

CANADA / JUDGMENT

Gill v. Huber

2020 BCSC 519

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Supreme Court of British Columbia

DECIDED

3 April 2020

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2020 BCSC 519 Gill v. Huber

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gill v. Huber,

2020 BCSC 519

Date: 20200403

Docket: M163174

Registry: New Westminster

Between:

Narrinder Kaur Gill

Plaintiff

And

Mark Steven Huber, South Coast British Columbia Transportation Authority A.K.A. TransLink, Coast Mountain Bus Company Ltd. A.K.A. Coast Mountain BusLink Company Ltd., Jane Doe or John Doe, ABC Company and Insurance Corporation of British Columbia

Defendants

Before: The Honourable Madam Justice Shergill

Reasons for Judgment

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Place and Date of Trial:

New Westminster, B.C.

June 3-7, & 10-12, 2019

November 7 & 8, 2019

Place and Date of Judgment:

New Westminster, B.C.

April 3, 2020

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I. Overview

- [1] The plaintiff, Narrinder Kaur Gill, is 63 years old. She seeks damages for injuries sustained on August 15, 2012 (the "accident"), while she was a passenger on a transit bus (the "bus") operated by the defendant, Mark Steven Huber. In addition to damages for pain and suffering, Ms. Gill claims for past income loss, impairment of future earning capacity and housekeeping capacity, cost of future care, and her out-of-pocket expenses for treatment.

- [2] At the time of the accident, Mr. Huber was an employee of the defendant, Coast Mountain Bus Company Ltd., also known as Coast Mountain Buslink Company Ltd. ("Coast Mountain"). The bus was owned by the defendant, South Coast British Columbia Transportation Authority, also known as TransLink ("TransLink") (Coast Mountain and TransLink are collectively referred to as the "Bus Defendants").
- [3] The Insurance Corporation of British Columbia ("ICBC") is named as a nominal defendant, pursuant to s. 24 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231 [Insurance Act].
- [4] There is no dispute that at all material times, Mr. Huber was operating the bus with the consent of the Bus Defendants. There is also no dispute that Coast Mountain is vicariously liable for his actions. However, Mr. Huber and the Bus Defendants deny liability, arguing that the accident occurred due to the actions of an unidentified driver, and not Mr. Huber's negligence. Alternatively, the Bus Defendants plead contributory negligence on the part of Ms. Gill. They also dispute the extent of Ms. Gill's injuries, loss, and damages, and argue failure to mitigate.
- [5] ICBC denies that an unidentified driver was wholly or partially responsible for the accident, and argues that the accident was due entirely to Mr. Huber's negligence, for which Mr. Huber and the Bus Defendants are 100% liable. Alternatively, ICBC submits that Ms. Gill's claim against ICBC as a nominal defendant should be dismissed as she has not complied with the provisions of s. 24(5) of the Insurance Act.

II. Issues

- [6] The issues for my determination are as follows:
- Who was liable for the accident?
 - If an unidentified driver was wholly or partially responsible for the accident, has the plaintiff complied with the provisions of s. 24(5) of the Insurance Act?
 - Was the plaintiff contributorily negligent for her injuries sustained in the accident?
 - Are the plaintiff's accident-related injuries, loss or damages attributable to pre-existing injuries or conditions?
 - Has the plaintiff failed to mitigate her damages?
 - Is the plaintiff entitled to non-pecuniary damages, special damages, loss of income and/or earning capacity (past and future), costs of future care and loss of housekeeping capacity? If so, in what amount?

III. Liability

- [7] On August 15, 2012, Ms. Gill boarded a transit bus heading eastbound on 49th Avenue in Vancouver, British Columbia. 49th Avenue is a main corridor which is often used as a bus route. The near-collision resulting in the accident occurred around after 8:00pm at the intersection of 49th Avenue and Knight Street ("the intersection"). Traffic was light. The curb lane on 49th Avenue had parked cars. There was a marked crosswalk on the near side of the intersection.
- [8] Mr. Huber was driving along 49th Avenue on a familiar bus route. As he approached the bus stop at Sherbrooke Street, he noticed an unidentified driver in front of his bus. At this point, Mr. Huber was three blocks away from the intersection of 49th Avenue and Knight Street, and travelling the speed limit, which was 50 km/h.
- [9] Mr. Huber continued to drive at the speed limit as he approached Culloden Street. By now, he was one block away from the Knight Street intersection. There were no obstructions blocking his view, and he could see up to 1.5 blocks ahead on 49th Avenue.
- [10] When Mr. Huber approached the intersection of 49th Avenue and Knight Street, he noticed that the unidentified vehicle was still in front of him. Mr. Huber anticipated that the green traffic light ahead was going to change colour, and started decelerating the bus. To effect this, he removed his foot from the accelerator, and hovered his foot over the brake. The bus slowed down to 40 km/h.
- [11] As Mr. Huber got closer to the intersection, the traffic light at Knight Street turned yellow. According to Mr. Huber, the unidentified vehicle stopped suddenly. To avoid a collision, Mr. Huber quickly applied the brakes, bringing his bus to an abrupt stop.
- [12] Ms. Gill did not see the unidentified vehicle. She was "minding [her] own business" and otherwise not paying attention to her surroundings. Ms. Gill was seated in seat number three, which was the first forward-facing window seat on the driver's side. The bus was not equipped with any seatbelts, and there was no handhold for the plaintiff to hold onto. There was a narrow ledge along the window to Ms. Gill's left side. Ms. Gill said she might have had her hand on the ledge. The sudden jolt caused Ms. Gill to fall off her seat to the floor of the bus, her arms pinned underneath her. A female passenger fell down next to Ms. Gill.
- [13] Mr. Huber testified that after applying the brakes, he told the passengers to "hang on". He asked if everyone was "ok" or if anyone was injured. In his brief backward glance towards the passengers, he saw a passenger on the ground in the forward facing seats, and heard someone saying that a person had been injured.
- [14] As Mr. Huber was still in the lane of traffic, he turned his attention to the road and waited for the light to turn green. He then drove the bus to the bus stop on the other side of Knight Street. Ms. Gill was still on the floor of the bus when Mr. Huber drove it to the bus stop, though by this time she had freed her arms and was aiding the other fallen passenger.

[15] After parking the bus at the bus stop, Mr. Huber assessed the situation and called for an ambulance. The ambulance crew attended to the female passenger. Mr. Huber's supervisor came to the scene, and Ms. Gill told him in Mr. Huber's presence that she had injured her knee in the accident. After remaining at the scene for a short period, Ms. Gill boarded another bus and got off at a bus stop close to her home. She walked the remaining few blocks to her home.

A. Legal Framework

[16] Both the plaintiff and ICBC rely on ss. 144 and 162 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318. Section 144 prohibits careless driving. Section 162 stipulates that a driver cannot follow another vehicle too closely.

[17] The parties do not dispute that a following driver must allow sufficient distance between her/himself and the vehicle in front to stop safely in the event of sudden or unanticipated stops ahead of her/him: *Tchir v. South Coast British Columbia Transportation Authority*, 2014 BCSC 1119 at para. 53.

[18] In *Benavides v. Insurance Corporation of British Columbia*, 2017 BCCA 15 at para. 17, Justice Fenlon summarized the principles concerning the duty of care and onus of proof where a passenger is injured on a bus. They are as follows:

- The mere fact that a passenger is injured while riding on a public carrier does not establish a prima facie case of negligence.
- The plaintiff bears the burden of proving on a balance of probabilities that the defendant breached the standard of care owed to the plaintiff.
- Once the plaintiff establishes a prima facie case of negligence, in practical terms the burden shifts to the defendant to answer the case against the defendant and to show that the defendant was not negligent.

[19] It is well settled on the authorities that the standard of care owed by a defendant bus driver to a plaintiff passenger is a high one. The standard of care is determined objectively, having regard to the conduct or behaviour that would be expected of a reasonably prudent bus driver in the same circumstances that the defendant finds himself or herself. In determining whether the standard of care has been breached, the court is to take into account the experience of the average bus driver, and anything the defendant driver knew or should have known: *Prempeh v. Boisvert*, 2012 BCSC 304 at paras. 15-17.

[20] It is not of itself a breach of the standard of care for a bus driver to stop abruptly. The court must consider the manner of the stop, the reason for its suddenness, and assess whether, in all the circumstances, the defendant's conduct was substandard when measured against the standard expected of a reasonably prudent driver: *Erickson v. Sibble*, 2012 BCSC 1880 at para. 57.

