

CANADA / JUDGMENT

Golkar-Karimabadi v. Bush

2021 BCSC 990

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Supreme Court of British Columbia

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2021 BCSC 990 Golkar-Karimabadi v. Bush

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Golkar-Karimabadi v. Bush,

2021 BCSC 990

Date: 20210526

Docket: M180543

Registry: Vancouver

Between:

Najmieh Golkar-Karimabadi

Plaintiff

And:

Arthur Bartlett Bush and Mojgan Boroujerdi

Defendants

Before: The Honourable Madam Justice Adair

Reasons for Judgment

Counsel for the Plaintiff:

R. A. Holness

Counsel for the Defendants:

A. H. MacLennan

Place and Date of Trial:

Vancouver, B.C.

January 18-21, 2021

Place and Date of Judgment:

Vancouver, B.C.

May 26, 2021

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 1. Introduction
 - [1] In 2016, the plaintiff, Najmieh Golkar-Karimabadi (I will refer to her as Mrs. Golkar), was involved in two motor vehicle accidents, one in January (the "January Accident") and one in March (the "March Accident"). Liability has been admitted for both accidents, which I will refer to collectively as the "Accidents."
 - [2] Counsel for the defendants confirmed in closing submissions that there is no need to apportion damages between the two accidents.
 - [3] Mrs. Golkar says that, as a result of the Accidents, she sustained injuries that (among other things) have caused her to develop chronic pain syndrome and driving anxiety. In addition to non-pecuniary damages, Mrs. Golkar seeks compensation for loss of earning capacity, loss of housekeeping capacity, cost of future care, special damages and an in-trust award.

[4] The defendants accept that Mrs. Golkar sustained soft tissue injuries in the Accidents. They also accept that, as a result of those injuries, Mrs. Golkar has pain in her neck, shoulders, upper and lower back and hips, as well as headaches and driving anxiety, and that the injuries aggravated pre-existing groin and knee pain. However, the defendants say that, as of trial, Mrs. Golkar was experiencing only lingering, intermittent symptoms. The defendants accept that Mrs. Golkar is entitled to non-pecuniary damages, but say that she has not established any entitlement to compensation for loss of earning capacity, loss of housekeeping capacity, cost of future care or an in-trust award.

[5] The parties have agreed on special damages.

2. Background

[6] Mrs. Golkar was born in August 1954. As of trial, she and her husband, Abdolhamid Golkar, had been married for 45 years. They have lived in West Vancouver for many years. They have two adult sons, Babak (who is in his early 40s) and Ashkan (who is in his late 30s), both of whom live in the Lower Mainland. Mr. Golkar and Babak Golkar testified at trial.

[7] Mrs. Golkar was born and grew up in Iran. Before her marriage, she attended university there, and received a Bachelor's degree in English Literature. The family immigrated to Canada in May 1997 and settled in West Vancouver. Mr. Golkar owned and ran a dry-cleaning business in North Vancouver from 1998 until his retirement in early 2017.

[8] For some years before the January Accident, Mrs. Golkar worked outside the home providing childcare to other families. She had completed a certificate course in Family Child Care at Capilano College (as it then was). According to Mrs. Golkar, in 2012, she began working for the West Vancouver School District, as a teacher assistant. Mrs. Golkar explained that she began working one hour a day, and then increased to two hours a day, five days a week. She explained that she worked at two different schools, essentially during lunch periods. According to Mrs. Golkar, her duties included some office work, and monitoring students outside and in the classroom when the teacher was at lunch.

[9] Before the January Accident, Mrs. Golkar was physically active in her leisure time. She explained that she went for long walks, as well as jogging and hiking. However, walking was her preferred, everyday form of exercise. In addition, she and Mr. Golkar were members of a local gym. Mrs. Golkar did aerobics and yoga there, and also went swimming several times a week.

[10] Mrs. Golkar explained that Mr. Golkar generally was working six days a week, and so she looked after all of the household chores, including all the shopping, cleaning and cooking. The two of them looked after yard work and gardening. Mrs. Golkar was a very keen cook, and Babak Golkar described his mother as "passionate" about cooking. Mrs. Golkar explained that, before the Accidents, she saw her sons regularly, about once or twice a week. When Babak's daughter, "TG" was born, and Mrs. Golkar and her husband became first-time grandparents, Mrs. Golkar regularly and happily provided child-care. Spending time with

her granddaughter was something that Mrs. Golkar enjoyed very much.

- [11] Mrs. Golkar explained that, before the January Accident, she also very much enjoyed spending time with her friends. She described going for walks and getting together for coffee, perhaps for two or three hours at a time whenever she had the time. Mrs. Golkar described herself as a very social person.
- [12] As of September 2015, Mrs. Golkar was working a total of 12.75 hours a week at West Bay Elementary School, five hours as a "Supervision Aide," monitoring students, and 7.75 hours as a "Teacher Assistant - General," which included some office work. Mrs. Golkar explained that she was being paid \$21.71 an hour plus a 16% top-up in place of benefits. She explained that her plans at the time were to increase her hours to 18-20 hours per week, and that, with the increased hours, she would then qualify for health benefits. Mrs. Golkar explained that she worked 10 months out of the year (about 42 weeks), and she enjoyed her work. Shortly before the January Accident, Mrs. Golkar completed a one-day first aid course that she required for work. According to Mrs. Golkar, she had no immediate plans to retire.

3. The Accidents and life after the Accidents

- [13] The January Accident happened on January 19, 2016 at about 10:00 a.m. As Mrs. Golkar recalled, she was on her way from her home to work at West Bay Elementary, and was driving a BMW sedan. As Mrs. Golkar recalled, it was not raining, but it was a cold day. She was travelling on Marine Drive in West Vancouver. At the intersection of Marine Drive and 23rd Street, she stopped for a pedestrian to cross. As Mrs. Golkar recalled, as soon as she stopped, she looked in her rear-view mirror and saw a car coming "super fast." As Mrs. Golkar recalled her vehicle was then hit from behind, "really badly." She recalled that her head and neck went back and forth, and she explained that she was "shocked," crying and shaking. As Mrs. Golkar recalled, someone helped her collect information. She recalled that there was damage to the bumper of her car and a light was broken. As Mrs. Golkar recalled, she pulled her car over to the shoulder of the road. She phoned her school and told them that she had been in an accident and would not be in to work. She also called her younger son, who came and took her to Lions Gate Hospital. As Mrs. Golkar recalled, she left the car where it was.
- [14] As Mrs. Golkar recalled, she had a severe headache, dizziness and nausea, and her right knee was hurting. As she recalled, at the hospital, she was crying and her body was shaking, and she was put in a neck brace. She was discharged from hospital later that day. As Mrs. Golkar recalled, she was told to contact her family doctor, given some medication for pain, and told to rest. Mrs. Golkar missed several days of work. Her family doctor referred her for both physiotherapy and massage therapy.
- [15] According to Mrs. Golkar, two weeks after the January Accident, she was still in pain. She had neck and back pain when driving. She recalled that it was difficult to get in and out of the car, and standing was difficult. She returned to work but had a hard time.

