NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 1793

JOHN L. FONTANA

VERSUS

PATRICIA W. NEWMAN AND
SHELTER MUTUAL INSURANCE COMPANY

Judgment Rendered: MAY 22 2012

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APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 2009-10179, DIVISION "B"

THE HONORABLE AUGUST J. HAND, JUDGE

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDONALD, J.

In this personal injury suit resulting from an automobile accident, the plaintiff challenges a jury's awards for past and future medical expenses and past pain and suffering as inadequate. He also challenges the jury's failure to award him any damages for future pain and suffering and for past and future loss of enjoyment of life. For the following reasons, we amend the trial court's judgment in part and affirm as amended.

FACTUAL AND PROCEDURAL BACKGROUND

At dusk on November 15, 2008, plaintiff John L. Fontana was stopped in his Ford Taurus at an off ramp at the intersection of U.S. Highway 190 and Louisiana Highway 22 in St. Tammany Parish. Defendant Patricia W. Newman, who was exiting the interstate onto the same off ramp in her Toyota Highlander, struck Mr. Fontana's vehicle from the rear. Ms. Newman admitted she did not see Mr. Fontana's vehicle; instead, she was "tracking" the brake lights of the car in front of him. Both vehicles were totaled. Two days following the accident, Dr. Bart Sellers, Mr. Fontana's longtime chiropractor, diagnosed him with an acute severe cervical sprain/strain, cervical cranial syndrome (headaches), thoracic sprain/strain, lumbar strain, and lumbosacral neuritis. Over two years after the accident, Mr. Fontana continued to receive regular chiropractic treatment, and at the time of trial, three medical professionals opined that his pain condition had become chronic.

Mr. Fontana filed the instant suit against Ms. Newman and Shelter Mutual Insurance Company, her automobile insurer, seeking damages for physical injuries; mental injuries, including pain and suffering, mental anguish, interference with his daily activities, and loss of enjoyment of life; loss of earning capacity; and past and present medical expenses.[1] He later filed a motion for partial summary judgment

[1] In his first petition, Mr. Fontana sought certain enumerated damages. He later amended his petition to list additional itemized damages.

on the issue of liability. After a hearing, the trial court signed a judgment granting the motion and finding Ms. Newman and Shelter liable to Mr. Fontana for the accident.

In March 2011, the case was tried before a jury on the issue of damages. The jury concluded Mr. Fontana suffered injury as a result of the accident and awarded him the following damages:

Past Medical Specials	$12,110.67
Future Medical Specials	$ 5,200.00
Past Economic Loss	$ - 0 -
Future Economic Loss	$ - 0 -
Past Pain and Suffering and Mental Anguish	$ 3,000.00
Future Pain and Suffering and Mental Anguish	$ - 0 -
Loss of Enjoyment of Life	$ - 0 -
Total	$20,310.67

On April 20, 2011, the trial court signed a judgment awarding Mr. Fontana $20,310.67, plus court costs and legal interest. Mr. Fontana devolutively appeals from the judgment contending the jury erred by awarding him: (1) only $12,110.67 for past medical expenses when the actual medical expenses proved without dispute at trial were $29,127.84; (2) only $5,200 for future medical expenses; (3) only $3,000.00 for past pain and suffering and no damages for future pain and suffering; and (4) no damages for past and future loss of enjoyment of life.[2]

MR. FONTANA'S PERSONAL AND MEDICAL HISTORY

Before addressing his assignments of error, we summarize Mr. Fontana's personal and medical history as it is relevant to our review of the jury's verdict. At the time of trial, Mr. Fontana was a 47-year-old divorced father of two children and worked as a registered nurse in the St. Tammany Parish Hospital recovery room. Mr. Fontana testified that he was raised in a family of seven boys who played sports and had been very active and healthy his entire life. As an adult, Mr. Fontana exercised daily, ate healthily, enjoyed being outdoors, engaged in

