NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 0226

FREDRICK FRANKLIN

VERSUS

AIG CASUALTY COMPANY, CRST, INC.,
AND ORLANDO STANLEY

CONSOLIDATED WITH

NO. 2013 CA 0227

OLD REPUBLIC LIFE INSURANCE COMPANY

VERSUS

CRST VAN EXPEDITED, INC., ORLANDO L. STANLEY, AND AIG INSURANCE COMPANY

Judgment Rendered: JUN 07 2013

* * * * *

On Appeal from the
21st Judicial District Court,
In and for the Parish of Livingston,
State of Louisiana
Trial Court No. 125466
Consolidated With
Trial Court No. 125873

Honorable Ernest G. Drake, Jr., Judge Presiding

* * * * *

Steven A. DeBosier
Jill LeBlanc Brady
Baton Rouge, LA

Attorneys for Plaintiff-Appellee,
Fredrick Franklin

McClendon, J. Concurs in part, dissents in part, and assigns reasons

Michael H. Rubin
Jamie D. Seymour
Brook L. Thibodeaux
Baton Rouge, LA

Paul A. Eckert
New Orleans, LA

Attorneys for Defendants-Appellants,
CRST International, Inc., Orlando Stanley
and New Hampshire Insurance Company

Willie G. Johnson, Jr.
Baton Rouge, LA

Attorney for Plaintiff-Intervenor-Appellee,
Old Republic Life Insurance Company

* * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

HIGGINBOTHAM, J.

In this action for personal injury damages arising out of a collision between the tractor-cab portions of two eighteen-wheeler trucks at a truck stop parking lot, the parties appeal a final judgment rendered in accordance with a jury verdict in favor of plaintiff, Fredrick D. Franklin.[1] For the reasons that follow, we affirm the judgment of the trial court.

FACTS AND PROCEDURAL HISTORY

Just after noon on Sunday, October 12, 2008, plaintiff Fredrick D. Franklin was sitting in his tractor-trailer rig at the Pilot Travel Center parking lot in Denham Springs, Louisiana. He was waiting in a line of trucks that were ready to exit the truck stop parking lot. At the same time, another truck driver, Orlando L. Stanley, while in the course and scope of his employment with CRST International, Inc. ("CRST"), was operating his tractor-trailer rig in the same parking lot. Mr. Stanley's rig somehow rolled out of its parked position and collided with the tractor portion of Mr. Franklin's rig. The collision injured Mr. Franklin's neck and lower back. As a result of his injuries, Mr. Franklin underwent two back surgeries for herniated discs. His

[1] On November 12, 2009, two cases arising out of the accident at issue were consolidated in the 21st Judicial District Court in Livingston Parish: *Fredrick Franklin v. AIG Casualty Company, CRST, Inc., and Orlando Stanley,* Trial Court Number 125466, was consolidated with *Old Republic Life Insurance Company v. CRST Van Expedited, Inc., Orlando L. Stanley, and AIG Insurance Company*, Trial Court Number 125873. This court declined to consolidate three appeals that arose out of these related matters; however, the appeals were all assigned to the same panel for consideration on the same docket. See **Franklin v. AIG Casualty Company**, 2012-1698 c/w 2012-1699, 2013-0069 c/w 2013-0070, and 2013-0226 c/w 2013-0227 (La. App. 1st Cir. 2/15/13)(unpublished order). This particular appeal, **Franklin v. AIG Casualty Company**, 2013-0226 c/w 2013-0227 (La. App. 1st Cir. 6/7/13), hereafter referred to as "**Franklin 3**", concerns the personal injury damage amounts awarded by the jury after a trial regarding quantum issues.

treating physician, Dr. Huraldo J. Villalobos, indicates that a third back surgery may be required in the future.[2]

Mr. Franklin filed a personal injury action against defendants, Mr. Stanley, CRST, and New Hampshire Insurance Company, hereafter collectively referred to as "Chartis."[3] On July 17-18, 2012, a jury trial was held on the sole issue of quantum for Mr. Franklin's damages since the issues of liability, causation, employee status, insurance coverage, and subrogation rights were all resolved by summary judgments signed two days before trial. After presentation of evidence, testimony, and argument to the jury, the jury ruled in favor of Mr. Franklin, awarding the following damages:

