Date: 20010108
Docket: S. H. No. 120930

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

LEONARD MACDONNELL

PLAINTIFF

- and -

MARK CAMPBELL & UAP INC.

DEFENDANT

D E C I S I O N

HEARD BEFORE:	The Honourable Justice M. Jill Hamilton, Supreme Court of Nova Scotia, on October 4th, 5th, 6th, 10th, 11th & 12th, 2000, at Halifax, Nova Scotia
DECISION:	January 8th, 2001
COUNSEL:	Mr. Michael LeBlanc & Mr. Sean Layden, for the Plaintiff Mr. Peter Bryson & Mr. Aidan Meade, for the Defendants

Hamilton, J.:

[1] Mr. MacDonnell, age 34, is claiming damages for injuries he claims he suffered as a result of a mild rear end collision on December 28th, 1993. The defendants admitted liability for the accident.

[2] Mr. MacDonnell was stopped at a red light, in a line of traffic, driving a 1984 Ford Bronco owned by his mother, headed east on Almon Street near its intersection with Robie Street. Mr. Campbell hit the back of the Bronco while driving a 1990 Chevrolet pick-up owned by UAP Inc. The car being driven by Mr. MacDonnell did not hit the car in front of it after it was hit by the car Mr. Campbell was driving.

[3] The police report of the accident indicates Mr. Campbell told Mr. MacDonnell, following the accident, that he couldn't stop because of the ice.

[4] The amount of damage caused to the Bronco is disputed, but the range is between the $1,601.21 that was paid to Mr. MacDonnell's mother, Joan Kerfort, and Bones Autobody and the $2,005.59 estimated by Wood Motors Ford Limited. The plaintiff has not satisfied me that the damage to the Bronco exceeded the $1,601.21 set out the Accident Appraisal Services Report prepared in January, 1994 and therefore I dismiss the plaintiff's claim for special damages in the amount of $486.20. Looking at Exhibit 4,

the original photograph of the back of the damaged Bronco, the damage to the Bronco appears minimal. I am also not satisfied the driver's seat in the Bronco was broken in the accident. The broken seat was referred to by Dr. Colwell and Dr. Mishra, but this was information provided to them by Mr. MacDonnell, and I am not satisfied by the evidence of Mr. MacDonnell or the estimates, that the driver's seat was broken in the accident.

[5] In addition to these special damages, Mr. MacDonnell is claiming substantial damages in the total amount of $658,158.56 plus taxed costs. He is claiming $65,000.00 as general damages for pain and suffering and loss of quality of life; damages in the amount of $205,130.00 for past loss of income and damages in the amount of $368,028.56, for loss of future earning capacity on the basis he has not been able to and cannot now work as a machinist, as a result of the injuries he suffered in the accident; and damages in the amount of $10,000.00 each for future care costs and loss of valuable services. Mr. MacDonnell alleges that with the Community College course he completed in the school year prior to the accident and with his work at the time of the accident, he had begun the apprenticeship that would have made him a journeyman machinist by October 1st, 1997.

[6] Mr. MacDonnell claims the accident caused him headaches and neck pain, which resolved within three to four months after the accident, and soft tissue and bony injury to his back, which still cause him relatively constant back pain and functional restrictions, so that he cannot work as a machinist or at a job that would pay him as much as that trade would. He agrees he would be able to do many types of jobs that require less manual effort, such as working in a bar or lounge as he did for 4 of the 6 years since the accident, but he claims he has not been able to obtain such a job working for someone else. Mr. MacDonnell's position is that he cannot now work as a machinist because he cannot bend or lift, or push or pull overhead, that he has constant pressure in his back, occasional spasms in his back, pain from his thigh to his ankle and tingling, that he does not sleep well at night, that his feet swell, that his backbones rub together and that pain shoots off to the sides of his spine and towards his buttocks. He also indicates he tires easily and finds it difficult to stand or sit for a long period of time and that some of his symptoms are getting worse.

[7] When Mr. MacDonnell first came to the witness stand to give evidence, he walked with difficulty, groaned three times as he came forward, and gave his name to the clerk slowly and with pain in his voice. Throughout the trial

when he was giving evidence, Mr. MacDonnell often groaned as he was sitting down or standing up and from time to time he stood while giving his evidence. He indicated he needed to stand to stretch his back to become more comfortable. After standing for a few minutes he would sit down again. I am not satisfied Mr. MacDonnell suffers the amount of discomfort suggested by his movements and groans during the trial.

