Forte was relieving only 60% of the pain. The plaintiff also complained of feeling depressed due to the pain and the accident. The doctor prescribed Cipramil. The plaintiff conceded that a personal traumatic event unrelated to the accident may have contributed to her depression in mid 2002, but blamed the pain from the accident as the reason for her depression. In October 2002 the medication for depression was changed to Efexor. The plaintiff took the anti-depressant medication only for about six months.

[4] The plaintiff's solicitors referred her to orthopaedic surgeon, Dr David White, and psychiatrist, Dr Christopher Danesi, for medico-legal reports. It does not appear that the plaintiff sought or required any specialist medical treatment for her injuries.

Personal circumstances

[5] At the date of the accident the plaintiff was the mother of three children. She and her partner separated in late 2000. The plaintiff was educated to year 10. She had

worked in a retail women's clothing store before the birth of her first child in 1990. When she returned to the workforce she worked for four years at a photographic store. For part of that time she was the manager of the store. She ceased employment when her second child was born in 1997. Her third child was born in March 1999.

[6] The plaintiff did not seek to return to work until August 2001. She did a one week security course and worked for a security firm which provided security services at Woodridge Tavern for one night a week earning $90 net per week. This job finished on 13 December 2001. She intended to find other part time employment, but the accident occurred. Her intention was not to seek full time work until all her children were attending school (which would not have been until at least 2005).

[7] Prior to the accident the plaintiff usually did the housework. About nine months before the accident, a friend of the plaintiff's family, Mr Kenneth Coleman, had started mowing the yard and doing the whipper-snipping at the plaintiff's home. Mr Coleman stated that he was doing that "Once a fortnight" before the accident. The plaintiff had described Mr Coleman's assistance in terms that "Ken would occasionally come over and mow the lawn, but other times I would do it". Mr Coleman also would occasionally before the accident assist the plaintiff with looking after the children and household chores such as vacuuming and cooking. Mr Coleman was quite definite about the extent of his involvement in assisting the plaintiff, both before and after the accident. On this detail about whether Mr Coleman was regularly mowing the lawn for the plaintiff and providing some assistance in the home before the accident I accept the accuracy of his recollection of the assistance that he provided to the plaintiff.

[8] The plaintiff was cross-examined on the nature of her relationship with Mr Coleman. Both the plaintiff and Mr Coleman were consistent in their descriptions of their relationship and I accept their evidence that they are friends and are not and have not been in a de facto relationship.

Employment history after the accident

[9] In or around April 2003 the plaintiff commenced working on a casual basis as a security officer for a security company that had the contract to provide security services at Logan Hyperdome. The plaintiff was motivated to return to work, because of wanting to improve the financial position of the children and herself. By October 2003 the plaintiff was working regularly for about 40 hours per week, accepting the increase in shifts that were offered to her. She would suffer bouts of neck pain and back pain whilst working, but took Panadol and persevered with working. At least once each week, the plaintiff would perform a driving shift of 12 hours that required her to drive around conducting surveillance. The nature of her activities during this shift tended to aggravate her neck and back pain. Mr Tansey, the operations manager of the security company, considered the plaintiff to be a good worker.

[10] The security company that employed the plaintiff lost the Logan Hyperdome contract in December 2004 to A1 Security Pty Ltd ("A1"). A1 offered the plaintiff a job but required her to work full time which involved four shifts each of 12 hours on consecutive days on a rotating roster of four days of work followed by four days off work. It was also proposed that two of the four shifts would be night time shifts.

This represented a change from how the shifts with the security company had been organised. The plaintiff did not feel she would be able to cope physically with shifts on that basis. She performed her last shift on 31 December 2004. There was a suggestion by Mr Tansey that he could recall that the plaintiff did not wish to do the night shifts, because it would be too hard on her children. The plaintiff was clearly meeting or exceeding her physical limitations due to her injuries caused by the accident in performing the work for the security company. I therefore accept the plaintiff's reason for declining the offer of full time employment on the basis proposed by A1.

