

CANADA / JUDGMENT

Gurung v. Trampleasure

2020 BCSC 1643

COURT

Supreme Court of British Columbia

DECIDED

4 November 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1643 Gurung v. Trampleasure

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gurung v. Trampleasure,

2020 BCSC 1643

Date: 20201104

Docket: M163977

Registry: Vancouver

Between:

Kristina Gurung

Plaintiff

And

Betty Trampleasure and John Gary Trampleasure

Defendants

Before: The Honourable Mr. Justice A. Ross

Reasons for Judgment

Counsel for the Plaintiff:

K. Simon

K Pierce

Counsel for the Defendants:

M. Mirosolin

J. Fergusson

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 5-7, 10-14, 17-21, 25-27, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 4, 2020

Table of Contents

Introduction. 3

The Accident. 3

The Plaintiff's Background. 5

Pre-Existing Medical Concerns. 6

The Plaintiff After the Accident. 11

Credibility and Reliability. 17

Causation. 24

Physical Injuries and Chronic Pain in Her Neck and Right Shoulder 26

Headaches. 35

Psychological Issues. 37

Adverse Inference. 44

Damages. 45

Non-Pecuniary Damages. 45

Loss of Capacity to Earn Income/ Past and Future. 48

Past Loss of Capacity/Opportunity. 51

Future Loss of Capacity to Earn Income. 54

Future Care Costs. 58

Special Damages. 63

Summary. 64

Introduction

- [1] The plaintiff was involved in a motor vehicle accident on April 30, 2015 (the "Accident"). She says that it caused permanent physical and emotional injuries, will require significant care, and will prevent her from carrying out her profession as a registered nurse providing bedside care.
- [2] The defendants admit liability for the Accident. Their position is twofold. First, they argue that the plaintiff's claims are not credible or reliable. Alternatively, they point to the plaintiff's pre-existing health and argue that she has not established that her current problems were caused by the Accident. On those bases, the defence argues that the plaintiff has not met the onus of establishing that she suffered any injuries, or alternatively, any ongoing injuries, that can be causally linked to the Accident.
- [3] The primary issues in this action are:
- a) credibility and reliability;
 - b) causation: Did the Accident cause the plaintiff's ongoing problems involving chronic pain, headaches, and mood disorder?
 - c) depending on the answers to the first two issues:
 - i. the extent of the plaintiff's ongoing problems;
 - ii. the financial impact of those problems.

The Accident

- [4] As noted, the Accident occurred on April 30, 2015, at approximately 5:00 P.M. The plaintiff was driving home from a physiotherapy appointment. Her son, age 11, was in the car in the front passenger seat.
- [5] The plaintiff intended to merge onto Highway 10 from Highway 17A in Delta. She stopped to wait for a gap in traffic. Her vehicle was rear-ended by a vehicle operated by the defendant Betty Trampleasure.
- [6] The defendants admit liability for the Accident.
- [7] Documents were tendered into evidence relating to the dollar amount paid to repair the damage to the plaintiff's vehicle. No evidence was led to correlate that dollar amount to the force of impact, nor the force of the impact to the severity of the injuries.
- [8] In her direct testimony, the plaintiff was clear that she was injured in the Accident. There is corroborative evidence that I discuss below.

- [9] When cross-examined about the Accident, the plaintiff stated that, at the instant of the Accident, she heard a "bang" and she asked her son what had happened. He responded that they had been hit by another car. The defendants submit that this testimony indicated that the plaintiff heard the Accident, but did not feel it. Their position is that if she did not feel the accident, then she could not be injured by it.
- [10] I put little weight on that submission or on the plaintiff's description of the Accident in answer to that question. Although the plaintiff is fluent in English, it is not her first language. The plaintiff's testimony elapsed over portions of eight days. The fact that, in one part of her testimony, she failed to mention that she felt the impact does not impel me to find that her body was not moved or jolted in some way during the Accident. I find other evidence, discussed below, far more compelling.
- [11] After the Accident, the parties exchanged information and the plaintiff returned home. No emergency vehicles were called. She did not attend any emergency department.

The Plaintiff's Background

- [12] The plaintiff was born in Nepal in 1971. She was raised in an orphanage. In her late teens, she met and befriended a couple from Creston, B.C. who regularly travelled to Nepal to provide medical care to the local residents. The Creston couple then sponsored the plaintiff to immigrate to Canada in 1991 at the age of 20. At the time, the plaintiff had completed the equivalent of Grade 10 in Nepal. She moved to Creston and completed Grades 11 and 12.
- [13] Through contacts in her church, the plaintiff was introduced to another couple in the Fraser Valley. The plaintiff moved to the Lower Mainland and began living with them in the early 1990s. That couple "adopted" her, and she considered them to be her parents, referring to them as "Mom" and "Dad". They encouraged her to pursue post-secondary education. She attended Trinity Western University, graduating with a degree in nursing in 2000. She qualified as a registered nurse.
- [14] Immediately after graduation, the plaintiff obtained work at Delta Hospital. She worked on the wards and was directly involved in patient care. By all accounts, she enjoyed the hands-on nature of her work, especially her role in making patients comfortable and easing their pain. Co-workers confirmed the plaintiff's testimony about her love of bedside nursing. Although her shifts were consistent, they were taxing. She worked four days in a row, with each shift being 12 hours. She worked two-day shifts, then two-night shifts. She would then have four or five days off.
- [15] While attending university, the plaintiff re-connected with a young man who had been in school with her in Nepal. He had emigrated from Nepal to the United States. The two were married in 2001. They bought a home near Delta Hospital. They have two children, born 2004 and 2006.

[16] The plaintiff continued working on the wards of Delta Hospital for the 15 years between 2000 and the date of the Accident.

[17] As discussed below, the plaintiff suffered a low back injury at work in December 2014. Her pre-accident health, and its effect on her ongoing condition, are discussed below.

Pre-Existing Medical Concerns

[18] The defendants argue that the plaintiff's pre-existing conditions have an impact on the issues of credibility and causation.

[19] Prior to the Accident, the plaintiff was generally healthy. She did, however, have some significant congenital medical issues. She has scoliosis of the spine, which was asymptomatic. She was born with hip dysplasia and underwent a hip fusion surgery in Nepal before the age of five. She has leg length discrepancy of approximately four centimetres.

[20] Between 2000 and 2014, the plaintiff did not miss any work, nor did she require any accommodation in her work, due to any significant medical condition. She was fully active with her family's activities.

[21] As noted, the plaintiff was very close with the couple whom she considers to be her parents. Her father passed away in the early 2000s. At that point, her mother moved in with Ms. Gurung's family. She later moved into an assisted living facility. Unfortunately, she suffered a fall in January 2015 and died from the consequences of that injury. The defendants argue that her mother's death is at least part of the cause of the plaintiff's mood issues and depression.

[22] As noted above, the plaintiff suffered a low-back injury at work on December 18, 2014. That injury was re-aggravated in early January. She required treatment and time off work. She submitted a claim to WorkSafeBC ("WCB").

[23] In early February 2015, the plaintiff commenced a graduated return to work. The plan called for her to start with light work and reduced hours. By mid-February, she had progressed to working moderate (not full) duties. She was still on restricted hours. However, she suffered a setback in her low back pain and returned to light duties in mid-February. She remained on light duties through the time of the Accident while the cause of her setback was being investigated.

[24] There is no dispute that the plaintiff's WCB claim related to her low back. As discussed below, the plaintiff's claim is based on the allegation that her ongoing (physical) disability is caused by chronic pain in her neck and right shoulder. However, the defendants submit that the low back problem might have disrupted her career track even in the absence of the accident. I discuss that issue below.

- [25] In addition to the pre-existing WCB injury to her back, there is some evidence that the plaintiff suffered from neck and shoulder pain in the month before the Accident. The defendants place significant weight on this evidence. They focus on three clinical record entries, which form the entirety of the documentary evidence of any pre-existing condition.
- [26] The plaintiff saw her family physician, Dr. Wong, regularly (ten visits) from January through April 2015 regarding her WCB claim. Most of the records indicate that Dr. Wong was treating the plaintiff's lumbar spine and reporting her progress to WCB. On one visit (January 14), the plaintiff discussed her adoptive mother's death.
- [27] On a WCB "Physician's Report" dated March 4, 2015, Dr. Chan wrote a clinical note discussing upper back and shoulder pain. Because it is written in the shorthand of doctors' notes, I paraphrase the entry below (based on Dr. Chow's testimony):
- The patient has been tolerating light duties 8 hours/day. She experiences tingling down her left leg and then couple days ago, she noted tightness in her upper left back. She had to leave her last shift early due to shoulder pain. She is not doing any lifting or bending. Her physio seems to be helping her low back symptoms. She is scheduled to see a WCB specialist on March 18. On examination: she had tense left posterior trapezius muscles, with reproducible pain. Testing the range of motion in her neck led to pain with lateral rotation to the right and along the left posterior neck muscles. There was no bony tenderness. The plan was a referral to massage. The recommendation was that Ms. Gurung continue on light duties at work. Follow-up on March 19 to see whether she could increase her hours, as tolerated.
- [28] Dr. Wong testified about that entry and confirmed that the plaintiff had complained of pain in the left side of her neck and her left shoulder. The left trapezius muscle spans the top of the shoulder across to the neck.
- [29] Dr. Wong's subsequent reports to WCB include notations of "upper L post-back pain". Dr. Wong confirmed that those notations refer to pain in the left upper back. However, the notations after March 4, 2015, were "auto-populated" on the WCB form, meaning that, because they were typed in on March 4, they automatically repeated on later reports. Hence, the clinical records of Dr. Wong during the pre-Accident period include only one notation of any complaint of upper left back and left trapezius pain.
- [30] The plaintiff saw Dr. Wong again on March 20 and April 29. There is no mention of neck or shoulder pain in those clinical records.
- [31] The plaintiff commenced physiotherapy treatments for her work-related low back injury in January 2015. Ms. Lovera, the physiotherapist, testified and interpreted her clinical notes. There were 25 appointments between early January and the date of the Accident. Within those visits, the records indicate that 23 dealt solely with the low back problems. There are, however, two entries that mention upper back and shoulder pain in addition to the low back.
- [32] Again, I have paraphrased the entries based upon Ms. Lovera's testimony:

