IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sangha v. Advanced Laser Hair Removal Inc.,*
2025 BCSC 1267

Date: 20250708
Docket: M1810374
Registry: Vancouver

Between:

Sukhvinder Kaur Sangha

Plaintiff

And

Advanced Laser Hair Removal Inc. and Balbir Kaur Dhaliwal

Defendants

- and -

Docket: M214817
Registry: Vancouver

Between:

Sukhvinder Kaur Sangha

Plaintiff

And

Ilgtya Dnebosky

Defendant

Before: The Honourable Madam Justice Sharma

Reasons for Judgment

Counsel for the Plaintiff: K. Miles
C. Caldwell
M. Birnie, Articled Student

Counsel for the Defendants:	R. Schubert C. Gray
Place and Date of Trial/Hearing:	Vancouver, B.C. January 20–24 and 27–31, 2025
Place and Date of Judgment:	Vancouver, B.C. July 8, 2025

Table of Contents

[1] This trial was about two motor vehicle accidents in which the plaintiff claims she was injured. The plaintiff was a driver in both accidents.

[2] Both liability and damages are at issue for the first accident (Action # M1810374), but liability for the second accident (Action # M214817) was admitted by the defendant on the first day of trial.

[3] The plaintiff submits her evidence was reliable and that she was a credible witness. She contends her testimony is supported by the collateral and expert witnesses she called in her case. Her position is that the defendant Balbir Dhaliwal is 100% responsible for the first accident. She seeks an award for non-pecuniary damages, loss of past and future earning capacity, loss of past and future housekeeping capacity, cost of future care and special damages totalling $993,000.

[4] The defendants' position is that there are significant concerns with the plaintiff's credibility and reliability, which have a material impact on both the assessment of liability for the first accident and the quantum of damages. The defendants submit that the plaintiff should be found to be equally liable for the first accident. While they admit the plaintiff was injured and suffered damages from the first accident, the defendants assert the impact of those injuries on the plaintiff's life is much more modest than she asserts. They submit the appropriate range of damages to award is between $36,992.82 and $98,032.82.

[5] Given the parties' positions, it is clear that the plaintiff's credibility and reliability will be a key issue.

I. LIABILITY

[6] As noted, liability is only at issue for the first accident. The second accident occurred on October 10, 2019, when the plaintiff's car was rear-ended by the vehicle being operated by the defendant, Ilya Dnebosky, who has admitted liability.

A. Facts

[7] The following facts were not disputed.

[8] The first accident happened on the evening of November 16, 2016. It occurred near the intersection of 6th Street and 10th Avenue in Burnaby, BC. The plaintiff was driving a Honda Civic, and Ms. Dhaliwal was driving a Lexus. Ms. Dhaliwal's car is owned by the other defendant, Advanced Laser Hair Removal Inc.

[9] It was raining heavily and it was dark. The plaintiff was driving home from Surrey Hospital with her son after he attended a specialist appointment. She was driving roughly northbound along 6th Street, which has two lanes, one going in each direction. She had turned right onto 6th Street from 10th Avenue.

[10] Ms. Dhaliwal was leaving work to travel home. Her workplace was located in a small strip mall whose entry and exit are on the north side of 6th Street, midway between intersections. She wanted to turn left and join the lane heading roughly north, which was the same lane in which the plaintiff was driving. This required her to first cross the lane of traffic heading in the opposite direction.

[11] Traffic was busy, and there was a line of cars on 6th Street heading towards 10th Avenue. Ms. Dhaliwal had to wait for a gap in the traffic to exit the parking lot. Once she left the parking lot and eased into the first lane of traffic, she again had to wait before joining the northbound lane of 6th Street. Just as she began her left turn, the two cars collided.

1. The Plaintiff and Her Son's Testimony about the Accident

[12] The plaintiff testified that she did not see Ms. Dhaliwal's car coming towards her, and did not notice headlights coming from that direction. She only remembered seeing headlights from the oncoming traffic. She also did not notice a gap in the opposing line of traffic. She said she was focussed on looking forward.

[13] The plaintiff described that the impact as serious. She did not really know what happened until her vehicle came to a stop and someone came up to the car saying that there had been an accident. She thought her car may have spun or slid after the collision, but she was not sure. She remembered her son screamed and

was then crying. She had put her arm out to the right in front of her son's chest. She also testified that both the front and side airbags deployed. They received help to get out of the vehicle. Her car was not drivable.

[14] The plaintiff's son was 16 at the time of that accident. He does not recall much about the accident, but he did not remember airbags deploying. He felt his mother's arm across his chest and said that she had the tendency to put her arm out like that often. He also remembers his knee hitting the dashboard and feeling shocked.

2. The Defendant's Testimony

[15] Ms. Dhaliwal testified that leaving from her workplace and turning left onto 6th Street was the route she took home every day from work, so she was very familiar with it. On the evening of the accident, she had to wait at the exit point of the parking lot for about five minutes before there was a gap in the southbound lane on 6th Street. She said she inched forward and then waited another two or three minutes before beginning to turn left into the northbound lane.

[16] She claimed that she looked both ways to see if the traffic was clear, although she agreed that her view of the northbound lane on 6th Street was obstructed because of her position within the first lane of traffic. She recalled that the traffic light at the intersection of 6th Street and 10th Avenue was red for drivers on 6th Street. She also relied on the fact that she saw no signal from the driver to her left indicating that a car was coming, so she began to turn. She did not see any traffic in the oncoming lane and did not see the plaintiff's vehicle.

[17] Ms. Dhaliwal claimed that she first heard the noise of the collision and did not see the plaintiff's vehicle. The front right bumper of her car hit the plaintiff's vehicle near the driver's side front wheel well.

[18] Ms. Dhaliwal received a traffic ticket from the police after the accident, which she did not dispute.

B. Analysis

[19] The plaintiff submits Ms. Dhaliwal should be found 100% liable because she turned left and failed to yield to an immediate hazard, which was the plaintiff's vehicle. The plaintiff's position is that Ms. Dhaliwal breached s. 174 of *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [*Act*]:

> **Yielding right of way on left turn**
>
> **174** When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

[20] During closing argument, the defendants agreed that the plaintiff had the right of way and that she was the dominant driver. This means Ms. Dhaliwal was the subservient driver. However, the defendants submit that finding does not absolve the plaintiff of liability. Their position is that liability must be shared between the parties.

[21] The defendants argue the plaintiff's admission that she was only looking straight ahead of her amounts to a breach of her duty under s. 144 of the *Act*, which states a person must not drive "without due care and attention" and "reasonable consideration for other persons using the highway".

[22] The defendants emphasize that the plaintiff admitted she had in the past turned left from that parking lot onto 6th Street, so she was familiar with the area and knew cars may want to turn left after exiting. The defendants also point out that the plaintiff did not see the gap in the line of traffic where Ms. Dhaliwal said she was waiting. The defendants contend that the plaintiff's failure to scan her environs and anticipate the possibility of a car turning left out of the parking lot amounts to her failing to meet the standard of a reasonably careful and skilled driver. On that basis, the defendants say the plaintiff should be found equally liable for the accident.

[23] I set out below evidence relevant to liability that was either agreed to by the parties or which I find to be uncontroverted:

a) it was dark, raining heavily, and traffic was very busy;

b) the plaintiff had turned right from 10th Avenue onto 6th Street;

c) Ms. Dhaliwal wanted to exit the parking lot and turn left, meaning she first had to cross the lane of traffic on 6th Street that was heading towards 10th Avenue;

d) there was a long line of cars on 6th Street heading towards 10th Avenue, which is a major thoroughfare;

e) Ms. Dhaliwal had to wait for a gap in traffic on 6th Street heading towards 10th Avenue before exiting the parking lot; and,

f) neither party saw the other vehicle until the collision occurred.

[24] The defendants argue that the plaintiff's credibility and reliability raise serious concerns that ought to affect the analysis of liability. They emphasize that the plaintiff's testimony in chief about whether air bags in her car deployed differed from evidence given at her examination for discovery, during her cross-examination and her son's testimony. The defendants also stress the differences between the plaintiff's and her son's testimony about how each of them got home after the accident. Lastly, they submit that the plaintiff's evidence that her vehicle travelled perhaps half a block after the collision differs from both her son's testimony and Ms. Dhaliwal's description.

[25] I do have concerns about the plaintiff's credibility and reliability, which I address below at paras. 80 to 94. However, I do not find those concerns materially affect the liability analysis. Among other things, none of the portions of the plaintiff's testimony relevant to liability that the defendants call into question are about what happened before or during the collision. Nor am I persuaded that the defendants have identified anything in the plaintiff's testimony, which, if not accepted, would make any difference to the analysis.

[26] On the other hand, I do have concerns about the reliability of Ms. Dhaliwal's evidence about the accident that affects the liability analysis.

[27] A critical fact is that when Ms. Dhaliwal decided to proceed with her left turn, the coast was not clear. Logic dictates that the plaintiff's vehicle was close enough to be a hazard because the collision occurred almost immediately. That is supported by the location of the impact on the two vehicles. Ms. Dhaliwal's right front bumper collided with the plaintiff's driver's side front wheel well. Had Ms. Dhaliwal proceeded further into her left turn before the collision, one would have expected the point of impact to be further back on her vehicle.

