

CANADA / JUDGMENT

Bolognese v. Phan

2022 BCSC 1734

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1734 Bolognese v. Phan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bolognese v. Phan,

2022 BCSC 1734

Date: 20221005

Docket: M190084

Registry: Vancouver

Between:

Julia Marie Bolognese

Plaintiff

And

Thi Phuong Phan

Defendant

- and -

Docket: M201334

Registry: Vancouver

Between:

Julia Marie Bolognese

Plaintiff

And

Robert Keith Farmer

Defendant

Before: The Honourable Justice Majawa

Reasons for Judgment

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Place and Dates of Trial:

Vancouver, B.C.

June 13-17 & 20-24, 2022

Place and Date of Judgment:

Vancouver, B.C.

October 5, 2022

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INTRODUCTION

- [1] The plaintiff, Julia Bolognese, was involved in two motor vehicle accidents (collectively, the "Accidents"). The first accident occurred on January 13, 2017, (the "First Accident") and the second accident occurred on July 2, 2018, (the "Second Accident"). The defendants have admitted liability for both Accidents.
- [2] Ms. Bolognese claims that as a result of the Accidents, she suffered multiple soft tissue injuries that have caused her ongoing chronic pain. She also claims that the Accidents have caused her to develop significant psychological problems which, at their worst, were completely disabling and required hospitalization. Ms. Bolognese claims that her injuries have limited her recreational and vocational abilities and have significantly impacted her social, family, and intimate relationships. She seeks damages for pain and suffering, loss of earning capacity (both past and future), special damages, and the cost of future care.

- [3] Unsurprisingly, the parties are very far apart on the issue of quantum: the plaintiff's total claim is approximately \$1.3 million while the defendants suggest that a more appropriate award would be in the range of \$135,000 to \$193,000. I have determined that Ms. Bolognese is entitled to a total award in the amount of \$571,500[1]. The following reasons detail my determination of the quantum of damages in this personal injury action.

CREDIBILITY OF THE PLAINTIFF AND LAY WITNESSES

- [4] The Court heard evidence from the plaintiff, Chase Robertson (the plaintiff's husband), Angela Bolognese (the plaintiff's sister), Luigi Bolognese (the plaintiff's father), and Chelsea Coombs (a friend of the plaintiff). The defendants did not call any lay witnesses.
- [5] The defendants submit that there are significant issues with Ms. Bolognese's credibility and reliability and that her evidence should be treated with caution. They argue that the plaintiff's evidence at trial was inconsistent with evidence she provided at discovery and evidence available in certain records. The defendants also submit that surveillance video evidence and posts from Ms. Bolognese's social media feeds call into question the credibility and reliability of the plaintiff's subjective complaints and limitations.
- [6] Given that little objective evidence exists to prove the type of soft tissue injuries that Ms. Bolognese claims to have suffered, her self reported symptoms are integral to the determination of the issues before me. Consequently, her credibility and reliability are squarely at issue. I am mindful of the comments made by McEachern C.J.S.C. (as he then was) in *Price v. Kostryba*, 70 B.C.L.R. 397 at 399, 1982 CanLII 36 (B.C.S.C.), with respect to the approach to be taken in cases such as this:

In *Butler v. Blaylock*, decided 7th October 1981, Vancouver No. B781505 (unreported), I referred to counsel's argument that a defendant is often at the mercy of a plaintiff in actions for damages for personal injuries, because complaints of pain cannot easily be disproved. I then said:

"I am not stating any new principle when I say that 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.

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."

- [7] However, I am also mindful of this Court's decision in *Rabiee v. Rendleman*, 2015 BCSC 595, in which Justice Sharma considered the above passage and stated:
- [65] I do not take these quotes to mean that a stricter standard of proof applies where the main evidence about injury comes from a plaintiff's subjective reports to doctors and testimony in court. The standard of proof does not change and it does not matter if the evidence is

"objective" or "subjective". In fact, after considering the above quotation, the Court of Appeal in *Butler v. Blaylock*, [1983] B.C.J. No. 1490 (B.C.C.A.) clarified: "It is not the law that if a plaintiff cannot show objective evidence of continuing injury that he cannot recover. If the pain suffered by the plaintiff is real and continuing and resulted from the injuries suffered in the accident, the plaintiff is entitled to recover damages."

- [66] The key consideration is whether the evidence, as a whole, establishes that the plaintiff's injuries were caused by the defendant's negligence on a balance of probabilities. I have concluded that Ms. Rabiee has met that burden. Thus, the fact that the evidence of her injuries is based largely on subjective reports does not detract from the application of the Stapley factors.
- [8] I have considered the often-cited factors summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-187, *aff'd* 2012 BCCA 296, in assessing the credibility of the plaintiff and the other lay witnesses and determining whether I will accept all, some, or none of their evidence: *Currie v. Taylor*, 2014 BCCA 51 at para. 33. The factors at para. 186 of *Bradshaw* include:

the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally [citations omitted]. Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

- [9] In general, I found Ms. Bolognese's testimony to be "consistent with the probabilities affecting the case as a whole and shown to be in existence at the time": *Bradshaw* at para. 186. However, I do have some concerns with the reliability and credibility of her evidence which causes me to approach her evidence with some caution.
- [10] In particular, I find that Ms. Bolognese tended to downplay the injuries that she suffered in two previous motor vehicle accidents that occurred in 2013 and 2014. For example, at discovery, Ms. Bolognese testified that the two previous accidents merely irritated her pre-existing scoliosis and that no symptoms persisted. When various clinical records detailing her complaints following those accidents were put to Ms. Bolognese at trial, she acknowledged that she now remembered that she sustained injuries from those previous accidents and explained that she did not recall that at the time of the discovery. While the previous accidents occurred many years ago, this explanation makes little sense to me as no explanation was provided as to why her memory is better now than at discovery. Ms. Bolognese also did not disclose the injuries she sustained from the earlier accidents at the independent medical examination arranged by the defendants' counsel, nor did she disclose those injuries to the functional capacity evaluator.

- [11] I also find that Ms. Bolognese tended to downplay the severity of her scoliosis and the treatments she received in respect of that condition in the years leading up to the Accidents. At discovery, Ms. Bolognese testified that she was able to manage her scoliosis and indicated that she only had flareups every couple of years. However, the clinical records clearly indicate much more frequent visits to her physiotherapist for scoliosis related treatments in that time period. When confronted with these records at trial, Ms. Bolognese agreed that her answer at discovery was not quite accurate.
- [12] Taken together, I find that Ms. Bolognese intentionally downplayed the significance of the injuries she sustained in the 2013 and 2014 accidents as well as the effect that her scoliosis had on her. This causes me to treat her evidence of self-reported symptoms with some additional caution.
- [13] However, I do not agree that the demonstrative evidence presented by the defendants had a significant impact on Ms. Bolognese's credibility. The surveillance video of Ms. Bolognese working various parts of her shift at McDonald's in October 2020, does not, in my view, depict an individual that has no limitations in performing her job duties. While Ms. Bolognese did complete many tasks, the video is consistent with her testimony in respect of the difficulty she has with certain tasks. In the video, Ms. Bolognese was seen rubbing her neck and shoulders, and stretching. The video did not depict her entire shift, nor did it depict the impact that it had upon her afterwards.
- [14] I am also not of the view that the social media posts tendered by the defendants are inconsistent with her reported injuries. The few posts tendered show Ms. Bolognese hiking, camping and attending a social event. Ms. Bolognese was forthcoming about these events and her participation in them. She explained the negative physical impact that the camping/hiking trip had upon her and this was confirmed by her husband. In any event, I am of the view that the plaintiff's social media posts are of limited utility when assessing her credibility. I find the words of Justice Murray in *Senger v. Graham*, 2018 BCSC 257, to be instructive:
- [18] While defendant's counsel tried to discredit her evidence by introducing photos that have been posted on the internet of Ms. Senger engaging in physical activities, I do not find that the fact that she has tried doing physical activities or travelled detracts from her evidence in the least. In fact, it makes her evidence more compelling.
- [19] Prior to the accident the plaintiff was an active young woman. She has always participated in sports. She is trying to keep active and in shape. As the majority of the activities she enjoyed prior to the accident now cause her pain she is trying others. She is to be commended for that.
- [20] Plaintiffs cannot be expected to cease living once they commence a lawsuit.

- [15] While I will approach Ms. Bolognese's evidence with some caution for the reasons I have stated above, I agree with the plaintiff that there is no evidence to suggest that her ability to work and enjoy life before the Accidents was any different than she testified to. Ms. Bolognese was not challenged on this point in cross-examination and the witnesses that testified on her behalf were steadfast that regardless of any pre-existing scoliosis or previous accidents, the plaintiff was high functioning at work and socially active prior to the First Accident. While Ms. Coombs may have had limited opportunities to observe the plaintiff after the Accidents, she had numerous opportunities to do so before the Accidents. I found her to be candid and that her testimony was provided without embellishment or exaggeration. Ms. Coombs was not cross-examined.
- [16] With respect to Ms. Bolognese's current condition and function at work and home, the defendants did not challenge the evidence of the plaintiff, her father, her sister, or her husband. There was no evidence tendered to contradict the plaintiff's report of her difficulties from her current or past employers. I agree that Angela Bolognese may have had limited opportunities to observe the plaintiff after Angela Bolognese moved out of the family house in 2019; however, she had plenty of opportunity to do so in the many years they lived in the same house. Moreover, Angela Bolognese provided evidence of the plaintiff's ability to work at McDonald's following the Accidents based upon her direct observations. I found her testimony to be clear and candid on this subject. The fact that Angela Bolognese was unaware of the plaintiff's 2013 accident, does not, in my view detract from her reliability as a witness. Rather, given that the plaintiff's father also did not recall the 2013 or 2014 accidents and their impact upon the plaintiff, this suggests that those earlier accidents were not as significant as the Accidents at issue in this case.
- [17] I do not agree with the defendants that Mr. Robertson is not a credible and reliable witness. I found that he provided evidence in a candid and forthright manner without embellishment. I accept his explanation that he did not understand how to interpret the intensity of the few hikes he tried to take the plaintiff on after the Accidents. I accept that he had attempted to choose hikes that would be within her ability and tolerance level but was unsuccessful in doing so.