[2] Mr. Fontana did not appeal the jury's failure to award him past and future economic losses.

mountain climbing and jogging, and routinely underwent chiropractic care for ongoing health issues, such as pulled muscles and strains, "in order to stay healthy." In fact, the record demonstrates Mr. Fontana has undergone chiropractic care since the early 1980s for numerous ailments, and as of 1994, his complaints included neck, shoulder, elbow, back, ankle, and radiating leg pain, and vertigo. Specifically, chiropractor Dr. Bart Sellers' records, introduced at trial, indicate Mr. Fontana received regular and continuous chiropractic treatment beginning in 1994 for complaints of stiffness or pain in his neck, shoulder, and back and that his regular chiropractic treatment continued from 1995 through 2000. Dr. Sellers' records also indicate Mr. Fontana received regular chiropractic treatment in 2003 through 2008 for several pains, including neck, shoulder, arm, upper and lower back, and sciatic problems. And, as of June 2008, a few months before the November 2008 accident herein, Mr. Fontana presented to Dr. Sellers with complaints of neck pain.[3]

In addition to seeing Dr. Sellers, Mr. Fontana also treated with chiropractor Dr. Michael Cavanaugh in 2005 for neck pain, "whole back" pain, and headaches. Further, beginning in August 2007 and continuing through August 2008, chiropractor Dr. Sheila Cavanaugh treated Mr. Fontana for neck, back, and left arm pain. In August of 2007, Mr. Fontana reported that his pain interfered with his daily activities and affected him for the majority of the day. And, as of August 2008, again only a few months before the November 2008 accident herein, Mr. Fontana presented to Dr. Sheila Cavanaugh with neck and low back problems.

As earlier stated, two days following the accident, on November 17, 2008, Dr. Sellers diagnosed Mr. Fontana with multiple sprains, cervical cranial syndrome

[3] In brief, the defendants claim Mr. Fontana saw Dr. Sellers five times within the two weeks immediately before the accident and refer to Dr. Sellers' report. This exhibit is not in the appellate record.

(headaches), and lumbosacral neuritis. Dr. Sellers testified that, at this visit, Mr. Fontana had new injuries for which he had not previously treated him, including neck and back sprains, as opposed to mere pain; buttocks pain; "tightness" in his back; and lumbosacral neuritis. Between the accident and the trial, a period exceeding two years, Dr. Sellers had seen Mr. Fontana approximately sixty times. Dr. Sellers testified that Mr. Fontana continued to have hip, back, neck, cervical, and thoracic pain as well as tightness, tenderness, and swelling. He noted that Mr. Fontana's primary complaint was of buttocks, leg, and lower back pain and that Mr. Fontana's buttocks pain had worsened, was not responding to treatment, and had become chronic. He opined that Mr. Fontana's prognosis was poor and that he was "going to have pain for a long time."

Dr. Sheila Cavanaugh, who also treated Mr. Fontana after the accident, agreed with Dr. Sellers that the accident caused Mr. Fontana new injuries for which she had not previously treated him, including sprains, hip pain, and "traveling" pain radiating through his hip. As of his last visit with her shortly before the trial, Dr. Cavanaugh noted Mr. Fontana's continued complaints of buttocks, sacrum, right hip, right leg, and neck pain. She also testified that Mr. Fontana's old and new injuries were now chronic, that he was not responding to chiropractic adjustment any longer, and that he needed another form of treatment. Both chiropractors also testified that Mr. Fontana's chronic pain would have a negative impact on his work performance as a recovery room nurse because his job required significant standing, moving, lifting, and bending.

Dr. John Logan, an orthopedic surgeon, saw Mr. Fontana for the first time on September 17, 2009, approximately ten months after the accident. At that time, Mr. Fontana presented with right buttocks pain that radiated to his lower back. Mr. Fontana told Dr. Logan that his right foot was on the brake when Ms. Newman rear-ended his vehicle and that his right buttocks pain began after the accident.