Past Physical Pain and Suffering	$150,000.00
Future Physical Pain and Suffering	$250,000.00
Past Medical Expenses	$122,079.10
Future Medical Expenses	$100,000.00
Past Lost Wages	$200,000.00
Future Lost Wages	$300,000.00
Loss of Earning Capacity	$ 75,000.00
Past Mental Anguish	$ 55,000.00
Future Mental Anguish	$ 55,000.00
Loss of Enjoyment of Life	$250,000.00
TOTAL	$1,557,079.10

[2] One day before trial, on July 16, 2012, the trial court signed a summary judgment finding that: (1) Mr. Stanley was acting within the course and scope of his employment with CRST at the time of the accident; (2) Mr. Stanley was 100% at fault for causing the accident; (3) the accident was the sole and proximate cause of Mr. Franklin's injuries and his subsequent medical treatment, including the recommended future treatment; and (4) CRST's liability insurer, New Hampshire Insurance Company, provided insurance coverage for the negligent conduct of CRST's employee, Mr. Stanley. We affirmed the summary judgment on the liability, causation, employment status, and insurance coverage issues in a separate opinion rendered this day in a related appeal. See **Franklin v. AIG Casualty Company**, 2013-0069 c/w 2013-0070 (La. App. 1st Cir. 6/7/13)(unpublished), ("**Franklin 2**"). We also affirmed a second summary judgment signed by the trial court on July 16, 2012, allowing Mr. Franklin's occupational accident insurer/intervenor, Old Republic Life Insurance Company, to recover on a subrogated claim for medical expenses and disability benefits paid to or on behalf of Mr. Franklin as a result of the accident. See **Franklin v. AIG Casualty Company**, 2012-1698 c/w 2012-1699 (La. App. 1st Cir. 6/7/13)(unpublished), ("**Franklin 1**").

[3] Initially, Mr. Franklin's petition incorrectly referred to CRST's insurer as "AIG Casualty Company."

The trial court rendered judgment in accordance with the jury's verdict and a final judgment was signed on August 3, 2012. Chartis moved for and was granted a suspensive appeal from the final judgment, urging that the jury erred by awarding $200,000.00 for past lost wages, $300,000.00 for future lost wages, and $75,000.00 for loss of earning capacity, all without sufficient record evidence to support such awards.[4] Mr. Fredrick answered this appeal, seeking an increase in the damages awarded by the jury for past physical pain and suffering, future medical expenses, past lost wages, future lost wages, and loss of earning capacity.

LAW AND DISCUSSION

In **Guillory v. Lee**, 2009-0075 (La. 6/26/09), 16 So.3d 1104, 1116, the Louisiana Supreme Court reiterated well-settled law that a jury is given great discretion in its assessment of quantum for both general and special damages. Further, the jury's assessment of quantum, or the appropriate amount of damages, is a determination of fact, and is entitled to great deference on review. **Id.** Because the discretion vested in the trier of fact is so great, and even vast, an appellate court should rarely disturb a damages award on review. **Id.** at 1117.

In reviewing a general damages award that cannot be fixed with pecuniary exactitude, such as pain and suffering or loss of enjoyment of life, the role of an appellate court is to review the exercise of discretion by the trier of fact rather than deciding what it considers to be an appropriate award. See **Id.** The Supreme Court has long held true to the following principle:

[4] As previously noted, we affirmed the summary judgments rendered prior to trial in the other two related appeals in **Franklin 1** and **Franklin 2**; thus, any issues other than quantum for the damage awards are not a part of this appeal in **Franklin 3**.

> before a Court of Appeal can disturb an award made by a [factfinder,] the record must clearly reveal that the trier of fact abused its discretion in making its award. Only after making the finding that the record supports that the lower court abused its much discretion can the appellate court disturb the award, and then only to the extent of lowering it (or raising it) to the highest (or lowest) point which is reasonably within the discretion afforded that court.