FACTS AND SUMMARY OF EVIDENCE

The Plaintiff, the Accident and the Injuries

- [18] Ms. Bolognese was born in New Westminster and grew up in North Burnaby. She attended high school but did not graduate as she was two or three courses shy of the requirements. For a number of years prior to the Accidents, Ms. Bolognese worked at McDonald's where she rapidly worked her way up from Crew Member to Second Assistant Manager.
- [19] Ms. Bolognese met her current husband, Chase Robertson in 2017 and they married in 2021. The two of them live in the downstairs of a house in which her father, step-mother, brother, and her brother's children live upstairs.

- [20] Ms. Bolognese was diagnosed with scoliosis when she was approximately 12 years old. She testified that this condition would result in a tightening and pulling feeling from the bottom to the top of her neck. This could be aggravated from working overtime at McDonald's. Ms. Bolognese attended physiotherapy when her scoliosis would bother her and such visits would generally provide four to six months of relief from her symptoms.
- [21] Ms. Bolognese was diagnosed with gastroparesis in 2013. She described a flare up of gastroparesis as "extremely painful", and "like a hollow feeling" where she would get "super hungry" but "nauseated at the same time". She further described becoming dehydrated and malnourished when she suffered a particularly bad flare up. Other symptoms also included vomiting and diarrhea. Ms. Bolognese described milder symptoms as including nausea and dry heaving, whereas more severe symptoms were described as a situation where she cannot keep food down for a few weeks to months, being "super dehydrated", "irritable", and "in pain".
- [22] Ms. Bolognese was in two motor vehicle accidents prior to the Accidents in this case. The first was in October 2013 and the second in March 2014. She reported symptoms following those accidents including headaches, lack of energy, back pain, fatigue, and dizziness. In April 2014, Ms. Bolognese's family doctor, Dr. Reynolds, indicated that she suffered soft tissue injury of the cervical, thoracic and lumbar spine, soft tissue injury of the right knee, and a concussion arising from the March 2014 accident.
- [23] On January 13, 2017, Ms. Bolognese went to Dr. Reynolds following a flare-up of her gastroparesis that had required a hospital visit in the days before. Dr. Reynolds provided her with a work absence certificate indicating she was unable to work until January 22, 2017, due to illness/injury. Later that day, Ms. Bolognese was involved in the First Accident when she was rear-ended by the defendant Phan while stopped at a red light on the Mary Hill Bypass. Ms. Bolognese had no warning of the impending collision and felt her head and neck fly forward and then backward. Ms. Bolognese's head and neck then struck the headrest. She also hit her shin on the bottom of the dashboard which resulted in a large bruise. Ms. Bolognese was brought to the hospital via ambulance. She was 21 years old at the time of the First Accident.
- [24] The Second Accident occurred on July 2, 2018, when Ms. Bolognese was 22 years old. She was driving home from shopping with her four-year-old nephew who was in the car with her. They were stopped at a red light on Dewdney Trunk Road at 232nd Street in Maple Ridge when they were rear-ended by the defendant Farmer. Ms. Bolognese was able to drive her nephew home and Mr. Robertson ultimately drove her to the hospital.
- [25] Immediately after the First Accident, Ms. Bolognese experienced a significant and intense headache which was constantly present for two to three weeks afterwards. While the intensity has decreased, Ms. Bolognese continues to experience headaches almost daily. Ms. Bolognese also experienced neck pain immediately following the First Accident. She described it as being very painful and said that she could barely turn her head for the first

couple of weeks. Ms. Bolognese also developed symptoms of pain in her back, ribcage, and tailbone following the First Accident. She experienced dizziness and light sensitivity. She initially experienced some blurred vision, knee, and hip pain but those symptoms have resolved.

- [26] Ms. Bolognese described experiencing feelings of anxiety and depression, including panic attacks, approximately one month following the First Accident.
- [27] The plaintiff was off of work for approximately eleven months following the First Accident.
- [28] By the time of the Second Accident, Ms. Bolognese's symptoms had improved somewhat. She had returned to work and the treatments she was receiving were helpful. However, I do not agree with the defendants that she had completely recovered by the time of the Second Accident.
- [29] Immediately after the Second Accident, Ms. Bolognese described ringing in her ears, a headache, sore chest, light sensitivity, sore ribcage, sore back, aggravated shoulder, dizziness, and difficulty breathing. She testified that all of the symptoms she had from the First Accident were made worse by the Second Accident. Of particular note, I accept that her anxiety and depression significantly worsened following the Second Accident.
- [30] Ms. Bolognese's condition has fluctuated over the years since the Accidents. In 2018, Ms. Bolognese's anxiety became so distracting to Mr. Robertson that it led him to end their relationship for a short period of time. In late 2019 and early 2020 her symptoms were likely at their worst. Her anxiety became debilitating and she rarely left the house to do anything other than work. In January 2020, she was admitted to the psychiatric ward of Royal Columbian Hospital. She was off work for approximately nine months following her release from the hospital. While she still experienced daily pain, she saw some improvement such that in late 2020 and early 2021 she got married, her mood was stable on medication, and she was able to work full-time (although reportedly in pain with limitations).
- [31] Ms. Bolognese became pregnant in the summer of 2021. She planned to work until March 2022 but found that her symptoms and pain were aggravated, such that she stopped working in January 2022. She gave birth to her son in April 2022.
- [32] Ms. Bolognese has had ups and downs, like many others with similar injuries. Ms. Bolognese continues to be in pain daily. Her energy is very low and her mood is negative. On bad days, she is in too much pain to handle her son, and her husband needs to step in and take over. On good days, she can manage caring for her son, but lacks the energy to do much else at home.

- [33] Ms. Bolognese's symptoms have impacted her ability to be a primary childcare provider. Her relationship with her husband has also been impacted by her injuries. Whereas she was once able to take care of her young nephew and had the energy to organize outings, do crafts, piggy-back him, ride bikes with him, and jump on the trampoline, she now struggles with the day-to-day requirements of taking care of her own son, even while she is off work.

Leisure and Social Activities

- [34] Prior to the Accidents, Ms. Bolognese's family and friends described her as generally being happy, bright, and energetic. She was outgoing and social; she enjoyed spending time with friends and going out with them to social events such as concerts, bonfires, and parties. She had no problems with being in large crowds or social settings. Ms. Bolognese would ride bikes, ride horses, and swim without physical limitation.
- [35] Ms. Bolognese particularly enjoyed cooking for her immediate and extended family. She would prepare meals for many hours at a time, and had no problem with the standing and changes of position that it required of her. The plaintiff also enjoyed doing hairdressing for her family and close friends which had similar physical demands to the cooking. She enjoyed gardening for many hours at a time and actively participated in raising her nephew.
- [36] Since the Accidents, Ms. Bolognese's involvement in the above-mentioned activities has significantly decreased or ceased altogether. She has isolated herself from her friends and almost never goes out to socialize; she spends most of her time at home. She has limited her participation in preparing family meals, something which she truly enjoyed doing, and she no longer does hairdressing for her family or friends. Although she has attempted to go on a few hiking camping trips with her husband, she experienced too much pain to complete these trips. These attempted trips caused her significant pain afterwards.

Employment

- [37] I have no trouble in finding that Ms. Bolognese was a dedicated and capable employee with a very high work ethic prior to the Accidents. She started working at McDonald's as a Crew Member in 2013 while she was in high school. She was promoted to Team Leader in 2014 and Swing Manager in 2015. In December 2016, approximately one month before the First Accident, Ms. Bolognese was promoted to Second Assistant Manager. The plaintiff liked her job at McDonald's and the challenges it provided her with. Although her scoliosis would sometimes be aggravated by long/overtime shifts, she would work through the discomfort and was generally able to do her job without restriction. I accept that her job at McDonald's was fast-paced, very demanding and required a large amount of physical activity, including long periods of standing and lifting heavy objects, as well as running between stations and around the restaurant. I accept that prior to the Accidents, the plaintiff could work a full nine-hour shift at McDonald's and then have the energy to come home and cook supper, take care of her nephew, or go out with her friends.