According to Dr. Logan, Mr. Fontana's MRI and x-rays proved "essentially normal;" however, the fact that his right foot was on the brake at the time of the collision suggested to Dr. Logan, from an orthopedic standpoint, that the impact could have transmitted a force through Mr. Fontana's pelvis or back consistent with his symptomatology. Dr. Logan determined Mr. Fontana had probable sacroiliac joint arthropathy, with the potential for facet arthropathy as well, and recommended physical therapy. Although physical therapy over the next few months provided Mr. Fontana some relief, he continued to have right lower back and buttocks pain, and Dr. Logan subsequently gave him injections for pain in his sacroiliac and facet joints. In his deposition, Dr. Logan testified that Mr. Fontana's case was a "chronic pain case," that he was not a suitable candidate for operative treatment, and that it was "certainly within reason" to assume that Mr. Fontana's condition was not going to change much if it had not changed in the two years since the accident.

Mr. Fontana testified at trial that, before the accident, his various aches and pains responded to chiropractic treatment. He admitted that many of his post-accident injuries had resolved but that he has continued to have constant problems with right buttocks pain and chronic sleep problems. He stated he cannot sit still, cannot stand, can no longer engage in cardiovascular exercise, has gained weight, has developed heart disease requiring surgery, has begun drinking more, and has seen a psychiatrist for depression.

Laurie Condon, Mr. Fontana's former co-worker also testified at trial. She stated that she worked as a registered nurse with Mr. Fontana in the St. Tammany Parish Hospital recovery room both before and after the accident. She noted that, after the accident, Mr. Fontana worked in pain, complained that he could not "do what he was normally doing," and needed assistance getting patients on to and off of stretchers and into beds. Unlike other nurses who stood while charting, Ms.

Condon stated that Mr. Fontana chose to sit while charting patient records. Ms. Condon also stated that Mr. Fontana's "outgoing" personality had changed since the accident, that he kept to himself and was quieter, and that he had told her he was depressed.

With this background, we now address Mr. Fontana's claims that that the jury erred by awarding him inadequate damages.

SPECIAL DAMAGES

In his first assignment of error, Mr. Fontana claims the jury erred in awarding him only $12,110.67 for past medical expenses when he proved at trial that his past medical expenses exceeded $29,000.00. He also claims the jury's $5,200.00 future medical expenses award is too low given the undisputed evidence that his condition is chronic.

A tort victim may ordinarily recover reasonable medical expenses, past and future, that he incurs as a result of an injury. See **Menard v. Lafayette Insurance Company**, 2009-1869 (La. 3/16/10), 31 So.3d 996, 1006. And, when a defendant's tortious conduct aggravates a preexisting condition, the defendant must compensate the victim for the full extent of the aggravation. **Lasha v. Olin Corporation**, 625 So.2d 1002, 1006 (La. 1993); **Parker v. City of New Roads**, 2010-1388 (La. App. 1 Cir. 2/11/11), 2011 WL 846138 *2 (unpublished). However, with regard to new and preexisting injuries, a plaintiff must prove the existence of the injuries and a causal connection between the injuries and the accident. See **Guillory v. Lee**, 09-0075 (La. 6/26/09), 16 So.3d 1104, 1124; **Moore v. Safeway, Inc.**, 95-1552 (La. App. 1 Cir. 11/22/96), 700 So.2d 831, 859, writs denied, 97-2921, 97-3000 (La. 2/6/98), 709 So.2d 735, 744. The test to determine if that burden has been met is whether the plaintiff proved through medical testimony that it is more probable than not that the injuries, or aggravation of preexisting injuries, were caused by the accident. See **Hurts v. Woodis**, 95-

2166 (La. App. 1 Cir. 6/28/96), 676 So.2d 1166, 1176; **Parker v. City of New Roads**, 2011 WL 846138 *2. Much discretion is left to the jury in its assessment of quantum - both special and general damages. La. C.C. art. 2324.1; **Menard**, 31 So.3d at 1006-1007. An appellate court, in reviewing a jury's factual conclusions regarding special damages, must satisfy a two-step process based on the record as a whole in order to reverse: there must be no reasonable factual basis for the jury's conclusion and the finding must be clearly wrong. **Guillory v. Insurance Company of North America**, 96-1084 (La. 4/8/97), 692 So.2d 1029, 1032. Notably, reasonable persons frequently disagree regarding the measure of damages in a particular case. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Menard**, 31 So.3d at 1007.