B. The Evidence

- [21] The evidence on liability came from four witnesses: Ms. Gill, Mr. Huber, Edmund Armstrong, and Bob Legace. Neither Mr. Armstrong nor Mr. Legace witnessed the incident.
- [22] Mr. Huber joined Coast Mountain in June 2008 after completing a six-week training program. Mr. Huber has been employed as a full-time bus driver with Coast Mountain since then. Mr. Huber was the only witness who testified as to the existence of an unidentified driver. Mr. Huber did not obtain the licence plates of the unidentified vehicle, nor does he know what kind of vehicle it was. The unidentified vehicle was the only vehicle between the bus and the intersection, and was at or inside the crosswalk when it stopped.
- [23] Mr. Huber testified that it would have taken him one bus length (40 feet) to bring the bus to a full stop. After the near collision, approximately three feet of space remained between the front of the bus and the rear of the unidentified vehicle.
- [24] Mr. Huber admitted in cross-examination that he was following too closely to the vehicle in front of him. He also conceded that his braking action was aggressive, and that people could have fallen out of their seats when he braked, given his speed and the distance remaining for him to stop the bus.
- [25] Ms. Gill testified that the braking occurred without warning. She did not hear any screeching of tires or horn honking prior to the near collision. Nor did she hear Mr. Huber call out to the passengers to warn them. Under cross-examination, Mr. Huber admitted that when operating a bus, the driver is required to give a safety warning to passengers, such as to "hang on" or "watch your step". Mr. Huber admitted that he did not warn the bus passengers before applying the brakes abruptly.
- [26] Mr. Armstrong is a TransLink instructor who testified on behalf of the plaintiff. He gave evidence about the training that new transit operators are required to undergo. Mr. Armstrong did not train Mr. Huber, nor was he called to testify as an expert witness on the standard of care of transit operators.
- [27] It was Mr. Armstrong's evidence that all new transit operators must undergo 30 days of training. Bus drivers at Coast Mountain are trained using the Smith System Driver Guide. The Smith system teaches bus drivers to maintain a distance of one second for every 10 feet of vehicle length for speeds up to 40mph (64km/hr). Under this training module, the minimum following distance for a 40-foot vehicle travelling at 30mph (48 km/hr) is four seconds.
- [28] Although it was his evidence that all training instructors at Coast Mountain teach the Smith System, Mr. Armstrong conceded that he did not have direct knowledge of the specific training that Mr. Huber received when he joined Coast Mountain. He agreed that individual instructors may have their own interpretation of the Smith System when training operators.

- [29] Mr. Legace is employed as an incident analyst at Coast Mountain. He prepared an Incident Analysis Report following the near collision in which he concluded that the near-collision incident was "preventable". Mr. Huber agreed with the contents of the Incident Analysis Report.

C. Conclusion

- [30] Having regard to the whole of the evidence, I conclude that Mr. Huber did not meet the standard of care that expected of a reasonably prudent bus driver in the circumstances, and is thus liable for the accident. In arriving at this conclusion, I have relied primarily on the circumstances of the near accident, as well as Mr. Huber's own evidence. I have placed little weight on the evidence of Mr. Legace and Mr. Armstrong. As noted, neither of them had any direct knowledge of the events in question, and neither was qualified as an expert witness.
- [31] The Bus Defendants argue that the plaintiff needs to call expert evidence on the standard of care expected of bus drivers to establish liability against Mr. Huber. I disagree. Where, as in here, the bus driver has admitted the elements required to prove negligence against him, that admission is sufficient.
- [32] I find that Mr. Huber could have prevented the sudden braking maneuver resulting in the accident, had he exercised due care and attention. By his own admission, Mr. Huber was driving too closely to the vehicle ahead of him, requiring him to brake "aggressively" to bring the bus to a stop. In doing so, Mr. Huber breached the standard of care that was expected of him. In anticipation of the light changing, Mr. Huber should have put further distance between himself and the vehicle in front of him. His failure to do so was negligent, and contravened s. 162 of the Motor Vehicle Act.
- [33] This is not a case of the unidentified driver driving erratically, making a sudden lane change into Mr. Huber's lane of travel, or otherwise creating a dangerous situation. The unidentified driver braked for a yellow light that Mr. Huber knew had previously been stale green. There was nothing unusual or unexpected about this set of events. Had Mr. Huber not been following so closely he would have had enough time to safely stop the bus. I conclude that the actions of the unidentified driver do not amount to negligence.
- [34] I am also unable to find any actions or inactions of Ms. Gill that contributed to her injuries. The bus was not equipped with any seatbelts, there was no handhold for Ms. Gill to hold onto, and the braking happened without warning. Mr. Huber was aware that the sudden braking would cause some passengers to fall such that it was important to warn them. Mr. Huber's warning to the passengers after he had already braked came too late. In failing to provide the passengers with a timely warning, Mr. Huber deprived Ms. Gill of the opportunity to brace herself to try to prevent her fall.

[35] As Mr. Huber was solely responsible for the accident, I conclude that Mr. Huber and the Bus Defendants are wholly liable for the near collision. The action against ICBC, John Doe, Jane Doe, and ABC Company, is dismissed.

[36] Given my findings on liability, I do not need to address the s. 24(5) Insurance Act argument advanced by ICBC.

IV. The Plaintiff

[37] Ms. Gill was 56 years old at the time of the accident and 62 years old by the trial date. She is a single mother of three adult children and five grandchildren. She resides by herself in Vancouver. The plaintiff has a son and daughter who live in the Metro Vancouver area, and a daughter who resides in Newfoundland.

[38] Ms. Gill was born in Punjab, India, and immigrated to Canada at the age of eight. She grew up in British Columbia, and graduated from high school around 1974. Ms. Gill married shortly thereafter. The marriage was abusive, and she eventually left her husband, divorcing him around 2005.

[39] Ms. Gill had a lengthy and rewarding career with the federal government. She started working there in 1975, and was still employed full-time with the federal government at the time of the accident. Ms. Gill was good at her job, and well liked by customers. In January 2011, a customer sent a letter of appreciation to Ms. Gill's supervisor, commenting on the cheerful, friendly, and efficient service that she provided to him. In April 2012, she received another positive review from a customer who heaped strong praise on Ms. Gill for her patience, expertise, and professionalism.

[40] In March 2011, Ms. Gill became eligible for retirement, having completed 35 years of pensionable service and achieving the minimum retirement age of 55. Ms. Gill enjoyed her job and had no plans to retire.

[41] Ms. Gill's hobbies prior to the accident included walking, reading, attending religious studies classes, and playing with her grandchildren.

A. Credibility

[42] As often occurs in actions of this nature, the plaintiff's credibility and reliability as a witness featured prominently in this trial.

[43] Determining the plaintiff's credibility and reliability as a witness was complicated. Standing on its own, Ms. Gill's evidence was delivered in a manner that brought her credibility and reliability into question. Ms. Gill was easily irritable and emotional while testifying. She spoke tangentially, had poor recall of events, was often vague in her descriptions, and frequently failed to directly answer questions put to her. For example, the plaintiff's evidence about her pre-accident health was vague. Though she admitted to seeing her family doctor about symptoms of anxiety, depression, and headaches prior to the accident,

she offered little by way of specifics. Due to her manner of speech, memory, and emotional state, it was difficult for counsel to elicit testimony from Ms. Gill, either through her direct examination or her cross-examination.

- [44] In assessing Ms. Gill's credibility and reliability as a witness, I have considered the diagnoses made by Dr. Dahi and Dr. Levin. The opinions of these experts provide insight into Ms. Gill's psychological condition, and the impact that it has on her overall presentation. Having regard to these expert opinions, and other evidence in this case, I conclude that Ms. Gill's credibility is not diminished by her presentation at trial. I find that the tangential nature of her speech, poor memory, and volatile emotional state are due to medical reasons, and are not motivated by a desire to improve her financial outcome in this litigation.
- [45] Nevertheless, Ms. Gill's poor memory and psychological outlook does make some of her evidence unreliable. To that end, where her evidence differs from the documentary evidence, I have preferred the latter.
- [46] In assessing Ms. Gill's credibility, I have also measured Ms. Gill's evidence against that of her collateral witnesses. I found both Mr. Dhaliwal and Ms. Dial to be credible and reliable witnesses. Ms. Gill's evidence was largely consistent with both their testimony; minor discrepancies between Ms. Gill's evidence and that of Mr. Dhaliwal or Ms. Dial, were resolved by my preferring their evidence to hers.

B. Pre-Accident Condition

- [47] The plaintiff admits to having pre-existing symptoms of anxiety, depression, and headaches. However, it is her position that these did not affect her ability to work, perform her household duties, or participate in other activities. The defendants argue that the plaintiff was a crumbling skull, and that her complex psychological condition is attributable to her pre-accident health, psychological makeup, and an unhappy work environment.

Anxiety and depression

- [48] It is evident that Ms. Gill had a significant history of anxiety and depression prior to the accident. In the two years prior to the accident, Ms. Gill saw her family physician a number of times for symptoms of anxiety and depression. In April 2011, her doctor referred her to an outpatient mental health program and in December 2011, she was referred to a psychologist on the Surrey Mental Health team. It is unclear whether Ms. Gill attended for these treatments. Regardless, she continued working full-time with the federal government during this time.

- [49] Around January 2012, her employer transferred Ms. Gill to a different work location. She left the 10th Avenue office, where she had worked for decades, for a location on Kingsway. The change was precipitated by what Ms. Gill described as "bullying" behaviour by one of her co-workers. Ms. Gill was not happy about the move. The working conditions at the Kingsway office were different from what the plaintiff was used to. She was moved around constantly, and no longer had a dedicated workstation and her own chair.
- [50] Ms. Gill was very upset with her new work situation. On February 25, 2012, she saw Dr. Birch for depression and anxiety. Dr. Birch performed the Global Assessment and Functioning (GAF) test, and reported a score of 40 or 50, indicative of a low level of functioning. He referred the plaintiff to Dr. Axler, a psychiatrist, and made another referral to a mental health outpatient program. It is unclear whether Ms. Gill followed through with these referrals.

Headaches

- [51] Ms. Gill also complained of migraine headaches prior to the accident. Her doctor referred her to Dr. Wolfenden, a neurologist, around July 2012. The plaintiff could not recall Dr. Wolfenden and could not say whether she attended the appointment that had been scheduled for November 8, 2012.

Foot Pain

- [52] Ms. Gill testified that she had been wearing orthotics for a number of years prior to the accident, though she denied that this was due to foot pain, referring to them as a "preventative" measure. However, clinical records confirm ongoing complaints of pain and swelling in her feet in the months leading up to the accident.

Back Pain

- [53] There is also indication that Ms. Gill complained of back pain in March 2012, and a tender neck and upper back on July 24, 2012, about three weeks before the accident. However, Dr. Armstrong was reluctant to conclude that this was indicative of a chronic back condition, stating, "almost everyone experiences back pain at some point in time in their life, so one has to be a little careful about attributing that as a pre-existing condition".