[11] The plaintiff found work at a plant nursery in March 2005. She lasted five shifts over two weeks, as she found some of the tasks, such as potting plants with secateurs to be difficult and the pay was low.

[12] The plaintiff obtained employment as a casual retail assistant in a women's clothing store with Rodney Clark Pty Ltd in May 2005 after responding to a newspaper advertisement by sending a letter (Ex 12) that showed how enthusiastic the plaintiff was about gaining employment. She usually worked between 17 hours and 25 hours per week until a restructure resulted in no position being available for her in August 2005. Her shifts were usually five hours long. The plaintiff found that the type of duties involved serving customers, using the computer till, light cleaning, merchandising, unpacking stock and distributing stock to other stores involved less physical activity than her security job and she found that her pain levels were much better than when she worked in security. The plaintiff conceded that she would have been able to work in this retail position for longer hours, such as the equivalent of full time work, if that had been offered. The plaintiff did not look for additional work to increase her total working hours during the period that she worked for Rodney Clark Pty Ltd.

[13] At the time of the trial the plaintiff was looking for work and wished to return to a retail position. Her goal was to be the manager of a women's clothing store. Even apart from the physical difficulties associated with some aspects of working in the security industry, the plaintiff's clear preference is for employment in retail sales of women's clothing.

[14] Since ceasing to work for Rodney Clark Pty Ltd, the plaintiff has been spending time on a temporary basis driving her 15 year old daughter who had recently returned to the plaintiff's care to and from college and to and from work each day. During this period the plaintiff has not been making concerted efforts to find paid employment. Although she had been looking for jobs in the newspaper, she had not had any interviews or sought work through an employment agency.

Personal circumstances after the accident

[15] After the accident Mr Coleman continued mowing the plaintiff's yard and doing the whipper-snipping. He also assisted in some of the household tasks. Immediately after the accident, he would assist with cooking, vacuuming, cleaning, bathing the children and washing. Mr Coleman would stay over at the plaintiff's house for about three nights each week. The plaintiff avoided activities such as bathing her children or lifting them which tended to aggravate the pain in her back or neck.

[16] The plaintiff moved to a larger house in February 2004. Mr Coleman moved into the house as a boarder. Mr Coleman pays the rent in alternate weeks for the house

that is rented by the plaintiff. The effect of this arrangement is that Mr Coleman and the plaintiff are sharing the rent for this house.

[17] The plaintiff estimates that Mr Coleman provided assistance in household tasks on average about six hours per week from the date of the accident until she ceased working with the security company on 31 December 2004. Mr Coleman estimated that the level of his assistance varied from week to week in that period, but was somewhere between five to ten hours per week. The plaintiff acknowledged that she needed the assistance of Mr Coleman in the house to enable her to work full time for the security company. The plaintiff considers that since she ceased working with the security company, she has been able to undertake all the household chores, because she has had more time to do them. Notwithstanding that she is able to manage the household chores, the arrangement between Mr Coleman as the boarder and her is that they share the cooking and Mr Coleman continues to assist on a limited basis with washing, vacuuming and looking after the children.

[18] Between leaving the security company and the time of trial the plaintiff was still suffering from episodes of neck pain, but reduced to once or twice each week, which were occasionally associated with headaches and instances of back pain that were reduced to about twice per week. The severity of the pain in this more recent period is not to the same degree that the plaintiff suffered immediately after the accident. The plaintiff uses two Panadol tablets once or twice per week for pain relief.

Medical evidence

[19] On the basis of the plaintiff's history, Dr White's opinion set out in his report dated 1 May 2003 (Ex 1) was that the plaintiff had suffered a flexion/extension injury to her cervical spine and a soft tissue injury to her thoraco-lumbar spine. An MRI scan of the plaintiff's cervical spine performed on 27 May 2003 demonstrated minor annular disc bulges causing thecal sac impression at C3/4 and C4/5. Dr White considered that the plaintiff had suffered a permanent impairment of the order of 10% whole person as a consequence of the injuries sustained to her cervical spine. An MRI scan of the plaintiff's thoraco-lumbar spine performed on 10 December 2003 demonstrated a disc disruption at T7/8 and, to a lesser extent, at T9/10 in the thoracic spine and a tear of the annulus at the L5/S1 disc associated with a degree of desiccation. Dr White expressed the opinion in his report dated 18 December 2003 (Ex 3) that the whole person impairment consequent to the pathology in the thoraco-lumbar region to be of the order of 10%. These opinions were confirmed in Dr White's report dated 12 July 2004 (Ex 11) in which Dr White expressed the opinion that the plaintiff would remain permanently unfit for work involving significant physical labour, prolonged standing, prolonged sitting, lifting, repetitive bending or maintenance of the head and neck in fixed positions for extended periods of time.