- [38] Ms. Bolognese was off work for approximately 11 months after the First Accident. While she wanted to return to McDonald's, she was not provided with the accommodations that she required. Consistent with her strong attachment to the workforce, Ms. Bolognese found a lighter, more flexible job at a tanning salon which she started part-time in December 2017.
- [39] In June 2018, Ms. Bolognese's symptoms had improved to the extent that she felt capable of returning to McDonald's as a Second Assistant Manager. However, within one month of returning to McDonald's, she was involved in the Second Accident which aggravated the symptoms from the First Accident.
- [40] Ms. Bolognese continued to work at McDonald's following the Second Accident but found it very difficult. Eventually, she found the physical demands to be too much and she left McDonald's in November 2018. At that time, she obtained employment at TD Bank as a teller and also picked up some part-time shifts at the tanning salon. Unfortunately, she found that the job at TD Bank aggravated her physical symptoms and took a toll on her mental health. Due to her declining health, she also stopped picking up shifts in the tanning salon in the spring 2019.
- [41] As mentioned above, Ms. Bolognese was admitted to the psychiatric ward in January 2020. She was released shortly thereafter and then spent approximately ten days in a community inpatient program.
- [42] Ms. Bolognese was off work for approximately eight months following her release from the hospital. She attempted to return to TD Bank in September 2020 but found that the job aggravated her anxiety and felt that if she continued to work there, it would cause any progress she had made with her mental health to be lost.
- [43] Ms. Bolognese once again applied to McDonald's and was hired as a part-time Swing Manager at the end of September 2020. She increased her hours to full-time and from the end of 2020 until early 2022, the plaintiff worked mostly full-time at McDonald's, save for a brief period of disability when her morning sickness was particularly bad in August and September 2021. In November 2021 she was promoted to Second Assistant Manager.
- [44] Although she was working, I accept that Ms. Bolognese struggled during this time. There were days where she would call in sick because of pain, days where she would go home early because of pain, and there were things she avoided doing because of her pain. She would delegate tasks to others that her supervisor said she should have done herself. She would often go straight to bed when she got home after a shift. She would also need two consecutive days off because she needed the first day to recover and recuperate.
- [45] Ms. Bolognese originally planned on commencing her maternity leave in March 2022. However, in January 2022, her pain was such that she left work on a disability plan approximately two months earlier than she had intended to commence her maternity leave. At the time of trial, Ms. Bolognese was on maternity leave and was unsure of whether she will be able to return to McDonald's after her leave concludes.

Housekeeping and Childrearing

- [46] Ms. Bolognese did the majority of the housework prior to the First Accident. She was the primary cook in the family, did much of the gardening, and took care of much of the cleaning to support her sister, a single mother at the time, and her working father. She had no physical limitations completing these tasks and would regularly engage in these housekeeping tasks after a full day at work. According to Ms. Bolognese and her family, she enjoyed these tasks, particularly cooking which she learned to do with her grandmother when she was a young child.
- [47] Ms. Bolognese's engagement in the housekeeping tasks dropped significantly following the First Accident because doing so would aggravate her symptoms and she had little energy in any event. While she can do some of the housekeeping tasks she used to, she takes longer and sometimes requires assistance. Her husband has assumed responsibility for most of the household tasks and the one-sided division of labour has put a strain on their relationship.
- [48] Ms. Bolognese did not have any children prior to the Accidents. However, she was an active aunt to her young nephew. Ms. Bolognese's pain and fatigue since the Accidents have led to her struggling with the day-to-day requirements of taking care of her infant son. As a result of Ms. Bolognese's struggles, Mr. Robertson felt that he had no choice but to quit his job, so he could stay home to help with the housework and take care of their son.

Treatments

- [49] Ms. Bolognese has received fairly extensive treatments since the Accidents including physiotherapy, kinesiology/active rehabilitation, occupational therapy, massage therapy, and chiropractic treatment. She has found the massage therapy, physiotherapy and kinesiology particularly helpful. At the time of trial, Ms. Bolognese continued to receive massage and chiropractic treatments and indicated a desire to continue with those treatments as a means of managing her symptoms.
- [50] Ms. Bolognese avoids over-the-counter pain and anti-inflammatory medications because they aggravate her gastroparesis.
- [51] Ms. Bolognese received counselling for her mental health symptoms from the fall of 2019 to early 2020. She took prescription medication for anxiety and depression for a period of time shortly after the First Accident and then again following her hospitalization in January 2020 until sometime in 2021. She is not currently taking any psychiatric medication.

EXPERT MEDICAL AND CAPACITY EVIDENCE

General Practitioner

- [52] Dr. Julia Reynolds has been the plaintiff's family physician since the plaintiff was born and recently delivered Ms. Bolognese's child. Throughout her 33 years as a family doctor, she has had extensive experience treating patients with chronic pain and mental health symptoms.

In addition to her training required to become a family doctor, Dr. Reynolds takes continuing education, including a chronic pain management program and multiple workshops focusing on anxiety and depression. According to Dr. Reynolds, she, unlike many family physicians, continues to provide care to her patients who have WCB or ICBC claims. As a result, she has accumulated significant experience managing the injuries that arise from these types of claims over her many years of practice.

- [53] Dr. Reynolds assessed Ms. Bolognese within one week of the First Accident. She has treated and made recommendations for Ms. Bolognese's physical symptoms and has also observed and treated her anxiety, depression, and panic attacks throughout the years since the Accidents. At the time of trial, Dr. Reynolds was still the plaintiff's family doctor.
- [54] Dr. Reynolds was tendered as an expert witness by the plaintiff. The Court qualified her to provide an expert opinion in the area of family medicine. She authored a report dated March 16, 2022, which was admitted into evidence subject to a redaction that was the subject of an in-trial ruling. Dr. Reynolds testified at trial.
- [55] Dr. Reynolds diagnosed Ms. Bolognese as having sustained soft tissue injuries of her cervical, thoracic and lumbar spine, left knee, right wrist, and right shoulder as a result of the First Accident. She opined that these injuries resulted in symptoms of neck and back pain and stiffness, headache, nausea, dizziness, light-headedness, tinnitus, tailbone pain, left knee pain, and burning in her left leg. By June 1, 2018, Dr. Reynolds reported that Ms. Bolognese had reached a plateau in her recovery and still had some residual symptoms of instability in her right shoulder and occasional headaches.
- [56] As a result of the Second Accident, Dr. Reynolds opined that Ms. Bolognese sustained soft tissue injuries of her right shoulder, bilateral ribs and lower back pain. In her report, she stated that the plaintiff was diagnosed with a concussion in the emergency department.
- [57] Dr. Reynolds also opined on Ms. Bolognese's mental health. She reported that Ms. Bolognese developed symptoms of depression, anxiety, panic, shaking, and insomnia and was unable to be in a room with other people following the First Accident and that these symptoms were aggravated by the Second Accident. Dr. Reynolds prescribed medications for anxiety, depression, and sleep which contributed to the improvement of some of Ms. Bolognese's symptoms.
- [58] In Dr. Reynolds' opinion, Ms. Bolognese has developed chronic pain syndrome. Dr. Reynolds describes this as involving pain, anxiety, and depression which interfere with an individual's daily life.
- [59] Dr. Reynold's prognosis for a full recovery for Ms. Bolognese is guarded. In her opinion, because Ms. Bolognese has had ongoing symptoms for more than three years, she will most likely continue to suffer with similar symptoms, depending on her activity level. She opines that Ms. Bolognese's career options will be negatively affected by her injuries and that she would be unable to tolerate work that requires sustained postures and neck flexion.

- [60] While I do not doubt that Dr. Reynolds is a highly qualified family practitioner, I have some concerns with her evidence that lead me to place less weight on her report than the plaintiff urges me to.
- [61] Dr. Reynolds' long-standing relationship with the plaintiff does not automatically render her opinion inadmissible, and the defendants do not argue that it does. As the defendants concede, it is the nature and extent of the interest or connection with the litigation or a party that matters. The defendants submit that the relationship between the plaintiff and Dr. Reynolds should be considered when assessing the weight to be given to Dr. Reynolds' evidence. I agree.
- [62] I also agree with the defendants that the assumptions upon which Dr. Reynold's states her opinion is made do not entirely accord with the evidence that I have accepted at trial. Dr. Reynolds states the following assumptions in her report:
- a) Prior to her accident of January 13, 2017 Ms. Bolognese was a fit 21-year-old who was working without limitations at McDonald's; and
 - b) Ms. Bolognese was involved in a motor vehicle accident on October 24, 2013, in which she sustained soft tissue injuries of her left shoulder, left ribs, neck and mid-back. Prior to January 13, 2017, she had fully recovered from these injuries.
- [63] In cross-examination, Dr. Reynolds acknowledged that her assumption that Ms. Bolognese had completely healed from the October 2013 and March 2014 accidents was not entirely consistent with the plaintiff's many physiotherapy visits following those accidents and leading up to the First Accident. In fact, the clinical records showed that Ms. Bolognese was receiving physiotherapy treatment for her neck and back intermittently between 2013 and the First Accident. While some of these visits were for treatment of symptoms related to her scoliosis, not all of them were.
- [64] Also, in completing a report for ICBC following the First Accident, Dr. Reynolds did not accurately recount the plaintiff's past accident history. In cross-examination, Dr. Reynolds acknowledged that many of the symptoms that Ms. Bolognese complained of following the Accidents had been present prior to the Accidents and that Ms. Bolognese had a long-standing history of complaining about pre-existing symptoms in her neck, back, and shoulder, and as to having headaches and dizziness. Ms. Bolognese's gastroparesis and other physical complaints relating to either the 2013 accident or her scoliosis are not consistent with Dr. Reynold's statement that "Ms. Bolognese was a healthy young woman prior to her accidents".
- [65] Given that Dr. Reynolds provided Ms. Bolognese with a certificate excusing her from work for one week due to her gastroparesis on the day of the First Accident, Dr. Reynolds' assumption that Ms. Bolognese was fit and working at the time of the First Accident is not entirely accurate. On its own, this would not cause me too much concern given that this particular absence was not related to any injuries that would be associated with a motor

vehicle accident. However, when considered together with the inaccuracy referred to above, as well as their long-standing relationship and Dr. Reynolds' understandable desire to want the best for her patient, I am concerned that Dr. Reynolds tended to minimize the potential impact of the plaintiff's pre-existing conditions.