- [16] In addition to her physical symptoms, Mrs. Golkar explained that, after the January Accident, she was very anxious, especially about driving. She could not drive by the intersection where the January Accident occurred. As Mrs. Golkar recalled, when she saw a "Stop" sign, she worried about being hit from behind. She explained that she was exhausted from her commute for work, and her physical pain was worse. According to Mrs. Golkar, she was unable to do housework. Mr. Golkar and Babak Golkar had to help out.
- [17] Mrs. Golkar began physiotherapy in early February. She recalled that it was very helpful.
- [18] Mrs. Golkar's initial treating physiotherapist was Jeffery Chalmers. Mr. Chalmers explained that, on his initial assessment of Mrs. Golkar, he found that she was having guarding through her postural muscles in the neck, upper back and lower back, and that her pelvis was also affected. He also found that Mrs. Golkar was having spasm in some of her postural muscles, and she was unable to activate her core to self-stabilize. According to Mr. Chalmers, in his subsequent sessions with Mrs. Golkar, she had some degree of muscle spasm.
- [19] However, Mrs. Golkar was then involved in the March Accident, on March 16, 2016. This time, Mrs. Golkar was a passenger in the BMW, which was being driven by Mr. Golkar. They were stopped for a red light at the intersection of Marine Drive and 21st Street, when their car was suddenly hit from behind. According to Mrs. Golkar, the impact was "really severe," and, as Mrs. Golkar recalled, shook the BMW. She recalled her back and neck moved back and forth. According to Mrs. Golkar, she experienced symptoms right away, especially in her neck, and she was very frightened. As she recalled, someone called 911, and an ambulance came to the scene. However, Mrs. Golkar did not want to go to the hospital. Instead, she went home and took Tylenol for pain relief.
- [20] Mrs. Golkar continued with physiotherapy after the March Accident. As she recalled, at that time, she had painful symptoms in her neck, shoulder, upper and lower back, hips and knees. She also had a new symptom, namely, pain in her groin area. According to Mrs. Golkar, she was also having headaches, anxiety and nightmares. Mrs. Golkar explained that she needed medication to help her sleep.
- [21] Mr. Chalmers saw Mrs. Golkar for treatment on March 21, 2016. According to Mr. Chalmers, on that occasion, Mrs. Golkar had a flare-up in both the muscle spasm and guarding, and, based on his notes, the flare-up continued through until her last visit with him in early April. Another physiotherapist, Eric Doak, then took over from Mr. Chalmers, and Mr. Doak continued to treat Mrs. Golkar through to April 2018.
- [22] In August 2016, Mrs. Golkar's family doctor referred her for counselling for what were described as "psychological stress/ PTSD type symptoms when driving." In September 2016, Mrs. Golkar began seeing a registered psychologist, Dr. Susan Higginbottom, for help with her anxiety and emotional problems following the Accidents. At trial, Dr. Higginbottom explained that, when Mrs. Golkar first came to her, she told Dr. Higginbottom that she tended to avoid anything that reminded her of the Accidents, including the cross-walk where

the January Accident occurred. Dr. Higginbottom explained that she took a general cognitive behavioural approach to Mrs. Golkar's anxiety, and, in addition to counselling, provided Mrs. Golkar with some techniques (such as diaphragmatic breathing) to help Mrs. Golkar deal with her intrusive and negative thoughts and feelings. Dr. Higginbottom explained that, in the second session (in October 2016) she gave homework to Mrs. Golkar. This included walking through the crosswalk where the January Accident occurred, and driving through the intersection at least once before their next session.

- [23] According to Mrs. Golkar, she found her sessions with Dr. Higginbottom helpful. However, she found it very difficult to drive through the intersection where the January Accident occurred, and she avoided travelling on Marine Drive. According to Mrs. Golkar, whether she was driving or was a passenger, she was worried that someone was going to hit the car.
- [24] According to Dr. Higginbottom, at her last session with Mrs. Golkar in February 2017, she and Mrs. Golkar reviewed the strategies that Dr. Higginbottom had recommended to Mrs. Golkar in the previous visits. Dr. Higginbottom felt there had been some improvement in Mrs. Golkar's driving anxiety.
- [25] According to Mrs. Golkar, she lost work hours at West Bay Elementary in the fall of 2016 as a result of the injuries she sustained in the Accidents. She explained that, at West Bay, she had been doing both student monitoring and office work. However, as Mrs. Golkar recalled, after the Accidents and with respect to office work, when she was asked to pick up boxes or heavier items, she had to tell her employer that she had been involved in an accident and was unable to do these tasks. As Mrs. Golkar recalled, she was also told that she needed to improve her office skills. As Mrs. Golkar recalled, she then lost the 7.75 hours per week that she had been working as a Teacher's Assistant - General. The documentary evidence confirmed that, on November 23, 2016, Mrs. Golkar was removed as a Teacher's Assistant - General, although she continued to work at West Bay Elementary as a Supervision Aide. After being terminated from her position as a Teacher's Assistant - General at West Bay, Mrs. Golkar did not work as a Teacher's Assistant - General again.
- [26] Effective March 27, 2017, Mrs. Golkar left West Bay Elementary and began a new assignment as a Supervision Aide at Sentinel Secondary School, working five hours a week.
- [27] When Mrs. Golkar was asked on cross-examination about the circumstances in which she left West Bay, and whether they were related to the Accidents, her evidence was slightly different than what she had said during her direct examination. It was put to her that she left because of the Accidents, to which she agreed. It was also put to her that she left to work reduced hours, to which Mrs. Golkar replied, yes, in some part. Evidence that Mrs. Golkar had given on her examination for discovery was then put to her, where she said that she left West Bay because she wanted to get more hours and better work. At trial, she said that the answers she had given on her examination for discovery were true.