V. Injuries

- [54] Ms. Gill claims for physical and psychological injuries flowing from her fall on the bus. The physical injuries involve virtually her entire body, from her head to her toes. Dr. Simon Horlick, an orthopaedic surgeon who assessed her on behalf of the defendants in September 2016, described these injuries as "diffuse musculoskeletal pain involving her head, neck, entire spine, upper extremities, and lower extremities". The defendants acknowledge that Ms. Gill suffered soft tissue injuries but say that they were minor and of short duration.

- [55] Ms. Gill's psychological injuries include severe anxiety, depression, and personality changes. The defendants do not deny that Ms. Gill suffers from psychological injuries, but dispute their cause and extent, and say that her current psychological state is attributable to non-accident related factors for which they are not liable.
- [56] It is Ms. Gill's contention that as a result of physical and psychological injuries sustained in the accident, she lost her long-standing employment with the federal government and has been permanently disabled from working. In addition, she claims the injuries have had a devastating impact on the quality of her life, and her familial and social relationships.

A. Post-Accident Events

- [57] Immediately following the aftermath of the accident, Ms. Gill reported a sore left knee. In the days following the accident, Ms. Gill testified that she had pain over her entire body, including in her neck, hips, knees down to her ankles, and was experiencing headaches. She felt "completely tired" and lost. She saw Dr. Birch who prescribed Tylenol 3 for her pain.
- [58] The plaintiff was on vacation at the time of the accident and was not scheduled to return to work for several weeks. Ms. Gill spent most of her recovery period at home. She describes herself as "not functioning at that point". She felt sad and exhausted, and was withdrawn.
- [59] About one month after the injury, Dr. Birch prescribed medications to address symptoms of depression and anxiety. The symptoms did not abate, and Ms. Gill remained off work. Dr. Birch recommended she attend KARP Rehabilitation to help manage her pain. Ms. Gill started treatment at KARP in November 2012. She was emotionally volatile, and had a few angry outbursts and emotional breakdowns while at KARP, but managed to complete her treatment.
- [60] Ms. Gill engaged in at-home exercises on the recommendation of the treatment providers at KARP. She found these helpful and testified that she performed the exercises daily. She also continued to take painkillers and anti-depressant medication. Around January 2013, Ms. Gill started massage therapy, which she took until March 2014.
- [61] In early June 2013, Ms. Gill participated in a graduated return to work program (GRTW) organized through KARP. She found it difficult. She still had pain in her body, including lower back spasms, and a stiff neck and headaches. She had difficulty focusing, concentrating and absorbing information.
- [62] Around the same time, Ms. Gill learned that her employer had overpaid her due to a clerical error. Ms. Gill "got really upset with them and was in shambles" because her employer wanted to recover these overpayments. Despite all this, Ms. Gill continued with her GRTW. She returned to full-time work duties by the end of August 2013.

- [63] The transition to full-time work did not go smoothly. Ms. Gill was still in pain and had a volatile mood. On September 24, 2013, following an angry outburst at work, she received a letter of reprimand from her employer. Ms. Gill was told that it was "not appropriate to shout in the workplace", and that she could face termination if her behaviour continued. Ms. Gill saw a counsellor in September and October 2013 through the employee assistance program.
- [64] On October 29, 2013 Ms. Gill's job of over 37 years ended. The "Notification of Separation" form indicates that she took retirement due to medical reasons. Ms. Gill says she was forced to leave.
- [65] Ms. Gill's angry outbursts were not restricted to her place of work. Following an altercation at her doctor's office, the police attended at her home. The police handcuffed her and took her to the hospital. Though Ms. Gill was later released, she found the incident extremely upsetting.
- [66] Ms. Gill continued to seek treatment from Dr. Birch until they had a falling out. She was referred by a new GP, Dr. Gorman, for an outpatient psychiatric consultation. In November 2014, Dr. Gorman recommended she attend a culturally-specific program employing dialectical behavioural therapy (DBT).
- [67] Ms. Gill did not undergo any further treatment modalities until September 2018, when she attended massage therapy for about six months. Around April 2019, Ms. Gill started seeing Gina Vanderham for counselling therapy. She was still seeing her at the date of trial.
- [68] Ms. Gill discontinued the use of prescription medication prior to the trial. While she felt it helped reduce her pain and improve her function, she believed it "masked" her injuries. On the advice of her daughter, in the six months leading up to the trial, Ms. Gill was using CBD oil to help manage her pain.

B. Expert Evidence

- [69] Medical expert opinion evidence was elicited from four specialists who prepared medical legal reports (MLRs) based on their assessments of Ms. Gill, and also appeared as expert witnesses in the trial. Dr. Armstrong and Dr. Levin testified in the plaintiff's case; Dr. Horlick and Dr. Dahi testified on behalf of the defendants.
- [70] There was significant disagreement between the expert opinions regarding Ms. Gill's physical injuries. In contrast, the psychiatric experts were in substantive agreement on the diagnosis of Ms. Gill's psychological condition, differing only on questions of causation.
1. Physical injuries

Dr. Armstrong

- [71] Dr. John Armstrong was qualified as an expert in complex chronic pain. He assessed Ms. Gill on February 27, 2019 by conducting a musculoskeletal examination, neurological examination, general medical examination, and mental health assessment.
- [72] Ms. Gill reported chronic pain in her neck, shoulder and chest, pain down to her legs and thighs, pubic tenderness, problems with balance, and headaches. On examination, Dr. Armstrong found Ms. Gill to have: tenderness and active inflammation in the pelvic area and abnormalities in both sacroiliac (SI) joints; difficulties with balance; mild tenderness in the neck and shoulders; some limited range in forward flexion of the lumbosacral junction; and mild tenderness in the thoracolumbar paraspinal muscles and back muscles.
- [73] Ms. Gill's mental health assessment revealed pain-focused behaviour; vague and circumstantial speech; poor mind/body connection; very severe depression on the Beck Depression Inventory (BDI-II); high levels of anxiety; severe levels of self-reported disability on the Brief Pain Inventory and Pain Disability Index; cognitive distortions; and low self-efficacy and motivation.
- [74] In his MLR dated February 27, 2019, Dr. Armstrong diagnosed Ms. Gill with the following:
1. chronic axial/para-axial myofascial disorder;
 2. sacroiliac joint dysfunction, spinal pelvic ring (SPR) instability and misalignment, spinal pelvic ring distortion (SPRD), and malalignment syndrome;
 3. Adjustment Disorder with mixed anxiety and depressed mood and chronic pain syndrome;
 4. Somatic Symptom Disorder with predominant pain, persistent and moderately severe; and
 5. complex chronic pain disorder with self-reported complications of emotional, cognitive, mental and social distress, disturbed sleep with fatigue, and diminished energy and physical capacity.
- [75] Dr. Armstrong opined that the force of the accident was of sufficient magnitude to cause the myofascial disorder, injury to both her sacroiliac joints, and injury to the SPR. Due to her gender, previous childbirth and transitional vertebra at L5, he believed she was likely predisposed to injury to her SPR. Her risk factors for chronic pain included her gender, past psychosocial challenges, limited education, ongoing social isolation, and chronic mental illness.
- [76] According to Dr. Armstrong, at the time of his assessment, the plaintiff had not reached maximum medical recovery. Her recovery was delayed and incomplete because of a number of factors, including: the constellation of symptoms from her soft tissue injuries; exacerbation of her pre-existing mental health issues; sleep disturbance; pain focus; limited coping skills; cognitive distortion and pain avoidance behaviors; Somatic Symptom Disorder; and Adjustment Disorder. He also noted Ms. Gill may be complicating her

headache disorder by overusing her analgesic medication.

- [77] Dr. Armstrong was of the view that an individualized rehabilitation program, if successful, could return Ms. Gill to (or close to) her pre-MVA condition. The program would need to address her sacroiliac joint and malalignment problems, chronic myofascial disorder and core weakness, and include psychological counselling, physiotherapy, and exercise.
- [78] Depending on her progress with treatment, Dr. Armstrong considered that it was possible that Ms. Gill could return to work as an office worker. However, this would require a major vocational rehabilitation effort, and motivation on the part of Ms. Gill to sustain a return to work program, which he doubted she had.
- [79] Dr. Armstrong was unable to give a firm prognosis for Ms. Gill's recovery, and was very guarded with respect to her ability to achieve improvement of her condition. He opines as follows in his MLR:
- (112) Generally speaking, the longer a chronic myofascial disorder and sacroiliac joint dysfunction persist, the less favourable is the chance for significant improvement with additional rehabilitation. In Ms. Gill's case, because, given her age and that she has had her physical problems for more than six years following the MVA, it is my opinion that she is less likely to obtain significant improvement with additional attempts at targeted rehabilitation
- (114) Her ultimate prognosis will depend on the outcome of her additional treatment, rehab, and counselling and, for the time being, it is not possible to predict how much improvement if any, she might obtain. The outlook for whether she can recover to her level of function as it would be today, but for the MVA, is very guarded.
- [emphasis added]
- [80] In his opinion, without appropriate and successful treatment, rehabilitation and counselling, Ms. Gill would continue to have daily headaches, chronic pain, nonrestorative sleep, and reduced physical capacity. In addition, she was at significant risk for developing nociplastic pain or fibromyalgia syndrome.
- [81] Dr. Armstrong was cross-examined extensively on his qualifications and opinion. I found Dr. Armstrong to be non-defensive, knowledgeable and thorough. I have placed significant weight on his diagnoses of Myofascial Disorder, Sacroiliac Joint Dysfunction, injuries to the SPR, Adjustment Disorder, Somatic Symptom Disorder, and Chronic Pain Disorder. I have also placed significant weight on his opinion on the cause of Ms. Gill's physical injuries. However, I have placed less weight on Dr. Armstrong's opinion in relation to the cause of the injuries that have a psychological component, i.e., myofascial disorder, Adjustment Disorder, chronic pain syndrome, Somatic Symptom Disorder and chronic pain disorder. This is because I find that Dr. Armstrong did not fully consider or appreciate Ms. Gill's pre-existing psychological health or its impact on her post-accident condition.