[66] I do, however, accept that it was appropriate for Dr. Reynolds to state in her report that Ms. Bolognese did not have any mental health symptoms prior to the Accidents. I come to this conclusion despite the fact that Ms. Bolognese reported an episode of anxiety before the Accidents. While it would have been wise to have mentioned this visit in her report, I accept that this one isolated incident does not amount to a history of mental health issues.

[67] While I have given little weight to Dr. Reynold's opinion that Ms. Bolognese was entirely healthy before the Accidents, her diagnoses and prognosis remained largely unchallenged and are relatively consistent with the physiatrist's diagnoses which will be discussed below.

Physiatrist

[68] Dr. David Flaschner is a physiatrist and was qualified to provide an expert opinion in the area of physical medicine and rehabilitation. He examined Ms. Bolognese on January 12, 2022, and prepared an independent medical report on behalf of the defendants dated February 9, 2022. Dr. Flaschner testified at trial.

[69] Dr. Flaschner diagnosed the plaintiff with the following injuries related to the First Accident:

- Cervicothoracic/right shoulder sprain/strain, aggravation of previous symptoms;
- lumbar sprain/strain;
- leg contusion, resolved;
- post-whiplash headache; and
- left shoulder contusion, resolved.

[70] He diagnosed the plaintiff with the following injuries related to the Second Accident:

- Cervicothoracic/right shoulder sprain/strain;
- lumbar sprain/strain;
- chest wall sprain/strain; and
- headache, post whiplash.

[71] Dr. Flaschner noted that the symptoms Ms. Bolognese reported after each of the Accidents had been present prior to the Accidents and that there are no objective tools to distinguish the percentage of ongoing symptoms that related to the pre-existing issues versus the two Accidents. Thus, his opinion on causation appears to be that the Accidents aggravated previous injuries:

Based on the history provided by Ms. Bolognese, the current presentation of ongoing cervicothoracic symptoms likely represents a consequence of the pre-existing issues, as well as the injuries sustained in the motor vehicle collisions with headache noted to be influenced by neck pain.

- [72] Dr. Flaschner also found that the plaintiff's injuries from the First Accident were noted to improve, and that there was an indication of a substantial improvement from the First Accident prior to the Second Accident.
- [73] In Dr. Flaschner's opinion, Ms. Bolognese has reached maximal medical improvement from her injuries and her ongoing musculoskeletal symptoms will be expected to require long-term management. However, it is his view that her injuries are not expected to negatively impact her long-term employability.
- [74] Dr. Flaschner opines that, in light of the plaintiff's history of intermittent musculoskeletal complaints and long-standing history of symptomatic scoliosis, there is an expectation that Ms. Bolognese would have continued to experience musculoskeletal complaints independent of the two Accidents.
- [75] Dr. Flaschner was aware of the plaintiff's history with anxiety and depression since the Accidents, including her hospitalization. He acknowledged that there is a relationship between a patient's experience of pain and their mood. However, Dr. Flaschner appropriately declined to give an opinion on Ms. Bolognese's mental health issues. I agree with him that Ms. Bolognese's psychological history is complex and that a psychological evaluation is necessary to provide a holistic view of her health. I will discuss the expert psychiatrist report below.
- [76] I do not agree with the plaintiff that Dr. Flaschner presented as an advocate for the defendants. I do, however, note that Dr. Flaschner himself seemed to acknowledge limitations in his ability to provide a conclusive holistic opinion because of the plaintiff's complex psychological history. However, when I consider Dr. Reynold's report, and the psychiatrist's report together with Dr. Flaschner's report and evidence, I am satisfied that Dr. Flaschner's opinion with respect to causation, diagnosis and prognosis of Ms. Bolognese's physical injuries should be given considerable weight. In that respect, and given the plaintiff's and Dr. Reynolds' tendency to downplay or minimize the impact of the injuries sustained in the 2013 and 2014 accidents and her history of symptomatic scoliosis, I accept his opinion that she may have experienced some musculoskeletal complaints independent of the Accidents.
- [77] However, I come to a different conclusion with respect to Dr. Flaschner's opinion that Ms. Bolognese's long-term employability will not be negatively impacted by her injuries. During cross-examination, it became apparent that Dr. Flaschner made little inquiry into Ms. Bolognese's functional capacity or the demands that her job at McDonald's placed on her. I agree with the plaintiff that Dr. Flaschner's opinion with respect to function appears to be based on what he would expect from "average" whiplash injury patients rather than on Ms.

Bolognese's actual experience. It is apparent that Ms. Bolognese's functional limitations are also related to her mental health issues and the relationship between the two; a relationship that Dr. Flaschner acknowledges as being real. As explained above, Dr. Flaschner's opinion was based upon her physical injuries and symptoms and not on her psychological issues. Consequently, I give little weight to his opinion on Ms. Bolognese's functional capacity.

Psychiatrist

- [78] Dr. Mitchell Spivak was qualified to give expert opinion evidence in the area of psychiatry. He examined Ms. Bolognese on April 14, 2021, and prepared an independent medical report on behalf of the defendants dated March 10, 2022. Dr. Spivak testified at trial.
- [79] Dr. Spivak opined that "the most appropriate diagnosis for Ms. Bolognese's challenges in the aftermath of her first accident and which followed into the aftermath of her second accident would be one of an adjustment disorder with mixed features of anxiety and depression". In Dr. Spivak's opinion, although it was possible that her more severe symptoms and hospitalization could have occurred absent the Accidents, he concluded that the Accidents materially contributed to the plaintiff's psychological condition.
- [80] With respect to prognosis, Dr. Spivak opined as follows:
- Ms. Bolognese's prognosis, as far as psychological injuries from her indexed accidents are concerned, is good. She has made a full recovery from her symptoms and is presently future-oriented. There are no active symptoms to target at present. One would expect it to continue going forward, although it is possible that she will remain at risk of a return of symptoms if she continues to experience chronic issues of pain. This will be significantly exacerbated if she were to reinjure herself or have intensification of her limitations and pain.
- [81] Dr. Spivak's conclusion that Ms. Bolognese had made a full recovery and his positive prognosis must be considered in light of the fact that he assessed her in April 2021, a time when Ms. Bolognese was at her highest level of recovery. She was on mood stabilizing medication, had just gotten married, and had found a good combination of treatment to manage her physical symptoms. She had reached a point where she felt optimistic enough to start trying for a baby and shortly after the assessment, she became pregnant. Dr. Spivak was, of course, unaware of the struggles that Ms. Bolognese has had since he assessed her, over a year ago.
- [82] As Dr. Spivak stated, Ms. Bolognese's mental health issues could be expected to return if she continues to experience pain or if her pain intensifies. The evidence before me, that I have accepted, is that Ms. Bolognese's pain has intensified since she was assessed and her psychological state has deteriorated. This is consistent with Dr. Spivak's opinion, particularly in light of his acknowledgements that:

- symptoms of depression and anxiety can fluctuate;

- there can be periods of remission and relapse;
- the more a person relapses, the worse the prognosis;
- pain and mental health have a synergistic effect--the experience of one affects the experience of the other; and
- psychiatric prognosis can be complicated by pain and the prognosis could correlate with pain.

[83] Along with Ms. Bolognese's pregnancy and increased responsibility at McDonald's in late 2021 came an exacerbation of her physical symptoms and a worsening of her mood. Consequently, Dr. Spivak's prognosis that Ms. Bolognese would be vulnerable to a return of psychological symptoms if she continued to experience chronic pain has proven to be correct on the evidence before me.

Functional Capacity Evaluation

[84] Andrew Hosking performed a functional capacity evaluation on the plaintiff on June 29, 2017. He authored a report on behalf of the plaintiff dated July 7, 2017. His report was entered into evidence with consent of the parties. Mr. Hosking was not required for cross-examination.

[85] In his report, Mr. Hosking opined that Ms. Bolognese did not meet the physical demands of her job as an assistant restaurant manager at the time of evaluation. Additionally, Mr. Hosking reported that Ms. Bolognese exhibited limitations for prolonged or repeated reaching with her right hand to shoulder level or higher, and had limited capacity for prolonged sitting. However, he opined that the plaintiff had demonstrated the capacity for sedentary and light physical strength demands. It was Mr. Hosking's opinion that the plaintiff would more likely than not require substantial accommodations in order to return to her former work as an assistant restaurant manager.

[86] Mr. Hosking's report was almost five years old at the time of trial. Furthermore, his assessment of the plaintiff occurred at a time when she was off of work after the First Accident and approximately one year before the Second Accident. Consequently, the most that Mr. Hosking's report can do is provide a snapshot in time to illustrate the plaintiff's function when she was not working in 2017 and I find that is of little value in opining on her current physical ability. It is, however, useful for providing an opinion on the physical demands of a restaurant manager which are consistent with the plaintiff's and Angela Bolognese's testimony.