[28] Thus, I find there was no basis in the evidence upon which I could conclude that the plaintiff was not so close as to be an immediate hazard when Ms. Dhaliwal started to turn left. By admitting that Ms. Dhaliwal was the subservient driver, the defendants have conceded that the plaintiff was an immediate hazard to which Ms. Dhaliwal had to yield.

[29] The defendants agree that s. 174 of the *Act* is applicable to the facts. However, they rely on *Nerval v. Khehra*, 2012 BCCA 436, to support their position that the plaintiff's being the dominant driver is not conclusive of liability.

[30] The circumstances of the accident in that case were significantly different than before me. The accident occurred at an intersection, and the through driver was speeding and had swerved to the right to pass a vehicle in front of her that was waiting to turn left.

[31] Nevertheless, some comments from that case are helpful. Specifically, the Court of Appeal comments on s. 174:

> [35] The effect of s. 174 is to cast the burden of proving the absence of an immediate hazard at the moment the left turn begins onto the left turning driver. This result flows inevitably from the wording of the section itself, given the nature of the absolute obligation the section creates. If a left turning driver, in the face of this statutory obligation, asserts that he or she started to turn left when it was safe to do so, then the burden of proving that fact rests with them.

[32] In that case, Ms. Nerval was the left-turn driver and Ms. Khehra was the through driver. At para. 37, the Court of Appeal stated that "despite being the dominant driver, Ms. Khehra nonetheless was negligent and at fault for causing or contributing to the accident".

[33] The court helpfully distinguished between identifying the dominant driver and assessing liability:

> [38] Whether a through driver is dominant turns on whether the driver's vehicle is an immediate hazard at the material time, not why it is an immediate hazard. Dominance identifies who must yield the right of way. One consequence of this analysis is that negligence on the part of a through driver does not disqualify that driver as the dominant driver. The through driver remains dominant, even though their conduct may be negligent. Indeed, the through driver's fault may be greater than the servient driver's fault. In other words, a through driver may be an immediate hazard even though that driver is speeding and given her speed would have to take sudden action to avoid the threat of a collision if the left turning driver did not yield the right of way. The correct analysis is to recognize that the through driver is breaching his or her common law and perhaps statutory obligations and to address the issue as one of apportioning fault, not to reclassify the through driver as servient based on the degree to which the through driver is in breach of her obligations.

[34] The defendants argue just as the through driver was found significantly liable in *Nerval*, the plaintiff should be found 50% liable in this case for failing to properly scan the area in anticipation of a possible driver exiting the parking lot to turn left.

[35] The defendants accept that Ms. Dhaliwal was 50% at fault for the accident. However, it is important to analyze the ways in which Ms. Dhaliwal was negligent. In her testimony, she explained her decision to proceed with her left turn after stopping in the gap:

a) she did not see any headlights or vehicles coming in her direction;

b) she saw that the traffic light at the intersection of 10th Avenue and 6th Street was red for vehicles travelling along 6th Street; and,

c) she relied on what she said was the facial expression of the driver to her left, immediately behind the gap.

[36] Ms. Dhaliwal did claim that she looked back and to her right and saw no vehicles. However, I question whether she made that check after she entered the gap in the line of traffic.

[37] Several times during her testimony, Ms. Dhaliwal gave an answer which I find consistent with her <u>making an assumption</u> that there would be no traffic coming

towards her on 6th Street. For instance, during cross-examination she was asked if she had looked to the right before proceeding with her turn. She claimed that she looked both ways but said she "looked at the light" because that is where she was checking. It is not clear why, when she is stopped in a gap in traffic, she would be looking to her left. It is more likely that she did that before entering the gap.

[38] Also, she said her view of the lane of traffic heading north on 6th Street was obstructed by the stopped lane of cars heading south, which is more consistent with being positioned at the exit before entering the gap.

[39] At another time during cross-examination, she was asked if she "saw" traffic in the lane into which she wanted to turn, and her answer included words to the effect that she did not <u>because</u> the light was red. This strongly suggests she assumed it was safe to proceed rather than her checking to make sure.

[40] For all those reasons, I find that she assumed the coast was clear because the light at the intersection to her right was red. I find that if she did make a check to her right just before proceeding to turn left, she did not look into the lane of traffic and only directed her attention to the traffic light at the 10th Avenue intersection.

[41] Ms. Dhaliwal agreed it would have been safer to turn right and go around the block, but explained because vehicles going in that direction (towards 10th Avenue) were stopped, that meant traffic was very busy, so she thought it was safe to go the other way because it <u>could be</u> clear. I do not accept her explanation as being logical or reasonable. As noted, 10th Avenue is a major thoroughfare so it should not have been a surprise that traffic on 6th Street would be heavier heading in that direction. However, that does not make turning left a safe option, especially when it was dark and raining heavily.

[42] Most concerning, she claimed that she relied to some degree on looking at the driver to her left, just behind the gap in the line of vehicles. She confirmed that she did not rely on a specific hand gesture or signal from that driver, but rather the lack of an indication that it was <u>not</u> safe to proceed. At one point she said she looked at the driver's facial expression.

[43] I find it difficult to accept that Ms. Dhaliwal could discern any facial expression of significance given the conditions. Regardless of that, relying on another driver's facial expression with the lack of a gesture is not reasonable or safe.

[44] I find it more probable than not that she did see some signal, even a subtle one, which, combined with the driver stopping to create the gap, prompted her to enter the gap. I am not persuaded on a balance of probabilities that she did rely on anything from that driver before proceeding with her left turn.

[45] I also find her estimation that she waited one or two minutes while in the line of traffic to be highly unlikely. At the very least, one would have expected other drivers would have become impatient at the length of that disruption and honked, but no mention was made of that. Furthermore, if she had waited five minutes at the exit for there to be a gap in the line of traffic, that ought to have informed her that it was better to turn right.

[46] Given all those factors, I find it is most probable that she did not stop and wait in the gap for one or two minutes, but proceeded almost immediately with her left turn after exiting the parking lot. I also find that she did not perform any check to her right for hazards, or she performed a clearly inadequate check, before proceeding with her left turn. In my view, that scenario is more consistent with the evidence than her description. Therefore, I find she was negligent and at fault for the accident.

[47] Finding Ms. Dhaliwal at fault for the accident does not foreclose the possibility that some fault should lie with the plaintiff. The defendants argue the plaintiff was negligent for failing to scan her surroundings and see both the gap in the traffic and Ms. Dhaliwal's vehicle waiting to turn left.

[48] I disagree.

[49] The most important factor is the uncontested evidence that it was dark and raining heavily. Those conditions reduce visibility to a significant degree. The plaintiff testified that she only saw headlights from oncoming traffic.

[50] It is not clear to me given both the conditions and the positioning of Ms. Dhaliwal's vehicle (possibly at a bit of an angle rather than directly perpendicular

to 6th Street in anticipation of turning left), that it would have been possible to see Ms. Dhaliwal's headlights. This is buttressed by my conclusion that it is most probable that Ms. Dhaliwal did not stop in the gap long as she testified, but proceeded almost immediately into her left turn after exiting the parking lot.

[51] Nor do I find the plaintiff was careless by focussing her attention in front of her as she drove, given the poor visibility. Being on the lookout immediately in front of you when visibility is poor is not careless, so long as you are not driving too fast. There was no suggestion that she was speeding.

[52] The defendants relied on *Nerval*, but I do not agree it supports their position. The negligence of the through driver in that case was both obvious and more serious than what is alleged to have been the plaintiff's negligence here. The trial judge held Ms. Khehra was speeding and failed to slow down or stop when passing on the right a stopped vehicle, meaning she passed to the right unsafely. This was a breach of another section of the *Act*. The trial judge found her 40% at fault.

[53] Lastly, I agree with the plaintiff that even if I had found she failed to adequately scan her surroundings (which I do not find), that was insufficient to find her negligent. There was no evidence that she was speeding, and I have concluded it was not proven that Ms. Dhaliwal's headlights could have been seen. Therefore, I am not convinced that the plaintiff's failure to scan would have been causatively linked to the accident.

C. Conclusions

[54] For all those reasons, I find Ms. Dhaliwal's decision to proceed with a left turn breached s. 174 of the *Act*, constituted careless driving and was negligent. I do not find that the plaintiff breached her duty to drive with due care and attention, or any other duty. Accordingly, I conclude the accident was caused by Ms. Dhaliwal's negligence and she is 100% liable.

II. ANALYSIS OF EVIDENCE RELEVANT TO DAMAGES

A. Non-Expert Evidence

[55] While the defendants accept that the plaintiff was injured as a result of the accidents, they submit that she has exaggerated the scope and extent of her injuries both in terms of what limitations they have caused, and how they have impacted her ability to work.

1. The Plaintiff's Life Before the Accident

[56] The plaintiff was 38 years old at the time of the first accident, and 46 years old at trial.

[57] She grew up in Prince George until about age 12. While a teen, she was active in volleyball as well as Bhangra, a type of Indian dance. She graduated from high school in 1996. She was married in 1997 when she was 18 years old and had a child shortly after. Two more followed. However, she and her husband separated in 2012. Two of her adult sons reside with her, and one lives with his father in a home close by. Her son Rajan Sangha testified at trial on her behalf.