Dr. Horlick

- [82] Dr. Horlick is an orthopaedic surgeon. He assessed Ms. Gill on September 22, 2016, and prepared a MLR of the same date. At the time of his assessment, Ms. Gill was no longer experiencing pain in her knees, ankles, wrists or hands. However, she was still complaining of intermittent pain in her neck radiating into her shoulders; intermittent low back pain radiating into the pelvis; and intermittent mid-back or thoracic spine pain, for which she was taking gabapentin and the occasional Tylenol 3.
- [83] Dr. Horlick found tenderness in the plaintiff's left and right parathoracic musculature extending to the posterior shoulder regions, and low back complaints elicited with straight leg raising and in the supine position. The test results for sacroiliac joint pathology were inconclusive. All other testing was negative.
- [84] Dr. Horlick was unable to find any pathology to explain Ms. Gill's ongoing complaints of pain in her cervical spine, lumbar spine and shoulders. He opined that the bus accident resulted in temporary soft tissue discomfort, which should have resolved within four to eight weeks of the accident.
- [85] Dr. Horlick had no specific orthopedic treatment recommendations. Instead, he recommended that Ms. Gill continue with her self-directed exercise program and use of medications to help manage her pain.
- [86] For the following reasons, I have placed very little weight on Dr. Horlick's opinion that Ms. Gill suffered only temporary soft tissue discomfort from the accident which should have resolved within four to eight weeks:
- a) Dr. Horlick's medical assessment of Ms. Gill occurred almost three years before the trial, and as such, is of limited use in determining her current condition and future prognosis.
 - b) Dr. Horlick's examination and expertise was limited to orthopedic injuries. As such, he was unable to opine on the diagnosis of any conditions that have a psychological component, such as Adjustment Disorder and chronic pain syndrome.
 - c) Dr. Horlick did not know what SPRD or pelvic malalignment disorders were and had no experience in the treatment or diagnosis of SPR injury.
 - d) Dr. Horlick did not perform dynamic testing of the sacroiliac joint region, and as such, his inconclusive findings are unreliable.
 - e) Dr. Horlick lacked sufficient knowledge about Ms. Gill's job duties, such that his opinion about the impact of her injuries on her employment is unreliable.
- [87] For all of the above reasons, I prefer Dr. Armstrong's opinion to that of Dr. Horlick's, on the diagnosis, causation, and prognosis of Ms. Gill's physical and pain conditions. I find Dr. Armstrong's opinion to be more medically sound, comprehensive, and consistent with the documentary and other evidence in this case.

2. Psychological Injuries

Dr. Dahi

[88] Dr. Abdorrahim Dahi is a psychiatrist. He prepared a MLR dated December 7, 2017 (based on an assessment conducted November 2, 2017), and a supplemental MLR dated May 28, 2019. He observed Ms. Gill to be highly anxious, agitated, restless, and disorganized during the interview. She was vague with respect to dates, had poor recall, and was tangential in her responses. Of note, Ms. Gill initially denied any psychological treatment before the accident, saying later that "maybe I had some", without further elaboration.

[89] In Dr. Dahi's December 7, 2017 MLR, he diagnosed her with:

1. Generalized anxiety disorder, severe;
2. Somatoform disorder, moderate;
3. Avoidant personality disorder; and
4. Paranoid personality traits.

[90] Dr. Dahi noted that Ms. Gill "has a long history of avoidance, insecurity, and somatization tendencies that root into her childhood". However, he believed that Ms. Gill's complex psychological condition was triggered by the bus accident such that:

She collapsed further into a period of deeper isolation, avoidance, and subsequent depression and anxiety. She could barely return to work. She finally left her job one month after returning to full-time work. Overall, her dramatic presentation has severe roots into her life prior to the accident on the bus in 2012.

[91] Dr. Dahi opined that Ms. Gill has "severe avoidant personality disorder" and "paranoid personality traits". He provided a guarded prognosis, noting that individuals with this kind of diagnosis cannot trust and commit to long-term treatment to address the causes of their symptoms.

[92] Dr. Dahi opined further that:

Due to severe isolation, a degree of confusion, and a relatively limited memory, she might not be able to properly take care of herself and over time, may develop even further emotional issues.

[93] According to Dr. Dahi, while Ms. Gill's complex psychiatric condition could have been brought up absent the accident, it seems "more than likely that the accident was responsible for triggering what was just below the surface." He explained it thus:

A sense of fear, lack of safety, and further vulnerability did not allow her to return to work, and when she returned to work part-time and started to build up her hours towards full time, that plan did not go well and she had to leave. She left with a sense of paranoia towards her manager and co-workers, at that time.

[94] Following review of Dr. Birch's and Dr. Gorman's records, Dr. Dahi revised his earlier opinion on the impact of the accident on Ms. Gill's income loss. He concluded in his supplemental MLR that:

More likely than not, the accident on the bus in August 2012 mildly aggravated the pre-existing Major Depression and Generalized Anxiety Disorder symptoms, which made her return-to-work more challenging.

Overall Mrs. Gill's limitations to go back to work after the MVA in August 2012 were mainly related to pre-existing psychiatric issues.

[95] Dr. Dahi made the following recommendations:

1. an extensive psychiatric intervention including a full blood workup and an updated brain CT scan to rule out whether she is prone to an early stage of the dementic process;
2. review of her medications, with incorporation of more efficient anti-anxiety and antidepressant medications, and a low dose of antipsychotic medication to help stabilize her mental state; and
3. long-term treatment with a culturally sensitive female therapist.

[96] I have placed significant weight on Dr. Dahi's opinion on the diagnosis of Ms. Gill's psychological conditions. I found Dr. Dahi to be a knowledgeable witness, and his opinion on diagnosis was well grounded, logical, and supported by the medical and other evidence. However, I have concerns about Dr. Dahi's opinion regarding causation, for the following reasons:

- a) Dr. Dahi made an assumption that a July 2012 prescription for nortriptyline was to treat major depressive disorder or anxiety, conceding only under cross-examination that it could also have been prescribed to treat insomnia or headaches.
- b) Dr. Dahi did not fully consider the inconsistency between Ms. Gill's gainful employment and the GAF score reported by Dr. Birch, on which Dr. Dahi relied in arriving at his opinion that the accident only mildly aggravated her pre-existing condition. Dr. Dahi agreed that a GAF score of 40 to 50 would indicate a severe level of dysfunction, and conceded that Ms. Gill would need to have a fairly high GAF score in order to perform her job with Revenue Canada.
- c) Dr. Dahi did not fully consider or appreciate Ms. Gill's pre-accident job duties and what they revealed about her pre-accident level of function.

[97] As such, I have placed less weight on Dr. Dahi's opinion regarding causation of Ms. Gill's post-accident psychological condition.

Dr. Levin

[98] Dr. Alexander Levin prepared a MLR dated March 7, 2019 based on a psychiatric assessment of the plaintiff conducted on February 25, 2019. Though he differs with Dr. Levin on the question of causation and the significance of Ms. Gill's pre-accident history to her current psychological state, Dr. Levin agrees with Dr. Dahi on his diagnosis of: severe generalized anxiety disorder; moderate somatoform disorder; avoidant personality disorder and paranoid personality traits.

[99] According to Dr. Levin, prior to the accident, Ms. Gill had mild symptoms of a generalized anxiety disorder (GAD) which was superimposed on an avoidant and paranoid personality. The accident caused her GAD to become severe and was complicated by a moderate somatoform disorder. This "resulted in Ms. Gill developing a more profound impairment in her social, interpersonal and occupational functioning".

[100] Dr. Levin concurs with Dr. Dahi that Ms. Gill's condition could have been triggered without the accident, but that it is more likely that the accident was responsible for triggering "what was just below the surface". According to Dr. Levin, Ms. Gill presented at the outset with significant psychological and biological vulnerabilities which "predisposed her to developing more severe psychiatric disturbances in response to the above-mentioned motor vehicle accident and related injuries, than would be expected in her circumstances."

[101] Dr. Levin was of the view that Ms. Gill would not have developed her Somatic Symptom Disorder in the absence of the accident. He opined that the accident caused Ms. Gill to decompensate, to the point where her ability to progress with her GRTW schedule was impaired. Dr. Levin goes on to say the following with respect to the causal significance of the accident:

in the absence of the subject MVA and related physical injuries, her pre-existent chronic anxiety, depression and personality-related difficulties would remain on a subclinical level, allowing Ms. Gill to maintain her relatively - adequate social and occupational functioning in the context of her employment with the federal government. Ms. Gill's decompensation (worsening of her depression, anxiety and personality-related issues) was clearly caused by the subject MVA and related physical injuries.

[102] Dr. Levin opined that as long as Ms. Gill had a stable routine and long-term employment, her avoidant/paranoid personality structure remained "compensated". However, with the onset of the accident and resultant injuries, she began to decompensate. This led to maladaptive behaviours, such as emotional outbursts at work and getting arrested by police.