CAUSATION

- [87] Before damages can be assessed the plaintiff must establish on a balance of probabilities that the defendants' negligence caused or materially contributed to an injury. The defendants' negligence need not be the sole cause of the injury so long as it is part of the cause beyond the range of *de minimis*. Causation need not be determined by scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-17, 1996 CanLII 183; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.
- [88] The tortfeasor must take their victim as the tortfeasor finds them, and the tortfeasor is liable even if other causal factors, for which the defendant is not responsible, result in the victim's losses being more severe than they would be for the average person: *Clayton v. Barefoot*, 2018 BCSC 239 at para. 23.
- [89] A plaintiff's damages may be reduced to account for any "measurable risk" that a pre-existing condition would have detrimentally affected the plaintiff even absent the tortious event: *Athey* at para. 35. A measurable risk must be based on the accepted evidence, but need not be proved on a balance of probabilities, as such a risk assesses a future event. The future event must be a real and substantial possibility, and rise above mere speculation: *Zacharias v. Leys*, 2005 BCCA 560, at para. 16.
- [90] It is well accepted that psychological injuries are compensable even where there is no diagnosis of a specific condition; the Court is concerned with symptoms and their effects rather than the label of a particular diagnosis: *Saadati v. Moorhead*, 2017 SCC 28 at para. 31.
- [91] The defendants argue that Ms. Bolognese has not proven causation with respect to all of the injuries she claims. However, the defendants concede that the First Accident caused an aggravation of pre-existing physical symptoms. The defendants further argue that Ms. Bolognese had substantially recovered from the First Accident by early 2018, and that the symptoms alleged by the plaintiff following the Second Accident were a continuation of the symptoms that pre-existed the First Accident, for which the defendants are not liable.
- [92] Dr. Reynolds and Dr. Spivak both opined that Ms. Bolognese's deterioration in her mental health was most likely related to and/or materially contributed to by the Accidents. Dr. Flaschner notes that Ms. Bolognese's physical symptoms may be related to her pre-existing injuries but ultimately opines that they are also likely a consequence of the Accidents.
- [93] I find that on a balance of probabilities, Ms. Bolognese's soft tissue and psychological injuries were caused by the Accidents. While I find that Ms. Bolognese had some pre-existing injuries similar to those she suffered in the Accidents, I find that the Accidents were more than a *de minimus* cause of her current symptoms. While she may not have been fully recovered from some of her previous soft tissue injuries at the time of the First Accident, she was certainly not experiencing symptoms anywhere near the frequency or severity as she was after the Accidents. The onset of her physical symptoms is consistent with them being caused and aggravated by the Accidents and is consistent with the opinions of Drs.

Reynolds and Flaschner.

- [94] I find that Ms. Bolognese was not suffering from any mental health conditions prior to the Accidents. While it is possible that she may have experienced mental health problems if the Accidents did not happen (as Dr. Spivak put it), the Accidents were a material contribution to her mental health state. This conclusion is consistent with the timing of the onset of her mental health challenges and is consistent with Dr. Spivak's ultimate opinion that Ms. Bolognese's psychological symptoms could return if she continued to experience chronic pain.
- [95] I am unable to accept the defendants' submission that the symptoms alleged by the plaintiff following the Second Accident were a continuation of the symptoms that pre-existed the First Accident, for which the defendants are not liable. While Ms. Bolognese had experienced some significant recovery immediately before the Second Accident, it does not follow that the Second Accident is only related to Ms. Bolognese's pre-existing injuries and not the First Accident. The defendants have pointed to no expert evidence, or any evidence for that matter, that would support their position in this respect. Neither of the experts tendered by the defendants have opined that the Second Accident aggravated a pre-existing injury but not the injuries she suffered in the First Accident. I can find no basis in the evidence or at law for such a conclusion on the facts of this case.
- [96] I do, however, find that the evidence establishes a "measurable risk" that Ms. Bolognese's pre-existing gastroparesis, scoliosis, and lingering effects from her 2013 and 2014 accidents would have detrimentally affected her absent the tortious conduct of the defendants. As discussed earlier, Ms. Bolognese received treatment for these conditions in the years leading up to the Accidents. She had attended the hospital and missed work due to complications with her gastroparesis in the past and was about to commence a week off of work in relation to that condition on the day she was involved in the First Accident. While this does not change my conclusion that the Accidents legally caused her injuries, it will be considered in my assessment of damages.

DAMAGES

Non-Pecuniary Damages

- [97] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities.
- [98] The factors that should be considered in making an award of non-pecuniary damages are well established and were set out by the Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46. They include the plaintiff's age, nature of the injury, severity and duration of the pain, disability, emotional suffering, loss or impairment of life, impairment of family, marital and social relationships, impairment of mental and physical abilities, loss of lifestyle, and the plaintiff's stoicism.

- [99] I have thoroughly described the injuries and their effect on Ms. Bolognese earlier in these Reasons. For the present purposes, I will highlight the following.
- [100] I agree with the plaintiff that the Accidents have had a profound impact on her physical and psychological health. The severity of Ms. Bolognese's psychiatric condition is particularly noteworthy given her young age.
- [101] Although the severity of Ms. Bolognese's symptoms fluctuates and has had some significant times of improvement, she continues to struggle to this day. Her injuries have caused two extended periods of disability from work, and she continues to require accommodation and suffers through pain while working. I accept her testimony that she has not had one entirely pain free day since January 2017. Her pain exhausts her to the point that on some days, Ms. Bolognese must go straight to bed after returning home from work. Mr. Robertson explained that on bad days she would not even have the energy to shower or to change out of her greasy McDonald's uniform, which has left stains on their bedsheets.
- [102] At the height of her emotional suffering, Ms. Bolognese's symptoms were so bad that she was admitted to the psychiatric ward at Royal Columbian Hospital. Her injuries have limited her social contact, resulting in her losing friends, and causing a strain on her relationships with her family and her husband. Her once busy social life is now non-existent. While some of this may be attributable to the inevitabilities of growing up and taking on more responsibilities, I find that her psychological condition has significantly contributed to her social withdrawal.
- [103] The combination of her pain and mental health symptoms depletes her energy and severely restricts her ability to meaningfully participate in recreational activities or household chores, many of which she enjoyed doing before the First Accident.
- [104] Her injuries have had a profound effect on her ability to parent her newborn and on her perception of her self-worth in this respect. Ms. Bolognese testified that she feels she is failing her son because she is often too tired and too sore to take care of him. Her husband vividly described the plaintiff standing beside him, holding the baby and crying, completely overwhelmed by the pain and her psychological issues.
- [105] As referenced above in the discussion of the expert evidence, Ms. Bolognese's prognosis for a full recovery is quite poor. This is significant given that she was only 21 years old when the Accidents occurred. She has experienced her symptoms for approximately five years already and can be expected to experience them to some extent for many decades to come.
- [106] Ms. Bolognese cites the following cases in support of an award for non-pecuniary damages in the amount of \$200,000:
- Fletcher v. Biu, 2020 BCSC 1304, where the court assessed non-pecuniary damages in the amount of \$200,000.

- Kim v. Lin, 2016 BCSC 2405, where the court assessed non-pecuniary damages in the amount of \$175,000 (which counsel submits is \$204,326 in 2022 dollars);
- Sebaa v. Ricci, 2015 BCSC 1492, where the court assessed non-pecuniary damages in the amount of \$180,000 (which counsel submits is \$213,661 in 2022 dollars); and
- Pearson v. Savage, 2017 BCSC 1435 , aff'd 2020 BCCA 133, where the court assessed non-pecuniary damages in the amount of \$175,000 (which counsel submits is \$201,035 in 2022 dollars).

[107] The defendant submits that an award of \$50,000 to \$75,000 is appropriate and cites the following cases as being comparable to the case at hand:

- Mendoza-Flores v. Haigh, 2010 BCSC 740, where the court assessed non-pecuniary damages in the amount of \$40,000 (which counsel submits is \$52,000 in 2022 dollars);
- Smith v. Evashkevich, 2016 BCSC 1228, where the court assessed non-pecuniary damages in the amount of \$50,000 (which counsel submits is \$59,000 in 2022 dollars);
- Dhimi v. Madden, 2020 BCSC 573, where the court assessed non-pecuniary damages in the amount of \$60,000 (which counsel submits is \$67,000 in 2022 dollars); and
- Neyman v. Wouterse, 2013 BCSC 741, where the court assessed non-pecuniary damages in the amount of \$60,000 (which counsel submits is \$74,000 in 2022 dollars).

[108] Compensation should be fair and fairness can be measured against awards made in comparable cases. However, comparable cases are only a rough guide as each case depends upon its unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188-189.

[109] I do not find the cases cited by either of the parties' to be particularly similar to the case at hand. For example, *Pearson*, a case cited by Ms. Bolognese, involves a plaintiff with significantly more severe physical symptoms and a more complex psychological injury including PTSD, chronic major depressive disorder and somatic symptom disorder.

[110] *Dhimi*, a case cited by the defendants, involved a plaintiff with significant pre-existing symptoms of depression, anxiety, fatigue, memory issues, and interrupted sleep whereas Ms. Bolognese has no such pre-existing psychological issues. The plaintiff in *Dhimi* also had more pre-existing physical conditions than I have found Ms. Bolognese to have and the Court in *Dhimi* concluded that not all of the plaintiff's post-accident symptoms were caused by the accidents in issue. Finally, the impact on the plaintiff's social life and recreation was less in *Dhimi* than in the present case.