[58] She has lived with her mother since 2012. Her mother is in her 70s and has kidney disease. The plaintiff testified that her mother helped with gardening and cooking, but she is starting to slow down.

[59] Other than having anemia, the plaintiff testified that her health was very good before 2016. The plaintiff testified that she had an active lifestyle and had no physical limitations before the accident. She enjoyed hiking, walking, yoga, travelling, dancing, socializing and entertaining, including hosting and cooking for people in her home, on occasion up to 100 guests. She claimed that she maintained a spotless home, spending her Saturdays cleaning her entire house.

2. The Plaintiff's Life After the Accident

[60] The plaintiff submits that the accidents have caused her to be restricted in her ability to enjoy her leisure and social activities. She says that activities that used to

give her joy are now things she has to endure. In particular, she does not host as many social gatherings at her home, and not for large groups. She does not enjoy outside social activities as often, and when she does go, she tires more quickly than she used to.

[61] She testified that she “never” experienced a headache before the accident, but now has them on a regular basis along with pain in her neck, left arm, left shoulder and back. She claimed to have numbness in her hands, left arm and legs. She suffers from disturbed sleep because of her pain, anxiety and depressed mood.

[62] She testified that she suffered from depression and gained a lot of weight after the first accident, weighing up to 220 pounds. She traveled overseas for gastric bypass surgery in 2020.

[63] Instead of being able to clean her entire home on Saturdays, she says she is only able to clean one room per day, and has to take many breaks. She is unable to cook as frequently as she used to.

3. Work History

[64] After graduating from high school, the plaintiff completed a pharmacy technician diploma. She worked as a pharmacy technician for about 20 years. She then switched careers.

[65] In September 2015, after being unemployed for about eight months, the plaintiff started working for CP Media West Inc., a company that operated a Punjabi television channel. She was hired as an administrator, but the station owner saw potential in her, and she became a broadcaster. This led her to hosting an hourly show, five days a week focussed on non-news related stories. She also did live events, in the community, typically on the weekend. The live events were a more dynamic assignment because they were unpredictable, and she was not in a controlled studio environment. She became more successful and has a social media presence in the lower mainland, which is important to her career.

[66] There is no dispute that after the first accident, she missed about five weeks of work because of her injuries. She then returned to the same job, but with some modifications. She continued to work for CP Media West Inc. until June 2021, when she quit because it had become an unpleasant workplace.

[67] She then worked on a television show operated by FYI Media Group until about June 2023 when she left that job. At that point, she started working as a radio show host with Sher-E Punjab Radio, where she was working during trial. She hosts a two-hour show which runs five days a week.

[68] The plaintiff is also an active member in the Punjabi community, and apart from her jobs in media, she has earned income by being an emcee at traditional Indian weddings or appearing at other events, such as award events or musical shows. For convenience, I will refer to all these other jobs as “hosting” jobs.

4. Testimony from Collateral Witnesses

[69] In addition to the plaintiff and her son, the following witnesses testified about their observations about the plaintiff: the plaintiff’s niece Harprett Rhandawa; her friends Mona Mahal and Sukh Oppal; and, a former co-worker, Jaskaran Mann.

[70] Her friends and niece were able to testify about changes they had seen in the plaintiff since the first accident. They all stated they noticed her to sometimes have low mood, which was not something they noticed before the accident. They said she did not host as many events at her home. Much of their evidence was consistent in that they all noticed she seemed to have less energy and enthusiasm for social events after the accident. When they went out, they noticed she tended to “hit a limit” and then want to go home, which was a behaviour she did not have before the first accident.

[71] Like her son, they all commented that the plaintiff liked to keep her home “spotless” before the accident. While her home is still clean, they all stated it was not up to the plaintiff’s preferred standard. Ms. Sangha’s son said that his mother would

be cleaning house every second day before the accident, but she has now slowed down. He says he tries to help with laundry and some vacuuming.

[72] There are elements of these witnesses' testimony about housecleaning that was difficult to accept. For example, Ms. Mahal claimed that while the plaintiff used to mop her floor "three or four times a day", she now only does that once a day. I do not accept that someone that does not live with the plaintiff would be able to observe floor mopping multiple times a day. Moreover, the plaintiff works full time, so it is unclear how she would fit in that frequency of mopping.

[73] In addition, the plaintiff, her son, Ms. Rhandawa and Ms. Oppal all used the term "OCD" to describe the plaintiff's penchant for a spotless home. That is an unusual term to use, and it is more unusual that all four people used it. It is also unhelpful because the term does not actually describe the tasks that the plaintiff did to differentiate her standards from what would probably be considered typical.

[74] Mr. Mann met the plaintiff through work. He is a cameraman and worked with her about twice a week when they both worked for FYI Media, doing the live events. He stated that doing those shoots requires carrying a lot of equipment and typically, the reporters help out by carrying the microphone and tripod or camera stand. He noticed that the plaintiff would struggle with that. He also noticed that while filming, she tended to move the microphone from one hand to another as it was difficult to hold in her left hand. She also needed to take more breaks than typical reporters. Notwithstanding that, he said no one had any complaints about her performance and he managed to make modifications, so that their work did not suffer.

[75] Like the plaintiff's niece and friends, Mr. Mann said that out in the community the plaintiff is easily recognized and, in his words, has many fans.

[76] With the exception of the evidence about the degree of the plaintiff's penchant for a clean house before the accident, I accept the testimony from the non-expert witnesses that they noticed changes in the plaintiff's energy, mood and enthusiasm for social events since the first accident. Together with Mr. Mann, their testimony

was also consistent that they noticed physical changes in the plaintiff's functioning that they had not seen before.

B. The Plaintiff's Credibility and Reliability

[77] As noted, my assessment of the plaintiff's credibility and reliability is a key issue in this case.

1. Legal Principles

[78] The test for assessing credibility is well known and set out in, among others, *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186–187. I will not repeat those oft-cited passages as they are not controversial. The defendants also rely on Justice Neilson's helpful summary of the difference between reliability and credibility in *United States v. Bennett*, 2014 BCCA 145 at para. 23, which I adopt.

> [23] Before considering these arguments, it is necessary to understand the distinction between reliable evidence and credible evidence. The definition of both concepts provided by Doherty J.A. in *R. v. Morrissey* (1995), 22 O.R. (3d) 514 (C.A.) at 526A is helpful in distinguishing them:
>
> > Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable. ...

[79] The defendants also rely on Justice Abrioux's helpful summary set out below from *Buttar v. Brennan*, 2012 BCSC 531 at paras. 24–25:

> [24] In a case such as this where there are little, if any, objective findings except some minor degenerative changes in the neck, back and knee, the following should be taken into account by the trier of fact:
>
> > - the assessment of damages in a moderate or moderately severe soft tissue injury is always difficult because the plaintiffs are usually genuine, decent people who honestly try to be as objective and factual as they can. Unfortunately every injured person has a different

> understanding of his own complaints and injuries, and it falls to judges to translate injuries to damages *Price v. Kostryba* (1982), 70 B.C.L.R. 397 at 397 (S.C.);
>
> - the court should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery (*Price* at 399);
>
> - an injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence -- which could be just his own evidence if the surrounding circumstances are consistent -- that his complaints of pain are true reflections of a continuing injury (*Price* at 399);
>
> - the doctor's function is to take the patient's complaints at face value and offer an opinion based on them. It is for the court to assess credibility. If there is a medical or other reason for the doctor to suspect the plaintiff's complaints are not genuine, are inconsistent with the clinical picture or are inconsistent with the known course of such an injury, the court must be told of that. But it is not the doctor's job to conduct an investigation beyond the confines of the examining room *Edmondson v. Payer*, 2011 BCSC 118 at para. 77, aff'd 2012 BCCA 114;
>
> - in the absence of objective signs of injury, the court's reliance on the medical profession must proceed from the facts it finds, and must seek congruence between those facts and the advice offered by the medical witnesses as to the possible medical consequences and the potential duration of the injuries *Fan (Guardian ad litem of*) *v. Chana*, 2009 BCSC 1127 at para. 73;
>
> - in a case of this kind care must be taken in reaching conclusions about injury alleged to have continued long past the expected resolution. The task of the court is to assess the assertion in light of the surrounding circumstances including the medical evidence. The question is whether that evidence supported the plaintiff's assertion and, if not, whether a sound explanation for discounting it was given *Tai v. De Busscher*, 2007 BCCA 371 at para. 41.

[25] In light of the above, an assessment of the plaintiff's credibility is critical:

> The test must reasonably subject his story to an examination of its consistency with the probabilities which surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.
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> *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357.

2. Discussion

[80] The defendants submit that the number and nature of inconsistencies within the plaintiff's testimony, and between her testimony and other evidence, raise serious concerns about both her reliability and credibility.

[81] With regard to inconsistencies, they point to what they say is her inconsistent evidence about the first accident, including whether airbags deployed, how she got home from the accident scene and how far her vehicle travelled after impact. I agree her evidence on those points was inconsistent with other evidence. However, I do not find those inconsistencies have a material impact on her general reliability or credibility for the reasons stated earlier (see above paras. 24-25).

[82] The plaintiff's position is that her evidence has been consistent and congruent with the medical and non-expert evidence. They submit considering the trial took place eight years since the first accident, any inconsistencies should not decrease her reliability or credibility.