- [28] In my view, Mrs. Golkar's evidence concerning the circumstances in which she left West Bay Elementary, while perhaps not perfectly clear, is not inconsistent or contradictory, taken as a whole. In fact, she left West Bay Elementary to work reduced hours at Sentinel. The reason was that she was unable, because of the effects of the injuries she had suffered in the Accidents, to perform all of the tasks required of her as a Teacher's Assistant - General at West Bay, and she was also not in a position to improve her skills in that respect. After being terminated as a Teacher's Assistant, Mrs. Golkar was not going to get more work hours at West Bay beyond the five hours she was working as a Supervision Aide, although she was capable of working at least 10 hours a week. To "get more hours," Mrs. Golkar had to leave West Bay, which she did. However, to get more hours, Mrs. Golkar was now in the position where she needed to find work as a Supervision Aide at two schools with compatible schedules.
- [29] As Mrs. Golkar recalled, she continued regular physiotherapy with Mr. Doak. She explained that she would feel some improvements, but the improvements would not last. In 2017, she continued to have pain in her back, hips and groin area. According to Mrs. Golkar, she occasionally had sharp pain in her groin, and this affected her activities such as walking. Mrs. Golkar also had 20 kinesiology sessions in 2017, and, although the sessions helped at the time, her symptoms returned.
- [30] As Mrs. Golkar recalled, there was no real change to her driving anxiety, although she continued to drive. Because of her driving anxiety, Mrs. Golkar was a very difficult passenger, something that Mr. Golkar confirmed in his evidence.
- [31] Mrs. Golkar said that she felt the symptoms from her injuries in the Accidents also affected her ability to get more work hours. She explained that, when she came home in the afternoon after physiotherapy, she was exhausted, and, according to Mrs. Golkar, she had no time to work on improving her skills. She explained further that there were always postings for teacher's assistants, and she would apply for posted positions. Mrs. Golkar explained that, since she started with West Vancouver Schools in 2012, she had seniority and postings were filled based on seniority. She explained that she could also work in two schools, which she did in 2017 and again in 2018. However, her ability to work at two different schools depended on how close they were to one another, and whether the hours she was scheduled to work at one fit with the scheduled hours at the other. According to Mrs. Golkar, if she had not been involved in the Accidents, she "maybe" could have applied for more jobs, including in North Vancouver, and started working 18-20 hours a week in 2017.
- [32] According to Mrs. Golkar, as of April 2018, she continued to have painful symptoms in her neck, shoulder, upper and lower back, groin area and knee. She was also having headaches, and she was moody and anxious. According to Mrs. Golkar, between April 2018 and the trial, none of these symptoms had changed. She explained that her neck pain causes headaches, and movement brings on pain. According to Mrs. Golkar, many activities are affected by her pain symptoms, including exercise, walking, sitting, working on the computer, housework, reading and driving. According to Mrs. Golkar, her pain symptoms last until she rests or

takes some Tylenol.

- [33] Mrs. Golkar described her low back pain as a dull pain, which she has about two to three times a week. According to Mrs. Golkar, walking is among the activities that triggers her back pain. Mrs. Golkar explained that she is unable to do squats or bending. Mrs. Golkar described her groin pain as completely different from her low back pain. She described it as a sharp pain, and when it comes on, she is unable to walk. She explained that heat, massage and rest help with pain relief. Mrs. Golkar explained that she had groin pain frequently in 2017 and 2018. However, according to Mrs. Golkar, as of trial, it was less frequent.
- [34] According to Mrs. Golkar, she also has pain - both sharp and dull - in both of her knees. She explained that the pain comes on when she is walking or standing for a long time, and sometimes it is severe. Mrs. Golkar estimated that, as of trial, she would have knee pain at least weekly, depending on what she was doing. According to Mrs. Golkar, her headaches have not changed since the Accidents, and she tends to get headaches when she is anxious.
- [35] Mrs. Golkar explained that, since stopping physiotherapy in April 2018, she has continued to do exercises at home, in addition to walking. She explained that, before pandemic closures came into effect, she was also swimming. Mrs. Golkar explained that she also tried to return to yoga. However, she found that she could not keep up with the class, and she had trouble squatting and bending. Mrs. Golkar explained that, while she continues to walk for exercise, it is no longer the same. She no longer goes for long walks, and when she has pain in her back, knees and groin, she must stop.
- [36] According to Mrs. Golkar, her social activities have been much more limited since the Accidents, especially during the period that she was attending regular physiotherapy.
- [37] Since the Accidents, Mrs. Golkar's cooking is much more simple. Mrs. Golkar explained that she will prepare light meals, or she and Mr. Golkar will have take-out. Her son sometimes brings over take-out when his family comes over on weekends. According to Mrs. Golkar, since the Accidents, she now struggles to do housework such as vacuuming and cleaning the bathroom. Mrs. Golkar explained that, since the Accidents, she no longer does yard work and gardening with Mr. Golkar, and she said that even doing flower boxes hurt her back because of the bending.
- [38] Mrs. Golkar explained that, before the Accidents, she used to spend time with and look after TG whenever she had the chance. However, since the Accidents, her time with TG has been more limited, and she has also been more limited in what she can do with TG. Mrs. Golkar explained that, for example, she can no longer pick up her granddaughter. Babak Golkar recalled his mother having problems bending and squatting down to help TG put on a jacket.

4. The expert evidence

- [39] Mrs. Golkar called two witnesses to give opinion evidence: Dr. Gillian Simonett and Dr. Higginbottom. The defendants tendered no opinion evidence.
- [40] Dr. Simonett is a medical doctor with a speciality in physical medicine and rehabilitation. She was tendered and qualified (without objection) as an expert in physical medicine and rehabilitation, qualified to diagnose, treat and provide prognoses with respect to traumatic injury, chronic pain syndrome, and myofascial pain, and to provide opinion evidence in that respect concerning Mrs. Golkar. Dr. Simonett carried out an independent medical assessment of Mrs. Golkar on September 25, 2020.
- [41] In Dr. Simonett's opinion, Mrs. Golkar's history and clinical records were consistent with musculoskeletal pain (notably myofascial pain syndrome) in the neck and upper back. However, in Dr. Simonett's opinion, the current examination was more in keeping with "widespread chronic pain presentation."
- [42] With respect to Mrs. Golkar's low back and pelvic pain, in Dr. Simonett's opinion, Mrs. Golkar's "[c]urrent presentation is most consistent with widespread chronic pain syndrome." With respect to Mrs. Golkar's knee pain, Dr. Simonett commented that, based on examination, the knee joint was "noncontributory." Rather, in Dr. Simonett's opinion, and based on her examination:

[Mrs. Golkar's] primary pain was with palpation of the medial aspect of the knee, which is one of the tender points as part of her screening for generalized pain syndrome.