[20] The defendants had the plaintiff assessed by orthopaedic surgeon Dr Anthony Keays for the purpose of a medico-legal report. Dr Keays' opinion, as ultimately expressed in evidence, was that the plaintiff had suffered a restriction of movement in both the cervical and lumbar spine which meant there was a 5% impairment for each.

[21] Although there was some difference of opinion between the orthopaedic surgeons on the exact nature of the plaintiff's injuries, it was ultimately common ground at

the trial between the parties that the plaintiff's whole person impairment is somewhere between 10% and 15% due to her cervical and thoraco-lumbar injuries.

[22] Dr Danesi saw the plaintiff on one occasion only on 28 April 2003. On the basis of the symptoms of depression and anxiety that the plaintiff described herself as suffering from April 2002 and her history, Dr Danesi expressed the opinion that the plaintiff had a chronic adjustment disorder with mixed mood disturbance and a pain disorder associated with both psychological factors and a general medical condition.

[23] Dr Danesi saw the plaintiff around the time that she commenced working for the security company. The plaintiff gave evidence that her confidence improved when she returned to the workforce. When the plaintiff was giving evidence, she spoke about her depression as being in the past. She stated (at T19): "I got very depressed at one stage…. That was 2002. I got very depressed."

[24] Dr Danesi conceded that he could not comment on the plaintiff's current state as he had not examined her since April 2003. Dr Danesi had made a recommendation that the plaintiff would benefit from psychological intervention to help her manage her chronic pain. By the time of her trial, the plaintiff was managing her pain levels that were episodic rather than chronic and in no way suggested in the course of her evidence that she either needed or sought treatment of the nature suggested in Dr Danesi's report. I accept that the plaintiff suffered anxiety and depression during the period April 2002 to April 2003 that was primarily attributable to the injuries she sustained in the accident, but that resolved.

[25] The plaintiff's solicitors had the plaintiff assessed by occupational therapist Ms Clare Redman. The first assessment was done on 19 December 2003, after the plaintiff had been working for the security company for about eight months. Ms Redman identified the physical restrictions that applied to the plaintiff and expressed the opinion that the plaintiff had restrictions with forward bending, holding the neck in fixed positions, being unfit for lifting general loads greater than 10 kilograms, and reduced capacity for handling loads on a repetitive basis. Ms Redman expressed the opinion in her report dated 12 February 2004 (Ex 6) that the plaintiff was capable of occupations in the sedentary range only and acknowledged that the plaintiff's then current occupation as a security officer was not of that nature and that the plaintiff was carrying out that role with ongoing pain and functional restriction.

[26] Ms Redman assessed the plaintiff again on 2 September 2005. Ms Redman acknowledged that the plaintiff had improved, since the earlier assessment. Ms Redman expressed the opinion in her report dated 5 September 2005 (Ex 14) that the plaintiff had decreased tolerance for long periods of sitting or standing, was unfit for heavy or repetitive lifting, and had restrictions with forward bending or twisting and holding the head, neck and shoulders in fixed postures. Ms Redman described the plaintiff as retaining "a hypothetical physical capacity for part time work as a light sales assistant". Ms Redman also expressed the opinion that the plaintiff was more vulnerable on the open labour market than she was pre-accident. I note, however, that the plaintiff's own assessment of her ability to work is less pessimistic than Ms Redman's assessment. The plaintiff's work history since the accident and her motivation to work suggest that reliance can be placed on the plaintiff's confidence in being able to cope with full time retail sales work and I therefore reject Ms Redman's opinion that the plaintiff has capacity for part time

(and not full time or almost full time) work as a sales assistant. Ms Redman's assessment that the plaintiff is vulnerable on the open market is not in issue and reflects the plaintiff's position.