[8] The defendants' position is that, if anything, the accident only caused Mr. MacDonnell mild head, neck and back discomfort for a short period of time and minimal, if any, wage loss. The defendants' position is that Mr. MacDonnell did not suffer any bony injury in the accident at the T-10 vertebrae and that he only suffered minimal soft tissue injury and no permanent or partial disability and no diminution in earning capacity. The defendants argue strenuously that Mr. MacDonnell's evidence with respect to the extent of his injury is fabricated and that he has no credibility.

ISSUES

1. What, if any, injuries did Mr. MacDonnell suffer as a result of the accident?
2. What is the appropriate amount of damages for those injuries?

LAW

[9] The onus of proof on a balance of probabilities is on Mr. MacDonnell. He must prove he suffered injuries as a result of the accident and what those injuries were. The general test for causation is the "but for" test, which requires Mr. MacDonnell to show that the injury would not have occurred but for the negligence of the defendants. Mr. MacDonnell is to be compensated so as to place him in the position he would have been in absent the defendants' negligence. The defendants are liable for any injury caused or contributed to by their admitted negligence.

FACTS

[10] In 1984 Mr. MacDonnell graduated from Grade 12. In 1985 he became a member of the Iron Workers' Union and worked at that trade until he injured his knee on a job in the summer of 1988. Following that injury he received Workers' Compensation for a number of years. Mrs. MacDonnell's evidence suggests he received Workers' Compensation until 1993. Dr.

Gross' report suggests Mr. MacDonnell received Workers' Compensation until 1992. Mr. MacDonnell's evidence confirms he did not work in 1988, 1989, 1990 or 1991. He indicated he did not work during this time because he was researching careers and he felt that if he couldn't work in the area he was trained in and chose to work in, he wouldn't work at all.

[11] The medical evidence before me with respect to Mr. MacDonnell's knee injury, satisfies me that no doctor was able to confirm what was causing the knee difficulty Mr. MacDonnell indicated he suffered as a result of that accident. He did receive Workers' Compensation with respect to that injury for many years, and eventually retraining, so Mr. MacDonnell satisfied those administering the Workers' Compensation program that he did suffer a knee injury while working.

[12] The notes of Mr. MacDonnell's doctor in 1990 indicate he requisitioned an x-ray of Mr. MacDonnell's back. Mr. MacDonnell gave evidence he did not recall why that x-ray was ordered or whether the x-ray was taken or what any results were. The doctor was not called. The x-ray was not produced.

[13] In September 1992, while he was receiving Workers' Compensation, Mr. MacDonnell was in a car accident which he indicates was minor and which he indicates did not cause him any injuries. Following that accident he went

immediately to the hospital. The hospital records show that an x-ray was done of Mr. MacDonnell's back at that time and that Mr. MacDonnell was complaining of a strained neck and back and was prescribed a soft neck collar. Mr. MacDonnell indicated he made no claim for injuries arising from that accident. This is to be compared to the fact that Mr. MacDonnell did not go to the hospital after the accident at issue in this case, until the day following the accident, about 24 hours later. The hospital records of this visit indicate Mr. MacDonnell was suffering back discomfort and that Mr. MacDonnell was frustrated that no x-rays were done. No neck collar was ordered.

[14] Through retraining initiatives available through Workers' Compensation, Mr. MacDonnell attended Community College from September 1992 to June 1993, to become trained as a machinist. In October 1993 he obtained a job at F. E. Veinot & Sons Machine and Welding Co. Ltd., which full time job he held as of the date of the accident. I find that Mr. MacDonnell was hired by Greg Veinot because he was thought to be a member of a union who could work fabricating and erecting steel at the Cole Harbour School. I accept Mr. Veinot's evidence that Mr. MacDonnell did no machining while he worked for Veinot's and that Mr. MacDonnell was not in the machine

shop five minutes during the whole time he was employed and that Mr. MacDonnell was not an apprentice machinist while working there. I am satisfied Mr. MacDonnell did sometimes work in the fabricating shop, creating the steel components required for the Cole Harbour School project, and that he erected steel at the Cole Harbour School site other times.

[15] In accepting Mr. Veinot's evidence, I am rejecting the contrary evidence of Mr. MacDonnell that he was hired by Greg Veinot as an apprentice machinist, that he spent 40% of his time in the machine shop, 20% of his time off site, and 30% to 40% of his time welding. Mr. MacDonnell's time sheets for the time he was working at Veinot's indicate that 226.5 hours were spent by Mr. MacDonnell working on the Cole Harbour School project, which job involved fabricating and erecting steel, out of a total of 339 hours worked by Mr. MacDonnell.