- [43] Dr. Simonett explained [underlining in original]:

Based on [Mrs. Golkar's] current presentation she primarily presents with a chronic pain syndrome. Chronic pain is defined as pain lasting more than three to six months. Chronic pain syndrome, although poorly defined, refers to the phenomena of pain that can extend beyond the expected recovery time of the initial injury (if an initial injury is identified) as well as beyond the initial location. This is often associated with other factors such as changes in mood, behaviour, fear of movement, and sleep disruption.

...

Ms. Golkar-Karimabadi reports that she had focal pain prior to the currently discussed MVCs, including right low back (although she points to her gluteus region) and resolved right knee pain. She did not have diffuse pain symptoms prior to the MVCs. She has been in consistent pain since MVC #1, and it appears that this has expanded to include new regions (such as bilaterally knee pain). This is highlighted by comparing her pain diagram from her initial physiotherapy assessment and her current pain diagram. Furthermore, my current physical exam notes more widespread pain locations when compared to her previous assessment by [her] treating physiatrist. Based on this timeline and absence of other known pain contributor, it is more likely than not that the pain/mood dysfunction initiated by MVC #1 (and potentially aggravated by MVC #2) materially contributed to her progression to chronic pain syndrome.

- [44] In her report, Dr. Simonett noted Mrs. Golkar's reported history of "focal low back pain" and right-sided knee pain. However, in Dr. Simonett's opinion, the previous history "would not fully explain [Mrs. Golkar's] current presentation."
- [45] In addition, on cross-examination, Dr. Simonett was asked about Mrs. Golkar's pre-accident knee issues, and the imaging that was done of her right knee in July 2015. Dr. Simonett explained that it would not necessarily change her opinion concerning Mrs. Golkar's knee pain if the court were to find that Mrs. Golkar had right knee complaints in July 2015. Dr. Simonett explained that, as of her examination of Mrs. Golkar, her knee pain was not in the joint or coming from the joint. Rather, it was on the inner aspect of the knee when Dr. Simonett palpated the soft tissues, and, as Dr. Simonett explained, when she palpated the soft tissues, there was a common tender point associated with widespread pain. Dr. Simonett explained that Mrs. Golkar did not have any reproducible pain limited to the joint line or with testing of the actual knee joint, and that, for purposes of the assessment, she spent quite a bit of time trying to differentiate between pain coming from the knee joint and pain from other areas around the knee. Moreover, Mrs. Golkar had pain and tenderness on both sides of both her knees.
- [46] Dr. Simonett was also asked on cross-examination about Mrs. Golkar's complaints of groin pain. Dr. Simonett explained that she was limited on knowing the cause of the groin pain, at least in part because Mrs. Golkar had difficulty recalling when it started, and it was not as clear-cut as Mrs. Golkar's other symptoms. Dr. Simonett explained that the timing of the development of groin pain is important where she is giving an opinion on groin pain. However, Dr. Simonett explained that she did not express a specific opinion on causation of Mrs. Golkar's groin pain in relation to the Accidents, because she did not have enough information. In Mrs. Golkar's case, she had widespread tenderness, which would not be fully explained by a specific degenerative joint pain.
- [47] In terms of a prognosis for Mrs. Golkar, Dr. Simonett said that, since, in her opinion, Mrs. Golkar has developed chronic pain syndrome, it was difficult to determine her prognosis, since it was no longer dependent solely on anticipated recovery from soft tissue damage. Dr. Simonett explained that, although improvement of chronic pain is variable:
- ... it usually has a poorer prognosis both in terms of full recovery and time for such recovery. Rather, treatment of chronic pain is often focused [on] maximizing function despite pain, rather than solely focusing on full recovery.
- Ms. Golkar-Karimabadi continues to have ongoing pain which effects her function despite appropriate intervention including three years of physiotherapy, an exercise-based kinesiology program, and counselling. I anticipate that most of her spontaneous recovery has plateaued and that she will be at elevated risk for prolonged pain symptoms for the foreseeable future.
- [48] With respect to treatment recommendations, Dr. Simonett said:

A. General treatment for generalized pain is to continue to have [a] consistent but not exhausting exercise regime. Ms. Golkar-Karimabadi has already been involved in regular exercise, as outlined by physiotherapy and kinesiology. She also reports benefit with swimming, although access may be currently limited due to the pandemic. I recommend that she continue to engage in regular exercise to help reduce risk of deconditioning. Given her prolonged pain symptoms despite ongoing exercise, this is less likely to be curative, but rather used to manage her ongoing pain.

B. Ms. Golkar-Karimabadi has had prolonged therapies, and I do not anticipate significant benefit from repeat of physiotherapy or kinesiology at this time. If there is a specific location of pain/new injury, then this would be appropriate for reassessment.

[49] In addition, Dr. Simonett commented that, given Mrs. Golkar's "global pain presentation," trialing pain medications (such as amitriptyline) would be appropriate. Dr. Simonett cautioned against overuse of Tylenol.

[50] Dr. Higginbottom has a Master's and a PhD in clinical psychology from Queen's University. She was tendered and qualified (without objection) as a registered psychologist, qualified to diagnose and treat psychological conditions related to driving anxiety, and to provide opinion evidence in that respect concerning Mrs. Golkar.

[51] As I noted above, Dr. Higginbottom was Mrs. Golkar's treating psychologist, and saw her on four occasions in the period beginning September 2016 and ending in February 2017. Dr. Higginbottom's report dated July 10, 2017 is based on her treatment sessions with Mrs. Golkar and her clinical records of those sessions.

[52] In Dr. Higginbottom's opinion, Mrs. Golkar's reported anxiety around driving, and her avoidance behaviour, were "consistent with" the Accidents. Given her contact with Mrs. Golkar, it was difficult for Dr. Higginbottom to express an opinion on a prognosis. However, Dr. Higginbottom commented that Mrs. Golkar's avoidance of places associated with the Accidents, and of driving generally, remained a significant obstacle to psychological symptom improvement, in her opinion. In Dr. Higginbottom's opinion, Mrs. Golkar could benefit from further treatment, "if she followed the treatment plan to the best of her ability, paying particular attention to her avoidance and utilizing strategies learned."