In the instant case, the jury awarded Mr. Fontana less than one-half of the past medical expenses he claimed. The expenses submitted into evidence included: Dr. Sellers' $8,159.00 bill for chiropractic treatment from November 17, 2008 through November 2010; Dr. Rachel Murphy's $150.00 bill for an office visit on November 18, 2008; Dr. Sheila Cavanaugh's $611.00 bill for chiropractic treatment from November 26, 2008 through December 30, 2008; Northshore MRI's $3,000.00 bill for MRIs of Mr. Fontana's cervical and lumbar spine on December 5, 2008; Dr. Michael Cavanaugh's $360.00 bill for chiropractic treatment from March through September 2009; Dr. Kevin Darr's $3,941.50 bill for services rendered on April 24, 2009; Premier MRI 4U's $600.00 bill for an MRI on September 15, 2009; Dr. Logan's $6,083.00 bill for treatment from September 17, 2009 through January 25, 2010 and his $3,574.00 bill for treatment on December 2, 2009; Dr. Lynn Aurich's $400.00 bill for a psychological evaluation on December 21, 2009 and her $185.00 bill for an undated psychotherapy session; Dr. Charles April's $1,754.34 bill for neuroradiological

imaging on January 13, 2010; and Dr. Greg Zeldon's $310.00 bill for an evaluation on February 8, 2010. Notably, Mr. Fontana's counsel introduced the above referenced expenses into evidence at the trial, but the transcript does not indicate that their causal relation to the accident was specifically explained to the jury.

Although it is not readily discernible how the jury arrived at the $12,110.67 figure awarded to Mr. Fontana for past medical expenses, the award suggests the jury did not believe that all of Mr. Fontana's post-accident treatment was causally connected to the accident. Accord **Kaiser v. Hardin**, 2006-2092 (La. 4/11/07), 953 So.2d 802, 810. This finding is not clearly wrong, as the record establishes Mr. Fontana had a long history as a chiropractic patient and, only a few months before the accident herein, had seen both Drs. Sellers and Cavanaugh for neck and/or low back problems. The jury could have reasonably believed that Mr. Fontana would have undergone treatment for neck and back pain whether or not he was involved in an accident. The $12,110.67 past medical expenses award is consistent with a finding that Mr. Fontana suffered some physical problems from the accident but was not entitled to recover all of his requested expenses. See **Id.**

The jury awarded Mr. Fontana $5,200.00 for future medical expenses. To recover such expenses, a plaintiff must establish that future medical expenses will more probably than not be medically necessary. **Menard**, 31 So.3d at 1006. A plaintiff shows this probability with supporting medical testimony and estimations of the probable cost of the expenses. **Id.** The medical testimony from Drs. Sellers, Cavanaugh, and Logan establishes that Mr. Fontana's pain condition has become chronic; this finding could lead to the implied conclusion that Mr. Fontana will need future medical care of some kind. And, although Dr. Cavanaugh testified that Mr. Fontana will need future treatment other than chiropractic, the record does not establish, by medical testimony or otherwise, what that specific treatment is or the probable costs of that treatment. Thus, as is evident from its verdict of $5,200.00,

the jury made a factual finding that, at the time of trial, Mr. Fontana continued to suffer from injuries related to the accident and would require some type of medical attention for a period of time after trial. But, the jury reasonably determined that Mr. Fontana did not prove what type of care would be "medically necessary" nor the estimated cost of this treatment beyond its award of $5,200.00. Under these circumstances, we cannot say the jury was clearly wrong in limiting Mr. Fontana's future medical expense award to $5,200.00. We find no merit in this assignment of error.