[83] The plaintiff submits the Court can rely on her evidence because she made reasonable admissions against her own interest under cross-examination. I do not agree that characterization was consistently accurate. I find she was sometimes evasive or resistant to accepting reasonable propositions.

[84] The plaintiff also stresses that her testimony about the impact the injuries have had on her was corroborated by the non-expert witnesses. I agree that the non-expert witnesses corroborated some aspects of her testimony, but for the most part, their testimony was vague and general, and not of great assistance.

[85] The defendants submit that the plaintiff's report to experts of significant symptoms was inconsistent, and sometimes differed from her trial testimony. They assert that she tended to exaggerate her symptoms. They also submit that when inconsistences or contradictions in the plaintiff's evidence were put to her, her explanations were not compelling.

[86] I agree. I find on a balance of probabilities, upon considering the evidence as a whole, that the plaintiff overstated the impact her injuries had on her functioning and ability to work to a significant degree.

[87] One stark example is the plaintiff's testimony about her weight gain and loss. During her direct testimony, she said her weight gain came suddenly after the first accident because of her lack of energy and low mood, which she attributed directly to the accident. Ultimately, that weight gain led to her travelling overseas for gastric bypass surgery in 2020. However, during cross-examination she agreed with the veracity of medical records in October 2015 where she reported concerns about weight gain and as well as low energy, which at the time she said she had been experiencing for months.

[88] This contradicts her self-report and evidence from her collateral witnesses that low energy was a new condition seen only after the first accident. This challenges the reliability of evidence that she did not suffer from problems with fatigue before the accident.

[89] More concerning, the plaintiff told Dr. Stewart that she suffered significant weight loss (85 pounds) after the first accident because of the anxiety which she said was caused by the accident. This directly contradicts her trial testimony. Also, the plaintiff failed to mention to Dr. Stewart that she had gastric bypass surgery in 2020. When she was questioned about that during cross-examination, I find she obfuscated, and her answers were evasive.

[90] The contradiction in whether she experienced weight gain or weight loss because of the accident, and her failure to mention gastric bypass surgery to Dr. Stewart significantly erodes her credibility. It is difficult to believe she would be mistaken and confused about whether she believed she gained or lost a significant amount of weight just after the first accident, especially because she took extreme measures to address her weight gain. Travelling overseas for surgery is highly unusual. She had no reasonable explanation for why she did not mention that to Dr. Stewart. This raises the spectre that the plaintiff would tailor her report of her

medical history to experts to maximize the connection between her complaints and the accidents.

[91] On its own, her shifting evidence about weight gain or weight loss would cause me to approach her evidence with at least some caution, but when combined with what I find to be numerous other examples of contradictions or inconsistencies, I find the reliability of the plaintiff's testimony about her symptoms and the impact of her injuries on her life is significantly diminished.

[92] The following are other examples of inconsistencies in the plaintiff's testimony about her limitations and physical capacity:

a) The plaintiff gave inconsistent reports to various providers compared to trial testimony about her sleep. Her trial testimony was that she only ever gets one to two hours of sleep at a time, and three hours of continuous sleep would be a "good" day. The plaintiff told Ms. Tencha that she wakes up about every 30 to 45 minutes. However, she told Dr. Stewart that she wakes up about twice a night and that it takes her 30 to 45 minutes to go back to sleep, but also that she usually gets about six to seven hours of sleep at night. When asked to explain these discrepancies during cross-examination, the plaintiff claimed that she told Ms. Tencha what her "worst" day was like whereas she told Dr. Stewart what her "best" day would be. I agree with the defendants that it was clear Dr. Stewart asked the plaintiff about her average sleep. Nor is there any indication in Ms. Tencha's report or testimony that the question about sleep was anything other than to describe a typical or average day.

b) I find the plaintiff's attempt to explain inconsistencies in what she told experts about her sitting tolerance to be unsatisfactory in the same way. She reported to Dr. Stewart that she could tolerate sitting comfortably for only about 45 to 60 minutes at a time. However, she told Ms. Tencha she could only sit for 10 to 15 minutes before she would have to get up and stretch. Her explanation for the discrepancy was that she thought

Dr. Stewart was asking about sitting in a “relaxed situation” whereas Ms. Tencha was talking about sitting at work. I find that explanation difficult to accept as being genuine, or reflective of what she was asked by the experts during their assessment.

c) The plaintiff testified that her headaches and back pain had gotten worse since the second accident. However, she agreed that she told Dr. Stewart something different. The plaintiff told her that immediately after the second accident, her headaches and back pain were worse for a time, but they then settled back to what they had been like after just before the first accident. There was no explanation for that difference.

d) At trial the plaintiff first stated that she experienced neck and back pain every single day since the first accident, although not necessarily constantly throughout the day. However, a record in May 2017 records that she reported to a physiotherapist that her neck pain was better and that she had been pain-free for five days. When asked about that during cross-examination, she simply said that she probably had a good week where she had not been very active.

e) The plaintiff said during her direct testimony that her functional capacity evaluation with Ms. Tencha lasted about eight hours, but she agreed in cross-examination it was only about five and a half. She claimed she was with Dr. Stewart for three to four hours, but Dr. Stewart said it was an hour and a half. These differences would not necessarily be significant on their own, but for the fact that she testified that her meeting with Dr. Filbey for an independent medical examination only lasted about 15 minutes. Dr. Filbey stated unequivocally that the 15-minute estimate could not be accurate. I accept his testimony on that point, especially given what was covered during his assessment. The suggestion that Dr. Filbey only spent 15 minutes with the plaintiff can be seen as an attempt to diminish the weight of his evidence by implying his assessment was deficient because

it was cursory. Similarly, overestimating the time Dr. Stewart spent with the plaintiff could be seen as an attempt at achieving the opposite effect. This raises the possibility that the plaintiff adapted her recollections—whether intentionally or not—in accordance with what would be most favourable to her position in the litigation. That significantly discounts the reliability of her recall.

f) There was inconsistency between evidence at the plaintiff's examination for discovery in 2022 and her trial testimony about whether she used to cut the grass at her home before the first accident. She reported to Dr. Stewart that she did so, and stated at trial that she had been unable to do this task since the first accident. During cross-examination she did not accept her discovery evidence where she stated that she did not cut the grass before the first accident. She also admitted that her son sometimes cut the grass and that she had hired people to do that work. I find two things significant about this. The first is her attempt to distance herself from her discovery evidence, which reflects poorly on her credibility. The second is that the inconsistency is related to a specific item for which she seeks an amount for cost of future care.

g) Another discrepancy is her discovery evidence when she stated that before the first accident she did some walks with rough terrain, but only with a bit of an incline, and nothing too intense, specifically mentioning she did not do the Grouse Grind. She also said since the first accident, she tended to just do walk around the block or on a track. However, during cross-examination she admitted that she had hiked the Grouse Grind, but she could not or would not specify when. She also confirmed that she completed the Quarry Rock Hike in Deep Cove in April 2022, which was shortly before the discovery at which she described only doing walks around the block.

[93] I also find there are a significant number of instances where her trial testimony is difficult to reconcile with evidence given at her discovery or other evidence about how often she missed work, or the reasons why she believed she was unable to take advantage of opportunities for hosting duties:

a) The defendants pointed to inconsistencies amongst her discovery evidence, trial testimony and Ms. Oppal's testimony about an invitation to host a wedding on June 11, 2023. At her discovery, the plaintiff stated that she turned down the opportunity because she was booked to do a live event in the community the same day. However, during cross-examination she stated she did not do a live event that day. She explained that she had been scheduled to do so, but could not because she was not feeling well enough. However, that answer contradicts her discovery evidence that she did all weekend live opportunities offered to her between June and August 2023. At trial, she attempted to downplay the discovery evidence, saying she could not remember how many live events she had done and that she "picked them up whenever she could". She also testified that she probably did not do the one scheduled on June 11, 2023, because she was not feeling well. All of this evidence is seriously compromised by the testimony of Ms. Oppal that the plaintiff did act as an emcee at a wedding on June 11, 2023, for about an hour and a half.

b) At an examination for discovery in 2024, the plaintiff stated she did not recall missing any time from work when she worked at FYI Media. However, during her trial testimony, she stated that she did miss work because she would sometimes leave work early or not make it to work at all. However, she could not identify nor specify either the number of times she missed work or left early. When it was suggested that her discovery evidence was inconsistent with her testimony, she said she misunderstand the question at discovery. I do not accept that because the question was clearly stated. Combined with her inability to give clear evidence about the amount of time or days she

missed from that job, I place more weight on her discovery evidence for this point.

c) The plaintiff testified about working at a particular roadshow. She described the schedule as intense, including travel to different cities. She testified that after attending the roadshow in Winnipeg and Calgary, she had to miss two days of work because of her pain and headaches. However, during cross-examination, her evidence changed. She agreed that she missed the next day of work in order to travel back home, and not because of her injuries. She then said she missed the next two days because of her injuries. On its own, this discrepancy may be minor, but it is indicative of a pattern of attributing any missed work time or opportunity to her injuries.