- a) March 5, 2015: On Tuesday, during an 8 hour shift, Ms. Gurung got "super tender" in her upper trapezius and mid-back. She is not sure what she did. She tried hot pack. A physiotherapist at work gave her some gentle stretches. She was sent home from work. She used a "Dr. Ho" machine at home and got a prescription for massage therapy. She had seen Dr. Wong about the problem. Her work was limited to doing medications, measuring vital signs and making an unoccupied bed. Ms. Gurung reported that her back was "good" but her shoulders were feeling more intense. She was taking ibuprofen for her lumbar spine and back. Work today was "ok". The treatment on March 5 dealt with the lumbar spine, thoracic spine and "UFT" (upper fibres of the trapezius). Ms. Lovera wrote a note that the office should book "2 units" (meaning 60 minutes) for treatment of the cervical and thoracic spine.
- b) March 16, 2015: The patient reported she had just come from work. She had "some" low back pain with tingling down the legs. On Friday, when at work, she had lots of neck and thoracic pain. She needed different pain medications over the past three days. She was not sure what had precipitated the pain, because she was performing light duties at work (making beds and moving the machine that measures vital signs). Today, she reported the pain was "so far so good", but there was pain in her right trapezius and rhomboid area. (There is an uninterpretable line stating that it "Felt like a really bad ____.") The physiotherapist noted that Ms. Gurung had limited rotation and extension of the cervical spine. Ms. Gurung had advised Dr. Wong about the initial incident which was March 3. Ms. Lovera told the plaintiff that she could not treat the cervical spine or thoracic spine because the WCB claim was limited to the lower back. However, she could "do a separate claim". Ms. Lovera suggested changes to posture, gentle stretches and the application of heat. She then treated the lumbar spine area.
- [33] After March 16, the plaintiff had a further 11 physiotherapy appointments before the Accident. Ms. Lovera's notes do not mention any neck or shoulder complaints in any of those visits. The plaintiff did not pursue the massage referral provided by Dr. Wong on March 4. She did not book any physio treatments outside of her WCB claim. It is not disputed that her extended benefit plan through work would have covered any such visits, with a referral from Dr. Wong. Further, absent a referral, she could have attended with Ms. Lovera by agreeing to pay for the treatments.
- [34] All of these events occurred before the Accident. I accept the descriptions of the events as set out in the records. They were confirmed by the authors. The plaintiff did not deny that the records were accurate.
- [35] The plaintiff says, and the records confirm, that the WCB claim related only to her low back. She says that her low back was injured in the Accident, but has returned to its pre-Accident state. She says that the condition limiting her capacity to work is in her neck and right shoulder.

- [36] The plaintiff called collateral witnesses to support her claims relating to her pre-Accident health and the injuries suffered in the Accident. Three co-workers, all nurses, who worked with the plaintiff at Delta Hospital testified that they noticed the plaintiff to appear to be in pain after the Accident. However, their observations of the plaintiff are somewhat weakened by the fact that she was on a graduated return to work program during the three months prior to the Accident. As a result, their observations of the plaintiff during the pre-Accident period were limited. The plaintiff did not return to work in the months after the Accident. Hence, they had no opportunity to see her working.
- [37] The plaintiff's husband also testified on this issue. I discuss his evidence below under the heading "Credibility and Reliability".
- [38] The defendants' position is that the clinical records indicate that plaintiff suffered from neck and shoulder pain before the Accident. Hence, they submit:
- a) the plaintiff failed to testify about this pre-existing condition during her direct examination. She also failed to advise any of the medical-legal experts about those visits. These failures demonstrate a deliberate intention to mislead the experts (and the court) about her pre-Accident health. I discuss this argument under the heading "Credibility and Reliability"; and
 - b) because the medical experts were not aware of the pre-Accident clinical records, and the plaintiff's pre-Accident neck and shoulder pain, the plaintiff is not able to meet the onus and burden of establishing on a balance of probabilities that the Accident caused her current condition.
- [39] The defendants further argue that, as the plaintiff approached her mid-40's, the nursing profession was starting to take a toll on her body. She suffered three distinct, but related, injuries to her low back between December 2014 and February 2015. Then, while performing light duties and working limited hours, she began having pain in her neck, upper back, and shoulders. The defendants put these injuries forward as an alternate theory for the cause of the plaintiff's complaints.
- [40] I discuss below the evidence regarding the plaintiff's life after the Accident, including a review of the treatments she pursued and her employment relationship. I then address the defendants' arguments under the headings: "Credibility and Reliability" and "Causation".

The Plaintiff After the Accident

- [41] As discussed in more detail below, the plaintiff's evidence is clear that her ongoing physical limitations relate primarily to her neck and right shoulder. She also has mood issues including depression, general anxiety and driving anxiety.

- [42] There is little dispute on the course of the plaintiff's life following the Accident. However, the defendants argue that, because the plaintiff sought legal advice within a month after the accident, all of her actions must be viewed through the lens that she was contemplating litigation.
- [43] As discussed, at the time of the Accident, the plaintiff was participating in a graduated return to work due to the WCB injury that affected her low back.
- [44] The plaintiff did not attend at any emergency department on the day of the Accident. She says that she drove home and rested. As the evening progressed she started feeling pain in her neck and shoulder. She contacted her employer and advised that she would not be at work the next day (May 1).
- [45] The day after the Accident, the plaintiff attended at her doctor's office, complaining of whiplash type symptoms in her neck and right shoulder with pain and tingling to her right hand. She was seen by an associate of Dr. Wong's. The doctor noted that her neck rotation was stiff.
- [46] The plaintiff returned to the office to see Dr. Wong on May 11. Dr. Wong completed a WCB form on that day advising WCB of the Accident and the injuries suffered in it. Dr. Wong listed the Accident related injuries as: headache, pain along the neck and down the right arm, and stiffness in the lower lumbar region.
- [47] It is evident from the documents that WCB was pressuring the plaintiff to return to full work duties prior to the Accident. A letter from WCB dated May 6, 2015, threatened to cut off her benefits if she did not continue with her graduated return to work. Ultimately, WCB agreed to pay wage benefits to July 31, 2015. The plaintiff says that she accepted that termination date because, at that point, she felt that her disabling injuries were those caused by the Accident as opposed to the prior workplace incidents. There is no suggestion that the plaintiff attempted to mislead WCB about the nature of her Accident-related injuries in order to continue those benefits.
- [48] The plaintiff saw Dr. Wong on 18 occasions between the Accident and the end of 2015. During those visits, she continued to complain of headaches as well as pain on the right side of her neck and right shoulder.
- [49] In September 2015, Dr. Wong started the plaintiff on amitriptyline to treat her ongoing pain which was becoming chronic. The plaintiff noticed that the new drug helped her headaches and her sleep patterns.
- [50] In October 2015, Dr. Wong first noted that Ms. Gurung was suffering from mood issues. The clinical note of October 28, 2015, indicates that the patient was tearful and feeling discouraged. She was apprehensive about going back to work after being off for so long. Ms. Gurung indicated to Dr. Wong that she was keen to get back to work but worried about not being able to keep up with the pace required. Dr. Wong referred her to a psychologist and increased the dosage of amitriptyline. Thereafter, the dosage of amitriptyline was adjusted

to balance the plaintiff's sense of drowsiness versus her overall mood and pain.

- [51] Also, in October 2015, the plaintiff told Dr. Wong that she was anxious about driving and was having trouble relaxing. Dr. Wong continued to pursue the plan of increasing the plaintiff's stamina by doing household chores. Dr. Wong encouraged her to drive on her own and be less reliant on her husband.
- [52] The plaintiff continued with physiotherapy at the same clinic after the Accident. At the start, the plaintiff had dual complaints and claims: the WCB claim for the low back, and the ICBC claim for the neck and shoulder.
- [53] The physiotherapists' initial clinical notes are inconsistent with respect to the Accident's impact on the plaintiff's low back pain. In a May 4, 2015 note, Ms. Lovera recorded that the low back was hurting. However, a note on May 6, 2015, indicates that the plaintiff advised Ms. Lovera that her low back had not been affected by the Accident. At trial, the plaintiff's position was that she did suffer an injury to her low back. The symptoms fluctuated over time, but resolved to their pre-Accident state within a year or so.
- [54] The plaintiff remained off work through the remainder of 2015. She continued to receive treatment from Dr. Wong and her physiotherapist.
- [55] The plaintiff's headaches, neck and shoulder symptoms, and mood issues continued into 2016.
- [56] There was an incident in February 2016 that the defendants submit constitutes an "intervening cause" with respect to the plaintiff's driving anxiety. The plaintiff was driving her children to church when, in the parking lot, her front bumper struck the side of a parked vehicle. The defendants submit that this incident had a substantial effect on Ms. Gurung's driving anxiety. In cross-examination, Ms. Gurung denied that the accident had any real affect on her. She denied that she "struck" the other vehicle and described it as a "scrape". She did, however, acknowledge that she was embarrassed by the incident and that her children had laughed at her. Dr. Sutherland, a psychologist, testified about her treatment of the plaintiff. I address below, the evidence of Dr. Koch, a psychologist, who was the only expert to provide an opinion on mood issues or driving anxiety. Further, the plaintiff's husband confirmed that, after this parking lot incident, his wife ceased driving completely for a period of time.
- [57] The plaintiff had a total of 18 visits with Dr. Wong in 2016. Those visits focused on her ongoing pain, mood problems, anxiety, and headaches. Dr. Wong, during this period, was working with Ms. Gurung toward a graduated return to work. The goal was to have Mrs. Gurung return to her previous job as a bedside nurse.
- [58] In September 2016, Dr. Wong referred the plaintiff to Dr. Dhanoa at the "MuscleMD" clinic for Xylocaine injections addressing her chronic neck and shoulder pain.