[111] I find that Ms. Bolognese's loss of housekeeping capacity is more in keeping with a loss of amenities or increased pain while completing such tasks. Consistent with the reasonable position taken by the plaintiff, it is, in my view, more appropriate to include the award for this loss in the award of non-pecuniary damages as opposed to making a separate award. In the circumstances, it is within my discretion to do so: *Kim v. Lin*, 2018 BCCA 77 at para. 33. Moreover, the circumstances of this case are not "special" such that a segregated non-

pecuniary award is warranted: *Riley v. Ritsco*, 2018 BCCA 366 at para. 102.

[112] As stated above, I have concluded that Ms. Bolognese would have suffered physically to some extent if the Accident had not occurred given her pre-existing gastroparesis, symptomatic scoliosis and lingering effects from the 2013 and 2014 accidents.

[113] Considering the principles and factors set out in *Stapley* and in the authorities provided by counsel, and considering Ms. Bolognese's circumstances and prognosis, particularly her young age and severe emotional suffering, I conclude that a fair and reasonable award is \$150,000.

Loss of Earning Capacity

[114] An assessment of loss of both past and future earning capacity involves consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. The future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation: *Athey* at para. 27. Once a real and substantial possibility has been established, the next step is to assess the likelihood of the hypothetical event, which informs the assessment of damages. The court will then apply the earnings approach or the capital asset approach, depending on the facts of the case. The court may use economic and statistical evidence as a tool to determine what is reasonable and fair in the circumstances, but should be careful not to turn the assessment into a calculation: *Grewal v. Naumann*, 2017 BCCA 158 at paras. 48-49.

Past Loss of Income Earning Capacity

[115] Compensation for past loss of earning capacity is to be based on what the plaintiff would have, not could have, earned but for the injury that was sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30:

[30] Thus, in my view, a claim for what is often described as "past loss of income" is actually a claim for loss of earning capacity; that is, a claim for the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury.

[Emphasis added.]

[116] Ms. Bolognese submits that there is a real and substantial possibility that, absent the Accidents, she would have continued to work full-time at McDonald's and would have worked her way up, becoming a First Assistant Manager in roughly January 2019 and a General Manager by January 2021. In the alternative, the plaintiff submits that if she was not going to work at McDonald's, she would have nevertheless earned income from other jobs comparable to the salaries of the McDonald's management roles.

- [117] On the premise referenced above, Ms. Bolognese calculates her without-accident income from the time of the First Accident to mid-March 2022 (when she planned to cease working to commence her maternity leave) as being in the gross amount of \$235,865. She conceded that her without-accident income would have been reduced in respect of the week that Dr. Reynolds certified that she take off of work due to her gastroparesis. Her actual income during this period was \$118,770. With rounding, the plaintiff calculates her gross loss of past income earning capacity to be \$117,096. Acknowledging that ss. 95 and 98 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, provides that she is entitled to net income concerning any claim for loss of past income earning capacity, the plaintiff submits that she is entitled to an award of \$95,000 under this head of damages.
- [118] The defendants say that Ms. Bolognese is entitled to an award in the gross amount of \$39,950 in respect of her lost past income earning capacity. The defendants submit that they are only liable for the plaintiff's loss of income between the First Accident and December 2017 when Ms. Bolognese began part-time work at the tanning salon, and for the difference between the amount she earned at the tanning salon and the amount she would have earned at McDonald's up until June 2018. The defendants submit that an assessment of damages under this head should be subject to a deduction for what they say is a real and substantial possibility that the plaintiff would have had more time off work even without the First Accident due to her pre-existing health issues. The defendants do not take issue with the plaintiff's actual earnings during the period between the First and Second Accidents.
- [119] As I understand the defendants' position, Ms. Bolognese is not entitled to an award for loss of past income earning capacity for the period between the Second Accident and the date of trial because they are of the view that the Accidents did not cause the injuries she complained of during that period. Rather, they argue that those symptoms were solely related to her pre-First Accident conditions. I am unable to accept this position.
- [120] As stated above, there is no basis in the evidence for a conclusion that Ms. Bolognese's symptoms following the Second Accident are solely attributable to her pre-First Accident health issues. In fact, the long period of disability and absence from work following the Second Accident was mainly due to the plaintiff's mental health conditions which I have found did not exist prior to the First Accident. Thus, in my view, Ms. Bolognese is entitled to an award for past loss of income earning capacity for the entire period between the First Accident and mid-March 2022 when she otherwise would have stopped working to commence her maternity leave.
- [121] The evidence before me establishes that Ms. Bolognese was strongly attached to the workforce at the time of the First Accident. She had progressed relatively rapidly at McDonald's, having received two promotions in the two years immediately before the First Accident such that she occupied the position of Second Assistant Manager at the time of the First Accident. She was in the process of being trained as a First Assistant Manager and was taking courses at BCIT related to the McDonald's manager training program at the time of the First Accident. I accept that she was thriving at work and was on an upward trajectory.

- [122] Angela Bolognese's progression from Second Assistant Manager to First Assistant Manager took approximately two years and she spent a further two years as First Assistant Manager before being promoted to General Manager. While I accept that this is an applicable comparison point, I cannot accept that Ms. Bolognese would have followed the exact same path. The evidence before me is unequivocal that the competition for promotions to the more senior management roles at McDonald's is fierce. Moreover, there is a real and substantial possibility that Ms. Bolognese's pre-existing health issues would have impacted her chances of promotion; the evidence was also unequivocal that McDonald's does not have a high tolerance for its managers to be absent from work.
- [123] Nonetheless, given her past performance and demonstrated career trajectory, and considering the real and substantial possibility that her pre-existing issues would have required her to take time off work and would have affected her career progression, I find that there is a real and substantial possibility that Ms. Bolognese would have been promoted to First Assistant Manager by January 2020 and would have remained in that position until she commenced her maternity leave in March 2020. I accept that as a First Assistant Manager, Ms. Bolognese would have earned an annual salary of approximately \$43,500.
- [124] Having regard to the plaintiff's actual earnings during the aforementioned period, and factoring in a contingency for time she would have likely missed due to her gastroparesis without the Accidents, I assess Ms. Bolognese's gross past income loss to be \$85,000. This award is a gross amount and is subject to applicable deductions which I expect that counsel can agree upon.

Loss of Future Income Earning Capacity

- [125] The Court must answer two questions to determine a plaintiff's claim for loss of future earning capacity: 1) has the plaintiff's earning capacity been impaired by her injuries; and, if so, 2) what compensation should be awarded for the resulting financial harm that will accrue over time: *Pett v. Pett*, 2009 BCCA 232 at para. 8. As with past income loss, while it can be attractive to apply a mathematical calculation, the assessment of the loss is a matter of judgment and must be based on the evidence as a whole: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18. The way in which the assessment is carried out will vary from case to case: *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353 at para. 8, 1985 CanLII 149 (S.C.); *Pallos v. Insurance Corp. of British Columbia*, 100 B.C.L.R. (2d) 260 at para. 24, 1995 CanLII 2871 (C.A.).
- [126] There are two possible approaches to an assessment of loss of future earning capacity: the "earnings approach" and the "capital asset approach". Both approaches are correct. The earnings approach will generally be more useful when the loss is easily measurable: *Perren* at para. 32. Where the loss "is not measurable in a pecuniary way", the capital asset approach is more appropriate: *Perren* at para. 12.

- [127] Even where the capital asset approach is appropriate, the court should "ground itself as much as possible in factual and mathematical anchors": *Knapp v. O'Neill*, 2017 YKCA 10 at para. 17.
- [128] In the recent decision of *Rab v. Prescott*, 2021 BCCA 345, the Court of Appeal provided guidance in respect of the analysis of damages for loss of future income earning capacity. Justice Grauer held that once it is proven that there is a real and substantial possibility of a future loss of income, the court must then assess the likelihood of that loss materializing using the test for assessing whether a future hypothetical event will occur. The three-step process is described in *Rab* at para. 47:
- [47] From these cases, a three-step process emerges for considering claims for loss of future earning capacity, particularly where the evidence indicates no loss of income at the time of trial. The first is evidentiary: whether the evidence discloses a potential future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in *Brown*). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring--see the discussion in *Dornan* at paras 93-95.
- [Emphasis added.]
- [129] The Court must then review the overall fairness of the award.
- [130] The approach in *Rab* was very recently re-affirmed and further explained in *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217.
- [131] The plaintiff submits that it would be appropriate to assess Ms. Bolognese's loss under the capital asset approach, particularly given her young age and that she did not yet have an established career path: *Ploskon* at para. 17. They submit that the award for loss of past income earning capacity should be in the amount of \$900,000.
- [132] The defendants submit that the plaintiff has not established a claim for loss of future earning capacity arising from the Accidents. Again, they say that the plaintiff's post-First Accident symptoms have resolved, and any symptoms the plaintiff continues to suffer from are a continuation of her injuries and conditions that pre-existed the First Accident. In the alternative, the defendants say that an award of \$33,000 to \$66,000 would be appropriate as it represents one to two years of Ms. Bolognese's pre-Accidents earnings.