[103] With respect to Dr. Horlick's opinion that Ms. Gill should have recovered from her soft tissue injuries within four to eight weeks, Dr. Levin notes that her severe GAD and maladaptive coping strategies most likely heightened her experiences of pain, thereby significantly prolonging the time for her physical recovery.

- [104] Dr. Levin agrees with the guarded prognosis made by Dr. Dahi. In his opinion, without adequate psychiatric treatment, Ms. Gill represents a high risk for further worsening of her behavioural problems and "possible dementic process requiring placement into a long-term care facility."
- [105] However, Dr. Levin believes the efficacy of any psychiatric treatment remains guarded in relation to her GAD and Somatic Symptom Disorder, which are superimposed on her avoidant/paranoid personality. He opines that Ms. Gill is at significant risk for deterioration in her personal functioning and concurs with Dr. Dahi that she may require placement in a long-term care facility. Despite this poor prognosis, Dr. Levin believes that Ms. Gill would benefit from a psychiatrist referral and change of medication.
- [106] Under cross-examination, Dr. Levin explained that the fact Ms. Gill was functioning well prior to the accident suggests her pre-accident symptoms were most likely mild. Even if they were moderate, he opined that they were not disabling.
- [107] I found Dr. Levin's evidence compelling and have placed considerable weight on his opinion regarding the diagnosis of Ms. Gill's injuries. However, as with Dr. Dahi, I have placed less weight on Dr. Levin's opinion regarding causation, for the following reasons:
- a) In arriving at his opinion regarding causation, Dr. Levin made assumptions about Ms. Gill's pre-accident work situation and mental health that were not supported by the evidence. For example, he assumed that Ms. Gill was able to effectively deal with issues with her coworkers. However, the evidence suggests that Ms. Gill's pre-accident difficulties with her coworkers were significant, such that her employer transferred her to a different worksite. Further, the timing of her attendance at her GP's office for depression and anxiety suggests that Ms. Gill was having a difficult time prior to the accident in dealing with issues related to her employment.
 - b) Dr. Levin did not fully consider the impact that a change of work location, after decades at the same worksite, could have had in decompensating Ms. Gill prior to the accident.
- [108] I turn now to the evidence of Ms. Gill's collateral witnesses.

C. Collateral Evidence

- [109] Ms. Gill tendered evidence regarding her physical and psychological condition before and after the accident from her daughter, Harvir Kaur Dial, and her religious studies instructor, Bachittar Singh Dhaliwal. I found them both to be credible witnesses. They each offered their evidence in a forthright manner, without embellishment, and uncoloured by their personal relationships with Ms. Gill.

Ms. Dial

- [110] Ms. Dial is a licensed practical nurse. She is married and has one child who was born just a week before Ms. Gill's accident. Ms. Gill was present for the delivery, and remained at her daughter's bedside during her entire hospital stay.
- [111] Until 2010, Ms. Dial lived at home with her mother. They had a close relationship, and Ms. Dial often turned to her mother for advice and assistance. She described her mother as hard working, reliable, cheerful, and physically active. Ms. Gill enjoyed working in her garden and they would often go for walks together. While Ms. Gill may have had some anxiety and depression prior to the accident, Ms. Dial said that she "always got up and got going".
- [112] The weekend following the accident, Ms. Gill stayed overnight at her daughter's house. Ms. Gill was very quiet throughout the visit, and looked like she was in pain. Over the ensuing months, Ms. Gill complained frequently that she was in pain and had a headache. Ms. Dial felt that she was becoming increasingly irritable. As Ms. Dial was busy with her newborn, it was not until a few months after the accident that she visited Ms. Gill at her home. The house was extremely messy and cluttered, with dishes left undone. There were piles of laundry and things left on the counters. Ms. Dial stayed for a few hours and helped clean up the house.
- [113] At first, Ms. Dial was regularly checking up on her mother. On occasion, she also took Ms. Gill to her medical appointments. Ms. Gill did not seem to improve. Her demeanour was different and she did not participate in family events. On her grandchild's first birthday, Ms. Gill seemed distant and did not help with the celebration as she had with her other grandchildren. She constantly moved around and held her back. She did not dance, and rarely held the baby.
- [114] Over time, Ms. Dial's visits with her mother diminished. Ms. Dial and her mother got into frequent arguments. Ms. Gill was irritable and snappy, and would frequently swear around the baby. Ms. Gill's home environment was unsanitary. She was hoarding things in her home, and had piles of garbage and boxes. Around August 2015, Ms. Dial consciously decided to distance herself from her mother for the sake of herself and her son. At the time, Ms. Dial's child was three years old. Despite their estranged relationship, Ms. Dial continued to invite Ms. Gill to family events. However, Ms. Gill rarely showed up, and missed birthdays and other celebrations.
- [115] Ms. Dial sometimes thinks that her mother is "going crazy". She has a hard time getting her point across, and does not seem to be fully "there". Ms. Dial's relationship with her mother remains strained, and Ms. Gill's condition does not seem to have improved.

Mr. Dhaliwal

- [116] Mr. Dhaliwal was Ms. Gill's Gurbani (Sikh religious studies) teacher. Ms. Gill had been attending classes with him on a weekly basis for a number of years prior to the accident. He found her to be a very good student. She was engaged in her studies, diligent with her homework, inquisitive and had a desire to learn.
- [117] From time to time, Mr. Dhaliwal and his wife assisted Ms. Gill with shopping, as Ms. Gill did not have a car. On the morning of August 16, 2012, Mr. Dhaliwal dropped by Ms. Gill's home to see if she needed anything, as he knew Ms. Gill's daughter had recently had a baby.
- [118] Mr. Dhaliwal knocked repeatedly on the door. When Ms. Gill finally opened the door, she looked nervous and was shaking. She told him that she had been in an accident the day prior. Mr. Dhaliwal suggested she call ICBC to report the incident, which she did in his presence.
- [119] Over the ensuing months and years following the accident, Mr. Dhaliwal observed a marked change in Ms. Gill's mood and behaviour. She attended classes infrequently, and when she was there, she was often moody and disruptive. She would cry, become easily irritable, and make others upset. Her mood was erratic, and she would lash out in anger and start clenching her teeth. She spoke in a confusing and circular manner, and would not get to the point. Mr. Dhaliwal found her so disruptive that he eventually banned her from coming to his class, telling her she could only return "when she is better".
- [120] Though Mr. Dhaliwal visited Ms. Gill at her home a number of times following the accident, he eventually stopped going, saying he was too afraid to visit her due to her volatile mood. Whereas previously her home was neat and tidy, it was now in complete disarray. Her earlier well-maintained yard now looked "like a jungle". The house was filled with garbage, with hardly any space to move around. It was extremely dirty and messy, and there were bugs in the kitchen and washroom. He said it was difficult to understand how anyone could live there.

D. Causation

- [121] The evidence establishes that as a result of the accident, Ms. Gill sustained soft tissue injuries to her left knee, cervical spine, lumbar spine and shoulders, as well as injuries to the SPR and sacroiliac joint dysfunction. The accident also aggravated her pre-existing headaches, low back pain, and generalized anxiety. Though the plaintiff recovered from the knee injury shortly after the accident, she continued to experience diffuse pain over her entire body, and was eventually diagnosed with myofascial disorder, chronic pain syndrome, Adjustment Disorder and Somatic Symptom Disorder. Ms. Gill continues to be symptomatic of these injuries, with a poor prognosis for recovery, and the potential that her physical and psychological condition will worsen.

- [122] In my view, despite the fact that Ms. Gill has discontinued her use of analgesics, and is currently managing her pain with CBD oil, it is evident that her current health condition is significant and her pain continues to have a substantial impact on all aspects of Ms. Gill's life.
- [123] However, the existence of a significant pre-accident medical history raises the question of whether Ms. Gill presents as a "thin skull" or "crumbling skull" plaintiff. The answer to that question affects the degree of responsibility that the Bus Defendants bear for Ms. Gill's accident related injuries and their aftermath.
- [124] In the seminal case of *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 34-35, the Court explained the difference between the thin skull and crumbling skull rules. The thin skull rule "makes the tortfeasor liable for the plaintiff's injuries even if the injuries are unexpectedly severe owing to a pre-existing condition." It is based on the principle that a tortfeasor must take their victim as they find them, such that a tortfeasor is liable "even though the plaintiff's losses are more dramatic than they would be for the average person".
- [125] The crumbling skull rule "simply recognizes that the pre-existing condition was inherent in the plaintiff's 'original position'". It is based on the principle that the defendant "need not put the plaintiff in a position better than his or her original position". The defendant is liable for the injuries caused to the plaintiff, "even if they are extreme", but does not need to compensate the plaintiff for "any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway": *Athey* at para. 35.
- [126] Damages should be adjusted when there is a "measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence": *Athey* at para. 35. A future or hypothetical event should be taken into account as long as it is a real and substantial possibility, and should be given weight according to the probability of its occurrence: *Zacharias v. Leys*, 2005 BCCA 560 at para. 16.
- [127] Having regard to the evidence in this case, I find that the accident was the sole proximate cause of the soft tissue injuries, the myofascial disorder, injury to both the plaintiff's sacroiliac joints, injury to the SPR, chronic pain disorder, Adjustment Disorder, and Somatic Symptom Disorder. To the extent that she was predisposed to injury to her SPR and chronic pain, I find that Ms. Gill was a thin skull plaintiff, and that the Bus Defendants are liable for her losses even though they are more dramatic than they would have been for the average person.
- [128] I further find that the accident aggravated Ms. Gill's headaches, low back pain, and generalized anxiety, all of which pre-dated the accident. There is insufficient evidence to support a finding that the low back pain would have affected Ms. Gill to its post-accident level, but for the accident. Thus, the Bus Defendants are fully liable for these injuries as well.