- [59] The plaintiff is a member of the B.C. Nurses Union, employed by the Fraser Health Authority. She has significant protections in place as a disabled worker. Within reasonable limits, her employer will accommodate her. She also has the right to "bump" into another position. As a result, a team of individuals representing Ms. Gurung, the union, the employer, and Ms. Gurung's medical team were involved in discussions regarding her progress, and the timing and nature of any return to work.
- [60] In the spring of 2017, that rehabilitation team concluded that the plaintiff's condition had plateaued and that she would not achieve sufficient recovery to allow her to return to her old bedside nursing job. Her physical restrictions related to her ongoing neck and right shoulder pain.
- [61] Thereafter, the employer and union, in accordance with the requirements of the collective agreement, attempted to have Ms. Gurung return to work in a modified position on her old ward at Delta Hospital. For a period of two weeks in early May 2017, she did some auditing work. She was tasked with checking chart entries. The funding for that position did not continue and the job ended.
- [62] Later in May 2017, she was hired as a "Home Health Liaison" nurse at Surrey Memorial Hospital. Unfortunately, Ms. Gurung was not suited to this work, and the position was terminated within a month.
- [63] After consultation, the rehabilitation team placed Ms. Gurung in another "Home Health Liaison" position at Delta Hospital in August 2017. Unfortunately, that job did not work out, and Ms. Gurung was "let go" from that position. The dismissal was performance-related and was not related to her ongoing pain.
- [64] In February 2018, Ms. Gurung was hired in the "Specialized Seniors Clinic" at Surrey Memorial Hospital. She remains in that role today. I discuss below Ms. Gurung's evidence regarding the nature of her new position and her stated preference for her prior role as a bedside nurse.
- [65] Over the period from the Accident to February 2018, the plaintiff continued to seek treatment for her neck and shoulder pain, headaches, and mood disorders. The list of her treaters and the periods of their treatments consist of:
- a) Dr. Wong, continuing as the plaintiff's family physician;
 - b) Ms. Lovera and Ms. Stillwell, physiotherapists, provided regular treatments from the Accident until late 2017. There was a decrease in treatments in 2018 (as the plaintiff returned to full-time work), but regular treatments recommenced in 2019 and continued until Covid-19 issues intervened;
 - c) Dr. Sutherland, psychologist, treated the plaintiff with regular visits from December 2015 through November 2017;

- d) Dr. Dhanoa and other doctors at the "MuscleMD" clinic treated the plaintiff with regular injections of Xylocaine to her neck and shoulders, including trigger points, from September 2016 through January 2019;
 - e) JR Rehab, a community-based rehabilitation company that reported to ICBC. Ms. Gurung was seen by:
 - i. A kinesiologist for 91 appointments from September 2015 to September 2017, during which they worked on strengthening and work-hardening;
 - ii. Ms. Young and Mr. Bains, Occupational Therapists, who oversaw the kinesiologist and worked with Ms. Gurung from August 2015 until May 2018. The plaintiff attended 41 appointments either in person or on the phone with the goal of returning to her prior occupation.
- [66] The records of these treaters discuss, overwhelmingly, the plaintiff's physical symptoms in her neck, shoulder, and headaches. Dr. Sutherland, of course, treated the plaintiff's mood issues. I discuss the impact of the totality of this evidence under the heading "Credibility and Reliability".
- [67] In addition to her work restrictions, the plaintiff says that she is less connected to her family and less capable of performing work around the house compared to her activity level before the Accident.
- [68] The plaintiff called several members of her treatment team, including Dr. Wong, Dr. Dhanoa, Dr. Sutherland, Ms. Janna Young (occupational therapist) as well as Ms. Lovera and Ms. Stillwell (physiotherapists). None of those treaters indicated or suggested that Ms. Gurung had shirked their attempts to rehabilitate her toward returning to work. To the contrary, they testified about Ms. Gurung's adherence to their treatment plans which were designed to return her to her pre-Accident role in bedside nursing.
- [69] The plaintiff also called Ms. Stephanie Stalker, a disability management coordinator employed by Fraser Health. Ms. Stalker was the employer's representative responsible for placing Ms. Gurung in accommodated employment. Ms. Stalker testified that the plaintiff was not a problem employee. It was her impression that the plaintiff wanted to return to work.
- [70] As noted, the plaintiff also called three co-workers, nurses who had worked with her on the wards at Delta Hospital. They all testified that she loved working on the ward with patients. She was a good and popular co-worker. They all continue to see the plaintiff socially, despite the fact that they have moved on to different jobs and hospitals. It was evident from their testimony that the plaintiff was part of a core group of friends who enjoyed working together at Delta Hospital.

- [71] In considering all of the evidence, I find Dr. Wong's testimony and records to have the greatest impact. Dr. Wong followed the plaintiff's complaints and treatments before and after the Accident. Dr. Wong's evidence was important in the assessment of both credibility and causation. Further, the evidence of the other treaters accorded with Dr. Wong's diagnosis and treatment plan. The clinical medical evidence was internally consistent and corroborative.
- [72] As discussed below, the defendants take significant issue with the plaintiff's expert opinion evidence on the issue of causation of her current symptom complex. Dr. Wong's evidence was important in assessing that argument.
- [73] The plaintiff concedes that her symptoms have waxed and waned over the past five years. However, she says that her condition has never improved to the point that would allow her to return to her old job in bedside nursing.

Credibility and Reliability

- [74] The defendants place significant weight on their argument that the plaintiff's testimony (and to some extent, her husband's) lacked credibility. Their submissions focus on a number of issues. However, for context, I note at the outset of this discussion that:
- a) at no point in her cross-examination was the plaintiff's trial testimony challenged by putting to her a sworn prior inconsistent statement;
 - b) as discussed above, with only minor exceptions, the clinical records displayed consistent complaints over time;
 - c) with the exception of Dr. Marks (whom I discuss below), no witness questioned the authenticity of Ms. Gurung's complaints or her desire to return to her old position;
 - d) the focus of the defence is on the three clinical records from March 2015 (discussed above); and
 - e) the entirety of the defence position (both on credibility and causation) relies on those three clinical records. The defence submits that the existence of those treatments establishes certain facts that prevent the plaintiff from establishing that her current condition was caused by the Accident.
- [75] The factors to be considered when assessing credibility were summarized by Dillon J. in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, as follows:
- [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes

with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

- [76] I also acknowledge that credibility findings have a knock-on effect on expert reports. As noted by Harris J. in *Gleizer v. Insurance Corporation of British Columbia*, 2014 BCSC 1037:
- [86] If the plaintiff's account of his or her change in physical, mental, and or emotional state as a result of the accident is not convincing, then the hypothesis upon which any expert opinions rest will be undermined: *Samuel v. Chrysler Credit Canada Ltd.*, 2007 BCCA 431 at paras. 15, 49-50.
- [77] The defence says that, in cross-examination, the plaintiff was argumentative, evasive, and unwilling to make even minor concessions. They note that, on multiple occasions, when faced with difficult questions, she launched into long self-serving monologues.
- [78] I accept most of the defendants' description of the plaintiff's testimony during her cross-examination. She did argue. She did launch into self-serving monologues. However, I do not accept that she was "evasive". Instead, I would characterize the back-and-forth between defence counsel and the plaintiff as a tangential game of tennis where each was playing with a different set of balls. Defence counsel would serve up a proposition to the plaintiff. She would return with an answer that was unresponsive, but appeared to presage her counsel's final arguments. Defence counsel would then attempt to re-state the proposition, and a similar, unresponsive answer would be provided. The cross-examination rarely saw an actual rally of connected questions and answers.
- [79] Two examples are illustrative:
- a) Mr. Mirosolin put to the plaintiff the proposition that her pre-Accident nursing job was "demanding". The plaintiff responded, at length, that although he might consider it to be demanding, she loved the work, and that was "the main thing." Defence counsel submits that she did not answer the question.
 - b) Mr. Mirosolin suggested that her prior work schedule, involving 12-hour shifts and overnight shifts, was difficult for the plaintiff. He posited that she is (now) better off because she works a regular day-shift from Monday to Friday. Ms. Gurung refused to accept that characterization and noted that she could have switched jobs at any point during her 15 years at Delta Hospital. She testified at length that she loved the shift work. In her answers, she attempted to relay the message that the shift work was beneficial for her family.

- [80] Although these are examples of the plaintiff being argumentative during her cross-examination, I do not find that they negatively influence my impression of her credibility. In the dynamics of this case, concepts about her pre-Accident life, which Ms. Gurung held to be true, were being attacked on cross-examination. She responded in a manner indicating that she did not accept defence counsel's propositions. She attempted to explain the reason for her answer. In that respect, she was argumentative, but she was holding to her position in the face of propositions with which she disagreed.
- [81] There was, however, one element of the plaintiff's cross-examination that I did find to be troublesome. The same element affected her husband's credibility.
- [82] During her direct examination, the plaintiff did not testify about any pre-Accident neck or shoulder pain. The pre-Accident clinical records relating to her neck and shoulder complaints were first raised in cross-examination. When being questioned about those pre-Accident clinical records, the plaintiff initially indicated that she did not recall making those complaints. Upon further questioning, she testified that she "vaguely" recalled:
- a) an incident during the period between January and April 2015 when she awoke with a stiff neck;
 - b) going to work and one of the doctors on the ward referring to her as a "robot";
 - c) a physiotherapist based at the hospital giving her some stretches; and
 - d) being sent home early from one shift.
- [83] In cross-examination, the defence counsel pointed out that her "vague" recollections of awakening with a stiff neck did not accord with the clinical records that elapsed between March 4 and 16. The plaintiff countered by stating that when you are awoken with a stiff neck, it does not go away in one day.
- [84] I find the plaintiff's answers relating to her "vague" recollection of this pre-Accident situation to be less than convincing. Her "vague" recollection evolved into the foundation of her argument with the defence counsel over the extent of her pre-Accident problems. In other words, (she argued) his proposition regarding her pre-Accident neck and shoulder pain was not correct, because (as she vaguely recalled) it related to a short-lived problem that arose after she awakened having slept in an odd position, with a stiff neck. Hence, for that purpose, her vague recollection became a full counter-measure.
- [85] The pre-Accident neck and shoulder pain was also fruitful ground for the defendants' cross-examination of the plaintiff's husband. In his direct testimony, Mr. Gurung gave very detailed descriptions of his wife's condition in the months after the Accident. However, in cross-examination, he could not provide any detail on her condition in the period from December 2014 to the date of the Accident. She had been off work, and then returning to work, as a result of a low back pain during that period. Given his detailed recall of the post-Accident period, it was surprising that he could give no real detail for the four months prior

during her WCB claim.