- [133] As set out in Rab, the first step is to determine whether the evidence discloses that there is a potential future event that could lead to a loss of capacity. The second step set out in Rab is to determine whether, on the evidence, there is a real and substantial possibility that Ms. Bolognese's chronic injuries and associated limitations will cause a pecuniary loss. In my view, there is such a real and substantial possibility. My considerations for concluding that the first and second steps have been met follow below.
- [134] In my view, Ms. Bolognese has established that she suffers from chronic injuries, namely her soft tissue injuries and psychological conditions, that may impair her ability to earn income in the future. There is a real and substantial possibility that Ms. Bolognese's chronic neck and back pain, chronic tailbone pain, chronic headaches, anxiety and panic attacks, low mood and depression, and chronic fatigue will impair her ability to earn income in the future (as they have in the past). As stated earlier, I accept that those injuries have persisted and that she will likely experience symptoms, to some degree, for the rest of her life.
- [135] The considerations discussed in Brown, at para. 8, are relevant to determining whether there has been an impairment in Ms. Bolognese's income earning capacity. Those considerations include whether:
1. the plaintiff has been rendered less capable overall from earning income from all types of employment;
 2. the plaintiff is less marketable or attractive as an employee to potential employers;
 3. the plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to her, had she not been injured; and
 4. the plaintiff is less valuable to herself as a person capable of earning income in a competitive labour market.
- [136] Although I have placed little weight on Mr. Hosking's functional capacity evaluation, the evidence before me supports a finding that the plaintiff is less capable of earning income and less marketable or attractive as an employee. Ms. Bolognese required accommodations when she returned to work at McDonald's. Even with accommodations, Ms. Bolognese experienced significant pain and fatigue such that her time outside of work was of low quality and almost entirely consumed with recovering for the next shift. Ms. Bolognese also had difficulties with her job at TD Bank; the standing and static posture requirements of her work there increased her pain and also her anxiety and depression.
- [137] Ms. Bolognese will likely need to find employment which will include light physical demands and reduced demand for sustained static postures. This greatly reduces the number of job opportunities available to Ms. Bolognese.

- [138] Given the above, and the premium placed on performance and speed at McDonald's and Angela Bolognese's observations of the plaintiff's difficulties in meeting the job requirements since her Accidents, I do not doubt that she has lost the ability to take advantage of all the job opportunities open to her. Given her strong attachment to the workforce, her high work ethic and her previous success, it is not surprising that she finds herself to be less valuable as a person capable of earning income.
- [139] The prognosis for further recovery is guarded. The task for Ms. Bolognese, as Drs. Spivak and Flaschner agreed, is to find the appropriate balance of work and treatment such that she can also have some reasonable quality of life outside of work with her family and friends.
- [140] There is a real and substantial possibility that Ms. Bolognese's injuries will cause a pecuniary loss in the future. Despite her positive career trajectory at McDonald's prior to the Accidents, her chronic physical injuries and mental health conditions will likely affect her ability to earn income as she would have but for the Accidents.
- [141] The uncontroverted evidence is that the culture at McDonald's is demanding, highly competitive amongst the managers, and results-based. Angela Bolognese described the culture as "unforgiving" because scheduling is rigid and it is very difficult to call in sick as a manager or leave during a shift due to illness (or any other reason). Angela Bolognese also explained that McDonald's has set quality and speed standards that their managers must meet. There are time targets that must be adhered to and managers are assessed based on their speed and impact on profitability. As described earlier, Ms. Bolognese also gave uncontroverted evidence about the physical demands of the duties of a Second Assistant Manager at McDonald's, which is supported by Mr. Hosking's functional capacity report. While her injuries may not prevent her from working at McDonald's entirely, there is a real and substantial possibility that the chronic pain and related psychological injuries that she will likely continue to suffer from will make her less competitive in her career path towards management. The pain and emotional injuries will continue to take a toll on her and make her less likely to be able to endure the demands placed upon the McDonald's management cadre.
- [142] I accept that had Ms. Bolognese not been injured, she would have likely continued to progress in her career at McDonald's, although her progress may have been somewhat hindered by her pre-existing gastroparesis.
- [143] The third step is to assess the value of Ms. Bolognese's possible future loss. As stated in Rab, this step must include an assessment of the relative likelihood of the possibility occurring. As has often been said, this analysis will always entail an element of crystal ball gazing. In assessing the loss, the Court is not to engage in a mathematical calculation: Rosvold at para. 18, particularly when dealing with a young plaintiff.

- [144] Ms. Bolognese's submission that she is entitled to an award of \$900,000 is based on the capital asset approach and uses certain mathematical anchors and economist calculations. I accept that the plaintiff's approach is an appropriate anchor from which I may assess a suitable award under the capital asset approach. This approach compares her likely future earnings, both with and without the Accidents, and then applies a percentage representing a diminishment of her income earning capacity. This was done in *Hoffman v. Luan*, 2021 BCSC 811 at para. 53. The capital asset approach is appropriate in this case because Ms. Bolognese is young, and because her past earnings as a Second Assistant Manager do not accurately reflect her future earning capacity.
- [145] The plaintiff's submission assumes that, but for the Accidents, Ms. Bolognese would have advanced to a General Manager position at McDonald's and earned an annual salary similar to her sister's salary in that position of approximately \$67,000 plus benefits.
- [146] In further support of her position on without-Accidents earnings, Ms. Bolognese has provided evidence from an economist, Darren Benning, regarding the average earnings for males and females both with and without a high school diploma. The plaintiff submits that the average annual earnings for a BC male with a high school diploma between the ages of 25-64 is \$75,000. Applying Mr. Benning's non-wage benefit calculations results in an average annual salary of \$81,848. Applying Mr. Benning's economic multipliers, which incorporate average labour market contingencies, to determine the present value of these lifetime earnings from the date of trial to age 69 results in without accident earnings of \$1,811,694.
- [147] Ms. Bolognese submits that her earning capacity has been diminished by approximately 50% and that she will earn, on average, \$40,000 per year over the remainder of her working life. Consequently, she submits that the present value of her loss of capacity is \$900,000.
- [148] In the circumstances of this case, I agree that the male data is a more appropriate anchor than the female data. The defendants have not made any submissions as to why the female data must be applied. Like in *Gill v. Lai*, 2019 BCCA 103 at paras. 52-56, I too am reluctant to apply the female specific data which may have embedded discrimination. Although Ms. Bolognese intended to take maternity leave after the birth of her son, and she was on such a leave at the time of trial, it is my view that her strong attachment to the workforce is indicative of the likelihood that she would not have removed herself from the workforce for significant periods of time, even after having children.
- [149] While I agree that there is a real and substantial possibility that Ms. Bolognese would have received her high school diploma but for the Accidents, I do not agree with the plaintiff that there is an "overwhelming likelihood" that Ms. Bolognese would have done so. Given that Ms. Bolognese has made two unsuccessful attempts to obtain the remaining credits required to receive her diploma, and did not make any attempt to do so before the Accidents, it is appropriate, in my view to consider the possibility of her not receiving a high school diploma as a negative contingency in valuing her loss.

- [150] The average annual earnings of BC males without a high school diploma are approximately \$65,000, including adjustments for non-wage benefits. Applying Mr. Benning's economic multipliers results in a present value of these lifetime earnings from the date of trial to age 69 of \$1,225,055. Given the salary that Ms. Bolognese would be expected to earn as a General Manager at McDonald's, and factoring in the real and substantial possibility that the plaintiff's pre-existing health issues would have affected her career trajectory in any event, I find that \$1,200,000 is an appropriate present value of Ms. Bolognese's likely without accident earnings. I have also considered the possibility that Ms. Bolognese would not work past age 65; the evidence before me falls short of establishing that she would work beyond this age.
- [151] While I agree that there has been a diminishment to Ms. Bolognese's income earning capacity, I do not agree that her capacity has been diminished by 50%. Given her injuries, Ms. Bolognese will be excluded from some occupations because the demands may exceed her functional limitations. However, this does not mean that Ms. Bolognese is necessarily less able to compete for the most desirable and well-paying jobs. If Ms. Bolognese does complete her high school diploma, as she submits she is still likely to do, better-paying jobs will be open to her. It is not a foregone conclusion that Ms. Bolognese will only be able to work half-time at a job with lighter physical demands that pays her the average salary of a high school graduate.
- [152] Since the Accidents, Ms. Bolognese has had periods of time where she was functioning well and working full-time, albeit with aggravation of her symptoms. While her current mental and physical state are rather dire, as Dr. Reynolds testified, they may be somewhat affected by her recent pregnancy and birth. Given her past success with medication and counselling, in my view, there is a possibility that Ms. Bolognese's condition will improve and I must factor that into the valuation of her loss of capacity.
- [153] Considering the negative and positive contingencies, I find that a fair and reasonable assessment for Ms. Bolognese's loss of income earning capacity on a capital asset approach is \$275,000. Given the age of the plaintiff, it would not, in my view be fair and reasonable to simply use one to two years of her pre-Accident earnings as the basis for her damages under this head. Doing so for a plaintiff so early in their working life would risk significant under compensation. In my view, the award of \$275,000 reflects a more holistic consideration of Ms. Bolognese's potential future. The Court of Appeal has suggested that this Court take such a holistic approach in the award of damages under this head for young plaintiffs: Ploskon at para. 17.