[16] Mr. MacDonnell has not satisfied me that the work he did on the Cole Harbour School project, either in the fabricating shop or at the site, was machinist's or millwright's work as opposed to the work of a steel erector, his first trade. Mr. MacDonnell's evidence that he was working as a machinist or a millwright, which he categorizes as a single trade even though they are separate trades according to the regulations to the *Apprenticeship*

and Trades Qualifications Act, R.S.N.S. 1989, c. 17, and was apprenticing to become one at the time of the accident, is brought into question by the hospital admission sheet completed at the time of his visit to the hospital the day following the accident, where it indicates he was a welder. Mr. MacDonnell would have been the only source of this information. Dr. Gross' report also indicates Mr. MacDonnell's job was that of a welder and fitter. This information would also have come from Mr. MacDonnell. Mr. MacDonnell also filled out his T-47 benefits claim indicating he was a mechanical welder and fitter, not an apprentice machinist or millwright.

[17] Considering all of the evidence I am not satisfied Mr. MacDonnell would have become a journeyman machinist by October 1, 1997 or by any other time. His Modular Apprentice Program Record Book, which was never presented by Mr. MacDonnell to Greg Veinot or to Atlantic Hardchrome, the place he worked for a short period of time while in school has no entries from a work, as opposed to a school, environment and therefore supports this conclusion.

[18] The accident occurred December 28th, 1993 at about 1:45 p.m. At approximately 12:20 p.m. on December 29th, 1993, Mr. MacDonnell attended at the hospital, the hospital form indicating he took himself in,

although Mr. MacDonnell disputes this. I am satisfied he met with his lawyer concerning the accident, sometime between his hospital visit and his first appointment with his doctor on January 7th, 1994. Mr. MacDonnell indicated that he did not need to make an appointment to see his doctor at this time because his doctor was available on a walk-in basis. Between January 11th, 1994 and March 2nd, 1994, Mr. MacDonnell attended physiotherapy eleven times. On January 19th, 1994, Mr. MacDonnell had an x-ray taken of his back.

[19] Mr. MacDonnell decided on his own not to return to work at Veinot's following the accident. He says his sore neck and back that he suffered in the accident prevented him from doing so. He never tried to return to work at Veinot's and he informed his employer at some point in early January 1994, that he would not be returning. His evidence as to how he informed his employer of this differed at trial and on discovery, and it is not clear if this contact was made by phone, in person or both, but it is clear he did not tell his employer he was not returning to work until sometime after he was scheduled to return to work.

[20] In March 1994, Mr. MacDonnell bought an interest in the lounge known as the Bullpen Bar, along with Carl Norton and David Kline and he worked at

that lounge 6 days a week, fifteen hours per day, in a supervisory capacity, from March 1994 until February 1996, when he sold the failing business to Bev Wilson for a certain amount of money plus an assumption of debt. It came out for the first time at trial that after he sold this business Mr. MacDonnell worked for the new owners of the Bullpen Bar for two or three months after they bought it and he was paid in cash "under the table". He did not declare on his income tax return his income from the Bullpen Bar after he sold it.

[21] Mr. MacDonnell's declared income from working at the Bullpen Bar was $23,408.00 in 1994 and $26,000.00 approximately in 1995, the highest amount of annual income he has earned to date.

[22] In the month following his sale of the Bullpen Bar, Mr. MacDonnell bought a better house for $170,000.00 and leased a new truck. His monthly payments for the mortgage on his new home and the lease payments on the truck were over $2,000.00. Mrs. MacDonnell's reported income in 1996 was $14,654.00. In addition, at about the same time, his lease for his second truck was renewed requiring a payment of approximately $300.00 per month and his payments on his Scotia personal loan were approximately $450.00 per month. His income as reported for income tax purposes for 1996 is zero.

Mr. MacDonnell explains his ability to make these monthly payments by indicating he won $27,000.00 at the Casino and dipped into his savings. No documentary evidence was presented with respect to his alleged winnings at the Casino or the amount of his savings and he was not able to estimate the amount of his savings or their source when asked.

[23] Mr. MacDonnell did not work from May 1996 until March 1998 when he bought a pool hall known as the Corner Pocket from Ernest Richie for $45,000.00, some of which has not yet been paid. He worked there from March 1998 to January 2000. This business also did poorly and he sold the license in January or March 2000 for $10,000.00 to Peter Adams and James Goyetch and he still has a debt outstanding relating to this failed business in the range of $30,000.00. Mr. MacDonnell worked in a supervisory capacity at this pool hall also, six days a week and fifteen hours per day.