GENERAL DAMAGES

In his second and third assignments of error, Mr. Fontana contends the jury erred by awarding him only $3,000.00 for past pain and suffering; no damages for future pain and suffering; and no damages for past and future loss of enjoyment of life. Pain and suffering, both physical and mental, refers to the pain, discomfort, inconvenience, anguish, and emotional trauma that accompanies an injury. **McGee v. A C and S, Inc.**, 05-1036 (La. 7/10/06), 933 So.2d 770, 775. The factors to be considered in assessing quantum of damages for pain and suffering are severity and duration. **Thibodeaux v. USAA Casualty Insurance Company**, 93-2238 (La. App. 1 Cir. 11/10/94), 647 So.2d 351, 357. In comparison, loss of enjoyment of life refers to detrimental alterations of a person's life or lifestyle or a person's inability to participate in the activities or pleasures of life he enjoyed prior to the injury. **McGee v. A C and S, Inc.**, 933 So.2d at 775. Separate awards for pain and suffering and loss of enjoyment of life are acceptable as such does not offend the existing concept of general damages. **Id.**; see also **Oden v. Gales**, 2006-0946 (La. App. 1 Cir. 3/23/07), 960 So.2d 114, 122.

When a jury determines a plaintiff is actually injured as a result of an accident, general damages should be awarded. See **Green v. K-Mart Corporation**, 2003-2495 (La. 5/25/04), 874 So.2d 838, 844; **Stewart v. Haley**,

2011-0584 (La. App. 1 Cir. 11/9/11), 2011 WL 5415175 *5 (unpublished). A trier of fact abuses its discretion in failing to award general damages when it finds a plaintiff has suffered injuries causally related to the accident that required medical attention. **Harris v. Delta Development Partnership**, 2007-2418 (La. App. 1 Cir. 8/21/08), 994 So.2d 69, 83-84; **Leighow v. Crump**, 2006-0642 (La. App. 1 Cir. 3/23/07), 960 So.2d 122, 129, writs denied, 2007-1195, 2007-1218 (La. 9/21/07), 964 So.2d 337, 341; **Stewart**, 2011 WL 5415175 *5.[4]

Pain and Suffering Damages

In the instant case, the jury awarded Mr. Fontana $12,110.67 in past medical expenses and only $3,000.00 in damages for past pain and suffering, representing damages for the approximate twenty-eight months between the accident and the trial. We find this to be an abuse of discretion in the pain and suffering damage award. As earlier noted, the jury's past medical expenses award suggests the jury did not believe that all of Mr. Fontana's treatment between the accident and the trial was causally connected to the accident. Likewise, the jury's past pain and suffering award also suggests the jury did not believe that all of the pain, discomfort, inconvenience, and anguish that accompanied Mr. Fontana's injury was causally connected to the accident. However, the $3,000.00 is too low in light of the past medical expenses of over twelve thousand dollars. Thus, we will adjust the award by raising it to the lowest amount reasonably within the jury's discretion to the amount of $15,000.00.

Additionally, in light of its award for future medical expenses, we reach the same conclusion with regard to the jury's failure to award Mr. Fontana future pain and suffering damages. Because the jury's future medical expense award indicates its implied finding that Mr. Fontana is still suffering from an injury that will, in

[4] Contrast **Wainwright v. Fontenot**, 2000-0492 (La. 10/17/00), 774 So.2d 70, wherein the Louisiana Supreme Court held that a jury does not abuse its discretion in awarding medical expenses but no general damages when the medical expenses were incurred only to determine whether injuries were in fact sustained.

fact, require future medical attention, we conclude it was an abuse of discretion for the jury to award no future pain and suffering damages. See **Green**, **Harris**, and **Leighow**. Thus, we will adjust the award to the extent of raising it to the lowest point that was reasonably within the jury's discretion. **See v. Entergy Corporation**, 2010-0065 (La. 6/4/10), 35 So.3d 1081 (per curiam); **Leighow**, 960 So.2d at 129.