5. Findings and conclusions concerning Mrs. Golkar's injuries

[53] Before setting out my findings and conclusions concerning Mrs. Golkar's injuries, I am going to make some comments on the witnesses and the evidence.

[54] I accept the evidence of Mr. Chalmers and Mr. Doak concerning their physiotherapy treatments of Mrs. Golkar and their observations made during those treatments. Both Mr. Chalmers and Mr. Doak testified using their clinical records made at the time, and there could be no dispute that those records qualified as "business records." Mr. Chalmers was cross-examined only very briefly, and Mr. Doak was not cross-examined at all.

- [55] Mr. Golkar from time to time answered questions before counsel was finished asking them, and gave answers that were not responsive to the questions asked. Counsel then had to clarify his answers. This gave some of Mr. Golkar's evidence a rehearsed quality. However, I have no real concerns about the credibility or reliability of Mr. Golkar, and I have no concerns about the credibility and reliability of Babak Golkar.
- [56] In any event, in closing submissions, the defendants did not challenge either the credibility or reliability of any of these witnesses.
- [57] I turn then to Mrs. Golkar. Her credibility and reliability are, of course, important in this case. Dr. Simonett's opinions are based, in significant part, on the history she received from Mrs. Golkar.
- [58] In closing submissions, the defendants argued that Mrs. Golkar is neither a credible nor a reliable witness. They submit that Mrs. Golkar was less than reliable in reporting her pre-accident injuries and symptoms to Dr. Simonett, and that Mrs. Golkar gave evidence at her examination for discovery that was inconsistent with her evidence at trial. The defendants cited several cases (*Gillespie v. Yellow Cab Company Ltd.*, 2014 BCSC 1745, at paras. 135-136; *Andrusko v. Alexander*, 2013 BCSC 985, at para. 49; *Hancott v. Barnes*, 2015 BCSC 1308, at para. 78; and *Buttar v. Brennan*, 2012 BCSC 531, at paras. 24-25 and 29) for the propositions that: where there are few objective findings of ongoing injury, the court must be "exceedingly careful" examining a plaintiff's evidence; if a plaintiff's account of his physical, mental or emotional state as a result of the accident is not convincing, the hypothesis upon which any expert opinions rest will be undermined; and an assessment of the plaintiff's credibility is critical.
- [59] The defendants argue further that Dr. Simonett's report should not be given much weight because of the inadequate history provided by Mrs. Golkar.
- [60] The weight that can be given to Dr. Simonett's opinion evidence depends on the court's assessment of Mrs. Golkar's credibility, and on the consistency of her evidence at trial with the information she provided to Dr. Simonett. In my opinion, although Mrs. Golkar is not a particularly good historian, the history that she provided to Dr. Simonett was not materially different from Mrs. Golkar's evidence at trial. Mrs. Golkar told Dr. Simonett about her pre-accident knee issues and groin pain. On cross-examination, Dr. Simonett was pressed on these points, and whether knowing more about the details would affect her opinion. Essentially, Dr. Simonett's answer was no, it would not. With respect to Mrs. Golkar's knee symptoms following the Accidents, Dr. Simonett explained how these were different medically from the joint pain about which Mrs. Golkar had complained in the summer of 2015. Moreover, Dr. Simonett explained how Mrs. Golkar's knee symptoms as of the assessment by Dr. Simonett in September 2020 made sense medically, and were consistent with Dr. Simonett's diagnosis of chronic pain syndrome. Dr. Simonett did the same in relation to Mrs. Golkar's pre- and post-accident complaints of groin pain. Dr. Simonett explained that she did not express an opinion on "groin pain" as such because she did not

have enough information to do so. Rather, in Dr. Simonett's opinion, the appropriate medical explanation for Mrs. Golkar's reported symptoms was that, as a result of the injuries Mrs. Golkar sustained in the Accidents, Mrs. Golkar had developed chronic pain syndrome. What I conclude from this is that Mrs. Golkar's post-accident groin pain is captured by and an aspect of Dr. Simonett's diagnosis of chronic pain syndrome.

- [61] The defendants do not dispute that, as a result of the Accidents, Mrs. Golkar sustained soft tissues injuries to her neck, upper and lower back. But they essentially argue that Mrs. Golkar's evidence that, as of trial, she continued to experience pain symptoms that had a significant impact on her life should not be believed.
- [62] However, I do not agree. While there were some inconsistencies in Mrs. Golkar's evidence, in my opinion, looking at the evidence as a whole, they are not material. Earlier in these Reasons I explained why I do not see material contradictions in Mrs. Golkar's evidence concerning the circumstances in which she left West Bay Elementary. Mrs. Golkar's evidence concerning the progression of her symptoms following the Accidents, and eventually reaching a plateau, was supported by the evidence of Mr. Chalmers and Mr. Doak, as well as the evidence of Mr. Golkar and Babak Golkar. Moreover, Dr. Simonett provided credible medical explanations for Mrs. Golkar's symptoms (including her groin and knee pain), consistent with the soft tissue injuries Mrs. Golkar sustained in the Accidents, and for why those symptoms persist. I accept this evidence.
- [63] I find that, as a result of the Accidents, Mrs. Golkar sustained soft tissue injuries to her neck, shoulder area, upper and lower back. She also developed headaches and emotional problems, specifically, anxiety relating to driving. Mrs. Golkar took limited time off work following the Accidents. However, I find that, as a consequence of her pain symptoms resulting from her injuries, she was unable to continue working as a Teacher's Assistant - General at West Bay Elementary, and her employment in that position was terminated in November 2016, reducing her hours per week from 12.75 to five.
- [64] Mrs. Golkar pursued rehabilitation through physiotherapy and kinesiology. However, I find that by 2018, her condition had essentially reached a plateau, and she had developed chronic pain syndrome. I find that as of trial, and as a result of the injuries she sustained in the Accidents, Mrs. Golkar continued to suffer from the effects of chronic pain syndrome. Her prognosis for full recovery is poor, and, in order to manage her pain symptoms, she must continue to engage in regular exercise to reduce the risk of deconditioning.
- [65] On the other hand, I find that Mrs. Golkar's driving anxiety can be improved by following the strategies recommended by Dr. Higginbottom during Mrs. Golkar's treatment sessions. Therefore, the prognosis here is a more optimistic one.
- [66] I find further that, as a result of the injuries she sustained in the Accidents, and the development of chronic pain syndrome, Mrs. Golkar is now more limited in her ability to participate in leisure and recreational activities. These activities include favourite recreational activities such as long walks and socializing with friends, as well as cooking for

her family, something that she was passionate about. The pleasure Mrs. Golkar took from those activities before the Accidents, and from her work, is now diminished. In addition, as a result of the effects of her injuries, Mrs. Golkar has been, and will be, more limited in the activities she can do with her granddaughter.