[24] Mr. MacDonnell has not worked since. He says he has tried unsuccessfully to get jobs in a bartending capacity, both before he purchased the Corner Pocket and after.

[25] I will first deal with Mr. MacDonnell's credibility, which I found lacking. I find he overacted while giving evidence and completely exaggerated his injuries from the accident. In several respects his evidence on discovery

differed from his evidence at trial. He tried to explain some of these inconsistencies by saying he was just elaborating at trial, but his explanations were not convincing. He admits he did not declare all of his income on his tax returns. The source and amount of his annual income and his savings is shrouded in mystery. His evidence is that his unreported income doesn't amount to a significant amount on a recurring basis and if this is accurate, he misled creditors when applying for credit by stating his income to be significantly higher than the documentary evidence suggests, ranging from $42,500.00 per year in March 1996, at a time he was unemployed, to $60,000.00 per year in April, 1998, and $60,000.00 per year in April 2000, again while he was unemployed. I do not accept Mr. MacDonnell's evidence that the income figures on the loan applications were supplied, in effect, by the creditors. I found Mr. MacDonnell's evidence to be replete with inconsistencies and contradictions.

[26] As Mr. Greg Veinot was leaving the court room, after giving evidence that was not supportive of Mr. MacDonnell's position, Mr. MacDonnell yelled out to him, "See you around Greg", the tone of which indicated, and I believe was taken by Mr. Veinot to be, a threat. While giving his evidence Mr. MacDonnell could not restrict himself to providing the facts when

answering a question put to him, but instead tried to determine the purpose of the question and provide an answer supporting his position even if the question did not call for such a response. Mr. MacDonnell tried to make his answers fit his claim. An example of this is when he said at the end of several of his answers the equivalent of, “I believe that’s my answer,”suggesting that if something came up later he wanted to be able to change his answer. Mr. MacDonnell was combative with counsel, especially during cross-examination. One example of Mr. MacDonnell becoming very belligerent during cross-examination was when he was asked why he saw his lawyer before his doctor following the accident. He initially denied that he ever sought permanent disability status from Workers’ Compensation as a result of his knee injury, but eventually he was forced on cross-examination to agree that he did seek this unsuccessfully.

[27] The fact, however, that someone’s source and amount of income is unclear, that they fail to report all of their income on their tax return and misstate their income when applying for credit does not necessarily mean they lack credibility with respect to the extent of the injuries they suffered as a result of someone’s negligence. I tried to consider Mr. MacDonald’s credibility carefully so as not to overreact to his financial misrepresentations, and to the

unfavourable manner in which he gave his evidence. By unfavourable manner I mean his belligerence and guardedness, not the inconsistencies and contradictions in his evidence. I did this especially given that Dr. Mishra and to a lesser extent Dr. Colwell indicated that they felt Mr. MacDonnell had suffered ongoing injuries as a result of his accident. Both Dr. Mishra and Dr. Colwell indicated that they take their patients at their word and that they did this with respect to Mr. MacDonnell. That may be their job but it is not mine. This reconsideration has not changed my assessment that Mr. MacDonnell generally lacks credibility.

[28] I then considered Mr. MacDonnell's claim for general damages in the amount of $65,000.00. In connection with this I considered whether the accident caused Mr. MacDonnell any bony injury to his back, specifically at his T-10 vertebrae.

[29] I am satisfied Mr. MacDonnell did not suffer any bony injury to his T-10 vertebrae as a result of the accident. In coming to this conclusion I considered Dr. Mishra's evidence that on examination on January 14th, 1994, Mr. MacDonnell was tender over the thoracic spine and that the x-ray of January 19th, 1994 showed a mild compression of the T-10 vertebrae that was noted to perhaps be related to a history of trauma, presumably referring

to the accident. Dr. Mishra did not see any swelling or bruising over the T-10 vertebrae during his examination, but notes it was quite some time from the time of the accident to the time he examined Mr. MacDonnell. Dr. Mishra also indicates that the hospital record of Mr. MacDonnell's examination on the day following the accident does not show any bruising and notes that it would have been noticeable by that time, which was approximately 24 hours after the accident. Dr. Mishra also pointed out there is no note of tenderness at that area of the back on the hospital record, but suggested this may be because the people in the hospital did not examine the correct part of the back. I do not accept that the correct part of Mr. MacDonnell's back was overlooked on examination in the hospital. It is obvious from the hospital report that Mr. MacDonnell made his views on the lack of a back x-ray well known to them, and I am sure if he felt they did not examine the portion of his back he felt had been injured he would have made that known to them as well and ensured they did examine it.