- [86] In that respect, Mr. Gurung's testimony appeared to have been well-prepared on aspects that assisted the plaintiff's claim. Further, when pressed about his recollection of the condition of the plaintiff's neck and shoulder pain in the period just before the Accident, Mr. Gurung, after some minutes of questioning, stated that he recalled that his wife had awakened with a stiff neck in or around March 2015.
- [87] While the plaintiff's description of this "stiff neck" incident was not convincing, her husband's testimony echoing her answers on the topic was simply not credible. Again, for context, Mr. Gurung could not provide any detail about the work-related injury that caused his wife to be off work starting in January 2014. In addition, his testimony regarding her current condition was somewhat superficial. Based on his testimony, I formed the opinion that he is not a spouse who regularly discusses his wife's ongoing complaints. Despite those limitations, he claimed to recall that, one morning approximately six years before the trial, his wife awakened with a stiff neck.
- [88] The only conclusion that I can draw is that: following her testimony, the plaintiff advised her husband that, should he be asked about her neck and shoulder pain in the period before the Accident, his answer should indicate that he recalled her awakening with a stiff neck.
- [89] I do not accept either of their testimony on that topic.
- [90] However, that is the only area of the plaintiff's testimony with which I find any real concern. As discussed above, there is ample clinical documentary evidence relating to the plaintiff's complaints both before and after the Accident. That evidence, and the testimony of the lay witnesses supported Ms. Gurung's overall narrative.
- [91] With respect to the defence argument regarding the documentation of the pre-Accident neck and shoulder pain, I note that there are no further clinical records after March 16. The plaintiff continued to see Dr. Wong and her physiotherapist over the next six weeks, and could have sought treatment for any ongoing problems.
- [92] The absence of any record of complaints during the six weeks before the Accident does not establish that her neck and shoulder complaints had resolved. However, the absence of complaints does suggest that the neck and shoulder issues were not a significant cause of concern for the plaintiff before the Accident. These records were made before the Accident during a time when she was participating in a graduated return to work. There can be no suggestion that the plaintiff was holding back on her complaints during that period.
- [93] The defendants further argue that the plaintiff's credibility is damaged by the fact that she did not advise any of the Independent Medical Examination doctors about the three pre-Accident clinical records relating to her neck and shoulder. Defence counsel describes this failure as a deliberate attempt to manipulate the evidence in this case. I discuss that issue below with respect to the opinion of each expert. However, I do not find that there was evidence of a deliberate intention to suppress her pre-Accident condition nor to mislead the

experts on this file. In that respect, as discussed below, the defence experts were not instructed to, nor did they, provide opinions on the relevance of the three impugned clinical records.

- [94] In response to the defendants' submission on credibility, the plaintiff says that this case is like *Soltan v. Glasgow*, 2019 BCSC 1527 at para. 39:
- [39] Such discrepancies as there were between the plaintiff's recollection of events at trial on the one hand, and her discovery evidence or the medical records on the other, were of no significance. It cannot be expected that a plaintiff will, years after an accident, have a perfect recollection of sequences of events, treatments rendered, and other fine details. Cross-examination that takes the form of a test of a plaintiff's memory when there is such a gap in time is often unhelpful, and such slight inconsistencies are seldom sufficient to impugn a plaintiff's credibility generally. I found Ms. Soltan forthright and credible through her trial testimony. She conceded, in cross-examination, points that might be construed as not being in her favour. Further, no other evidence at trial gave rise to credibility concerns: the medical experts whose reports are in evidence noted no discrepancies between her complaints and their examination findings; and, Ms. Soltan's evidence of her pre- and post-accident condition was corroborated, in its essential details, by testimony from her husband and friends.
- [95] I agree with the plaintiff's submission on this point.
- [96] As noted above, although the plaintiff was argumentative during cross-examination, there was no part of her evidence that indicated a changed narrative or patent inconsistency. To the contrary, the evidence of her treatments, as documented in the records of her treating practitioners, indicates that the plaintiff's neck and shoulder complaints have been remarkably consistent. They originated the day after the Accident and continued into 2020. The post-Accident records are markedly different from the pre-Accident records.
- [97] Further, on the issue of credibility, this is not a case where the plaintiff had an intermittent work record or poor work evaluations and an accident intervened to provide an excuse for leaving the workforce. Ms. Gurung had a 15-year career in nursing at Delta Hospital, interrupted only by two maternity leaves. The plaintiff enjoyed bedside nursing on the wards of Delta Hospital. She also enjoyed her co-workers. There is no evidence of any concern regarding her work performance. By all accounts, she was a valued member of a team.
- [98] Similarly, the plaintiff's interaction with her employment after the Accident is consistent with the injuries she alleges in this action. She attempted to rehabilitate her injuries with the goal of returning to her old job. She was not able to achieve that goal, and she took an accommodated position that is less "hands-on" and more administrative. That work is less satisfying and enjoyable. She now works at Surrey Memorial Hospital which is a 40-minute drive from her home. Her pre-Accident job was at Delta Hospital, a two-minute drive from her home.

- [99] That being the case, I find little support for the defendants' attacks on the overall credibility or reliability of the plaintiff's testimony. The undisputed external facts are consistent with the plaintiff's complaints.
- [100] Having reviewed all of the evidence, I find the plaintiff's testimony about her Accident-related injuries to be credible and reliable.
- [101] The real question for me is whether the totality of the evidence leads to the conclusion that the plaintiff's complaints are logically, medically connected to the motor vehicle accident. I discuss that evidence below.

Causation

- [102] Having found the plaintiff's testimony to be, on the whole, credible and substantiated by the documentary evidence, I now turn to consider the expert reports to determine whether there is sufficient evidence to satisfy the onus and burden on the plaintiff to establish that the Accident caused her current condition.
- [103] The defendants submit that the test to be applied in this case arises from the decision of the Court of Appeal in *Yoshikawa v. Yu*, [1996] 8 W.W.R. 239 (B.C.C.A.). That case discussed in detail the decision in *Maslen v. Rubenstein* (1993), 83 B.C.L.R. (2d) 131 (B.C.C.A.).
- [104] In *Yoshikawa*, Lambert J.A set out a number of considerations and principles. The defendants submit that I should consider the court's lengthy caution to trial judges who are tasked with determining a claim for chronic pain, and other conditions that rely entirely upon the self-report of the plaintiff. They submit that the question cannot usually be answered for the court by medical practitioners, because those experts are unable to test the source of the plaintiff's complaints or indicate objective signs of injury. The defendants submit that the plaintiff must adduce "convincing" evidence.
- [105] Although *Maslen* and *Yoshikawa* are useful decisions, I note that the Court of Appeal revisited the proper assessment of this type of claim in *Koltai v. Wang*, 2017 BCCA 152 and provided the following caution:
- [87] My colleague appropriately points to *Maslen v. Rubenstein* (1993), 83 B.C.L.R. (2d) 1331 (C.A.) at para. 15.1 for the approach this Court has taken to the evidence required to discharge the plaintiff's onus of proof for injuries such as those alleged in this case. While the correctness of *Maslen* is not before us, and it would require a five-justice division to consider that issue in any event, one has to question it to the extent that its discussion of "evidence of a "convincing" nature to overcome the improbability that pain will continue" might be taken to suggest a higher burden of proof (*Maslen* at para. 15.1).
- [88] In *F.H. v. McDougall*, 2008 SCC 53 the Supreme Court of Canada established "once and for all" that there is only one civil standard of proof at common law and that is proof on a balance of probabilities (at para. 40). There, Justice Rothstein said:

- [45] There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
- [46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency.
- [89] Where it may be considered inherently improbable that an event occurred -- for example, that a plaintiff continues to suffer pain long after his or her physical injuries have healed -- "there can be no rule as to when and to what extent inherent improbability must be taken into account by a trial judge" (F.H. at paras. 47-48). As Maslen itself recognizes, the plaintiff's own evidence may be sufficient to meet the burden of proof in these cases (at para. 15.1). Credibility is of course critical. But it is for the trial judge, scrutinizing the evidence with care, as he or she does in all cases, to determine the extent to which the circumstances suggest that an allegation is inherently improbable and, where appropriate, to take that improbability into account in assessing whether it is more likely than not that the event occurred (F.H. at para. 48).
- [106] Hence, I approach the issue of causation on the basis that the burden on the plaintiff is to prove that the Accident caused her ongoing condition on the balance of probabilities. There is no higher burden due to the nature of her complaints. I have found the plaintiff's complaints to be credible, with the one concern that I expressed above. Thus, the remaining issue is whether the medical opinions are based on a solid factual foundation, and whether they support the causal link between the Accident and the plaintiff's current condition.
- [107] The plaintiff's complaints can be segregated into three areas:
- a) Physical injuries and chronic pain in her neck and right shoulder.
 - b) Headaches.
 - c) Psychological issues.
- [108] Because each area was addressed by a different expert, I have addressed each condition as a separate heading.

Physical Injuries and Chronic Pain in Her Neck and Right Shoulder

- [109] I described above the timing of the plaintiff's first complaints relating to neck and shoulder pain after the Accident. They appeared in the clinical record on the day after the Accident. With minor exceptions, the clinical records thereafter consistently relate to the treatment of the neck and right shoulder.
- [110] The plaintiff's counsel sent her to see Dr. Chow, a physiatrist, on August 9, 2016, and October 18, 2018. Dr. Chow provided three reports, dated August 23, 2016, November 2, 2018, and June 22, 2020.