Wainwright v. Fontenot, 2000-0492 (La. 10/17/00), 774 So.2d 70, 74 (quoting **Coco v. Winston Indus., Inc.**, 341 So.2d 332, 335 (La. 1977) (internal citations omitted)).

Additionally, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). Where there are two permissible views of the evidence, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong. **Id.** An appellate court must be cautious not to re-weigh the evidence or to substitute its own factual findings just because it would have decided the case differently. **Perkins v. Entergy Corp.**, 2000-1372 (La. 3/23/01), 782 So.2d 606, 612. Reasonable persons frequently disagree about the measure of damages in a particular case. **Guillory**, 16 So.3d at 1117. It is only when the award is, in either direction, beyond that which a reasonable trier of fact could assess for the effects of the particular injury to the particular plaintiff under the particular circumstances that the appellate court should increase or reduce the award. **Youn v. Maritime Overseas Corp.**, 623 So.2d 1257, 1261 (La. 1993), cert. denied., 510 U.S. 1114, 114 S.Ct. 1059, 127 L.Ed.2d 379 (1994).

As for special damages such as medical expenses and lost wages that have a "ready market value," the amount of damages theoretically may be

determined with relative certainty. **Guillory**, 16 So.3d at 1117-1118. An appellate court must satisfy a two-step process based on the record as a whole when reviewing a jury's factual conclusions regarding special damages, by determining that (1) there is no reasonable factual basis for the jury's conclusions, and (2) the finding must be clearly wrong. **Id.** at 1118.

With these principles in mind, we review the evidence in the record to determine if the jury's special and general damages awards were contrary to the evidence contained in the record and were clearly wrong or constituted an abuse of discretion. We also note that when opinions of expert witnesses differ, it is for the trier of fact to determine the most credible evidence, and the jury's determinations will not be overturned unless it is proven that the expert's stated reasons are patently unsound. **Brown v. City of Madisonville**, 2007-2104 (La. App. 1st Cir. 11/24/08), 5 So.3d 874, 881, writ denied, 2008-2987 (La. 2/20/09), 1 So.3d 498.

Past and Future Lost Wages

Chartis assigns error contending that the jury's awards for past ($200,000.00) and future ($300,000.00) lost wages awarded to Mr. Franklin were abusively high. Mr. Franklin, on the other hand, maintains that those awards were abusively low. A plaintiff seeking damages for lost wages bears the burden of proving lost earnings, as well as the duration of time missed from work due to the accident. **Brown**, 5 So.3d at 887. The jury has broad discretion in assessing awards for lost wages, but there must be a factual basis in the record for the award. **Id.** Where there is no basis for a precise mathematical calculation of a lost wage claim, the trier of fact can award a reasonable amount of damages without abusing its discretion. **Id.**

At the time of the accident, Mr. Franklin was 55 years old and was self-employed as a truck driver. After retiring from working over ten years in food service management for the United States Army, Mr. Franklin worked for the next 20 years as a truck driver, sometimes working for trucking companies and sometimes working as an independent owner-operator. When the accident occurred, Mr. Franklin was operating a 1996 Western Star tractor-trailer rig, of which he owned the tractor portion.

Since the accident in October 2008, Mr. Franklin has been unable to work as a truck driver or at any other job. Even if Mr. Franklin experiences an excellent outcome after he undergoes the proposed third back surgery, he will only be released to work on a restricted part-time, sedentary basis, requiring very little walking, no bending, stopping, squatting, or climbing, no lifting anything over five pounds, and no driving longer than 20 minutes at a time. Truck driving does not fit those work restrictions. Mr. Franklin stated that he typically drove 70 hours per week in addition to maintaining his rig when he worked as an owner-operator truck driver. According to Mr. Franklin's treating physician, Mr. Franklin will never be a truck driver again.