General damages

[27] The submission was made on behalf of the plaintiff that an award of $40,000 for general damages was appropriate, relying on a number of comparative decisions including *Hopkins v WorkCover Queensland* [2003] QSC 257 ("*Hopkins*") and *Calvert v Mayne Nickless Limited* [2004] QSC 449 ("*Calvert*"). The defendants submitted that general damages fell in the range between $25,000 and $35,000, relying on *Ball v Monaghan* [2002] QDC 124, *Walker v Durham* [2003] QCA 531 ("*Walker*") and *Campbell v Jones* [2003] 1 Qd R 630 ("*Campbell*").

[28] The extent of the disability that was considered in each of *Hopkins* and *Calvert* where general damages was assessed at $40,000 was much more significant than that which has affected the plaintiff, even though the matters may seem comparable when the disability relating to the spine is expressed merely in percentage terms. The plaintiff Hopkins was a 44 year old man who was found to have a 10% permanent impairment of his lumbar spine, but he was using a walking stick to assist 95% of the time, was in constant pain and was unlikely to return to work. The plaintiff Calvert was a 39 year old nurse who had continuous back and leg pain in the six years between the accident and trial which precluded her from working at all in her occupation as a nurse and left her suited only for part time sedentary work some time in the future.

[29] The comparative decisions relied on by the defendants suggest that the award should be in the vicinity of the high end of the defendants' range rather than the low end. The assessment of $27,500 in *Campbell* was for a less significant permanent disability than that of the plaintiff, whereas in *Walker* the 19 year old plaintiff who suffered a forward flexion and extension injury to her cervical spine which left her with a 10% permanent disability was awarded $35,000 for pain and suffering.

[30] On the basis that the plaintiff has suffered a permanent injury due to her cervical and thoraco-lumbar injuries and had a short term problem with depression and anxiety following the accident, the appropriate award for the plaintiff for damages for pain and suffering and loss of amenities is $35,000. Half of that award should be apportioned to the past and interest should be allowed at 2% per annum for 3.97 years, resulting in an amount of $1,389.

Past economic loss

[31] There is a significant difference between the plaintiff's calculation of past economic loss at $21,330 and the defendants' calculation at $3,420. For the period from the date of the accident to the date in April 2003 on which the plaintiff commenced employment with the security company, the plaintiff claims her immediate pre-injury net weekly wage of $90 for 65 weeks, making a total of $5,850. For the same period the defendants allow $90 per week for 9 months, factoring in a period of time to find other casual work and a period of no work. The defendants' calculation of 38 weeks at $90 net per week results in the amount of $3,420. I consider that the defendants have allowed too much for those discounting factors. At that stage the plaintiff was seeking to work only about one day per week, so as not to jeopardise her Centrelink parenting payment. The plaintiff was likely to have had no difficulty

in finding such limited casual work. I allow $5,400 (60 weeks at $90 per week) for this period.

[32] It is common ground that there is no claim for past economic loss for the period for which the plaintiff worked as a security officer. The plaintiff then takes her average net weekly wage from her last period of six months' employment with the security company of $558 and uses that as the benchmark to calculate loss from 1 January 2005. (If the plaintiff had taken her average net weekly wage from 1 July 2003 to 30 December 2004 whilst employed with the security company, it would have been $518.) Because the plaintiff's statement of claim asserted that the relevant net weekly wage was $540, that ultimately was the actual figure used in the plaintiff's calculations. On the plaintiff's method of calculation the plaintiff should have earned $540 per week for 49 weeks from 1 January 2005 to the date of judgment (making a total of $26,460), but earned $3,420 from 1 January 2005 to the date of trial and an additional $2,006 from the date of trial to the date of judgment (making a total earned in that period of $5,426). That results in an amount for past economic loss for both periods of $21,034.