[111] In response, the defendants sent the plaintiff to be assessed by Dr. Grypma, an orthopedic surgeon. A report was obtained. However, defence counsel became concerned after some decisions of this court commented unfavourably on Dr. Grypma's opinions. At the request of defence counsel, the plaintiff acceded to a request to replace Dr. Grypma with Dr. Marks, another orthopedic surgeon.

[112] Dr. Marks saw the plaintiff on September 12, 2019, and provided a report dated November 13, 2019.

[113] The opinions of Dr. Marks and Dr. Chow do not agree. Further, I find fault with both Dr. Marks and Dr. Chow's opinions.

[114] I deal first with Dr. Marks' report.

[115] Dr. Marks summarized his opinion as follows (with original syntax):

In summary, Ms. Christina Gurung presents with a complex file. This including two separate motor vehicle accidents. As well, there was noted to be significant pre-existing musculoskeletal issues with congenital right hip, which is essentially ankylosed. As well, she had a pre-date of loss, a Workers' Compensation claim in 2014 injuring her low back. She notes that she was just coming off Worker's Compensation at the time of the first accident of April 30, 2015.

I do note that these various circumstances provide a level of complexity to this file that make it difficult, if not impossible, to stratify out contribution of various pre-existing circumstances and that which may have been superimposed, related to the accidents on this file.

In addition, I note that the plaintiff was a very difficult historian in terms of obtaining details. This was also noted in the context of severe altered behavioural responses, pain behaviours and Waddell's signs. This with multiple discrepancies that were documented during the formal physical examination.

As such, I have not been able to identify any specific accident-related orthopedic impairment injury or disability. There is no indication for formal therapy or further investigation as such. There is no indication for further consultation. There is no indication for surgery for accident-related complaints. There are no medical restrictions applied to her circumstance for accident related complaint.

[116] In short, Dr. Marks stated that the background information was very complex. Thus, he could not "stratify out" the contribution of any individual incident to her current presentation. In addition, Dr. Marks found that the plaintiff had severe altered behavioural responses and pain behaviour, and inappropriate responses to Waddell testing.

[117] With respect to the uncontroverted information being too "complex", I note the following:

- a) Dr. Marks indicates that there were two separate motor vehicle accidents. His report identifies the second accident as the one that occurred in the church parking lot. He says that the second accident is a complicating factor.

There are a few problems with Dr. Marks' inclusion of the church parking lot accident as a complicating factor. First, there is no suggestion or evidence that the church parking lot incident caused any physical injury to the plaintiff. She did not mention it to Dr. Wong or her physiotherapist. The physiotherapy clinical records around February and March 2016 indicate mild improvement in her condition.

Next, in the body of his report, Dr. Marks listed this second accident, then attempted to associate the alleged injuries to the clinical records of treatments that followed it. However, there is no evidence that those treatments were linked to the second accident. A significantly larger problem is that Dr. Marks got the date of the second accident wrong. He believed that it occurred in August 2016. As such, he reviewed clinical records in that time period. The parking lot accident occurred in February 2016. Hence, any attempt to link and increase in complaints or treatments in or after August 2016 would, by necessity, be incorrect.

I discuss below the effect that the church parking lot accident had on the plaintiff's psychological problems and driving anxiety. Despite the increase in those anxiety issues, there is no evidence that the second accident had any effect on her physical injuries.

For those reasons, I find that Dr. Marks is simply incorrect when he identifies the second accident as a complicating factor in his attempt to determine the causation of the plaintiff's current physical condition.

- b) Second, Dr. Marks identifies the plaintiff's congenital hip problem as a complicating factor. It is true that Ms. Gurung had significant pre-existing musculoskeletal issues, including a congenital right hip problem that required fusion surgery in her childhood. However, the evidence is also clear that she worked as a nurse for 15 years without her hip causing her any problems. There is no evidence that the low-back WCB injury she suffered in late 2014 was associated with her hip issues. Simply put, there is no evidence that her congenital hip issues contribute to her current presentation or disability in any way. There was no change in her hip condition before or after the Accident. Dr. Marks is simply incorrect in this assessment.
- c) Third, Dr. Marks identifies the pre-existing WCB-related low back injury as a further complicating factor. However, the evidence is clear that the plaintiff's current work-related limitations are due to her ongoing neck and shoulder pain. Her low back pain, to the extent it exists, would not limit her ability to work. Hence, the low back injury is not a complicating factor.

[118] Having considered those issues, I do not accept Dr. Marks' statement that "these various circumstances provide a level of complexity to this file that make it difficult, if not impossible, to stratify out contribution of various pre-existing circumstances". The only conclusion I can draw is that Dr. Marks was looking for a reason not to ascribe the plaintiff's ongoing neck and shoulder complaints to the Accident.

- [119] Somewhat ironically, although Dr. Marks was in possession of the pre-Accident clinical records, he did not comment upon the three pre-Accident clinical records that recorded the plaintiff's complaints of neck and shoulder pain. I infer from that fact that he did not find those clinical records to constitute evidence that was relevant to his assessment of her Accident-related injuries and condition. Hence, those pre-Accident complaints were not a complicating, nor a causative, factor in his opinion.
- [120] I further note that, following delivery of his report, Dr. Marks was not asked to provide a supplemental report specifically commenting upon the three clinical records that, the defence submits, are relevant.
- [121] After stating that the plaintiff's history is complex, Dr. Marks noted that he found the plaintiff to have altered behavioural responses. The suggestion in his report was that the plaintiff was exaggerating or manufacturing her responses to stimuli. I note that his findings in that regard stand in stark contrast to the other experts who saw the plaintiff, most notably, Dr. Koch, the defence psychologist, and Dr. Tessler, the defence neurologist. Their reports are discussed below, but I take specific note that they did not find the plaintiff's presentation to be problematic.
- [122] Dr. Marks' report suggests that, from a strictly musculoskeletal and orthopedic perspective, an uncomplicated soft tissue injury should resolve within three months after the offending incident. Notably, that opinion does not consider the existence of chronic pain and psychological overlay, either in the general public or in this plaintiff.
- [123] Finally, Dr. Marks's report does not address the facts that I find to be compelling on the issue of causation: the plaintiff saw a family physician the morning after the Accident and complained of neck and right shoulder pain. Over the next few years, she pursued a number of different treatment modalities aimed at improving her pain in those areas. As of the date she saw Dr. Marks, the plaintiff's main complaints continued to be neck and right shoulder pain. I am unable to identify any other reason that those injuries arose. The causal connection between the Accident and those symptoms seems relatively straightforward.
- [124] On that basis, I have significant difficulty with Dr. Marks' opinion that the plaintiff's history is too complex to ascribe causation to the Accident. As a result, I do not accept Dr. Marks' opinion.
- [125] As noted, in relation to her neck and shoulder pain, the plaintiff relies on the opinions of Dr. Chow. Dr. Chow's reports are supportive of the plaintiff's position and opine that the Accident caused her current condition. However, he was ably cross-examined. That cross-examination left me with questions regarding his opinion on causation. I discuss his reports, then turn to the cross-examination.

[126] Dr. Chow saw Ms. Gurung on two occasions, August 9, 2016, and October 18, 2018. He also had a telephone call with her on June 19, 2020. He wrote three reports dated August 23, 2016, November 2, 2018, and June 22, 2020. The third report is a rebuttal to Dr. Marks' report.

[127] In his first two reports, Dr. Chow opines that, as a result of the Accident, Mrs. Gurung immediately suffered right shoulder and neck pain along with headaches. She also exacerbated her pre-existing low back pain. Her neck and shoulder pain have developed into a chronic pain condition, with some rotator cuff involvement. The low back pain had resolved to its pre-Accident level. He did not opine on her psychological state, but felt that she had depressive symptoms.

[128] Dr. Chow wrote that, from a physical standpoint, the plaintiff was capable of performing jobs that have light to medium physical demands. He also opined that some housekeeping tasks would exceed her function limits.

[129] Dr. Chow's second report updated the plaintiff's condition, but did not alter his opinion in any notable manner. She continued to have chronic pain in the neck and shoulder. He opines that her ongoing problems were caused by the Accident. He recommended further investigations for her shoulder pain but felt that she had reached maximal improvement. He wrote:

She has not returned to her pre-accident level. She continues to have pain with activities.

Prolonged exertion in normal life tasks would create an excessive load on the neck, upper back and shoulder thereby aggravating her pain. It would be important for her to avoid any excessive load in the affected areas since this will continue to stimulate the nociceptors thereby resulting in ongoing peripheral and central sensitization of the pain pathways associated with chronic pain. She has findings of temperature and pinprick sensitivity in the neck, shoulder girdle and upper limb area in keeping with the central sensitization process. The ongoing pain and impairment have substantially interfered with her normal life activities.

Her functional limitations are in regard to her cervical spine and right shoulder. Furthermore, she has sleep disturbance, tiredness, headache, psychological issues, and cognitive issues, which will further affect her overall functional abilities.

From a physical perspective, in my opinion, she likely would not be able to perform tasks or jobs that require activities beyond the occasional to midfrequent rate and physical demand tasks beyond the light level. She managed to return to work as a nurse but not in the regular nursing care that she would be doing on the ward. She is doing geriatric care, which involves monitoring and assessment mainly. There is no carrying, lifting, pulling or pushing involved. She seems to be coping. It is unlikely that she will be able to return to her regular nursing duties in the hospital.

[130] As noted, Dr. Chow's opinion was ably tested in cross-examination, particularly on the issue of causation. Dr. Chow confirmed that his opinion was based upon the clinical records that he reviewed and the assumption that the plaintiff had provided him with an accurate

history. He described the process leading to the writing of his medical-legal reports. The plaintiff was interviewed by an assistant for 30-60 minutes, using an outline of questions developed by Dr. Chow. Dr. Chow then interviewed the plaintiff, in the presence of the assistant, for a further 30 minutes. He then conducted the physical examination. He usually dictates the medical-legal report before seeing the next patient.