At trial, the jury was presented with testimony from several expert witnesses. Stephanie Chalfin, who was accepted as an expert vocational rehabilitation consultant, testified on behalf of Mr. Franklin. She stated that it would be difficult to place Mr. Franklin in a sedentary job because he does not have any clerical or computer skills, he lives in a rural area, and most sedentary jobs would require too long of a commute in violation of Mr. Franklin's restrictions. Ms. Chalfin further testified that, given his skill set, Mr. Franklin could earn the most money as a truck driver, but that he will

never be able to earn that amount of wages again since he will never be able to work as a truck driver again.

Additionally, Ms. Chalfin stated that Mr. Franklin's gross earnings as an experienced owner-operator truck driver during the three-year time period before the accident was $116,000.00 in 2006, $134,000.00 in 2007, and $124,000.00 in 2008 (until the accident in October). She also testified that Mr. Franklin could earn an average annual salary of $48,000.00 if he worked for another trucking company from his home base of North Carolina. Ms. Chalfin stated that Mr. Franklin enjoyed being a truck driver and had always planned to work as a truck driver until he retired at the earliest, age 65. On cross examination, Ms. Chalfin indicated that Mr. Franklin's expenses for his owner-operator trucking business ranged from $63,985.00 in 2006 to $77,339.00 in 2007, resulting in net annual earnings of $52,015.00 to 56,661.00.[5]

Dr. George Randolph Rice was accepted as an expert in the field of economics, who testified on behalf of Mr. Franklin. Dr. Rice stated that from the time of the accident until the time of trial, Mr. Franklin could have earned a gross income of $507,488.00 as an owner-operator truck driver. Dr. Rice clarified that gross receipts do not take into account business expenses such as maintenance and repairs on Mr. Franklin's used trucks. He also testified that Mr. Franklin's remaining work life (his labor market activity) from the time of trial until age 65 was 5.72 years. Dr. Rice calculated that it would take $758,648.00, which included a cost-of-living adjustment, to replace Mr. Franklin's lost future gross wages as an owner-operator truck driver. Dr. Rice

[5] Ms. Chalfin testified that Mr. Franklin's income tax returns showed a reported business income in 2006 of $16,328.00 and $4,620.00 in 2007.

also determined that under a scenario where Mr. Franklin worked for a trucking company rather than as an owner-operator, with gross annual earnings of $44,969.60, his past lost wages would equal $169,283.00 and his future lost wages would amount to $253,062.00.

Dr. Kenneth J. Boudreaux was accepted as an expert economist who testified on behalf of Chartis. Dr. Boudreaux opined that Mr. Franklin had a little over eight years worth of work life expectancy at the time of the accident, with five years allocated to future lost wages and three and a half years allocated to past lost wages. Dr. Boudreaux testified that, according to the tax returns, Mr. Franklin's actual business earnings were $16,328.00 in 2006, $4,620.00 in 2007, and $3,323.00 in 2008 through the date of the accident. Thus, Dr. Boudreaux testified that Mr. Franklin's average annual earnings in the three years leading up to the accident were $8,728.00. While acknowledging that this rate of earning was less than minimum wage, Dr. Boudreaux used that rate to calculate Mr. Franklin's lost wages, testifying that Mr. Franklin's actual past lost wages were $27,372.00 and his future lost wages were actually $48,102.00.

Dr. Boudreaux criticized Dr. Rice's figures because Dr. Rice used gross earnings without removing expenses from those actual earnings to arrive at Mr. Franklin's true income. Dr. Boudreaux also stated that no expert could testify as to whether Mr. Franklin could earn $44,000.00 per year working for another trucking company after his accident, since Mr. Franklin's tax records don't support that amount of annual earnings. However, Dr. Boudreaux opined that if he made that calculation based on an annual salary of

$44,000.00, the lost wages figure would be $170,000.00 for past lost wages and $260,000.00 for future lost wages.