[33] Implicit in the method of calculation of past economic loss by the plaintiff as from 1 January 2005 is the assumption that, but for the injuries sustained in the accident, the plaintiff would have continued working on a full time basis in the security industry or other industry that was able to generate for her a net weekly wage of $540. That assumption overlooks the fact that it was not the plaintiff's intention to work full time in the security industry when she commenced employment with the security company in April 2003, but that she took advantage of the opportunity to work the full time hours that were offered to her when there was a spread of shifts. It is an odd method to calculate loss of income by reference to a relatively short period of employment post-accident which presented an opportunity that the plaintiff was prepared to act on at that time. The assumption also ignores the plaintiff's clear preference for working in the retail sales industry. The assumption does not reconcile with the fact that the plaintiff was content to work for Rodney Clark Pty Ltd for between 17 and 25 hours per week when she considered that she had a capacity to work longer hours during that time.

[34] The plaintiff's calculation of past economic loss for the period from 1 January 2005 also overlooks the fact that the plaintiff is prepared to moderate her working hours or working patterns to accommodate the needs of the children, as she did for a time when her daughter returned to live in the household and the plaintiff postponed a concerted effort to find employment after ceasing to work for Rodney Clark Pty Ltd.

[35] The defendants contend that there is no past economic loss for the period from 1 January 2005 to the date of judgment as the plaintiff is capable of working full time and has earned more in the pre-trial period due to her employment with the security company than she had intended. Just as it is fallacious for the plaintiff to treat unexpected earnings as a benchmark for calculating loss of future earnings, it is fallacious for the defendants to use unexpected earnings to deprive the plaintiff of loss of earnings for a subsequent period, unless the failure of the plaintiff to work in the subsequent period was a consequence of receiving the unexpected earnings (which is not suggested by the evidence).

[36] It is completely artificial to calculate the past economic loss for the period of 1 January 2005 in accordance with the plaintiff's method. It overcompensates the plaintiff and ignores the fact that the plaintiff's work patterns pre-accident and post-accident were not settled and were affected by decisions that the plaintiff made that related to her family circumstances. What the plaintiff has to be compensated for in the period 1 January 2005 to the date of judgment is the extent to which delays in finding employment were the result of the care the plaintiff needs to exercise in finding a job that does not aggravate her back and neck injuries and that the plaintiff's awareness of her physical limitations may translate from time to time into her working slightly less hours than she may have otherwise elected to do. The assessment also needs to take into account the plaintiff's vulnerability on the open labour market as a result of her permanent incapacity.

[37] The period for assessment of past economic loss that commences on 1 January 2005 raises virtually identical considerations to the assessment of loss of future earning capacity. I propose to apply the same method of allowing an average loss of wages of $80 net per week (which takes into account the factors I have identified that must be accommodated in the calculation). I therefore assess the past economic loss for the period from 1 January 2005 to the date of judgment in the sum of $3,920 (49 weeks at $80 net per week).

[38] The total amount for past economic loss is $9,320. I calculate interest at 2.8% per annum on past economic loss for the first period to be $599 and for the second period to be $110, making a total of $709.

Past superannuation

[39] The plaintiff calculated past superannuation contributions at 9%, whereas the defendants calculated it at 6%. Calculation for the past period at 9% is closer to the mandatory rates applying throughout that period than the calculation suggested by the defendants. That makes a loss of past superannuation of $838.

Loss of future earning capacity

[40] The plaintiff's method for calculating loss of future earning capacity is to compare the net weekly earnings of occupations such as car park attendant or service station attendant recommended for the plaintiff by Ms Redman of $389 compared with a security officer earnings in the amount of $553. The plaintiff has calculated that her loss of net earnings is $164 per week, discounted on the 5% tables for 26 years (multiplier 769). The plaintiff then allowed a 10% discount for vicissitudes. The resultant figure is $113,504.