- [154] In considering the fairness and reasonableness of this award, I note that this award is roughly equivalent to a loss equal to 20-25% of her lifetime without accident earnings of \$1,200,000, based on her diminished earning capacity. In my view, a diminishment of 20-25% of her capacity is more consistent with the evidence than a 50% diminishment and it accounts for the likely effect that the pre-existing conditions that the plaintiff minimized would have had on her working life without the Accidents.

Cost of Future Care

- [155] 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, insofar 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*, 49 B.C.L.R. (2d) 33, 1985 CanLII 179 (S.C.); *Spehar v. Beazley*, 2002 BCSC 1104 at para. 55; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29-30.
- [156] It is not necessary that a physician testify to the medical necessity of each item claimed; however, there must be some basis in the evidence whereupon the trier of fact can draw a link between the professional's assessment of pain and disability with the recommended treatment: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 39.
- [157] In *Sharma v. Chui*, 2019 BCSC 2115, the Court said the following about adjustments to be made and contingencies to be applied to the assessment of damages for the cost of future care:
- [120] Assessment of damages under this head is complicated by the necessity to predict the future based on the evidence, but also make adjustments for contingencies: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21. In *Bystedt v. Hay*, 2001 BCSC 1735 at para. 163, the court stated that the claim for cost of future care must be supported by evidence that demonstrates what a reasonable person of ample means would provide to meet the reasonable needs of the plaintiff. This is assessed on an objective basis that is fair to both parties.
- [121] However, the court must have some assurance that the plaintiff will incur the costs. Damages should not be awarded under this head if it is unlikely the plaintiff will avail herself of the services in future: *Maltese v. Pratap*, 2014 BCSC 18 at para. 78. In addition, whether adjustments are necessary to account for contingencies that are either positive (improvement in the plaintiff's condition) or negative (additional care will be required) depends on the specific care needs of each plaintiff: *Langille v. Nguyen*, 2013 BCSC 1460 at para. 234.

- [158] I also note that an assessment of damages for cost of future care is not a precise accounting exercise: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.
- [159] Ms. Bolognese suggests she is entitled to an award between \$104,431 and \$116,432 for her cost of future care. After considering positive and negative contingencies, she submits that she is entitled to a present value award of \$85,000. The defendants say that the plaintiff is not entitled to an award under this head because she has not met the evidentiary burden upon her. In the alternative, they argue that if Ms. Bolognese is entitled to anything that the amount should be "nominal", although they do not specify an amount.
- [160] There is no expert evidence regarding the anticipated costs of the care items sought by the plaintiff; however, her submissions are based upon the rates allowed by the defendants' insurer for the various practitioner therapies. I also have the plaintiff's schedule of special costs before me which provides some evidence of the cost incurred by the plaintiff for some of these treatments in the recent past. I agree that the plaintiff's history of accessing treatment is a helpful indicator in assessing future care costs. Given that determining damages under this head is an assessment as opposed to a calculation, I find that I have sufficient evidence to assess the plaintiff's damages for the items claimed.

Physiotherapy, Massage Therapy and Chiropractic Care

- [161] Before accounting for negative and positive contingencies, Ms. Bolognese seeks an award of \$13,783 for physiotherapy. This amount assumes six sessions per year until the age of 70 to address flare-ups of the plaintiff's symptoms. She seeks between \$20,937 and \$27,916 for massage therapy and between \$13,871 and \$18,494 for chiropractic care. The claims for massage and chiropractic care represent nine to 12 sessions per year for each modality of treatment until the age of 70.
- [162] In his report, Dr. Flaschner opines that massage and physical therapy may be helpful intermittently for treating exacerbations of pain related to soft tissue injuries. On cross-examination, he stated that there is no reason to discontinue such treatments if they are providing the patient with some relief and stated that it would be reasonable for such a person to receive treatments occasionally. I accept that Ms. Bolognese has received some benefit from these treatments in the past and I am satisfied that these treatments are reasonably necessary to promote Ms. Bolognese's health.
- [163] Given her testimony at trial and her history of use of these modalities, I am satisfied that she will use them in the future. However, no one has recommended that she receive these treatments for the rest of her life, and in any event, I am not satisfied that she will continue to attend these sessions at those frequencies for the rest of her life. I must also consider that Ms. Bolognese received physiotherapy for a number of years prior to the First Accident for her scoliosis and/or the injuries she sustained in the 2013 and 2014 accidents. I find that Ms. Bolognese would likely have continued to receive some physiotherapy even if the Accidents had not occurred.

[164] In light of the positive and negative contingencies I have identified above, I find that a reduction of approximately 50% is appropriate in respect of her claim for physiotherapy, and consequently, I award her \$6,500. In my view, a reduction of approximately 40% is appropriate in respect of her claims for massage therapy and chiropractic care. Consequently, I award her \$14,500 and \$9,000 for massage and chiropractic care, respectively.

Active Rehabilitation

[165] Before accounting for negative and positive contingencies, Ms. Bolognese seeks an award of \$936 for active rehabilitation. This represents a one-time cost for 12 sessions and the amount is based upon the previous active rehabilitation program that she participated in after the First Accident.

[166] Dr. Reynolds recommends that Ms. Bolognese engages in an active rehabilitation program. The plaintiff engaged in an active rehabilitation program in the past and Dr. Flaschner opines that she should continue those exercises independently, and indefinitely. Considering that Ms. Bolognese last participated in an active rehabilitation program many years ago, I am of the view that a refresher would be useful in assisting her with her physical symptoms. She can then carry on with the exercises she learns on her own. I find that the amount claimed is reasonable and award her \$1,000 for her participation in 12 sessions.

Psychological Counselling

[167] Before accounting for negative and positive contingencies, Ms. Bolognese seeks an award of \$20,937 for psychological counselling. This claim is the present value of six sessions per year until the plaintiff reaches age 70.

[168] Dr. Spivak opined in his report that there do not appear to be "further target symptoms that would merit further psychotherapy treatments". However, during cross-examination he agreed that counselling may be beneficial if her conditioned worsened. As discussed above, Dr. Spivak assessed the plaintiff at a time when she was doing relatively well; her mental health has deteriorated significantly since that time. Dr. Reynolds is also of the view that Ms. Bolognese should obtain counselling. Ms. Bolognese has attended counselling in the past and has found it to be beneficial. She also testified that she would engage again if she found a therapist who was the right fit. Given the plaintiff's psychological issues, I am satisfied that counselling would be reasonably necessary to promote her mental health.

[169] However, given the plaintiff's demonstrated ability to have prolonged periods of good mental health and considering the possibility that her physical symptoms may improve which would in turn have a positive effect on her mental health, I do not accept that the amount claimed by Ms. Bolognese is appropriate. Moreover, I find that it is unlikely that she would attend at that frequency for nearly 35 years. In my view, a reduction of approximately

50% would better reflect the plaintiff's need and likely use of this treatment modality. Consequently, I award her \$10,000 for psychological counselling in the future.

Prescription Psychiatric Medication

[170] Before accounting for negative and positive contingencies, Ms. Bolognese seeks an award of \$33,032 for prescription psychiatric medication. This represents the present value of the monthly cost of the ongoing use of Duloxetine, a drug taken by the plaintiff to treat her mental health issues.

[171] Ms. Bolognese was taking anti-depressants when Dr. Spivak assessed her. In his report, he opined that her then current medication regimen was stable and that there did not appear to be a need to adjust it. In cross-examination, after being advised that she was no longer taking those medications, he agreed that she may need to take them again in the future. However, he did testify that the number of medications she was taking in January 2020 is not likely to be representative of her future needs given the acute and severe state she was in at the time that required hospitalization. Dr. Reynolds also recommends that she use psychiatric medication if necessary.

[172] The plaintiff testified that she would take psychiatric medication again in the future if she needed to. It was not clear to me why she was not taking such medication at the time of trial given her reported psychological symptoms. While I agree that such medication may be reasonably necessary to support her mental health, I am not persuaded that she would take such medication continually until the age of 70. It is more likely that she would take such medication for a period of time on a few occasions over the years. Consequently, I find that a deduction of 75% would more appropriately reflect her future needs. As a result, I award the amount of \$8,000 for prescription medications.

Summary of Cost of Future Care

[173] In sum, I award the following cost of future care items:

Physiotherapy

\$6,500

Massage Therapy

\$14,500

Chiropractic Care

\$9,000

Active Rehabilitation

\$1,000

Psychological Counselling

\$10,000

Prescription Psychiatric Medication

\$8,000

Total

\$49,000

Special Damages

[174] The parties have agreed that Ms. Bolognese is entitled to \$12,500 of special damages and I award that amount.

CONCLUSION

[175] Ms. Bolognese's claim for damages is allowed and the defendants are jointly and severally liable for the damages awarded. In summary, I award the following:

Non-Pecuniary Damages

\$150,000

Past Loss of Income

\$85,000

Future Loss of Earning Capacity

\$275,000

Cost of Future Care

\$49,000

Special Damages

\$12,500

Total

\$571,500

COSTS

[176] Subject to circumstances of which I am unaware, the plaintiff is entitled to her costs of the action at Scale B. Should the parties wish to make submissions on costs, they may arrange to do so with Supreme Court Scheduling. Any such arrangements to speak to the matter of costs must be made within 45 days of the date of these Reasons for Judgement.

"Majawa, J."

- [1] The total amount awarded is an approximation because the award for loss of past earning capacity is a gross award and is subject to applicable deductions.
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