- [131] Defence counsel then put to Dr. Chow the two pre-Accident clinical records of the plaintiff's physiotherapist which discuss neck and shoulder pain.
- [132] Dr. Chow agreed that, if those entries were correct, then the plaintiff had neck and shoulder pain in the month before the Accident. He indicated that he had not reviewed those records and he was unsure whether he had received them. Defence counsel then directed him to Appendix II of his report, in which he summarized the clinical records that he had reviewed. His summary of the physiotherapy records states:

January 13, 2015 through June 2, 2015.

There are numerous entries, handwritten clinical notes, detailing ongoing neck and back pain and shoulder pain. Passive and active therapies were used. Treatment mostly consisted of traction and stretches as well as hot packs.

- [133] It is notable that this stretch of clinical records includes the date of the Accident. Hence, I would expect Dr. Chow to distinguish between the complaints that existed before and after April 30, 2015. Further, it is clear from the summary that Dr. Chow had reviewed the specific clinical records, noted that there was neck, back, and shoulder pain, and then proceeded to write his report without discussing those entries in his consideration of the causation of the plaintiff's current neck and shoulder pain.
- [134] When asked, in cross-examination, whether the existence of a pre-existing condition would cause him to change his opinion with regard to the causation of the neck and shoulder pain, Dr. Chow answered, "Correct".
- [135] In re-examination, Dr. Chow clarified that answer by testifying that he considered a "pre-existing condition" to be a medical issue of long-standing. He stated that he would expect to see entries relating to the neck and shoulder in the clinical records of the family doctor. (As noted, Dr. Wong did have one entry relating to neck and shoulder pain on March 4, 2015.)
- [136] As a result of the cross-examination, I find that Dr. Chow's opinion on causation is questionable. Although his report records the pre-Accident physiotherapy records relating to the plaintiff's upper back and shoulders, he did not appear to consider those entries when assessing the issue of causation. If he did not ascribe any weight to those entries, I cannot be confident that his opinion is fully considered.

- [137] As a result, I am left with the conflicting opinions of Dr. Marks and Dr. Chow on the issue of causation of the plaintiff's ongoing problems in her neck and right shoulder. However, there are problems with both opinions. I find that I cannot make a finding regarding causation of the plaintiff's ongoing neck and shoulder issues on the basis of either Dr. Marks' or Dr. Chow's opinion.
- [138] On this front, I note that I also have for consideration the defendants' other experts, Dr. Tessler and Dr. Koch. They both opine that the Accident caused the plaintiff's neck and shoulder injuries and led to the development of chronic headaches and mood disorders. These reports support the causal nexus.
- [139] However, on the facts of this case, I do not need the opinion of Dr. Marks or Dr. Chow to make a finding on causation. Having considered all of the evidence, I do not believe that the causation question in this case is particularly complicated.
- [140] The plaintiff had complaints of neck, upper back and shoulder pain that arose in early March 2015. The clinical records between March 16 and April 30 disclose no further complaints of neck or shoulder pain, despite continued treatment of her low back during those six weeks. As noted, the plaintiff continued on her gradual return to work during that period. She had further appointments with her physiotherapist and her family doctor. The notes from those visits indicate no complaints of neck or shoulder pain.
- [141] Then, commencing the day after the Accident, the clinical records are replete with complaints of neck and right shoulder pain. Those complaints are consistent across several modes of therapy over the following years.
- [142] These facts allow for two possible explanations:
- (1) in the pre-Accident period, the plaintiff devised a cunning plan wherein she would disclose her neck and shoulder pain at one stage, and then hide those same pains for six weeks between March 16 and April 30, (while she continued working). She would hide those pains in the hope that she would, at some undetermined moment in the future, suffer some form of injury that allowed her to blame her pre-existing neck and shoulder pain on that future incident. Then, upon being involved in the Accident, the plaintiff manufactured a further plan to mislead the court by creating evidence of an injury (in the form of the subsequent five years of medical treatments) and thus, a personal injury claim blaming the Accident for her ongoing condition. In order to be successful, that scheme had to be devised immediately after the Accident, starting with her visit to her family doctor the next morning wherein she complained of neck and shoulder pain; or
 - (2) the plaintiff suffered injuries to her neck and right shoulder caused by the Accident. Those injuries developed into chronic pain.

[143] The first explanation is not reasonable or believable. On the balance of probabilities, the second explanation is the only one that makes sense. As set out above, I found the plaintiff's complaints, on the whole, to be credible. There is no evidence to suggest that she manufactured this injury with the hope of benefiting financially.

[144] On the basis of the analysis above, I find that the plaintiff's current physical condition, with chronic pain in her neck and right shoulder, was caused by the Accident.

Headaches

[145] Two neurologist reports were tendered on the issue of the plaintiff's headaches.

[146] Dr. Robinson provided a report for the plaintiff. Dr. Tessler provided a report for the defence. There is no real dispute between the opinions of the two neurologists.

[147] Dr. Robinson saw the plaintiff on June 2, 2016. His (only) report is dated June 16, 2016. As a result, it is somewhat dated. Regardless, he diagnosed "chronic posttraumatic headache related to soft tissue injury to her neck sustained in the April 30, 2015 motor vehicle accident." At the time she saw Dr. Robinson, he recorded that she was suffering from one migraine-type headache per week.

[148] As noted, Dr. Tessler concurred in that opinion. In commenting on Dr. Robinson's report, Dr. Tessler wrote, "I fully agree with his opinion." Dr. Tessler's report, dated September 10, 2018, stated:

My opinion is that as a result of the Motor Vehicle Accident on April 30, 2015, Ms. Gurung sustained a hyperextension and flexion soft tissue cervical injury of musculoligamentous type. It is not likely that she sustained a cervical root injury but had some altered sensation over the distribution of 6, 7, and 8 nerve roots, indicating that likely she has had some mild irritation of the brachial plexus which resides in the armpit area and above the collar bone.

She developed some restriction of cervical movements related to pain.

Her neck pain improved considerably but she still has some discomfort in cold weather.

She developed constant headaches within 1 to 2 days after the accident

She developed posttraumatic headaches which initially were cervicogenic in nature, that is related to the cervical injury, but they also took on migraine features and became chronic, recurrent and more frequent.

Her headaches were assessed by Dr. Robinson in June 2016, whose opinion I agree with, but since that time she there has been further improvement. Initially, she had accentuated headache every 2 to 3 days, but now it is occurring twice a month.

- [149] It is evident from Dr. Tessler's report that he agrees with Dr. Robinson that the plaintiff's headaches were secondary to the physical injuries suffered in the Accident. Dr. Tessler indicates that the headaches had decreased in frequency by 2018. The plaintiff takes issue with that assessment. She says she gets headaches weekly. In terms of the assessment of damages, not a lot turns on that discrepancy.
- [150] Both neurologists were retained to address the plaintiff's headaches. However, both Dr. Robinson and Dr. Tessler offered opinions relating to the (hypothetical) impact the plaintiff's prior WCB-related low back injury would have had on her ability to practice bedside nursing. Notably, each specialist offered an opinion that was, at the same time: not associated with his retainer, outside of his area of expertise, and supportive of the position of the party for whom the report was prepared. I put no weight on their comments regarding the plaintiff's ability to work as a bedside nurse in the absence of the Accident.
- [151] In a surprising twist to the expert evidence, the defendants argue that neither the opinion of Dr. Tessler nor Dr. Robinson can be relied upon. They submit that:
- a) neither Dr. Tessler nor Dr. Robinson was aware of the plaintiff's pre-existing neck issues;
 - b) they both opine that the neck issues led to the headaches;
 - c) the plaintiff's subjective complaints are not credible;
 - d) hence, their opinions regarding the cause of the headaches do not stand because the foundation has been removed.
- [152] The obvious problem with the defendants' submission on this issue is that defence counsel instructed Dr. Tessler (in 2018). They provided Dr. Tessler with the very clinical records of which, they submit, he was not aware. Notably, those records were sent to Dr. Tessler not once, but twice. They were included in counsel's initial instruction letter dated March 29, 2018. They were re-sent to him in early 2019 along with other updated clinical records and a request for an updated report. Dr. Tessler provided an addendum report indicating that the additional documents (including the same pre-Accident records) did not change his opinion.
- [153] The only inference I can draw from those facts is that Dr. Tessler was aware of the pre-Accident clinical notes relating to complaints of neck and shoulder pain, but did not think they were relevant to the issue of causation of the plaintiff's headaches. I give no credence to the defendants' submission on this point.
- [154] As such, I accept both the opinions of Dr. Robinson and Dr. Tessler that the Accident caused hyperextension and flexion injuries to the plaintiff's neck and (likely) some mild irritation of the brachial plexus (armpit area). Those injuries led to chronic headaches within two days of the accident. Those headaches were constant for some months, but improved over time.

Psychological Issues

[155] The plaintiff's psychological condition is another area where:

- a) there is no dispute on the expert evidence; but
- b) the defendants submit that I should not accept the expert evidence.

[156] The defendants had the plaintiff seen by a psychologist, Dr. Koch on December 5, 2017, and again on April 19, 2018. He provided a report dated May 28, 2018. The defence served that report on the plaintiff.

[157] The plaintiff reviewed Dr. Koch's opinion, agreed with it, and served the report back on the defendants. Hence, both the plaintiff and the defence served, and rely upon, the same opinion. There was no other expert opinion regarding the plaintiff's mood issues.

[158] When the plaintiff served the report back, defence counsel advised that they would require Dr. Koch to attend at trial for cross-examination. Counsel for the plaintiff acceded to that demand. As a result, Dr. Koch was called in the plaintiff's case and cross-examined by the defence.