Dr. Todd Capielano testified on behalf of Chartis, and was accepted as an expert vocational rehabilitation expert. Dr. Capielano opined that Mr. Franklin could not return to work as a truck driver even if his third back surgery was successful, because truck driving requires more than what sedentary-to-light work restrictions will allow. Dr. Capielano testified that experienced truck drivers in North Carolina, where Mr. Franklin lives, earn anywhere from $38,251.00 to $44,075.00 per year. Dr. Capielano stated that after a successful third surgery, Mr. Franklin would be able to work at sedentary-to-light positions such as a trucking dispatcher, escort vehicle driver, order clerk, or security guard. However, when Ms. Chalfin was called to testify on rebuttal, she countered that Mr. Franklin's future job prospects were guarded because he would only be able to return to work on a part-time basis in a sedentary position, not light work, and that is only if he experiences a very good outcome from the third surgery.

The jury was instructed, without objection, that any award for lost wages should be based on gross income figures.[6] The jury apparently found merit in some of each of the competing experts' testimony regarding wages for owner-operators versus drivers working for trucking companies. The amounts awarded Mr. Franklin for past and future lost wages actually fell between the highest figures presented by Dr. Rice and the lowest figures offered by Dr. Boudreaux for owner-operator truck drivers. Further, the

[6] The general rule is that gross rather than net earnings are the appropriate measure of damages for calculating lost wages. See **Brown**, 5 So.3d at 888, n.7; **Crane v. Exxon Corp. U.S.A.**, 613 So.2d 214, 225-226 (La. App. 1st Cir. 1992), rehearing denied, writs granted in part on other grounds, and remanded, 620 So.2d 858 (La. 1993); and **Sorrells v. Eddie Knippers & Associates, Inc.**, 544 So.2d 556, 562 (La. App. 1st Cir. 1989).

amounts awarded were well within the range of projected estimates and were very consistent with the evidence presented by all expert witnesses for gross wages earned by a truck driver that worked for a trucking company, which the evidence showed Mr. Franklin had done for much of his trucking career.

Where, as here, a conflict in the evidence exists and no party presents evidence that is wholly inconsistent, implausible on its face, or unbelievable in light of objective evidence, the appellate court must defer to the factfinder's decision unless that decision is manifestly erroneous or clearly wrong. **Cotton v. State Farm Mut. Auto. Ins. Co.**, 2010-1609 (La. App. 1st Cir. 5/6/11), 65 So.3d 213, 224, writ denied, 2011-1084 (La. 9/2/11), 68 So.3d 522; **Brown**, 5 So.3d at 888. Having reviewed the evidence presented, we cannot say that the amounts awarded Mr. Franklin for past and future lost wages were an abuse of the jury's discretion. Accordingly, we reject Chartis's and Mr. Franklin's assignments of error so alleging.

Loss of Earning Capacity

Chartis also maintains that the jury's award of $75,000.00 for Mr. Franklin's loss of earning capacity was clearly wrong in that it was duplicative of the future lost wages award and highly speculative. Mr. Franklin counters that the award was abusively low considering the fact that he has been unable to be gainfully employed due to his permanent medical restrictions.

In many cases, as in this one, lost earning capacity and lost future wages are different elements of damages. **Haydel v. Hercules Transport, Inc.**, 94-1246 (La. App. 1st Cir. 4/7/95), 654 So.2d 418, 435, writ denied, 95-1172 (La. 6/23/95), 656 So.2d 1019. A loss of earning capacity award is not

based merely upon the difference between a person's earnings before and after a disabling injury, but also on the loss or reduction of an injured person's ability to earn money. **Hobgood v. Aucoin**, 574 So.2d 344, 346 (La. 1990). Earning capacity is not necessarily determined by the actual loss; damages may be assessed for what the injured plaintiff could have earned despite the fact that he may never have seen fit to take advantage of that capacity. Thus, damages for a person's loss of earning capacity are calculated on the person's ability to earn money, rather than what he actually earned before his injury. **Haydel**, 654 So.2d at 435. It also encompasses the loss of the person's earning potential or capacity – the loss or reduction of a person's capability to do that for which he is equipped by nature, training, and experience. **David v. Our Lady of the Lake Hosp., Inc.**, 2002-1945 (La. App. 1st Cir. 6/27/03), 857 So.2d 529, 533.