- [129] In contrast, I find that there is a measurable risk that the headaches and generalized anxiety condition would have detrimentally affected Ms. Gill in the future, regardless of the Bus Defendants' negligence. Consequently, Ms. Gill's damages are required to be adjusted to reflect this pre-existing risk of harm.
- [130] There is no dispute that the plaintiff had prior symptoms of anxiety, depression, and headaches. These, coupled with her avoidant and paranoid personality traits, made her particularly vulnerable to any changes in her regular routine. Despite that, up until early 2012, Ms. Gill was fully functioning and working without difficulty. However, the interpersonal work conflict which surfaced towards the end of 2011, and a subsequent change of work locations in early 2012, caused a significant disruption to Ms. Gill's routine. As noted by Dr. Levin, a disruption in her routine and long-term employment, could trigger a decompensation of Ms. Gill's avoidant/paranoid personality structure. It is evident that Ms. Gill's transfer to the Kingsway office was causing her psychological and emotional distress, which started to manifest at least six months before the accident. This is reflected in her complaints of increasing headaches, anxiety, and depression. These were of sufficient magnitude as to require referral to a psychiatrist, outpatient-counselling program and a neurologist. While I accept that Ms. Gill's condition was not as poor as Dr. Birch's GAF score assessment would suggest, particularly given that she continued working full-time right up until the accident, there is evidence that the transfer to the new work site was having an impact on her mentally and physically.
- [131] Having regard to the whole of the evidence, I conclude that there is a measurable risk that Ms. Gill's headaches and complex psychological and pain conditions would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence. I find that there is a 20% chance that absent the accident, Ms. Gill's psychological and pain conditions and headaches would have devolved to her present condition.

VI. Non-pecuniary Damages

- [132] A non-pecuniary damages award is intended to compensate a plaintiff for her pain, suffering, loss of enjoyment of life, and loss of amenities: *Pololos v. Cinnamon-Lopez*, 2016 BCSC 81 at para. 105. The award is to be fair to both parties and fairness is measured against awards in comparable cases. However, each case depends on its own unique facts: *Olson v. Farran*, 2016 BCSC 1255 at para. 156.
- [133] In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, the Court set out a non-exhaustive list of factors to be considered in assessing non-pecuniary damages. These include the plaintiff's age; nature of the injury; severity and duration of pain; disability; emotional suffering; loss or impairment of life; impairment of family, marital and social relationships; impairment of physical and mental abilities; and loss of lifestyle. The plaintiff's stoicism should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, 2005 BCCA 54 at paras. 54-55.

- [134] Prior to the accident, the plaintiff was in reasonably good health. Though she had a history of psychological and physical problems, she was managing well. Ms. Gill worked full-time in a job that she enjoyed and with an employer that she had been with for over 36 years. She was engaged in her hobbies such as walking, reading, and regularly attending her Gurbani classes. She enjoyed spending time with her grandchildren, and would take them for walks in the park or play with them in the back yard. She maintained a neat and tidy house and yard.
- [135] All this changed after her fall on the bus on August 15, 2012. She was in constant pain. She stopped taking care of her home and yard, and withdrew socially. She became moody, irritable, erratic, prone to angry outbursts, and otherwise difficult to deal with. Ms. Gill's manner of speech also changed. She had a difficult time expressing herself, often speaking tangentially or using circumstantial speech.
- [136] The accident caused the plaintiff permanent physical and psychological injuries, which have had a devastating impact on her personal and work life.
- [137] She has lost a job of 37 years that she loved which has had profound emotional impact on her. Ms. Gill's emotional connection to her job is not unusual. As quoted by the Court in *Boyd v. Harris*, 2004 BCCA 146 at paragraph 54, from Dickson J. in dissent in *Reference re Public Service Employee Relations Act*, [1987] 3 W.W.R. 557 (SCC) at 618, "Work is one of the most fundamental aspects in a person's life.... A person's employment is an essential component of his or her sense of identity, self-worth and emotional well-being."
- [138] Ms. Gill has become estranged from her family and social network. Her emotional volatility resulted in her being arrested and handcuffed by the police, an event that was extremely upsetting and humiliating for Ms. Gill. Ms. Gill has been banned from attending Gurbani classes due to her volatile and disruptive mood. Her inability to participate in Gurbani classes has been very distressing. Ms. Gill found spiritual solace by attending her Gurbani classes. This loss to her is immeasurable.
- [139] Though Ms. Gill has not reached maximum medical recovery, the efficacy of further treatment is doubtful, given Ms. Gill's psychological profile. Even with appropriate treatment, Ms. Gill's prognosis for her condition is guarded. She has also been rendered vulnerable to a further worsening of her condition.
- [140] The plaintiff submits that an appropriate range for her non-pecuniary damages is from \$150,000 to \$175,000, and relies on the following case authorities in support of her position: *Cornish v. Khunkhun*, 2015 BCSC 52; *Murphy v. Hofer*, 2018 BCSC 869; *Cantin v. Petersen*, 2012 BCSC 549; and *Cumpf v. Barbuta*, 2014 BCSC 1898.
- [141] The Bus Defendants have provided varying positions with respect to the quantification of non-pecuniary damages. At trial, it was submitted that Ms. Gill is not entitled to any award because of the minimal nature of her injuries for which they are responsible, namely a sore left knee. Alternatively, they submit that Dr. Dahi's report supports a finding of a minor

aggravation of a pre-existing condition for which Ms. Gill is entitled to only a nominal award. In the further alternative, they say that if it is found that some or all of her present injuries are attributable to the accident, the proper range for non-pecuniary damages is \$75,000 to \$100,000. This position is somewhat different from what the Bus Defendants submitted in their written arguments, arguing that an appropriate range for Ms. Gill's non-pecuniary damages was \$70,000 to \$90,000.

- [142] The Bus Defendants rely on the following case authorities for the quantum assessment: *Griffioen v. Arnold*, 2017 BCSC 490; *Partridge v. Buskop*, 2019 BCSC 459; *Forghani-Esfahani v. Lester*, 2019 BCSC 332; *Lafond v. Mandair*, 2017 BCSC 523.
- [143] Bearing in mind that each case has its unique set of facts, I find the case authorities relied on by the plaintiff to more closely resemble the circumstances of the case at bar.
- [144] Having regard to the factors in *Stapley*, the various case authorities presented by the parties, and the evidence in this case, I find that a fair and reasonable assessment of Ms. Gill's non-pecuniary loss is \$170,000.
- [145] However, as noted elsewhere, I find that the amount of the plaintiff's damages should be reduced to reflect the finding that there is a real and substantial possibility that some of the plaintiff's pre-existing conditions would have detrimentally affected her in the future, regardless of the defendants' negligence. Bearing in mind that not all of the difficulties the plaintiff currently faces arise from her pre-existing conditions, I find that \$145,000 is an appropriate award to reflect the plaintiff's non-pecuniary loss due to the negligence of the defendants.

VII. Special Damages

- [146] The plaintiff seeks compensation for out-of-pocket expenses in the amount of \$11,664.94. The Bus Defendants have agreed to special damages of \$10,831.44.
- [147] At issue are expenses in relation to Lindsay Prosthetics & Orthotics, Happy Feet Wellness, and the Medical Services Plan. The defendants argue that these expenses are unreasonable, as they are unrelated to the accident and would have been incurred by the plaintiff regardless of the accident. I agree. It is clear that Ms. Gill had a prior history of foot problems requiring the need for orthotics. Indeed, she testified that she had been using orthotics for a number of years before the accident due to pain in her feet. I also find that the plaintiff would have continued to pay premiums for her Medical Services Plan coverage regardless of the accident. Consequently, the defendants should not be held liable for these expenses.
- [148] The plaintiff's claim for special damages in the amount of \$10,831.44 is allowed.

VIII. Past Income Loss and Loss of earning capacity

[149] As at June 2019, the plaintiff quantified her net past income loss and past loss of earning capacity at \$329,808. The plaintiff's claim for past wage loss/loss of earning capacity can be divided into three categories:

- a) income loss from the date of the accident until her full-time return to work in August 2013;
- b) loss of overtime for the post-accident period through to the termination of her employment on October 29, 2013; and
- c) loss of earning capacity for the period November 2013 to the date of trial, during which she was in receipt of a superannuation pension.

[150] The plaintiff was off work from August 20, 2012 to June 3, 2013, at which time she began a graduated return to work. She worked reduced hours for approximately three months, and returned to full-time work in late August 2013. However, she was not able to put in her usual overtime hours following her return to work, due to her accident-related injuries.

A. Past Income Loss and Loss of Overtime Hours

[151] The defendants rely on Dr. Horlick's opinion to support their argument that Ms. Gill has not proven her past income loss claim. Based on his examination of Ms. Gill in September 2016, Dr. Horlick opined that "there was no contraindication to Ms. Gill returning to her usual employ, especially given the job description and nature of duties required". As noted elsewhere, I have placed little weight on this opinion. Rather, I prefer Dr. Armstrong's opinion about the impact of the accident on Ms. Gill's ability to work post-accident. Dr. Armstrong opined that in light of Ms. Gill's SPRD, it would have been difficult if not harmful for her to return to work due to aggravation of her SPRD condition.

[152] I find that Ms. Gill is entitled to past income loss from the date of the accident until her return to full-time work in August 2013. I find that she is also entitled to lost overtime hours from the period August 2013 until October 2013.

[153] The plaintiff claims lost overtime hours calculated at the rate of 11.4%. The defendants concede that the plaintiff worked overtime hours prior to the accident. If the plaintiff's past loss of income is proven, the defendants say that her lost overtime hours should be calculated at 7-8% of her base salary. Both parties agree that the overtime hours worked as submitted by Ms. Gill's employer are incorrect and neither party has relied on those figures. Doing the best that I can with the evidence that I have, I conclude that 10% on top of her base salary is a fair and reasonable assessment of Ms. Gill's lost overtime hours.