Considering the particular facts and circumstances of this case, the jury's factual findings implicit in the future medical expense award, and the gamut of general damages awards for similar injuries, we find the appropriate award for future pain and suffering damages to be $7,500.00, the lowest amount reasonably within the jury's discretion and consistent with its future medical expenses award. Thus, we will amend the judgment accordingly.

Past and Future Loss of Enjoyment of Life Damages

As noted, loss of enjoyment of life is a compensable component of general damages. **McGee v. A C & S, Inc.**, 933 So.2d at 774; **Brossett v. Howard**, 2008-535 (La. App. 3 Cir. 12/10/08), 998 So.2d 916, 930, writ denied, 2009-0077 (La. 3/6/09), 3 So.3d 492. It involves the inherently speculative valuation of the quality of a person's life and cannot be definitively measured. **McGee v. A C & S, Inc.**, 933 So.2d at 774. These damages refer to the detrimental alterations of a person's ability to participate in the activities or pleasures of life that were formerly enjoyed prior to the injury. **Id.** at 773. Whether or not this element of general damages is recoverable, however, is a question that depends on the particular facts of the case, and is to be left to the discretion of the trier of fact to be determined on a case-by-case basis. **Id.** at 774-775.

The trial testimony in this case establishes that the quality of Mr. Fontana's personal and professional life has been negatively impacted by injuries sustained in the accident. Dr. Sellers testified that, prior to the accident, Mr. Fontana responded

"relatively well" to chiropractic care and that none of his pre-accident conditions interfered with his daily activities. He noted that the accident aggravated some of Mr. Fontana's pre-existing conditions. He also testified that Mr. Fontana's buttocks pain had not responded to any type of treatment and had actually appeared to have gotten worse. He expected that Mr. Fontana will have difficulty "staying on his feet" for long hours in his job as a nurse because of the buttocks injury. (He indicated that Mr. Fontana's prognosis was "not very good" and that he was "going to have pain for a long time." Dr. Sheila Cavanaugh testified similarly. She indicated that, prior to the accident, Mr. Fontana's ailments improved with chiropractic treatment. Following the accident, however, his body was not responding to chiropractic care, and she thought he would need a different type of treatment designed to strengthen his soft tissue and muscles. She testified the accident caused Mr. Fontana new injuries, such as radiating pain and sacroiliac pain. Dr. Cavanaugh expected Mr. Fontana to have difficulty performing his duties as a recovery room nurse due to the prolonged standing, necessary bending, moving of beds, and transporting of patients. She also stated Mr. Fontana would have difficulty exercising.

In addition to the medical testimony, Mr. Fontana's own testimony and that of his former co-worker, Laurie Condon, provide evidence that his quality of life has declined due to injuries sustained in the accident. Because their testimony has been summarized earlier in this opinion, it will not be repeated. However, we note that, while he is able to work full-time hours, Mr. Fontana can no longer perform his employment duties as a recovery room nurse as proficiently as before the accident. Although a plaintiff in another profession may not have been as adversely impacted, the testimony shows Mr. Fontana's job necessarily requires continuous standing, bending, and lifting, and these are activities with which he now has more trouble; thus, the detriment to his ability to perform on the job is

significant. Further, the fact that Mr. Fontana maintained a healthy and active lifestyle before the accident demonstrates that his inability to participate in many of the activities he formerly enjoyed, coupled with the now chronic nature of his pain, have significantly impacted his enjoyment of life.[5]

Based on the above, we conclude the jury abused its discretion in failing to award damages to Mr. Fontana for his past and future loss of enjoyment of life. Under the facts and circumstances of this case, we find the appropriate award of damages for past and future loss of enjoyment of life to be $10,000.00, the lowest amount reasonably within the jury's discretion and consistent with the special damages award.[6] We will amend the judgment accordingly.