Because awards for loss of earning capacity are inherently speculative and are intrinsically incapable of being calculated with mathematical certainty, the trier of fact is given much discretion in fixing such an award. **Jenkins v. State ex rel. Dept. of Transp. and Development**, 2006-1804 (La. App. 1st Cir. 8/19/08), 993 So.2d 749, 772-773, writ denied, 2008-2471 (La. 12/19/08), 996 So.2d 1133. Nevertheless, a projection of loss of future earning capacity must have a factual basis in the record, and an award may not be based upon speculation, possibility, or conjecture. **Id.** at 775.

All of the experts acknowledged that Mr. Franklin is basically unemployable at this point, and even if Mr. Franklin has a successful outcome from a third back surgery and is able to return to some kind of part-time sedentary-to-light work, he will never be able to drive a truck again because

of his medical restrictions. The vocational rehabilitation consultant, Ms. Chalfin, further testified that due to Mr. Franklin's lack of clerical/computer skills, his intellectual and educational capabilities, and his physical limitations, he would never again earn the wages he could have earned as an owner-operator truck driver.

There was no countervailing evidence that Mr. Franklin could earn the same amount or more at a different job if his third surgery is successful. The record contains little evidence that is helpful in determining a specific amount for an appropriate award due to the economic impact of Mr. Franklin's physical limitations, but the loss of his earning capacity was certainly proved in a general sense. Given the evidence in the record, we cannot say that the jury abused its discretion in its $75,000.00 award to Mr. Franklin for his loss of earning capacity, implicitly finding that Mr. Franklin would be able to earn more money after his future surgery if he did not have medical restrictions limiting him to part-time sedentary-to-light work. Accordingly, we find no merit to these assignments of error.

Physical Pain and Suffering

In his answer to Chartis's appeal, Mr. Franklin assigns error to the jury's award of $150,000.00 for his past physical pain and suffering, arguing it is abusively low considering his two failed surgeries and the agonizing pain he endured over the almost four years between the accident and trial. The jury considered the video deposition testimony of Mr. Franklin's treating physician, Dr. Villalobos, who was accepted as an expert in the field of neurosurgery. Dr. Villalobos testified about the significant and large disc herniation in Mr. Franklin's lower back, and he gave his opinion that the

herniation was caused by the accident. He also testified about Mr. Franklin's radiating nerve pain into the leg and foot, and the tingling and numbness Mr. Franklin experiences from nerve compression. Dr. Villalobos further stated that Mr. Franklin experienced failed back surgeries and has residual pain due to instability in his back.

The jury also heard the live testimony of Mr. Franklin and his sister, Wanda Franklin Land. Ms. Land testified that her brother lives with her in North Carolina, and has lived with her ever since he came to stay with her after his first surgery. She stated that Mr. Franklin's pain and nausea were bad after the surgery, that he was weak and pale, that he is depressed much of the time, that walking hurts him and he drags his foot, that sitting too long hurts him, and that he cries and he falls.

Mr. Franklin testified that he initially felt pain the day after the accident. He stated that his neck and back were hurt in the accident and that he had radiating pain to his fingers and toes, along with numbness on his left side. Mr. Franklin underwent painful physical therapy, injections in his neck and back, and two back surgeries, but his pain is worse not better. He indicated that he is still in pain and is in need of a third surgery. Even though Mr. Franklin is fearful about the future third surgery, he stated that he will undergo the surgery to help him have a chance to walk again without dragging his left leg and falling. Mr. Franklin testified that he feels pain and numbness every day, even while taking pain medication, which tends to make him sick. Mr. Franklin also stated that he does not sleep well and he dislikes living his life in this way.

A jury is entitled to great deference in assigning quantum for general damages. **Guillory**, 16 So.3d at 1126. While we recognize the jury's award is likely on the lower end of what is appropriate, it is not our role to substitute our view of the evidence for that of the jury's. **Id.** Based upon the evidence in the record, the jury could have reasonably concluded $150,000.00 was an appropriate award for Mr. Franklin's past physical pain and suffering. He was also awarded $55,000.00 for his past mental anguish and $250,000.00 for his loss of enjoyment of life. Given the overall amount awarded for general damages, we do not find the jury abused its discretion. This assignment of error is without merit.