[41] The defendants' submission was that the plaintiff has not established any ongoing fixed loss per week and rely on the plaintiff's concession that she is capable of working full time in retail sales. The defendants point to the award wage for full time employment in retail of $543.40 gross per week which is about $450 net per week. The defendants refer to the global assessment for loss of future earning capacity undertaken in *Walker* of $40,000 and *Campbell* of $30,000. The defendants contend for a global assessment up to $25,000.

[42] The findings that I have made about the plaintiff's permanent impairment and its impact on her physical capacity to work justify more than a nominal global sum for loss of future earning capacity. The matters that I identified when considering the

plaintiff's past economic loss for the period 1 January 2005 to the date of judgment do not support the precise mathematical approach that the plaintiff has taken to the calculation of her loss of future earning capacity. Over the balance of the plaintiff's working life, if she wishes to, she is likely to be employed full time or mostly full time in her preferred occupation in retail sales, but subject to her associated vulnerabilities. I consider these factors are best quantified by selecting an average net loss per week over the plaintiff's working life. In selecting the figure of $80 net per week, I have had regard to the casual retail sales assistant gross hourly rate of $17.59. I consider that long term the plaintiff's average loss of future earning capacity is best assessed in terms of a few hours loss of work per week. The average figure of $80 net per week allows for vicissitudes. I therefore assess loss of future earning capacity at $61,520 (based on the multiplier of 769). It follows that future superannuation at 9% should be assessed at $5,537.

Care

[43] Section 55D of the *Motor Accident Insurance Act* 1994 ("the Act") is relevant. To the extent that the plaintiff is seeking to recover an award for gratuitous services in the nature of the assistance provided by Mr Coleman in looking after her yard, the defendants relied on s 55D(2) of the Act which precludes damages being awarded for gratuitous services that are of the same kind that were being provided for the injured person before the date of the accident.

[44] The parties agreed that the appropriate rate to apply for gratuitous services is $18.10 per hour. I consider that the plaintiff should be allowed most of the assistance provided by Mr Coleman from the date of the accident until the plaintiff undertook full time work with the security company in October 2003. I consider that most of Mr Coleman's assistance thereafter whilst the plaintiff was working with the security company was required because of the plaintiff's full time work commitment. To the extent that Mr Coleman provided services that were due to the plaintiff's physical restrictions sustained in the accident, it is difficult to characterise them as being different to those services provided by Mr Coleman pre-accident. I accept the plaintiff's estimate of the number of hours per week that Mr Coleman provided assistance in this period between the date of the accident and October 2003. That 6 hours per week should be reduced to 5 hours per week to allow for the extent of the services that were being provided by Mr Coleman pre-accident. There should be no assessment for care after 2003. That makes $8,612 for damages for past care for the period from the date of the accident to October 2003. Interest on that sum at 2.8% per annum for 3.97 years is $957.

[45] I accept the defendants' submission that as Mr Coleman's evidence was that his current assistance is limited to tasks done pre-accident, no allowance for future care is warranted.

Special damages

[46] Special damages were agreed at $2,288.70. It was contended by the defendants that most of the special damages had been incurred by the Health Insurance Commission and that no interest should accrue on the special damages. That is reflected by the small amount of $70 claimed by the plaintiff as interest and it is not necessary to allow for any interest.

Future expenses

[47] The plaintiff claims the sum of $4,000 for the program at the Royal North Shore Pain Clinic recommended by Dr Danesi. As indicated above, I am not satisfied that it is an expense that would or should be incurred by the plaintiff in the future. The plaintiff adopted the defendants' approach of allowing for future requirements for Panadol. The plaintiff had estimated that she used 2 tablets once or twice per week. The allowance for future expenditure on Panadol of $500 is reasonable.

Conclusion

[48] My findings in relation to quantum can be summarised as follows:

Pain, suffering and loss of amenities	$35,000.00
Interest (2% pa on $17,500 for 3.97 years)	1,389.00
Past economic loss	9,320.00
Interest on past economic loss	709.00
Past superannuation	838.00
Loss of future earning capacity	61,520.00
Future superannuation	5,537.00
Past care and assistance	8,612.00
Interest on past care	957.00
Special damages	2,288.70
Future special damages	500.00
TOTAL	**$126,670.70**