6. Damages

(a) Non-pecuniary damages

- [67] It is well-established that the purpose of non-pecuniary damages is to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. The factors to be taken into account include: the plaintiff's age; the nature of the injury; the severity and duration of pain; disability; emotional suffering; impairment of life; impairment of family, marital and social relationships; impairment of physical and mental abilities; loss of lifestyle; and the plaintiff's stoicism (a factor that should not, generally speaking, penalize the plaintiff). See *Stapley v. Hejslet*, 2006 BCCA 34, at paras. 45-46. An award of non-pecuniary damages must be fair and reasonable to both parties.
- [68] It is also well established that each case must be decided on its own facts, and prior cases are useful as a guide - but only a guide - in the assessment of non-pecuniary damages.
- [69] On behalf of Mrs. Golkar, Mr. Holness submits that an award of \$125,000 for non-pecuniary damages is fair and reasonable in this case.
- [70] In support of his position, Mr. Holness cites: *Chavez-Salinas v. Tower*, 2017 BCSC 2068 (in particular in relation to the "golden years" principle: see paras. 430-431); *Bidulka v. Haugen*, 2020 BCSC 1065; and *Kelly v. Kalra*, 2019 BCSC 1305.
- [71] On behalf of the defendants, Mr. MacLennan submits that an award of \$50,000 for non-pecuniary damages would be fair and reasonable in this case. In support of the defendants' position, Mr. MacLennan cites: *Mothe v. Silva*, 2015 BCSC 140; and *Kelly v. Kotz*, 2014 BCSC 244
- [72] In my opinion, an award at the level proposed by the defendants is too low and would fail to fully take into account the impact of the injuries on Mrs. Golkar's quality of life. On the other hand, in my opinion, Mr. Holness's closing submissions show that Mrs. Golkar implicitly accepts that an award of non-pecuniary damages at the level of the awards in *Chavez-Salinas* (\$180,000) and *Bidulka* (\$165,000) is substantially more than would be appropriate in her case. Moreover, in *Kelly*, there was opinion evidence that the plaintiff suffered from severe depression and anxiety as a result of injuries she had sustained (in addition to developing chronic myofascial pain syndrome).
- [73] In view of my findings above, and having regard to the *Stapley* factors (including Mrs. Golkar's age and stage of life), the purpose of an award of non-pecuniary damages and the cases cited to me in argument, I conclude that a fair and reasonable award of non-pecuniary damages in Mrs. Golkar's case is \$90,000.

(b) Loss of earning capacity

- [74] Mrs. Golkar seeks compensation for both loss of earning capacity in the period up to trial, and loss of future earning capacity. She says that reasonable compensation for her loss of earning capacity in the period up to trial would be \$30,000 (net), while reasonable compensation for her loss of future earning capacity would be \$25,000.
- [75] Mrs. Golkar was laid off from work in March 2020, when pandemic restrictions came into effect. She has not returned to work since. She began a 12-month leave, unrelated to the Accidents, in September 2020. Mrs. Golkar does not claim any loss for the period from March 2020 to September 2021. Mrs. Golkar plans to return to work in September 2021.
- [76] On behalf of Mrs. Golkar, Mr. Holness argues that, but for the injuries she sustained in the Accidents and time off taken for recommended treatment, Mrs. Golkar would have obtained additional work through West Vancouver Schools by the beginning of January 2017, and would have worked an additional 10 hours per week (for a total of 20 hours per week). Mr. Holness submits that Mrs. Golkar was not able to increase her work hours, as she had planned, because of the time burden of her treatments (physiotherapy in particular), along with her physical symptoms and driving anxiety. Mr. Holness argues that Mrs. Golkar's loss to trial should be assessed on the basis that, but for the Accidents, she would have earned another \$259.00 per week for 154 weeks (covering the period from January 2017 to March 2020), or about \$40,000, gross. Mr. Holness submits that it is appropriate then to apply a 20% negative contingency. Accordingly, in the submission of Mr. Holness, Mrs. Golkar's loss of earning capacity in the period up to trial should be assessed at \$30,000 (gross).
- [77] With respect to loss of future earning capacity, Mr. Holness submits I should find that Mrs. Golkar will continue to work until at least age 70 (and would have done so absent the Accidents), and that, without the Accidents, there is a real and substantial possibility that, beginning September 2021, she would be working 20 hours per week. Mr. Holness submits that the capital asset approach is appropriate, and that Mrs. Golkar's loss should be assessed at \$25,000. This is based on the present value of an annual loss of \$10,878 for four years, and applying a 40% contingency discount (to take into account the possibility that Mrs. Golkar may not have obtained extra hours for reasons other than her injuries).
- [78] No submissions were made in the alternative, in the event I did not accept that, in the without-accident scenario Mrs. Golkar would have worked 18-20 hours per week until age 70, or made different findings about Mrs. Golkar's with-accident and without-accident situation.
- [79] The defendants say that Mrs. Golkar is entitled to be compensated for the income she lost when she missed three days of work immediately after the January Accident, that is, \$187.86. The defendants say that, apart from this, Mrs. Golkar has not established an entitlement to any compensation for loss of earning capacity, whether in the period up to trial or in the future. The defendants say, in the alternative, that, if I conclude Mrs. Golkar's claim for compensation for loss of earning capacity is not too speculative, then any award should reflect the uncertainty about Mrs. Golkar's return to work in September 2021, her age and

her relatively low income before the Accidents. Otherwise, the defendants did not advance any alternative submissions, and, in particular, the defendants did not propose any alternative amount under this heading.