[30] In coming to my conclusion that Mr. MacDonnell did not suffer any bony injury to his back as a result of the accident, I also considered Dr. Gross' evidence in terms of the wedging in this area of Mr. MacDonnell's back that may relate to deformities of his lower thoracic spine and his conclusion that

Mr. MacDonnell did not suffer any bony injury to his thoracic spine as a result of the accident. I considered Dr. Gross' oral evidence that Scheuermann's Disease would usually have no impact on one's everyday life and that with this disease one is not more susceptible to injury and therefore not slower to recover from an injury, than other persons. I do not accept Mr. MacDonnell's evidence that Dr. Gross only saw him for five to seven minutes before writing his report, which time included the time necessary to explain and sign the consent. As Dr. Gross indicated in his evidence, I do not think it is reasonable that he could have made the handwritten notes he displayed during his testimony in that short period of time and get the information from Mr. MacDonnell that is contained in his report.

[31] I also considered Dr. Leighton's report of April 20th, 1994, noting that the bone scan did not show a fracture at T-10, but noted some anterior wedging at T-8, T-9 and T-10, more in keeping with Scheuermann's Disease rather than trauma. I have also considered that a fracture may not show up in a bone scan or an x-ray done after a certain period of time following an accident.

[32] I also considered Dr. Loane's report of March 19th, 1995 noting tenderness during examination around the T-10 vertebrae to both punch percussion and light palpation and his note that Mr. MacDonnell seemed to have genuine back discomfort at T-10. He noted that the x-rays showed no evidence of abnormalities and he noted the wedging of the lower thoracic vertebrae. Dr. Loane concurred with the conclusion of his senior radiologist, Dr. MacMillan, that the wedging of the lower thoracic vertebrae was not consistent with trauma, but more likely with Scheuermann's Disease.

[33] I also considered Dr. Colwell's evidence on this point, namely: that he had some initial concern that there was a compression fracture, but that subsequent x-ray exams did not tend to confirm that impression. His conclusion was: "It is extremely doubtful that the accident actually caused a compression fracture of his (Mr. MacDonnell's) dorsal spine. The symptoms he describes are below that level." Dr. Colwell also concluded that there would not likely be any connection between an injury at vertebrae T-10 and the tingling sensation down Mr. MacDonnell's legs.

[34] In considering what amount should be awarded to Mr. MacDonnell as general damages, I also considered his evidence with respect to attending

physiotherapy at the QEII hospital on two occasions and attending a work hardening program.

[35] I am also not satisfied that Mr. MacDonnell attended at the QEII hospital for physiotherapy and that they lost their records of his treatment, nor do I accept that Mr. MacDonnell attended a work hardening program and that they too lost their records of his visits. The physiotherapy sessions I am referring to are those Mr. MacDonnell gave evidence he attended in late 1994 or early 1995, two or three times a week for two or three weeks and then again in either late 1996 or in May 1997.

[36] The plaintiff has not satisfied me that he is not able to be involved with sporting activities following the accident any less than he was able to participate in those activities before the accident. I do not accept his evidence with respect to his inability to skate, play hockey, play baseball, walk, play golf and engage in sexual activities and I note he continues to play billiards on a weekly basis, which involves leaning.

[37] Considering Mr. MacDonnell's lack of credibility, the unexplained back x-ray ordered for Mr. MacDonnell in October 1990 by Dr. Sharma; the delay in the time between the accident and his first doctor's appointment; the fact that he saw his lawyer before his doctor after the accident occurred; the very

limited number of times he saw his doctor, about ten times, between the date of the accident and the present time, six years; the fact that most of the appointments he had with his doctor followed requests made for reports from his doctor by his lawyer; the fact he has taken no medication since 1994, although he does have a TENS machine that he uses every second week according to his evidence and he indicated he does not like to take medication and Dr. Mishra confirmed his attitude is not to prescribe medication for pain except as a last resort; the hospital chart following his September 1992 accident noting he had neck and back strain as a result of that accident and wore a collar; the minimal damage to the Bronco he was driving at the time of the accident; the medical evidence satisfying me that Mr. MacDonnell did not suffer a bony fracture at his T-10 vertebrae as a result of the accident; and the opinion of Dr. Mishra, and to a lesser extent Dr. Colwell, that Mr. MacDonnell suffered injury as a result of the accident, being largely based on their accepting Mr. MacDonnell's description of his symptoms, although I note they were accompanied by physical examinations; I am satisfied Mr. MacDonnell has not suffered any ongoing injury as a result of the accident.