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[5] In **McGee v. A C and S, Inc.,** 933 So.2d at 775-776, the Louisiana Supreme Court observed how the same injury can affect different plaintiffs' enjoyment of life differently:

> Consider, for example, two boys, one athletic and the other artistic, who are both involved in an accident and suffer similar injuries. Presumably, each boy should be awarded a similar quantum of damages for pain and suffering. However, the same injury may affect the boys very differently. The artist's lifestyle was not drastically altered by the accident, as he was able to resume his artistic activities after the accident, whereas the athlete's lifestyle is altered significantly, as he has to resign from his team and can no longer participate in athletics. Arguably, the athlete may be entitled to a greater pain and suffering award if he can demonstrate his mental anguish occasioned by the accident and its consequences. The athlete is damaged, however, well beyond his mental anguish over not being able to participate in athletics because now the athlete is forced to drastically alter his lifestyle as a result of his accident. The athlete is no longer able to participate in athletics, in competition or at practice, and has to find another avocation to fill his leisure time. Moreover, he no longer spends a significant amount of time with his teammates and is forced to seek out new friends. These detrimental changes in lifestyle go uncompensated in an award for pain and suffering. Under these circumstances, the drastic lifestyle change required of the athlete, as compared with the artist, warrants an additional award for the athlete's loss of enjoyment of life. To ignore the athlete's change in lifestyle and to award each boy roughly the same quantum of damages because each experienced similar pain and suffering would fail to compensate the athlete for all of his damage.

[6] For comparison, see **Caskey v. Merrick Construction Company, Inc.**, 46,886 (La. App. 2 Cir. 3/14/12), ___So.3d___, 2012 WL 832803 *8-11; **Darbonne v. Bertrand Investments, Inc.**, 11-1224 (La. App. 3 Cir. 3/7/12), 2012 WL 716381 *3-4 (unpublished); **Guidry v. Allstate Insurance Company**, 11-517 (La. App. 3 Cir. 12/21/11), 2011 WL 6372956 *10 (unpublished); **Guillory v. Saucier**, 11-745 (La. App. 3 Cir. 12/7/11), 79 So.3d 1188, 1195-96, writs denied, 12-0075, 81 (La. 3/9/12), ___So.3d___, ___; **Sloan v. Mouton**, 11-804 (La. App. 3 Cir. 12/7/11) ___So.3d___, 2011 WL 6058103 *5-7, writ denied, 12-0048 (La. 3/9/12), ___So.3d___; **Deligans v. Ace American Insurance Company**, 11-1244 (La. App. 3 Cir. 3/7/12), ___So.3d___, 2012 WL 716388 *1-5; **Augustine v. SAFECO National Insurance Company**, 08-1515 (La. App. 3 Cir. 6/10/09), 18 So.3d 761, 770; **Crawford v. Diamond B. Construction, LLC**, 09-0226 (La. App. 1 Cir. 9/11/09), 2009 WL 3162061 *8-9 (unpublished), writs denied, 09-2219, 2325 (La. 12/18/09), 23 So.3d 948.

CONCLUSION

For the foregoing reasons, we conclude the jury in this case properly awarded damages to Mr. Fontana for past and future medical expenses. We affirm the judgment as to these damage awards. We also find that the jury abused its discretion in awarding only $3,000.00 for past pain and suffering. We further conclude the jury abused its discretion by failing to award Mr. Fontana damages for future pain and suffering and for past and future loss of enjoyment of life. We amend the judgment to award Mr. Fontana $7,500.00 for future pain and suffering, $10,000.00 for past and future loss of enjoyment of life, and $15,000.00 for past pain and suffering. Costs of the appeal are assessed equally to the parties.

JUDGMENT AMENDED AND AFFIRMED AS AMENDED.