d) The plaintiff turned down the opportunity to work on a different roadshow with the performer called Bohemia. At her discovery she said she declined that opportunity because it would require her to take off a significant amount of time from her job (about two weeks). She said that while she could be gone for a sporadic day here and there, being away from her regular show for that length of time was too long a break for her listeners. She was very committed to her show and wanted to keep her audience. However, during the trial, she tried to downplay that evidence and said those concerns were secondary to her not wanting to do the roadshow because of her injuries.

e) The plaintiff produced a number of documents about missed hosting opportunities. Her evidence in direct was that she typically did not respond because she was not confident she could do the work due to her injuries. I agree with the defendants that it is unclear what if anything can be gleaned form those documents. Two examples are typical:

    i. In her direct testimony she described an email from a body-building company was an opportunity to be a “brand ambassador” by sharing videos about fitness. During direct testimony, she testified she knew she could not provide such videos because of her injuries. However, in

cross-examination it was pointed to her that the invitation was not to be an ambassador, but simply to "share her fitness journey" with the company. She then admitted that the email was not a realistic opportunity for her as she was not and had never been a body builder.

ii. Another example was a series of text messages she exchanged with someone in October 2024, about a possible hosting job at an awards ceremony on November 22, 2024. Her text reply stated that she would know within two weeks if she could do the job, but she testified during direct testimony that she ultimately declined the offer because of the symptoms from her injuries she was feeling at the time. However, she confirmed in cross-examination that she acted as an emcee at a friend's wedding on November 7, 2024, and had a hosting job on November 30, 2024, both events being close in time to the invitation she declined. Overall, the defendants say that the plaintiff's evidence about why she declined that particular invitation was confusing and inconsistent. I agree.

[94] The preceding discussion does not capture every inconsistency or problematic aspect of the plaintiff's testimony, but it is representative. I find the number and nature of inconsistencies between the plaintiff's trial testimony and other evidence to significantly diminish both her credibility and reliability. Particularly significant are her attempts to downplay or reject evidence she gave at discovery, which occurred closer in time to the events she was questioned about than trial.

3. Conclusions

[95] For all the reasons discussed above, I find the plaintiff's reliability in recounting the extent of her symptoms and injuries and the impact they had on her work, physical and psychological condition and functioning was seriously diminished. There were times her answers were evasive or defensive, or she would not easily agree to reasonable propositions put to her. I find that eroded her credibility. Both have a material impact on the assessment of damages.

C. Summary of Expert Evidence

[96] I briefly summarize the evidence from experts who testified at trial.

1. Functional Capacity Evaluation

[97] Haley Tencha was called by the plaintiff. She was qualified as an occupational therapist and a certified work capacity evaluator with expertise in functional capacity evaluations ("FCE"), cost of care assessments and management of impairments due to physical limitations and injuries. She produced one report dated October 18, 2024, addressing both FCE and cost of future care.

[98] She opined that the plaintiff's demonstrated limitations make her unable to perform the full scope of critical job demands of her both her pre-accident and post-accident jobs. That conclusion was based primarily on Ms. Tencha's findings from the FCE and opinions regarding the plaintiff's tolerance for sitting, frequent bilateral reaching, left hand dexterity and leaning over while seated. Ms. Tencha opined that the plaintiff would need to continue with the modifications she had already made (using wireless microphone and reducing the length of her show) to continue completing her regular weekly duties. Ms. Tencha was also of the view that plaintiff's limitations mean she could not tolerate extra assignments.

2. Physiatrists

[99] Dr. Nairn Stewart was called by the plaintiff, and Dr. James Filbey was called by the defendants. Both were qualified to provide expert evidence with regard to physical medicine and rehabilitation. Dr. Stewart met with the plaintiff on January 24, 2024, but her report was not completed until October 11, 2024. Dr. Filbey assessed the plaintiff on September 26, 2024, and completed a report dated October 2, 2024.

[100] Dr. Filbey's and Dr. Stewart's opinions about the injuries caused by the first accident were essentially the same. Dr. Stewart concluded the plaintiff suffered soft tissue injuries to her neck, shoulder, upper, mid and lower back, and anxiety related to driving. Dr. Filbey identified the same injuries and opined that these caused the

plaintiff to suffer from chronic pain affecting her left shoulder and low back pain, and caused low mood, anxiety and difficulties with sleep.

[101] Dr. Stewart opined that the second accident also caused soft tissue injuries to the plaintiff's neck, shoulder and back, and aggravated her anxiety related to driving. Dr. Filbey was of the opinion that second accident only temporarily worsened the injuries from the first accident.

[102] In Dr. Stewart's opinion, the plaintiff suffered symptoms of extensor tendinitis after the first accident. She noted the medical records that the plaintiff received treatment for lateral epicondylitis ("tennis elbow"). In her view, both injuries result from over-use, and it is "likely those arose because of the injuries to her neck and shoulders". In cross-examination, Dr. Filbey conceded these symptoms could have been caused by the accidents.

[103] However, they differed with regard to prognosis. Dr. Filbey said the plaintiff's prognosis for improvement was good, and he considered the likelihood of reduced symptoms and improved function to be very good if the plaintiff were to follow his treatment recommendations. He recommended medications for pain, sleep and mood. Dr. Stewart also recommended pain medication. Additionally, they both recommended psychological counselling. Both testified massage therapy and physiotherapy would be useful as a tool for managing flare-ups, although Dr. Filbey did not recommend either in his report.

[104] Dr. Filbey recommended active therapy whereas Dr. Stewart opined it would be of no benefit given the duration of her symptoms. She did recommend restorative yoga.

[105] They also differed on the impact of her injuries. Dr. Filbey was of the opinion that the plaintiff was not restricted from performing her work or normal household or recreational activities. Dr. Stewart concluded that she would continue to be limited in her ability to work and perform household duties and partake in recreational activities.

3. Neurologist

[106] Dr. Gordon Robinson was qualified as a specialist in neurology with expertise in the determination of causation, diagnosis, prognosis and treatment of headache disorders, other neurological issues and associated psychiatric conditions. He assessed the plaintiff on September 9, 2024, and produced a report dated September 11, 2024.

[107] Dr. Robinson opined that the first accident caused the plaintiff to suffer from persistent headaches related to her soft tissue injuries, and that was aggravated by the second accident. In his view, passive treatments would not be helpful in addressing her headaches. He opined she may benefit from Botox, but also recommended that she undertake psychological counselling.

D. Assessment of Expert Evidence

[108] The plaintiff submits Dr. Filbey's report should be given either no or very little weight. She submits it is fundamentally flawed because it contains a conditional diagnosis of chronic pain disorder. She also faults him for not making more detailed enquiries of the plaintiff about her home, garden and duties at her job.

[109] I disagree. Dr. Filbey clearly opined that the plaintiff suffers from chronic pain syndrome; it was not a conditional diagnosis. However, during his testimony, he explained that it is a diagnosis of exclusion, meaning it is typically made when there is no other explanation for long lasting pain. He noted that the plaintiff experienced symptoms atypical for soft tissue injuries, including foot drop and numbness in her limbs. Putting his duty as a physician over his duty as an expert, he was concerned those had not been yet adequately investigated. He strongly recommended further testing, and commented on possible explanations for those symptoms. However, that did not diminish his conclusion based his assessment of the plaintiff and review of records that she suffered from chronic pain syndrome.

[110] I confirm I place no weight on his speculation of what other causes might exist to explain the non-typical symptoms, but I do place weight on his diagnosis of chronic pain syndrome.

[111] The plaintiff submits Dr. Stewart's evidence should be given greater weight. She did not differ significantly from Dr. Filbey in terms of diagnosis, but they did differ with regard to prognosis and treatment.

[112] I have a number of concerns about Dr. Stewart's report, mainly because I am not confident that the plaintiff's report of symptoms to Dr. Stewart was accurate for the reasons discussed above (see above para. 92). In addition, the plaintiff told Dr. Stewart that she had lost consciousness for a few seconds during the accident, but there is no mention of that in any other record or report. It is unclear why the plaintiff would make that statement, other than to amplify the extent of her injuries.

[113] Dr. Stewart admitted that certain information may have changed her opinion (such as whether the plaintiff mowed the lawn herself before the accidents), while other information would not (such as whether the plaintiff was able to take breaks during her workday). I find the instances of Dr. Stewart's agreement that different facts would change her opinion difficult to reconcile with the instances that different facts would not change her opinion. That justifies placing less weight on her conclusions.

[114] I also note that Dr. Stewart has not been in clinical practice since 2018, which does give me pause, but would not independently cause me to discount her opinion.

[115] The parties differed on the weight that should be placed on Ms. Tencha's evidence. I have already identified concerns with the plaintiff's reporting to Ms. Tencha (see above para. 92), which are relevant to the weight I place on the evidence.

[116] Given issues with the plaintiff's credibility and reliability, the defendants submit Ms. Tencha's opinions must be given reduced weight because of Ms. Tencha's admission that she relied heavily on the plaintiff's self-reports of function

and symptoms. They also contend Ms. Tencha's refusal to acknowledge that her opinion might change if she was given different or more information weakened her opinion.

[117] I agree. I find Ms. Tencha was reluctant to acknowledge the possibility that her opinions might change if the plaintiff's self-reports had been different. On occasion, her answers to questions during cross-examination bordered on being defensive, especially when confronted with different information about the plaintiff's capacity for hiking. I also find her denial that the plaintiff's omission of the hosting duties she had done after the accidents to be significant.