[38] As indicated, I find Mr. MacDonnell overacted and completely exaggerated the injuries he suffered in the accident. While he is entitled to some amount for general damages for the soft tissue injury to his back and neck that caused him pain and headaches for a short period of time, I am satisfied his injury was a very mild injury and that at most he suffered two or three months discomfort from the injury following the accident, after which he suffered no pain or functional restriction. Based on the facts as I find them, including consideration of the physiotherapy he did receive in January, February and March 1994, I award Mr. MacDonnell general damages in the amount of $10,000.00.

[39] Before dealing with Mr. MacDonnell's claims for past lost income and loss of future earning capacity, I should indicate that I did not find Mr. Conrad's actuarial report to be of any help because the facts as I find them do not support a finding of any permanent disability, either partial or full, that would prevent Mr. MacDonnell from working at a job similar to the one he had at the time of the accident.

[40] I make this determination even after considering Dr. Mishra's evidence. Dr. Mishra's opinion is that Mr. MacDonnell cannot perform the lifting, bending, pushing and pulling functions that were necessary for him to do his

job as a millwright/machinist. The plaintiff has not satisfied me that he was working as a millwright/machinist at the time of the accident or that he would not be able to perform the functions of such a job if he was able to get one. At first it concerned me that my assessment of Mr. MacDonnell and Dr. Mishra's assessment are in conflict, given Dr. Mishra's sincerity in giving his evidence. I realize however, that Dr. Mishra's role and my role are different. Dr. Mishra may be justified in assuming his patient will be forthright in outlining his symptoms to him, since his patient is presumably coming to him as a treating physician to treat the underlying cause of the symptoms the patient describes. In such a situation it may be appropriate that the doctor accept the information provided by the patient at face value. That is not my function. It is not for me to assume the truth of Mr. MacDonnell's statements. It is for Mr. MacDonnell to prove the facts before me on a balance of probabilities and the disclosure and discovery required under our *Civil Procedure Rules,* and the cross-examination involved in a trial, are very effective in testing a litigant's credibility.

[41] In coming to my determination with respect to Mr. MacDonnell's present health after the accident, I also considered Dr. Colwell's evidence that his physical examinations of Mr. MacDonnell were practically normal, but that

he relied on what Mr. MacDonnell told him as to what Mr. MacDonnell could do and his evidence that his second examination of Mr. MacDonnell showed a marked improvement in Mr. MacDonnell from the time of his first examination, showing a full range of motion without discomfort. I also considered the evidence of Dr. Gross that Mr. MacDonnell can lift and flex and that it would not be better for him to look for a clerical job in his present physical state. I also noted his evidence that Mr. MacDonnell has no physical impairment to prevent lifting and if there is some pain in lifting that there are usually ways found to deal with this pain. The most important factor that Dr. Gross indicated he took into account in coming to this conclusion was his physical examination of Mr. MacDonnell indicating a full range of movement and good muscles.

[42] With respect to Mr. MacDonnell's claim for loss of past income, I am satisfied given the nature of the work Mr. MacDonnell was doing at the time of the accident, mainly fabricating and erecting steel for Veinot's, that he did lose the possibility of earning his income from that job for two weeks. There is no evidence he would have been fired or let go during that period of time following the accident. His wages at Veinot's were $12.00 per hour and he worked 40 hours per week. Accordingly I find that Mr. MacDonnell

is entitled to receive $960.00 which is less than the amount he was reimbursed by the Section B insurers at the amount of $140.00 per week for 8 weeks.

[43] With respect to Mr. MacDonnell's claim for damages for loss of future earning capacity, cost of future care and loss of valuable services, as is probably apparent from my previous findings, I am not satisfied Mr. MacDonnell presently suffers any pain or ongoing functional restriction as a result of the accident and accordingly I dismiss his claims under these headings. Neither his evidence, nor that of his wife, satisfied me that Mr. MacDonnell is unable to do anything after the accident.

[44] Prejudgment interest will be at 2.5% for a period of 4 years.

[45] With respect to costs, if the parties cannot agree on the costs, they can submit briefs to me by January 31, 2001.

J.