- [80] The applicable principles are well-established.
- [81] There are two stages in assessing a claim for damages for loss of earning capacity. First, a plaintiff must prove that the injuries suffered in the accident and the resulting symptoms impaired her ability to earn income and that there is a real and substantial possibility that her diminished earning capacity has resulted or will result in a pecuniary loss. A plaintiff may be able to prove that there is a substantial possibility of a future loss despite having returned to the plaintiff's usual employment. If the plaintiff satisfies that burden, and therefore establishes an entitlement to compensation, then the second stage requires an assessment of the loss. A plaintiff may prove the quantification of that loss either on an earnings approach or a capital asset approach. Both are correct. The capital asset approach is often more appropriate where the pecuniary loss is not easily measured. See generally *Perren v. Lalari*, 2010 BCCA 140, at paras. 21 and 32. Either way, the court must endeavour to quantify the financial harm accruing to the plaintiff over the course of her working career, taking into account relevant and realistic negative and positive contingencies.
- [82] A plaintiff's loss is assessed on the basis of the difference between the plaintiff's original position just before occurrence of the negligent act or omission, and the injured position after and as a result of such act or omission: see *Athey v. Leonati*, [1996] 3 S.C.R. 458, at paras. 34-35. Compensation for past loss of earning capacity is based on what the plaintiff would have - not could have - earned, but for the injuries she sustained: see *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141, at para. 30.
- [83] The assessment is an exercise of judgment, not a mathematical calculation. Ultimately, the court must base its decision on what is reasonable in all of the circumstances. Even in circumstances where employment data and calculations appear to show no reduction or even an increase in income following an injury, where a plaintiff continues to suffer to some degree from the effects of an accident which have an impact on the plaintiff's work, there is an impairment of earning capacity. The proper question under this head of damages is not simply whether a plaintiff will suffer an actual wage loss, but rather whether there has been an impairment of the plaintiff's income-earning capacity. This latter approach treats the ability to earn income as a capital asset, and the issue is whether that asset has in any way been diminished by reason of the defendant's negligence. Projections, calculations and formulas are only useful to the extent that they help determine what is fair and reasonable.
- [84] Using the capital asset approach does not mean that the assessment is unstructured or that the assessment is entirely at large without the necessity to explain the factual basis of the award: see *Villing v. Husseni*, 2016 BCCA 422, at paras. 18-19. In every case where the capital asset approach is adopted, the four questions in *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 (S.C.), at para. 8, form the basis of the assessment. The questions are 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.
- [85] The questions in *Brown* address the means of assessing the value of a loss of earning capacity once such a loss has been established. They do not determine entitlement: *Tisalona v. Easton*, 2017 BCCA 272, at paras. 50-51.
- [86] In my opinion, Mrs. Golkar has failed to make out any entitlement to compensation for loss of earning capacity on the basis that, without the Accidents, she would have worked between 18-20 hours per week until age 70. However, I have concluded that the evidence supports some loss of earning capacity as a consequence of the Accidents, both in the period up to trial and in the future. This is because, in my opinion, as a result of the injuries sustained in the Accidents, Mrs. Golkar no longer had the capacity to work as a Teacher's Assistant - General, and she was and is limited to working as a Supervision Aide.
- [87] I will first address the period up to trial.
- [88] Mrs. Golkar took time off work immediately after the January Accident, and lost gross income of \$187.86. This is not disputed.
- [89] Mrs. Golkar's claim for compensation for loss of earning capacity to trial is based on past hypothetical events, namely: there was a real and substantial possibility that, but for the injuries she sustained in the Accidents, she would have, beginning in January 2017, found positions and worked an additional 10 hours per week.
- [90] However, in my opinion, this is speculation and wishful thinking. There is no evidence that, in the three-plus years prior to the January Accident when Mrs. Golkar was working for West Vancouver Schools, Mrs. Golkar ever applied for positions totalling 20 (or even 18) hours per week. No evidence was presented of any postings available, for which Mrs. Golkar might have applied, in the period from September 2012 to trial. The existence and postings of available positions are matters of past fact, not past hypothetical fact, and needed to be proved on a balance of probabilities. They were not. Whether there were any positions posted, that, but for the Accidents, Mrs. Golkar might have been selected to fill, is unknown. There is no evidence of what additional work, at what schools, Mrs. Golkar would have done, but for the Accidents.
- [91] I conclude therefore, with the exception of one area, that Mrs. Golkar has failed to prove a loss of earning capacity prior to trial on the basis of a real and substantial possibility.

- [92] The one area concerns Mrs. Golkar's positions at West Bay Elementary. As I noted above, as of the January Accident, Mrs. Golkar was working 12.75 hours at West Bay, 5 hours as a Supervision Aide and 7.75 hours as a Teacher's Assistant - General. The latter involved office work. In November 2016, Mrs. Golkar was removed from her position as Teacher's Assistant - General, although she retained her position as Supervision Aide, and her hours were reduced from 12.75 to five hours per week. I have concluded that Mrs. Golkar was terminated as a Teacher's Assistant - General as a result of the effects of the injuries she sustained in the Accidents. In other words, in my opinion, but for the Accidents, Mrs. Golkar would have continued to work a total of 12.75 hours per week at West Bay Elementary.
- [93] In my opinion, Mrs. Golkar has shown, as a real and substantial possibility, that, but for the Accidents, she would have kept both of her positions at West Bay at least until she left West Bay and moved to Sentinel Secondary in March 2017. She is entitled to be compensated for her loss of earning capacity for the period from November 23, 2016 to March 26, 2017, assessed on the basis of her hourly wage (\$21.71 plus 16% in lieu of benefits) for 7.75 hours per week.
- [94] I will leave counsel to do the final calculation of the gross amount, to include \$187.86 for the three days missed immediately after the January Accident.
- [95] I turn then to loss of future earning capacity. Here, I am also not persuaded that Mrs. Golkar has demonstrated a real and substantial possibility of a hypothetical future event - namely, working between 18 and 20 hours per week - that she can no longer realize as a result of the Accidents and which results in a loss of income. I have not been persuaded that something Mrs. Golkar never did before the Accidents has been shown to be a real and substantial possibility in the without-accident scenario.
- [96] However, in my view, that is not the end of the matter. Based on my findings above, Mrs. Golkar is no longer capable of working as both a Supervision Aide and a Teacher's Aide - General. Rather, following the Accidents, and as result of the injuries she sustained and their consequences, Mrs. Golkar is limited to working as a Supervision Aide. She is capable of working 10 hours a week. In that sense, there is no material reduction in the number of hours Mrs. Golkar can work in the with-accident and without-accident scenarios. However, now, to find 10 hours of work, Mrs. Golkar must work at two schools with compatible schedules. Mrs. Golkar's evidence at trial shows that there is a reasonable possibility she will not always be able to achieve that.
- [97] Accordingly, in my view, Mrs. Golkar has shown as a real and substantial possibility that she will not be able, consistently, to find 10 hours of work a week, and that this will result in a pecuniary loss. The amount of the loss, given Mrs. Golkar's age, must be modest. Taking into account the pattern of Mrs. Golkar's income from employment before the Accidents, I assess her loss of future earning capacity at \$3,000.
- (c) Loss of housekeeping capacity

[98] Mrs. Golkar seeks an award of \$28,000 for loss of housekeeping capacity.