[118] Another example is particularly significant. Ms. Tencha followed up with the plaintiff with a phone call a few days after the FCE, to ask how she was doing. That phone call happened to be on the same day that the plaintiff had been assessed by Dr. Robinson. The plaintiff reported to Ms. Tencha that her pain was worse than it had been on the day of the FCE. However, Dr. Robinson noted the plaintiff had greater range of motion in the abduction of her left shoulder and neck that Ms. Tencha noted. Ms. Tencha agreed that reporting greater pain would typically be associated with worse results on range of motion, but she did not agree that Dr. Robinson's findings should cause her to question the reliability of the plaintiff's reports to her. That refusal suggestion a degree of defensiveness of her own opinion. I find this decreases the weight afford to Ms. Tencha's evidence.

[119] Overall, I agree with the defendants that greater weight should be given to Dr. Filbey's evidence than Dr. Stewarts, and decreased weight placed on Ms. Tencha's conclusions.

E. Conclusions and Findings about Injuries

[120] The parties do not differ significantly regarding what injuries the plaintiff suffered as a result of the accidents.

[121] The defendants accept that the plaintiff suffered soft tissue injuries to her neck and lower back, with associated symptoms of pain, headaches, low mood, and

non-restorative sleep from the first accident. The defendants also say that those injuries were exacerbated temporarily by the second accident. However, they do not agree that any of her injuries were permanently worsened or aggravated or that there were any new injuries as a result of the second accident. They do not agree that her issues with fatigue are attributable to the accidents.

[122] The plaintiff submits that the evidence supports the conclusion that her injuries are permanent, and that they significantly impact all aspects of her daily activities. Her position is that she is permanently and significantly impaired in her ability to fully engage in work, household and leisure activities. She also submits her headaches and anxiety were aggravated by the second accident.

[123] The expert evidence does not differ significantly on the injuries she sustained. The most significant difference was how Dr. Stewart and Dr. Filbey answered the question of what the plaintiff's future would likely be. Dr. Filbey was optimistic of the plaintiff's prognosis if she received counselling, took medications and engaged in active rehabilitation. Dr. Stewart concluded the plaintiff would not improve and would need modifications and assistance for work, household activities and leisure.

[124] The plaintiff argued Dr. Filbey was unrealistic to opine that the plaintiff's pain would improve given its chronicity, citing Dr. Stewart's opinion. However, Dr. Filbey's prognosis was not that the plaintiff would be able to be pain-free. His opinion is that with proper medications, counselling and improved fitness, her ability to tolerate her injuries would improve, thus improving her functioning.

[125] The significant concerns I have with the plaintiff's reliability and credibility lead me to conclude that she exaggerated and embellished how the accident has affected her life, especially to Dr. Stewart and Ms. Tencha. Given my other comments about their evidence, I rely on Dr. Filbey's prognosis with regard to the plaintiff's future.

[126] The defendants also submit that the plaintiff had pre-existing symptoms of anxiety and "fatigue condition" that has to be factored into any award of damages.

With regard to anxiety, they point to the descriptions of her being “OCD” about her home’s cleanliness.

[127] I am not convinced there is a sufficient evidentiary basis to conclude the plaintiff had pre-existing anxiety to the degree that it affected her functioning.

[128] With regard to fatigue, the defendants point to her admitted low iron, which can cause low energy, and her report in October 2015 of low energy. However, her low iron was treated and continues to be treated. Accordingly, I am not satisfied that the evidence supports a conclusion she suffered from pre-existing fatigue to the degree that it impacts the assessment of damages.

[129] For all those reasons, I find:

a) The first accident caused the plaintiff to suffer soft tissue injuries to her neck, shoulder and low back with associated pain in those areas, as well as headaches and anxiety.

b) These conditions are chronic.

c) All of her injuries contribute to the plaintiff’s suffering from low mood and low energy, which I find are attributable to the first accident.

d) The second accident did not cause any new or different injuries, and only temporarily worsened her injuries.

e) I am not convinced on a balance of probabilities that she has been permanently disabled to the degree that she cannot work full time as she did before the accidents, albeit she requires some minor modifications.

f) I find on a balance of probabilities that her injuries have caused her modify, but only to a modest degree, the manner in which she completes her household cleaning, and the degree to which she engages in her recreational activities. However, I do not find those modifications to be significant to the degree that they are disabling.

III. DAMAGES

[130] The plaintiff seeks a total of $993,000.00 for damages comprised of:

a) non-pecuniary damages - $150,000;

b) loss of housekeeping capacity - $198,000;

c) past lost of earning capacity - $164,000;

d) future loss of earning capacity - $318,000;

e) cost of future care - $149,000; and,

f) special damages - $14,000.

[131] The defendants' position is the maximum amount of damages that are appropriate to award is between $36,992.82 and $98,032.00, broken down as follows:

a) non-pecuniary damages - between $45,000 and $85,000;

b) loss of housekeeping capacity - nil;

c) loss of past earning capacity - $1,200;

d) loss of future earning capacity - nil, or in the alternative, $50,000;

e) cost of future care - between $4,332.00 and $4,612.00; and,

f) special damages - $1,695.82.00

A. Non-Pecuniary Damages

[132] It is well settled that the amount awarded should put plaintiffs in the same position they would have been but for the defendant's negligence. There is no dispute that the factors to consider in assessing the appropriate amount of non-pecuniary damages are set out in *Stapley v. Hejslet,* 2006 BCCA 34. In that case the Court of Appeal articulated a non-exhaustive list of common factors to be considered

(para. 46) when awarding non-pecuniary damages, which includes: the plaintiff's age; the nature of the injury; severity and duration of the pain; the degree of disability; emotional suffering; any loss or impairment to life, family, marital or social relationships or physical and mental abilities; and loss of lifestyle.

[133] The plaintiff also relies on *Evans v. Keill*, 2018 BCSC 1651 at paras. 161–164:

> [161] The fundamental principle of compensation in personal injury cases is that a plaintiff should receive full and fair compensation, calculated to place them in the same position as they would have been had the tort not been committed, insofar as this can be achieved by a monetary award: *Lines v. Gordon*, 2009 BCCA 106 at para. 167, citing *Ratych v. Bloomer*, [1990] 1 S.C.R. 940 at 962-63.
>
> [162] This principle is accomplished by awarding damages for pecuniary loss in the amount reasonably required to permit a standard of living and day to day functionality that, to the extent possible, approximates what the plaintiff would have experienced but for the wrong they were subjected to. Non-pecuniary damages are assessed to compensate for pain, suffering, and loss of enjoyment of life both prior to trial and into the future having ensured that the pecuniary losses are appropriately compensated and will not erode the non-pecuniary damages.

[134] In addition, the parties referred to cases that they claim had enough similarities to be useful comparators. While similar cases are helpful to provide a range of damages awarded, each case must be decided on the facts before the court.

[135] The plaintiff relied on two cases in which the plaintiff was awarded $150,000 in non-pecuniary damages. *Mattson v. Spady*, 2019 BCSC 1144, involved a plaintiff who was 30 years old at the time of the accident. The court found the accidents caused her to suffer neck pain and headaches, soft tissue injuries to right cervical facets and injuries to the shoulder girdle muscles, winging of the right scapula, compromised shoulder function and low back injury that resolved. The impact of the injuries to the plaintiff in that case was more serious than to the plaintiff before me. Justice Winteringham described the impact on the plaintiff's life as follows:

> [151] Ms. Mattson was 30 years old at the time of the accident. I have found that her prognosis for a full recovery is guarded, although further

> treatment (injections and/or pain management through a pain clinic) may provide some improvement. Ms. Mattson will be restricted in her day-to-day activities. The impact of her condition has been significant, resulting in reduced work hours, nominal participation in extracurricular activities and inability to attend to her home responsibilities. Importantly, her ability to care for her infant children has been impacted.

[136] The plaintiff also relies on *Ziolkiewicz v. Emmanuel*, 2024 BCSC 1174, but I find that case distinguishable as it involved a much younger plaintiff who had not yet been able to establish a career path.

[137] The defendants also referred to cases which they say involved similar injuries. In *Cegielka v. Grace*, 2020 BCSC 115, the court concluded that the plaintiff, who was 32 years old at the time of the accident, would suffer ongoing, periodic neck and back pain but would not be impaired or disabled. He originally had shoulder and low back pain, but both resolved. He sought damages in the range of $85,000 to $100,000 and was awarded $40,000 non-pecuniary damages, which amounts to $46,928 today.

[138] In *Han v. Dular*, 2023 BCSC 108, Justice Forth awarded the plaintiff $85,000. She summarized her findings with regard to the plaintiff's injuries:

> [115] I find that Ms. Han suffered soft tissue injuries in the Accident to her right shoulder, arm, and right knee, but she made a full recovery from those injuries. She does have some on-going symptoms of neck and back pain but it is infrequent and not disabling. I accept that she still experiences some cognitive issues but that they do not prevent her from working or participating in her regular recreational pursuits. Her headaches continue but are not disabling and occur, at most, a few times a month. They usually are very short, a matter of seconds, though can last a few hours.

[139] The defendants also referred to cases involving much more serious injuries than the plaintiff suffered, but where less than $150,000 was awarded. I do not find those helpful for comparison purposes.