[159] Dr. Koch opines that the plaintiff suffered the following psychological conditions, and described the contribution of the Accident to each:

- a) Sub-syndromal Post Traumatic Stress Disorder ("PTSD") and driving fear/avoidance, directly caused by the subject MVA. The term "sub-syndromal" indicates that the plaintiff had symptoms of PTSD, but she did not meet the formal diagnostic criteria for that disorder. He described the formal criteria as a "light switch" whereas, in his experience, patients have symptoms on a spectrum that is better described as a "dimmer switch".
- b) Panic Disorder and Agoraphobia, caused by her under-employment and increased stress that were, in turn, directly caused by the Accident. As a result this condition was an indirect result of the Accident.
- c) Triggered Major Depressive Episodes: This condition was caused by a combination of pain problems, employment difficulties, and her mother's death in January 2015. She had a second episode of depression related to being let go from the Home Health Liaison position in late 2017.
- d) Generalized Anxiety Disorder: Dr. Koch opined that the plaintiff had a pre-existing anxiety disorder and the accident aggravated that condition.

[160] Due to his testing and examination of the plaintiff being very slow, Dr. Koch saw the plaintiff on December 5, 2017, and again on April 19, 2018. As noted above, she was "let go" from her position as a home health liaison in late 2017. She then obtained her current job in February 2018. According to Dr. Koch, the loss of her position in late 2017 had a significant negative effect on her mood. However, the attainment of her new job in 2018 had a significant positive effect on her mood. As a result, his test results on the two

appointments were markedly different.

[161] With respect to ongoing disability, Dr. Koch opines:

At most, Ms. Gurung currently suffers a partial disability in her current work position as a likely joint consequence of her anxiety and chronic pain. However, she would likely be more significantly disabled if she were to return to regular clinical nursing where the physical demands are more significant.

[162] Dr. Koch stated that the fact that she is now employed on a full-time basis indicates that she is not disabled in her current role. However, his opinion acknowledges that a return to bedside nursing would be more physically demanding and would result in increased pain. That pain would lead to a downturn in her mood, leading to her being "more significantly disabled."

[163] In that regard, Dr. Koch supports the plaintiff's allegation that she is not able to perform her pre-Accident role in bedside nursing.

[164] Again, despite the fact that the defence served Dr. Koch's report, they argue that I should not accept his opinion as being accurate for two reasons:

- a) It is entirely based on the plaintiff's self-report. Hence, if her evidence is not accepted, then her complaints to Dr. Koch cannot form the basis of his opinion. As discussed, I have accepted her complaints as credible.
- b) The defendants submit that Dr. Koch's opinion was that chronic pain can be associated with mental distress. In cross-examination, he agreed that the plaintiff's pain dating back to December 2014 could explain her later psychological complaints. However, I find that this argument fails on the basis that the defendants instructed Dr. Koch in 2018 and provided him with the pre-Accident records. Hence, he was aware of the WCB claim and the ongoing low back pain at the time of the accident. With that information in hand, he formed his opinion that the accident caused, directly or indirectly, the psychological issues noted above. I find no support for the submission that Dr. Koch did not consider the WCB injury in coming to his opinion.
- c) On the issue of driving anxiety, the plaintiff did not advise Dr. Koch about the February 2016 church parking lot accident. That incident was notable because, according to the plaintiff's husband, the plaintiff entirely ceased driving for a period after that incident. Further, Dr. Wong acknowledged that the problem worsened after February 2016.

[165] On the driving anxiety issue, I accept that Dr. Koch's opinion was formed in the absence of an important fact. He opines that the driving anxiety was caused directly by the Accident. However, he was not aware of the church parking lot incident. The evidence of the plaintiff's husband was clear that the plaintiff did some driving after the subject Accident. Then, she ceased driving completely for a period of time after the church parking lot incident. It does not take a specialist to determine that the church incident, at the very

least, significantly aggravated the driving anxiety.

[166] Taking Dr. Koch's other opinions at face value, I accept that:

- a) the Accident caused the plaintiff to have some driving anxiety, but that problem was aggravated by the church parking lot incident. The evidence indicates that the plaintiff is now driving to and from work on a daily basis. Although bothersome, the driving anxiety is not a major factor in her life.
- b) The panic disorder and agoraphobia were indirectly caused by the Accident. At present, those conditions are not a significant factor in the plaintiff's life. As noted by Dr. Koch, her return to work in 2018 significantly improved these conditions.
- c) The Accident triggered two episodes of major depressive disorders. However, at the time of Dr. Koch's assessment in 2019 (and thus, the evidence at trial), the depression was in at least a partial remission. The plaintiff remains on antidepressant medication to assist with sleep and to control symptoms of depression and pain. The first depressive episode was caused by a combination of her pain problems, employment difficulties, and her mother's death in January 2015. The second episode of depression related to being let go from the home health liaison position in late 2017. That event would not have occurred if she had continued in her role as a bedside nurse.

[167] On that basis, I find that the injuries suffered in the Accident may not have been the sole cause, but they made at least a "material contribution" to her depression. In this regard, I find this an extraordinary case as described in *Clements v. Clements*, 2012 SCC 32 at para. 46:

- (2) Exceptionally, a plaintiff may succeed by showing that the defendant's conduct materially contributed to risk of the plaintiff's injury, where (a) the plaintiff has established that her loss would not have occurred "but for" the negligence of two or more tortfeasors, each possibly in fact responsible for the loss; and (b) the plaintiff, through no fault of her own, is unable to show that any one of the possible tortfeasors in fact was the necessary or "but for" cause of her injury, because each can point to one another as the possible "but for" cause of the injury, defeating a finding of causation on a balance of probabilities against anyone.

[168] As noted, Dr. Koch opines that the plaintiff had a pre-existing anxiety disorder and that the accident aggravated that condition.

[169] I found Dr. Koch to be a very fair and balanced witness. With the noted caveat regarding driving anxiety, I accept his opinions.

Summary on Causation

[170] I return to the defendants' over-arching submission that I should not accept the opinions of any of the experts. The defence argues that none of the experts were aware of the plaintiff's pre-Accident neck and shoulder complaints because she (deliberately) did not inform them

of those complaints. I have considered that argument, and it fails on the basis that each of the experts was in possession of the pre-Accident clinical records. If those records were relevant to their findings, they would have mentioned them. I find it instructive that no expert, on either side, commented on those records. Further, until the trial, none of the experts were instructed to provide their opinion on those records.

- [171] As to the defence argument that the plaintiff did not provide the information, I can only infer that, if she had been asked, she would have confirmed that the information in the clinical records was accurate. The experts already had the clinical records.
- [172] The only inference I can draw is that the experts did not think those entries to be particularly important. Those records constitute the only documentary evidence of any pre-existing neck or shoulder pain. No expert mentioned those records as being relevant in forming his opinion. I have set out above my concerns with Dr. Chow's opinion on causation. Apart from his opinion, I am unable to find that any other opinion on causation may have been affected by the pre-Accident reports of neck and shoulder pain. To find otherwise, I would have to find that all of the experts missed the keystone to the defendants' case. That is not a reasonable conclusion. It is much more likely that those records were reviewed, but not considered to be determinative or important.
- [173] Finally, on this issue of causation, the defendants submit that I should assess this case on the basis that it involved a minor accident. They acknowledge that the court cannot assume that the forces involved in the accident were so minor that no person could possibly be injured as a result. However, they submit that the severity of the accident is an important consideration in the court's assessment and it is also open to the court to rely on common sense. The defendants cite *Sandhu. v. Raveendran*, 2017 BCSC 499. In that case, the plaintiff was involved in a minor accident in a parking lot. By chance the accident was caught on surveillance video. In his decision, Justice N. Brown wrote:
- [56] In *Butler v. Blaylock Estate*, [1981] B.C.J. No. 31 (S.C.), McEachern C.J. stated at paras. 18-19:
- [18] I am not stating any new principles when I say that the Court should be exceedingly careful when there is little or no objective evidence of continuing injury, and when complaints of pain persist for long periods extending beyond the normal or usual recovery period.
- [19] An injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence -- which could be just his own evidence if the surrounding circumstances are consistent -- that his complaints of pain are true reflections of a continuing injury.
- [57] In this case, I find a lack of convincing evidence that this minor, slow-moving parking lot accident caused the plaintiff any compensable injury. Accordingly, the plaintiff's claims for damages are dismissed with costs.

- [174] I note the use of the word "convincing" in para. 57. The Sandhu decision was delivered one month before the Court of Appeal's decision in Koltai (above at 105) which expresses concern with that formulation of any burden on the plaintiff.
- [175] In addition, there were substantial differences between the facts in Sandhu and the facts in this case. In Sandhu, there was video of the impact available for the court. That evidence indicated that there was no real change of direction in Ms. Sandhu's vehicle. As noted, in this case, the defendants tendered evidence of the cost to repair Ms. Gurung's vehicle, but I am unable to draw any association between that dollar amount and the force of impact.
- [176] Further, Ms. Sandhu did not see a doctor for a week after the accident. At her first visit, Ms. Sandhu complained of low back pain. At trial, her family physician tendered a report indicating that she suffered injuries to her shoulders, upper back, mid back, low back, right wrist, headaches, and depression. He stated that he could not provide a prognosis for her full recovery. Justice N. Brown took issue with that opinion because the plaintiff had testified that she had fully recovered from all of her injuries.
- [177] Hence, the evidence in Sandhu was not "convincing" in that it did not meet the balance of probabilities burden.
- [178] I have set out above my findings regarding the causal relationship between the Accident and the injuries to the plaintiff's neck and shoulder, her headaches and her mood disorders. I return to the cautions provided in Maslen and Yoshikawa and the clarification set out in Koltai.
- [179] In the end, having:
- found the plaintiff's complaints of pain, headaches, and mood disorder to be credible,
 - assessed the contemporary records and evidence of the treating practitioners, and
 - considered the expert opinions.

I find that the plaintiff has established that her ongoing condition was caused by the Accident. I noted Dr. Koch's opinion with respect to depressive episodes and anxiety disorder. The Accident materially contributed to her depressive episodes and aggravated her pre-existing anxiety disorder.