[99] The defendants say no award is justified.

[100] Compensation for loss of homemaking capacity is distinct from compensation for cost of future care. An award for loss of homemaking capacity is intended to reflect the value of the work that would have been done by the plaintiff but which the plaintiff is incapable of performing due to the injuries caused by the accident. It is not dependent upon whether replacement costs are actually incurred. However, a cautionary approach is to be taken in assessing damages for loss of homemaking capacity to ensure the award is commensurate with the loss. See, for example, *Westbroek v. Brizuela*, 2014 BCCA 48, at paras. 72-78. Where homemaking can be done, although with pain, it may be more appropriate to reflect that in the award for non-pecuniary damages, rather than make a separate award for loss of housekeeping capacity: see *Kim v. Lin*, 2018 BCCA 77, at para. 33.

[101] In my opinion, based on my conclusion that Mrs. Golkar has developed chronic pain syndrome, a modest award, consistent with the cautionary approach and commensurate with the loss, can be justified in this case. I award \$3,500.

(d) In-trust claim

[102] Mrs. Golkar seeks an "in-trust" award of \$1,000 in respect of assistance provided to her by Mr. Golkar in the period after the January Accident and up to the March Accident, and also by her son Babak. Mrs. Golkar says that, in this period, Mr. Golkar went beyond what is expected of a spouse, and (among other things) took time off of work to care for her and to look after the household. Babak Golkar said that he helped "a little bit" with some of the household chores and also with some shopping.

[103] A plaintiff can recover an amount to reflect the assistance provided by family members. However, such claims must be carefully scrutinized, both with respect to the nature of the services (were they simply part of the usual "give and take" between family members, or did they go "above and beyond" that level), and with respect to causation (were the services necessitated by the plaintiff's injuries or would they have been provided in any event?): see *Bystedt (Guardian ad litem of) v. Hay*, 2001 BCSC 1735 at para. 180, aff'd 2004 BCCA 124; and *Dykeman v. Porohowski*, 2010 BCCA 36, at para. 29.

[104] In my view, the assistance provided by Mr. Golkar did not go above and beyond what would have been part of the normal give and take among family members sharing the same household so as to justify an in-trust award. In many households where both spouses work, household tasks such as grocery shopping must be done outside of normal work hours. I am also not persuaded that the assistance Babak Golkar was providing to his mother supports an award.

[105] Accordingly, I have not been persuaded that any in-trust award is justified.

(e) Cost of future care

- [106] Mrs. Golkar seeks an award of \$3,770 (rounded) for cost of future care, to cover the cost of physiotherapy (10 sessions per year for four years) and medication to age 70.
- [107] An award for cost of future care is based on what is reasonably necessary, on medical evidence, to promote the mental and physical health of the claimant. The award must (1) have medical justification, and (2) be reasonable. The medical necessity of future care costs may be established by a health care professional other than a physician, such as an occupational therapist, if there is a link between a physician's assessment of pain, disability and recommended treatment, and the health care professional's recommended care item. See *Gao v. Dietrich*, 2018 BCCA 372, at paras. 69-70. No award is appropriate for costs that a plaintiff would have incurred in any event: *Shapiro v. Dailey*, 2012 BCCA 128, at paras. 51-55. Moreover, future care costs must be likely to be incurred by the plaintiff. The onus is on the plaintiff to show that there is a reasonable likelihood that she will use the suggested services: see *Lo v. Matsumoto*, 2015 BCCA 84, at para. 20.
- [108] In addition, while health and happiness are intertwined, the award is not intended to account for the cost of amenities which serve the sole function of making the plaintiff's life more bearable or enjoyable: *Warick v. Diwell*, 2018 BCCA 53, at para. 24.
- [109] In my opinion, the evidence - and specifically Dr. Simonett's report - does not support any award for cost of future care. There is no medical justification for future physiotherapy, and Dr. Simonett said expressly that "I do not anticipate any significant benefit from repeat of physiotherapy or kinesiology at this time." Dr. Simonett also cautioned Mrs. Golkar on the use of Tylenol on a regular basis. In any event, Tylenol can be found in most households as a matter of routine first aid and pain control.
- [110] If, in the future, Mrs. Golkar concludes that she wishes to have some physiotherapy, the costs should be financed out of her award for non-pecuniary damages, not through an award for cost of future care.
- [111] In my opinion, Mrs. Golkar has not justified any award for cost of future care.

(f) Special damages

[112] The parties have agreed on special damages at \$3,583.00.

7. Summary and disposition

[113] In summary, I award damages to Mrs. Golkar as follows:

- (a) non-pecuniary damages in the sum of \$90,000;
- (b) for loss of earning capacity to trial, an award in the amount described above. I will also leave counsel to deal with applicable taxes on the gross award for income loss from January 19, 2016 to trial. If they are unable to reach agreement, they have liberty to apply;
- (c) for loss of future earning capacity, \$3,000;

- (d) for loss of housekeeping capacity, \$3,500;
- (e) special damages in the sum of \$3,583.00.

[114] I have concluded that Mrs. Golkar has not established an entitlement to an in-trust award or an award for cost of future care.

[115] There will be pre-judgment interest in accordance with the Court Order Interest Act, R.S.B.C. 1996, c. 79.

[116] Subject to any submissions that the parties may wish to make, Mrs. Golkar is entitled to costs on Scale B. If the parties wish to make submissions concerning costs, they may do so in writing, provided that any submissions must be filed within 30 days of the date of these reasons. Written submissions must be no more than 10 pages double-spaced (except for quotations) using a font size no smaller than 12 point (except for quotations). I will leave counsel to agree on a suitable schedule for the exchange of submissions.

"Adair J."

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