[140] I find the plaintiff in *Mattson* to have suffered more serious injuries in terms of the limitations and disabling impact on the plaintiff. For that reason, I do not agree $150,000 is appropriate.

[141] The plaintiffs in the two cases cited by the defendants had some injuries that fully resolved by trial, and may have been less serious in terms of duration, but their impact was somewhat similar. I consider my concerns about the plaintiff's credibility and reliability to be most relevant to other heads of damage, although they are relevant to non-pecuniary damages.

[142] Taking everything into consideration, I find the appropriate amount of non-pecuniary damages is $90,000. I confirm this includes an amount to account for the modifications she needs to make with regard to housekeeping duties.

B. Loss of Housekeeping Capacity

[143] Both parties referred to the helpful summary about this head of damage in *Ali v. Stacey,* 2020 BCSC 465 at para. 67:

> [67] Read together, these two judgments establish that a plaintiff's claim that she should be compensated in connection with household work she can no longer perform should be addressed as follows:
>
> a) The first question is whether the loss should be considered as pecuniary or non-pecuniary. This involves a discretionary assessment of the nature of the loss and how it is most fairly to be compensated; *Kim* at para. 33.
>
> b) If the plaintiff is paying for services provided by a housekeeper, or family members or friends are providing equivalent services gratuitously, a pecuniary award is usually more appropriate; *Riley* at para. 101.
>
> c) A pecuniary award for loss of housekeeping capacity is an award for the loss of a capital asset; *Kim* at para. 31. It may be entirely appropriate to value the loss holistically, and not by mathematical calculation; *Kim* at para. 44.
>
> d) Where the loss is considered as non-pecuniary, in the absence of special circumstances, it is compensated as a part of a general award of non-pecuniary damages; *Riley* at para. 102.

[144] The plaintiff submits the lack of "medical" evidence to counter Dr. Stewart's and Ms. Tencha's conclusions about the plaintiff's needing household help is determinative. I disagree. I have placed decreased weight on both opinions for the reasons explained, making the omission of other evidence unimportant.

Furthermore, it is not clear to me medical evidence is essential to disentitle (or entitle) someone to a pecuniary award for loss of housekeeping capacity.

[145] The plaintiff seeks a significant award for this head of damage, but she has not addressed the threshold issue as to whether the loss is pecuniary or non-pecuniary.

[146] I find the loss in this case is non-pecuniary. I did not find she was permanently or significantly impacted by her injuries in her ability to complete household duties. Instead, I have found she has had to make modest modifications for how she completely those tasks.

[147] The more important point is that the evidence about the plaintiff's exacting standards about cleanliness in her home was vague and general, and generally not compelling. I repeat my comments above at paras. 71-73 about my concerns with this evidence.

[148] In my view the plaintiff's position as to what amount should be awarded for loss of housekeeping capacity was not supported by the evidence.

[149] To the extent I have found that the plaintiff has had to modify the manner in which she completes her household cleaning, I confirm I have taken that into consideration in assessing the award for non-pecuniary damages.

C. Loss of Earning Capacity

1. Legal Principles

[150] The parties agreed on the applicable legal principles. In *Gark v. Lauzon*, 2023 BCSC 1930, I reviewed the legal principles applicable to loss of earning capacity:

> [157] The standard of proof for both past and future loss of earning capacity is not the balance of probabilities, but a real and substantial possibility: *Smith v. Knudsen*, 2004 BCCA 613 at para. 29; *Schenker v. Scott*, 2014 BCCA 203 at para. 82; and *Grewal v. Naumann*, 2017 BCCA 158 at para. 48.
>
> [158] In *Rowe v. Bobell Express Ltd*., 2005 BCCA 141 at paras. 25–31, the court set out the principles applicable to determining the appropriate amount

to award a plaintiff for past loss of earning capacity. The principles from those cases can be distilled as follows:

> a) The loss of earning capacity is a lost asset, and the appropriate valuation is to determine what the plaintiff would have earned if the injuries had not occurred.
>
> b) The claim is the loss of learning capacity, meaning the loss of the value of the work the plaintiff would have performed but was unable to because of the injury, not just "loss of income".
>
> c) The damages are meant to represent the value of the plaintiff's earnings that she would have received over time had the tort not been committed, not merely a loss incurred entirely at the time of the tort.
>
> d) The loss may be measured in different ways including reference to actual earnings the plaintiff would have received.

[159] With regard to assessment of future loss of earning capacity, the legal principles were recently re-affirmed by the Court of Appeal's trilogy of cases: *Dornan v. Silva*, 2021 BCCA 228; *Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421. From those cases, I distill the following principles:

> a) The burden to establish entitlement to future wage loss is not a balance of probabilities. Instead, the plaintiff must show a real and substantial possibility of loss that amounts to something more than speculation.
>
> b) The award for future loss of earning capacity is an assessment, not a mathematical calculation.
>
> c) The assessment involves a comparison of the plaintiff's likely future if the accident had not happened, with what the plaintiff's likely future will be after the accident.
>
> d) The first step of the assessment requires the court to determine whether the evidence discloses a potential future event that could lead to a loss of capacity. One example is the possibility that accident-related injuries will worsen.
>
> e) If the first step is satisfied, the second step asks where there is a real and substantial possibility that the future event will cause a pecuniary loss.
>
> f) A number of factors are examined to determine if the second step is met, including:
>
> > i. the plaintiff's intention to keep working and what they intend to do;
> >
> > ii. the plaintiff's inability to devote the same energy or hours to the pre-accident occupation;
> >
> > iii. the plaintiff's work history;
> >
> > iv. the plaintiff's medical conditions; and

> v. the plaintiff's intentions concerning future lifestyle, and risks inherent in those plans.
>
> g) If the second step is met, the third step is to determine the value of that potential future loss, which requires assessing the relative likelihood of the possibility occurring. The third step can be accomplished by employing either the "earnings" approach, or the "capital asset approach".
>
> h) The earnings approach is more useful when the loss is easily measured. While that determination is not a mathematical exercise, the court should be guided by mathematical anchors.
>
> i) The capital asset approach should be used where the loss is not measurable in a pecuniary way. In that case, the court asks whether the plaintiff:
>
> > i. has been rendered less capable overall from earning income from all type of employment;
> >
> > ii. is less marketable or attractive as an employee to potential employers;
> >
> > iii. has lost the ability to take advantage of all job opportunities which might have been open to her had she not been injured; and
> >
> > iv. is less valuable to themselves as a person capable of earning income in a competitive market.

2. Past Loss of Earning Capacity

[151] The defendants agree that the plaintiff should be compensated for the five weeks she did not work after the first accident. She returned to full-time work after that.

[152] At the time of the first accident, the plaintiff was earning approximately $1,000 per month at her job with CP Media West Inc. While she did provide evidence that in the following year her annual earnings increased (to $33,737), there was no explanation as to when her income increased and on what basis. Accordingly, in November 2016, she was earning $1,000 per month, and that is the appropriate measure. Five weeks of lost salary amounts to $1,200.00.

[153] The plaintiffs did not contest that calculation.

3. Past and Future Loss of Earning Capacity for Missed Opportunities

[154] The plaintiff submits that in addition to lost income for time taken off work, she could have earned before trial $25,000 per year for hosting duties but for the accidents. She calculated this loss to be $164,000.00 based on $25,000 multiplied by 8.2 years and discounted for taxes.

[155] The plaintiff relies on the same evidence and arguments, as well as methodology in support of her claim for future loss of earning capacity. She also relies on the expert evidence of economist Darren Benning. He prepared a report dated October 23, 2024, which sets out the income loss multipliers.

[156] Relying on Mr. Benning's economic multiplier to age 70, applied to annual earnings of $25,000 for lost hosting opportunities, the plaintiff calculated her future loss of earning capacity to be $318,350.00.

[157] The defendants submit the plaintiff has not adduced sufficient evidence to meet the test to award anything for lost hosting opportunities, either before trial or after.

[158] The plaintiff's position is that her injuries have negatively affected her career advancement. In her closing submissions, she described that "she has lost …the ability to cross-pollinate her day job in media, with further opportunities, and to parlay her current position into better opportunities for her in mainstream or ethnic media".

[159] The plaintiff is in the entertainment industry. I accept that the cross-pollination to which she refers is an important route of improving one's visibility and recognition, which could reasonably lead to greater income.

[160] The defendants appropriately conceded that the plaintiff has met the first stage of the test to establish she could suffer a loss of earning capacity because of the chronicity of her injuries.

[161] However, they submit she has not met the second step, which requires her to establish a real and substantial possibility that she will suffer a future loss because of her injuries.

[162] I accept the evidence from the plaintiff's testimony and evidence from non-expert witnesses, that she is often recognized in public because of her media presence both from her job and previous jobs, and social media postings. I also note that she has, in fact, earned income from hosting duties since the accidents, which confirms that there is demand for her. While I do not find that she was permanently disabled from working, I conclude she would need modest modifications. It follows that her injuries have caused at least some diminishment of her ability in future to earn income from hosting. In my view, that meets the test of a real and substantial possibility of suffering a future loss.

[163] The third step is to attach a value to that lost asset. I do not agree that the evidence supports the plaintiff's valuation.