Future Medical Expenses

Mr. Franklin also assigns error to the jury's award for his future medical expenses, submitting that the award of $100,000.00 was abusively and unreasonably low. Although future medical expenses must be established with some degree of certainty, they do not have to be established with absolute certainty, as an award for future medical expenses is by nature somewhat speculative. **Brown**, 5 So.3d at 889. An award of future medical expenses is justified if there is medical testimony that they are indicated and setting out their probable cost. **Id.** An appellate court should not disturb an award for future medical expenses absent an abuse of the trier of fact's discretion. **Id.**

The only record evidence regarding the probable cost of a third back surgery was presented by Dr. Villalobos, who testified that a third surgery as a result of Mr. Franklin's accident was a possibility. Dr. Villalobos also stated that the third surgery would necessarily be a fusion, costing anywhere

from $40,000.00 to $140,000.00, depending on the length of Mr. Franklin's hospital stay, the hardware used in the surgery, and any complications. In light of this evidence, we find a reasonable factual basis exists for the jury's award of $100,000.00 for future medical expenses. Thus, the jury did not abuse its discretion; we find no merit to this assignment of error.

CONCLUSION

For the outlined reasons, we affirm the trial court's final judgment that was rendered in accordance with the jury's verdict. All costs of this appeal are equally assessed to plaintiff, Fredrick D. Franklin, and defendants, Orlando L. Stanley, CRST International, Inc., and New Hampshire Insurance Company.

AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0226

FREDERICK FRANKLIN

VERSUS

AIG CASUALTY COMPANY, CRST, INC., AND ORLANDO STANLEY

CONSOLIDATED WITH

2013 CA 0227

OLD REPUBLIC LIFE INSURANCE COMPANY

VERSUS

CRST VAN EXPEDITED, INC., ORLANDO L. STANLEY, AND AIG INSURANCE COMPANY

****

McCLENDON, J., concurs in part, dissents *in* part, and assigns reasons.

While I agree with the majority that the general rule is that gross income is the appropriate measure of damages for calculating lost wages,[1] where a plaintiff is a self-employed business person who has considerable expenses, the appropriate measure of "gross" earnings is usually the "bottom line" of Schedule C, or the net profit from the business. See Russ Herman, Louisiana Practice Personal Injury, § 4:280 (2012 ed.) and **Preston v. Chrysler Motor(s) Corp.**, 334 So.2d 486, 488 (La.App. 1 Cir.), writ denied, 377 So.2d 877 (La. 1976). Nevertheless, given that the jury could have relied on Ms. Chalfin's testimony that Mr. Franklin's net annual earnings from his trucking business ranged from $52,015.00 to $56,661.00, I concur with the majority's decision affirming the

[1] The majority sets forth this premise in footnote 6 of the opinion.

$200,000.00 and $300,000.00 awards for past and future lost wages, respectively.

Additionally, I disagree with the majority's affirmation of the $75,000.00 award for Mr. Franklin's loss of earning capacity. Factors to be considered in fixing awards for loss of earning capacity are: age, life expectancy, work life expectancy, appropriate discount rate (also known as the investment income factor), the annual wage rate increase or productivity increase, prospects for rehabilitation, probable future earning capacity, loss of future earning capacity, loss of earning ability, and the inflation factor or decreasing purchasing power of the applicable currency. **Brown v. DSI Transports, Inc.**, 496 So.2d 478, 484 (La.App. 1 Cir.), writ denied, 498 So.2d 18 (La. 1986). According to Mr. Franklin's rehabilitation expert, Ms. Chalfin, given Mr. Franklin's age and skill set, his best earning potential was working as a truck driver. Further, Mr. Franklin was 59 years old at the time of the accident and had a work-life expectancy from the time of trial of between 5.72 and 8 years. Considering all relevant factors, I conclude that the jury's award of $75,000.00 for loss of earning capacity is abusively high.