[154] I turn now to determining the plaintiff's absent-accident annual earnings, which was not a straightforward exercise. This is because none of the plaintiff's T4 earnings supplied from 2011 onwards are reflective of her average annual income. The 2011 T4 earnings were approximately \$30,000 higher than in previous or subsequent years. Though the

discrepancy is explained in large part due to a substantial amount of back pay received in 2011, the precise amount of that back pay is unknown. The 2012 and 2013 T4 earnings are also not representative, as her income in both those years was interrupted due to the accident. Ms. Gill retired from her employment in November 2013, and as such, the subsequent year's tax returns reflect her superannuation pension income.

[155] I found the methodology employed by Robert Carson, the plaintiff's expert economist, sound in arriving at the plaintiff's base salary figures. I have therefore used the figures set out in Mr. Carson's Economic Loss Report dated March 8, 2019, to assist me in determining Ms. Gill's past wage loss. Employing a base wage loss figure of \$20,320 for 2012, and \$54,074 for 2013, I have added in 10% for overtime, and deducted \$21,716 for income Ms. Gill earned in 2013. This yields a gross past wage loss figure of \$60,117, from which I have deducted \$10,821 for income tax of 18%. I thus arrive at \$49,296, which I find to be a fair and reasonable assessment of Ms. Gill's past income loss from the date of accident until October 2013. I do not find there was a measurable risk the plaintiff's pre-existing conditions would have devolved to her present condition by October 2013, and no discount is made to this portion of the past income loss award.

B. Past Loss of Earning Capacity

[156] Ms. Gill was 57 years old when she left her employment in October 2013. She submits that she would have continued working at her date of injury employment past age 65. Depending on her health and financial needs, she says she would have worked until age 70. Even if it is found that absent accident she would have retired from her date of injury employment before the age of 65, the plaintiff argues she would have found work elsewhere to supplement her income while in receipt of superannuation pension benefits. As a result, the plaintiff seeks compensation for past loss of income earning capacity from November 2013 to the date of trial.

[157] The defendants submit there is insufficient evidence to support an award for any earnings losses beyond October 2013. They rely on the following factors in support of their argument that the plaintiff would have stopped working in late 2013:

1. The plaintiff was very unhappy with the transfer to the Kingsway location.
2. The plaintiff was of advanced age and had increasing health concerns.
3. The plaintiff had a substantial superannuation pension which had vested before the accident.

[158] The test to be applied to past and future hypothetical events is "whether there is a real and substantial possibility that the events in question would occur": *Rousta v. MacKay*, 2018 BCCA 29 at paras. 14 and 17; and *Smith v. Knudsen*, 2004 BCCA 613 at para. 24.

- [159] I agree with the defendants that it is unlikely that the plaintiff would have continued working with the federal government beyond the end of 2013. To earn a salary of \$55,000, Ms. Gill would have had to continue working at least 40 hours per week at her date of injury employment. Yet she could stop working entirely and receive a pension of approximately \$40,000 per year. I find that it is implausible that the plaintiff would have continued working at her federal government job beyond 2013 in order to only earn an additional \$15,000 per year. This is particularly so given her distress with the change to the Kingsway location, her increasing anxiety, depression, and headaches, and the fact that her pension had fully vested.
- [160] However, in light of the overall fulfillment that Ms. Gill found while working, I find that there is a real and substantial possibility that the plaintiff would have sought part-time remunerative employment outside of the civil service to supplement her income. As such, the plaintiff is entitled to damages for past loss of earning capacity for the period from November 2013 up until the trial date.
- [161] The assessment of these damages is not a precise mathematical calculation. In addition to accounting for income tax, I must factor in contingencies such as: the possibility that her condition would have deteriorated absent accident; her inability to work due to her pre-existing physical and psychological conditions; and her competitive employability given her already advanced age and health concerns.
- [162] I therefore assess Ms. Gill's net past loss of earning capacity for the period from November 2013 until the date of trial at \$40,000.

C. Mitigation

- [163] The defendants argue that the plaintiff's awards for past and future loss of income earning capacity should be reduced for failure to mitigate. They point to what they say is an "inconsistent approach to treatment".
- [164] First, the defendants argue that had Ms. Gill sought treatment when Dr. Birch recommended it to her, her symptoms would have substantially improved. They point to the various pre-accident recommendations made by Dr. Birch that she seek treatment for her depression, anxiety, and headaches, and to Dr. Armstrong's opinion that earlier treatment would have been beneficial to Ms. Gill. Ms. Gill could not recall whether she had obtained the treatment recommended by Dr. Birch, and it can reasonably be inferred that she did not.

- [165] The defendants were unable to provide any authorities supporting the proposition that Ms. Gill's failure to follow recommended medical advice prior to the accident should result in a reduction of her award for damages. Indeed, based on the principles enunciated in *Athey*, the defendants must take their tortfeasor as they find them. This means that the defendants cannot rely on Ms. Gill's failure to improve her condition prior to the accident as a way to avoid their own culpability.
- [166] The defendants' second argument is also flawed. They say that Ms. Gill's failure to continue seeing her family doctor in 2018, and her subsequent decision to discontinue her medication regime, also constitute a failure to mitigate. They point to Ms. Gill's testimony that the Tylenol helped her more with managing her pain and improving her function than the CBD oil.
- [167] Ms. Gill testified that she discontinued taking prescription medications to improve her medical condition. She believed that the pain medications were masking her pain, and that her recovery would be aided if she discontinued taking the prescription pills. In addition, Ms. Gill gave evidence that she had been unable to find a family doctor for approximately one year, though she had made efforts to try to find one.
- [168] In *Chiu v. Chiu*, 2002 BCCA 618 at para. 57, the Court held that:
- The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably.
- [169] Having regard to the principles enunciated in *Chiu*, and the evidence in this case, I conclude that the defendants have failed to prove that Ms. Gill could have avoided all or a portion of her loss by continuing to see her family doctor in 2018 or continuing her medication regime. The following reasons support this conclusion:
- a) The defendants have failed to provide evidence showing the extent to which Ms. Gill's damages would have been reduced had she been receiving care from a family physician since 2018. In any event, I take judicial notice of the fact that there is a shortage of primary care physicians in British Columbia, and find that Ms. Gill should not be faulted for her inability to find a family doctor since 2018.
 - b) Ms. Gill's decision to discontinue taking prescription medications is reasonable in light of Dr. Armstrong's opinion that she may be overusing her analgesic medication and complicating her headache disorder.
- [170] Accordingly, I conclude the defendants have failed to establish that Ms. Gill failed to mitigate her damages.

IX. Impairment of Future Earning Capacity

[171] Damages for loss of earning capacity are awarded to provide the plaintiff with full compensation for all her pecuniary losses: *Thomson v. Thiessen*, 2018 BCSC 1353 at para. 55.

[172] In a claim for future loss of earning capacity, the plaintiff bears the onus of proving that there is a real and substantial possibility of a future event leading to an income loss: *Perren v. Lalari*, 2010 BCCA 140 at paras. 30-32.

[173] In *Pololos* at para. 133, the Court summarized the applicable principles for assessment of loss of capacity:

- a) To the extent possible, a plaintiff should be put in the position he/she would have been in, but for the injuries caused by the defendant's negligence; *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 185, leave to appeal ref'd [2009] S.C.C.A. No. 197;
- b) The central task of the Court is to compare the likely future of the plaintiff's working life if the Accident had not occurred with the plaintiff's likely future working life after the Accident; *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32;
- c) The assessment of loss must be based on the evidence, but requires an exercise of judgment and is not a mathematical calculation; *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18;
- d) The two possible approaches to assessment of loss of future earning capacity are the "earnings approach" and the "capital asset approach"; *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 at para. 7 (S.C.); and *Perren v. Lalari*, 2010 BCCA 140 at paras. 11-12;
- e) Under either approach, the plaintiff must prove that there is a "real and substantial possibility" of various future events leading to an income loss; *Perren* at para. 33;
- f) The earnings approach will be more appropriate when the loss is more easily measurable; *Westbroek v. Brizuela*, 2014 BCCA 48 at para. 64. Furthermore, while assessing an award for future loss of income is not a purely mathematical exercise, the Court should endeavour to use factual mathematical anchors as a starting foundation to quantify such loss; *Jurczak v. Mauro*, 2013 BCCA 507 at paras. 36-37.
- g) When relying on an "earnings approach", the Court must nevertheless always consider the overall fairness and reasonableness of the award, taking into account all of the evidence; *Rosvold* at para. 11.

[174] The court must consider both positive and negative contingencies when conducting this analysis: *Kellett v. Stam*, 2018 BCSC 1127 at para. 77.

[175] The plaintiff seeks an award of \$354,386 for impairment of her future earning capacity, based on a loss of earnings approach.

[176] The defendants submit that no future loss of capacity award is payable, either on a loss of earnings approach or capital asset approach, for the following reasons:

1. Ms. Gill is now 63, well past the average age of retirement for a female civil servant, which Mr. Carson opined is 61 years.
2. There is a lack of medical evidence establishing ongoing disability arising from the accident.
3. It was Dr. Armstrong's opinion that Ms. Gill has not yet achieved maximum medical improvement, and with appropriate treatment, she should suffer no impairment of future earning capacity or loss of housekeeping.