[164] The plaintiff argues that she would have taken up numerous lucrative opportunities for hosting duties, but for the accidents. The hosting duties that she did undertake provides some evidence as to the value of her loss, but that evidence falls far short of supporting an annual loss of $25,000.

[165] A major reason why I do not accept the plaintiff's quantification is because of my conclusions about the unreliability of much of her evidence on this topic (see above para. 93). I find that the plaintiff consistently downplayed how the demands of her full-time job would interfere with her availability and capacity to take on hosting duties, regardless of her injuries.

[166] The plaintiff relied on a number of documents to support her position about the extent of her lost hosting opportunities. This evidence is directly relevant to her claim for past loss of earning capacity. I find her evidence about those documents was significantly weakened during cross-examination.

[167] One example was her role as a brand ambassador for EO Healing. She received free product in exchange for posting content on social media. She testified that she decided not to renew that position because of her injuries. However, she also said the demands of that position were “like a full-time job”. I agree with the defendants that the opportunity was not lucrative enough given the time commitment, and that was the reason she did not renew it, not because of her injuries.

[168] At times, her claim of a missed opportunity was merely speculative and, therefore, not sufficient to establish a real and substantial possibility that she could have earned income from it; in essence, it was not a true opportunity. One example was not being offered a position as a presenter at Zee TV. She claimed she was not selected when she told them she would not want to do live events outside if it was cold. The problem is there was no independent evidence to gauge that claim, nor to assess whether she was actually in the running to be selected. The entertainment business is notoriously fickle and unpredictable.

[169] Moreover, that position would have been incompatible with her full-time job because it required her to complete 15 on-site stories per month. She testified she would have done that work on weekends and after work if she had not been injured, but I find that statement to be unrealistic, and another example of her exaggeration.

[170] Another example was her not accepting an opportunity to be involved with a particular film, but again, I find the reasons she did not take up that opportunity were that it would have required her to travel out of town, including overseas and she understood that what was really being sought was for her to be a financial partner in the film’s production. I am not persuaded that she wanted that opportunity so turning it down was unrelated to her injuries.

[171] These examples (and those described above in para. 93) are typical of the problems with the evidence the plaintiff relied on in support of her claim for lost opportunities. I agree with the defendant, that the plaintiff did not establish that she actually lost any opportunities for hosting before trial because of her injuries, and

that aspect of her claim was speculative. It is clear that she did perform some hosting, and she earned income from those. Accordingly, there is no basis for any additional amount to be awarded for past loss of earning capacity.

[172] With respect to future loss of earning capacity, the defendants also argue that even if the Court were to find the plaintiff had met the second step (as I have), the plaintiff's methodology was not supported by the evidence. They submit the valuation should not be based on an assumption that the plaintiff would earn a particular amount annually. For that reason, they submit Mr. Benning's multipliers are of no assistance.

[173] I agree. I do not accept that the evidence supports assigning an annual amount. The evidence fell short of establishing both the quantum and frequency of possible opportunities to support an income approach. I also find that there was no reliable evidence about how long she expected to work, so there is no basis to assume absent the accidents that she would have continued to earn income from hosting until age 70.

[174] Accordingly, I agree with the defendants that the capital asset approach is appropriate.

[175] The defendants' position was that the award for loss of future earning capacity should be one year of the plaintiff's current income, which includes the most amount she has ever earned from hosting duties: $50,000.

[176] I agree and award that amount.

D. Cost of Future Care

[177] The legal principles are undisputed. In *Blackman v. Dha*, 2015 BCSC 698, Justice Devlin provided a helpful summary of the general principles:

> [84] The plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her to her pre-accident condition, in so far as that is possible. When full restoration cannot be achieved, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is

> reasonably necessary on the medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.) [*Milina*]; *Williams v. Low*, 2000 BCSC 345; *Spehar v. Beazley*, 2002 BCSC 1104; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29-30.
>
> [85] The test for determining the appropriate award under the heading of cost of future care is an objective one based on medical evidence. For an award of future care there must be a medical justification for the claim, and the claim must be reasonable: *Milina* at paras. 195-201.
>
> [86] Future care costs are "justified" if they are both medically necessary and likely to be incurred by the plaintiff. The award of damages is speculative, and thus requires a prediction as to what will happen in future. If a plaintiff has not used a particular item or service in the past, it may be inappropriate to include the cost of that service in a future care award. However, if the evidence shows that previously rejected services will not be rejected by the plaintiff in the future, he or she can recover for such services: *Izony v. Weidlich*, 2006 BCSC 1315 at para. 74; *O'Connell* at paras. 55, 60 and 68-70.
>
> [87] The extent, if any, to which a future care costs award should be adjusted for contingencies depends on the specific care needs of the plaintiff. In some cases, negative contingencies are offset by positive contingencies and, therefore, a contingency adjustment is not required. In other cases, however, the award is reduced based on the prospect of improvement in the plaintiff's condition or increased based on the prospect that additional care will be required. Each case falls to be determined on its particular facts: *Gilbert v. Bottle,* 2011 BCCA 144 at para. 253.
>
> [88] An assessment of damages for cost of future care is not a precise accounting exercise. Rather, it is a matter of prediction that must be made in light of the fact that no one knows the future: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.

[178] The plaintiff relies on the evidence of Ms. Tencha, which she says was endorsed by Dr. Stewart. I place decreased weight on their evidence, which impacts how much I rely on their recommendations for cost of future care.

[179] The defendants agree it is appropriate to award the following:

a) $1,512 for 12 sessions of kinesiology or active rehabilitation, and

b) $2,820 for 12 sessions of counselling.

[180] The defendants submit no award should be made for over-the-counter pain medications because the plaintiff's evidence about her use of that was inconsistent,

and because of the general concerns about the decreased reliability of her evidence. I agree and make no award for that.

[181] Dr. Stewart recommended on an annual basis six physiotherapy sessions, and 12 massage therapy sessions to address flare-ups of pain. In his report, Dr. Filbey opined the plaintiff had received little benefit from passive treatments, so he did not recommend them. However, during cross-examination, he clarified that she did not experience progressive benefit from passive treatments, but he agreed providing symptom relief can help functioning. He cautioned that there is a risk of over-treatment, but agreed that no more than six to 12 treatments a year was sufficient. In my view, that justifies awarding an amount for treat, but not both physiotherapy and massage, nor the number of sessions Dr. Stewart recommended. I make an award based on the average cost of both for 12 sessions a year, which is $840 annually. Using Mr. Benning's multiplier, this results in an award of $22,592.

[182] I agree with the defendants that there was insufficient evidence to support an award for Botox treatment recommended by Dr. Robinson. In his report, Dr. Robinson made brief reference to the fact that Health Canada had approved Botox for treating chronic migraines, but there had been no large trials of its effectiveness for post-traumatic chronic headaches. Furthermore, Ms. Tencha confirmed that injections could be covered by Medical Service Plan, depending on the provider. Even if the plaintiff had to pay out-of-pocket, there was no evidence as to the dosage, frequency or duration upon which to make an award.

[183] The plaintiff sought an award for an occupational therapist to assess her workplace, which Dr. Filbey testified was reasonable. The defendants submit no award should be made because the plaintiff's reticence to disclose her injuries at work make it unlikely for her to utilize that assessment. I do not agree that I can or should draw that inference. I find this is an appropriate item to award. Ms. Tencha's evidence was the cost would be between $3,780 and $4,032; I award the mid-point of those amounts at $3,906.

[184] I agree with the defendants that the other items included in Ms. Tencha's report were not supported by the plaintiff's testimony that she intended to use those items. Therefore, it is not appropriate to award an amount for them.

[185] In conclusion, I award a total of $30,830 for cost of future care comprised of the following:

a) $1,512 for 12 sessions of kinesiology or active rehabilitation;

b) $2,820 for 12 sessions of counselling;

c) $22,592 for 12 sessions annually for physiotherapy and/or massage therapy; and,

d) $3,906 for occupational therapy.

E. Special Damages

[186] The parties agreed it is appropriate to award $1,695.82 in special damages for physiotherapy expenses and out-of-pocket prescription medication.

[187] The plaintiff also seeks an additional $13,120 comprised of the following up to the date of trial (8.2 years):

a) $600 annually for Advil and Tylenol;

b) $1,000 per year for weekly visits to have her hair washed, blow dried and straightened.

[188] I agree that the plaintiff's evidence about her usage of medications in general, including Advil and Tylenol, was inconsistent. Moreover, it was not explained why the amount she seeks is significantly higher than what Ms. Tencha has estimated for future annual cost. The plaintiff did not refer to any case law that would justify an award of special damages for grooming services. For neither item were receipts provided.

[189] I am not satisfied it is appropriate to award anything other than the agreed upon $1,695.82.

IV. SUMMARY AND CONCLUSIONS

[190] For all the reasons in this judgment, I award the plaintiff the following:

Non-pecuniary damages:	$90,000.00
Past loss of earning capacity:	$1,200.00
Future loss of earing capacity:	$50,000.00
Cost of future care:	$30,830.00
Special damages:	$1,695.82
TOTAL	**$173,725.82**

[191] The plaintiff is entitled to costs. If there are circumstances of which I am unaware relevant to the issue of costs that either party wants to raise, they may do so via the on-line portal “Request to Appear”, so long as that request is made no later than 30 days from the date of this judgment.

“Sharma J.”