[177] The defendants' reliance on Dr. Armstrong's opinion referenced above is not sustainable. He was very clear that even with appropriate medical treatment, Ms. Gill's prognosis remains guarded. In addition, I note that there is a difference between maximum medical improvement and functional improvement. I agree with the plaintiff that just because Ms. Gill's function may improve with appropriate medical treatment, does not mean that she would be capable of working.

[178] I conclude that Ms. Gill: has been rendered less capable overall of earning income from all types of employment; has lost the ability to take advantage of all job opportunities that might otherwise have been open to her; and is less valuable to herself as a person capable of earning income in a competitive labour market: *Ferguson v. Watt*, 2018 BCSC 1587 at para. 122.

[179] The evidence supports a finding that there is a real and substantial possibility that Ms. Gill would have continued working until the age of 65, but for the accident. Ms. Gill found fulfilment and a sense of identity and purpose while working. There is a real and substantial possibility that she would have sought part-time remunerative employment to supplement her income until the age of 65. However, based on her health at the time of the accident, I find that it is unlikely that Ms. Gill would have worked past the age of 65 absent the accident, even in a part-time capacity. Due to the accident-related injuries, her ability to do so has been further impaired.

[180] Balanced against this are a number of other negative and positive contingencies which I must take into consideration. For example, Ms. Gill's advanced age and pre-existing health conditions would likely have rendered her less marketable as an employee regardless of the accident, thereby making it difficult for her to find and maintain part-time employment up to the age of 65. In addition, there is also a real and substantial possibility that Ms. Gill would have fully retired before the age of 65. On the other hand, there is a possibility that Ms. Gill would have continued working up to the age of 70, despite being an "outlier" as noted by Mr. Carson. There is also the possibility that with appropriate treatment, Ms. Gill's condition will improve to the point where she will be able to work on a part-time basis.

[181] Based on all the evidence in this case, and the principles governing such an award, as well as the various negative and positive contingencies, I find that a future loss of earning capacity award of \$20,000 is fair and reasonable.

X. Loss of Housekeeping Capacity

[182] In addition to her claim for housekeeping services as a cost of future care, the plaintiff seeks an award of \$50,000 for past and future loss of housekeeping capacity.

[183] The defendants acknowledge that homemaking costs can be awarded for loss of capacity, and that such an award is distinct from future care and cost of care claims: *O'Connell v. Yung*, 2012 BCCA 57 at paras. 65-68. However, they submit that an award for both loss of future housekeeping capacity and for housekeeping services as a cost of future care would overcompensate the plaintiff. It is their submission that Ms. Gill has not proven entitlement to an award for loss of future housekeeping capacity. Further, they say that past loss of housekeeping capacity is properly subsumed into the award for non-pecuniary damages.

[184] In *Morena v. Dhillon*, 2014 BCSC 141 at paras. 169-174, the Court explained the difference between an award for loss of housekeeping capacity and an award for housekeeping as a cost of future care. The former is "an asset that is lost" whereas the latter is "an additional expense one will incur in the future": *Morena* at para. 170. An award for future care costs compensates for services provided to the plaintiff; loss of housekeeping capacity is a loss of the plaintiff's own ability to do household work.

[185] Loss of housekeeping capacity may be compensated by a pecuniary or non-pecuniary award. The non-pecuniary approach may be preferred where the plaintiff is limited, but not unable, to do household tasks for physical or psychological reasons. A pecuniary award may be more appropriate where replacement services are hired or family members provide gratuitous support: *Kim v. Lin*, 2018 BCCA 77 at para. 28.

[186] There is evidence of an impairment in the plaintiff's ability to perform her household duties. The plaintiff testified about her lack of motivation to do household chores, which is consistent with the overall medical evidence about her psychological condition. Both Ms. Dial and Mr. Dhaliwal testified about the poor condition of Ms. Gill's living environment, and the state of disrepair and neglect of her home and yard.

[187] I conclude that Ms. Gill is limited in her ability to perform her household duties for reasons related to the accident. Given her guarded prognosis, these restrictions in her housekeeping capacity will continue to affect her into the future, and are in addition to the losses previously described in the non-pecuniary damages section. This loss is best compensated through a separate non-pecuniary award. However, in making this award, I have considered various positive and negative contingencies, such as her pre-existing condition; the possibility that with effective treatment Ms. Gill's condition will improve; and the possibility that her condition will worsen despite treatment.

[188] I find that \$20,000 is a fair and reasonable sum to compensate Ms. Gill for her loss of housekeeping capacity.

XI. Cost of Future Care

[189] A future care cost award is based on what is reasonably necessary on the medical evidence to preserve and promote the plaintiff's mental and physical health. A claim for future care is established if there is medical justification for the claim, the claim is reasonable, and the expense is likely to be incurred by the plaintiff: *Audet v. Chan*, 2018 BCSC 1123 at paras. 114 and 115.

[190] The quantification of damages under this head is an "assessment and not a precise accounting": *Midgley v. Nguyen*, 2013 BCSC 693 at para. 337.

[191] Ms. Gill seeks a global award of \$75,000 under this head of damages, less any adjustments to calculate net present value as per Mr. Carson's Costs of Care Multipliers Report dated March 8, 2019.

[192] The defendants do not dispute that the plaintiff is entitled to a reasonable amount for future care where (a) it is medically justified and (b) likely to be used by the plaintiff. However, they submit that many of the items claimed by the plaintiff are not justifiable or likely to be used by the plaintiff.

[193] Dr. Dahi, Dr. Levin and Dr. Armstrong each made recommendations with respect to future care.

[194] Dr. Dahi recommended the following:

1. psychiatric intervention with a culturally sensitive female therapist (if possible);
2. anti-anxiety and antidepressant medication on an ongoing basis at a low dose;
3. A CT scan and blood work to rule out whether Ms. Gill is prone to an early stage of the dementic process.

[195] Dr. Levin recommended a referral to a psychiatrist, and the use of new atypical neurolytics medications.

[196] Dr. Armstrong's recommendations were as follows:

1. Start taking serum magnesium, which is typically low in chronic pain patients;
2. A home visit by an occupational therapist to review her difficulties with housework;
3. Exercise with a supervised senior physiotherapist (passive treatments should be minimized). Eighteen sessions over six weeks were recommended at a cost of \$75 to \$100 per session;

4. Thereafter, a further 18 sessions of physiotherapy with a general physiotherapist at a cost of \$75 to \$100 per session; and then ongoing monitoring by a general physiotherapist occurring twice a month for one year at a total cost of \$1800 to \$2400;
5. Thereafter, a supervised gym membership for two years (\$2,100 initially and \$1,800 thereafter);
6. Inter-trochanteric ("sacral") belt at a cost of \$75 (which is not covered by MSP);
7. Use of a walking pedometer (\$25);
8. Fifteen counselling sessions with a clinical psychologist (\$200 per session); and
9. Once she has reached maximum medical recovery, attendance at a group-style, multi-disciplinary program of pain management, the cost of which would likely be about \$15,000 for a four to six-week program at a private clinic.

[197] The costed items above range from a low of approximately \$26,500 to a high of \$28,000. Added to those would be the cost for medications recommended by Dr. Dahi, Dr. Levin and Dr. Armstrong, and the cost of a home visit by an occupational therapist. I do not have any cost estimates for those items, but note the plaintiff's current desire to avoid taking prescription medications.

[198] Dr. Armstrong made additional recommendations, depending on the outcome of her additional care. These included the possibility that she could be a candidate for ancillary remedies such as:

1. An injection of local anesthetic (with or without corticosteroid) bilaterally into her sacroiliac joints (one at a time) (paid by MSP);
2. Lateral branch blocks (SI -4) (paid by MSP);
3. Prolotherapy (partially covered by MSP);
4. A new surgical technique in the United States called "minimally invasive sacroiliac joint fusion".

[199] As noted, most of these treatments would be covered by the Medical Services Plan (MSP) and are provided only as contingencies for consideration. Dr. Armstrong agreed that surgery was a remote possibility and that he was the only physician who has mentioned surgery for the plaintiff.

[200] Ms. Vanderham recommended that Ms. Gill get a therapy dog. However, I have placed no weight on this recommendation, as Ms. Vanderham was not qualified as an expert.

[201] Having regard to all of the evidence in this case, as well as the negative and positive contingencies referenced elsewhere, including the net present value of a future care cost award, I find that \$18,000 is a fair and reasonable award under this head of damages.

XII. Summary of Damages Awarded

[202] In summary, the Bus Defendants are liable to pay the plaintiff the following damages award:

Non-Pecuniary Damages

\$145,000.00

Special Damages

\$10,831.44

Past Income Loss

\$49,296.00

Past Loss of Earning Capacity

\$40,000.00

Impairment of Future Earning Capacity

\$20,000.00

Loss of Housekeeping

\$20,000.00

Cost of Future Care

\$18,000.00

Total Loss

\$303,127.44

[203] The plaintiff is also entitled to interest in accordance with the Court Order Interest Act, R.S.B.C. 1996, c. 79.

XIII. Costs

[204] Costs ordinarily follow the event. As such, my preliminary view is that the plaintiff is entitled to her costs of the proceedings at Scale B, to be paid by the Bus Defendants. In addition, in light of the fact that the Bus Defendants were not successful in the unidentified driver defence, the Insurance Corporation of British Columbia is entitled to its costs of the proceedings at Scale B, payable by the Bus Defendants. These cost awards are subject to any offers or other matters that I have not been made aware of.

[205] In the event that a party wishes to make submissions on the issue of costs, they may do so in writing up to a maximum of five pages in length. These should be submitted through Supreme Court Scheduling within 30 days of the release of these Reasons. Any responding submissions are to be provided within 14 days of receipt of the opposing party's submissions on costs.

"Shergill J."

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Prepared on 29 October 2026 · Esheria