Adverse Inference

- [180] Finally, on the issue of causation, the defendants submit that I should draw an adverse inference from the plaintiff's failure to call her son, who was in the vehicle at the time of the Accident. Counsel submits that he may have been able to provide evidence regarding the impact of the Accident upon the plaintiff. However, defence counsel was not able to articulate any particular inference that I should draw from that alleged gap in the evidence. The argument was simply that the son should have been called, and I should assume his evidence would not have helped the plaintiff.

[181] I draw no adverse inference. I do not believe it would be appropriate to simply ascribe credence to some part of the defence argument (presumably on the subject of force of impact) on the basis that the plaintiff's son did not testify.

[182] I now proceed to assess the damages caused by the plaintiff's injuries. In that regard I discuss below the effect that the injuries have had, and will have, on the plaintiff's life, her earning capacity, and her treatment needs.

Damages

Non-Pecuniary Damages

[183] Given the position taken by the defendants on the issues of credibility and causation, it is not surprising that there is substantial disagreement on the appropriate award for Non-Pecuniary damages.

[184] Both parties acknowledge the factors to be considered in the assessment of non-pecuniary damages are set out in *Stapley v. Hejslet*, 2006 BCCA 34 at paras. 45-46, leave to appeal ref'd [2006] S.C.C.A. No. 100:

[45] Before embarking on that task, I think it is instructive to reiterate the underlying purpose of non-pecuniary damages. Much, of course, has been said about this topic. However, given the not-infrequent inclination by lawyers and judges to compare only injuries, the following passage from *Lindal v. Lindal*, supra, at 637 is a helpful reminder:

Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury" (*Cooper-Stephenson and Saunders*, *Personal Injury Damages in Canada* (1981), at p. 373). In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (*Thornton* at p. 284 of S.C.R.).

[Emphasis added in *Stapley*.]

[185] In this respect, the assessment of non-pecuniary damages focusses upon the overall effect the injuries have had upon the plaintiff's life.

[186] The plaintiff submits that guidance on the appropriate non-pecuniary award can be garnered from the following cases:

- a) *Gulati v. Chan*, 2015 BCSC 431: Non-pecuniary damages assessed in the amount of \$150,000.00 (discounted to \$120,000.00) for a 57-year-old female plaintiff (51 at the time of the accident) who suffered a fracture of her left humerus, soft tissue injuries to her neck, left arm and hand, lower back and legs, headaches, dizziness and loss of balance, and depression and post-traumatic stress. There was a discount for a pre-existing condition and intervening events.
- b) *Khosa v Kalamatimaleki*, 2014 BCSC 2060: Non-pecuniary damages assessed in the amount of \$140,000 for a 33-year-old licenced practical nurse who suffered from moderate soft tissue injuries (causing significant pain in her neck and down her whole left side), headaches, and psychological injuries. She was rendered unable to return to work and she had strained relationships with her friends and family.
- c) *Ferguson v. Watt*, 2018 BCSC 1587: Non-pecuniary damages assessed in the amount of \$140,000 for a 49-year-old nurse who suffered injuries to her neck, back, knee, shoulder girdle, headaches, sleep disruption and depressed mood and anxiety in respect of her future prospects. The injuries and symptoms caused by the accident caused her to abandon her career as an operating room nurse, which led her to question her own self-worth.
- d) *Quezada v. Quezada*, 2019 BCSC 1732: Non-pecuniary damages assessed in the amount of \$125,000.00 to a registered nurse who had some pre-existing conditions, and who suffered chronic pain, concussion, depression and anxiety after the accident.
- e) *Stoneson v Testa Estate*, 2015 BCSC 1549: Non-pecuniary damages assessed in the amount of \$100,000 for a 52-year-old nurse, working on obtaining her nurse practitioner certification. She was diagnosed with soft tissue injuries primarily to her neck, shoulder and upper thoracic spine. She had pre-existing mild low-back pain, and had a subsequent slip and fall.

[187] In response, the defendants made submissions based on different "scenarios" that are dependant upon my findings regarding credibility and causation. They submit:

- a) no award, if the plaintiff is found not to be credible or if no causal link is found;
- b) \$45,000, if I find that there were some soft tissue injuries and they resolved in line with Dr. Marks' opinion (within three months). In this scenario, the defendants submit that the plaintiff's psychological complaints cannot be attributed to the Accident. The defendants rely on *Parker v. Lemmon*, 2012 BCSC 27 and *Peck v Peck*, 2012 BCSC 1617.

[188] Given my findings on credibility and causation, the scenarios suggested by the defendants, and hence their suggested range of damages, are not applicable.

[189] Instead, I find that the Accident caused the following impact on the plaintiff's life:

- a) She experiences chronic pain on a daily basis in her neck and right shoulder, although the level of that pain fluctuates.

- b) She continues to have headaches, although they are significantly improved since 2016 when Dr. Robinson provided his report.
- a) She has suffered through bouts of depression along with increased general anxiety.
- b) She was not able to continue her graduated return to work from her WCB injury.
- c) She was unable to work for more than two years.
- d) Her chronic pain prevents her from returning to the profession of bedside nursing that she greatly enjoyed.
- e) She is forced to take accommodated employment for which she is less suited.
- f) Her interactions with her husband and children have been reduced.
- g) She has been more isolated socially.

[190] I find all of the cases submitted by the plaintiff to be helpful in this assessment. Reviewing those cases, some are more severe, and some less, than the plaintiff's injuries and their impact in this case.

[191] Using those cases as a guide, I assess the plaintiff's non-pecuniary damages at \$130,000.

Loss of Capacity to Earn Income/ Past and Future

[192] I address the claims for past and future losses related to income below.

[193] The evidence forming the basis for these claims is that:

- a) the plaintiff was employed as a bedside nurse for 15 years at Delta Hospital. She was in the B.C. Nurses Union. The terms of her employment were set out in a collective agreement, including her hourly rate, plus other perquisites such as overtime pay and shift differential;
- b) prior to the Accident, her annual income always exceeded the "Collective Agreement Base Salary" that would result from calculating "hours x hourly rate" (I discuss that evidence below);
- c) the plaintiff was on a graduated return to work program at the time of the Accident;
- d) the timeline for that graduated program, and her return to full duties and full hours, was unclear;
- e) at the time of the Accident, the plaintiff was limited to performing light duties while her low back pain was being investigated. However, after investigation, it was determined that she did not have any physical lesion or disc problem that would prevent her from returning to full duties;
- f) the injuries suffered in the Accident intervened in her return to work;
- g) she did not work again until May 2, 2017;

- h) when she did return to work, she had three interim, accommodated positions before obtaining her current (still accommodated) position. Each position paid the same hourly wage. The three interim positions were as follows:
 - i. She was hired to perform an auditing function on the wards at Delta Hospital. She began on May 2, 2017. The funding for that position ran dry. It lasted less than a month.
 - ii. The home health liaison job at Surrey Memorial (May 29-June 22, 2017) ended because she was unfit for the job. It required significant walking and carrying of materials.
 - iii. The home health liaison job at Delta Hospital (September 7-November 2017) was terminated because the plaintiff was not meeting the job requirements (unrelated to her injuries or physical condition). She struggled with the data entry and computer charting requirements.
 - i) her current position, Specialized Senior's Clinic Nurse started February 8, 2018 at Surrey Memorial Hospital.
 - j) her current job is full-time. The hourly wage is equivalent to the (current) hourly wage of her pre-Accident position. However, there are no opportunities to work overtime, and she does not receive any shift differential pay.
 - k) the opinions of Dr. Chow and Dr. Koch, which I have accepted, state that the plaintiff cannot return to her pre-Accident position as a bedside nurse due to chronic pain. However, she is not limited in performing her current role. She will not be forced into an early retirement.
- [194] Before assessing the damages under these heads of damage, I address the alternative submissions of the defendants.
- [195] The defendants' position on these heads of damage (i.e., in addition to credibility and causation, discussed above) is that:
- a) the plaintiff may have been disabled by her pre-existing low back issues for an extended period of time; In this respect:
 - i. the plaintiff accepts that there can be no income loss claim prior to July 31, 2015, when the WCB claim ended;
 - ii. the defendants' argument relies on the opinions relating to the plaintiff's low back pain provided by Dr. Marks and Dr. Tessler. For the reasons set out above, I do not accept either of those opinions. The plaintiff was working (on a graduated return to work) before the Accident, and she stopped working immediately after the Accident;
 - iii. while I do not accept the opinions of Dr. Marks and Dr. Tessler, I do accept that there is some prospect that the plaintiff would not have achieved full return-to-work status by July 31 or August 31. I include that position below in my assessment of the past loss.

- b) the defendants argue that, if the plaintiff recovered from an uncomplicated whiplash-type injury within three months, then the award for past income loss would be \$22,750. As outlined above, I do not accept that the plaintiff recovered from her injuries;
- c) finally, the defendants submit that, once the plaintiff returned to work in 2017, her earnings approximated, or exceeded her pre-Accident income. I deal with those calculations below.

[196] With those submissions in mind, I now assess her income loss claims.

Past Loss of Capacity/Opportunity

[197] The assessment of the past loss in this case requires me to address the "past hypothetical" circumstances that might have occurred if the Accident had not.

[198] The standard of proof for hypothetical events, both past and future, is that of a "real and substantial possibility": *Gao v. Dietrich*, 2018 BCCA 372.

[199] The plaintiff's position is that (but for the Accident) she would have returned to work from her WCB injury by August 31, 2015. She would then have continued working on a full-time basis. The plaintiff points to her 15-year history in the position of bedside nurse as evidence of her intention and capacity to remain in that role.

[200] Following the accident, the plaintiff was off work until May 2017 (a period of two years). She then had the three short-lived positions before attaining her current job.

[201] Prior to the Accident, the plaintiff worked overnight shifts, weekends, and holidays. The collective agreement provided for additional pay for overtime and shift differentials.

[202] The plaintiff's earnings in the years before the Accident were consistently higher than the amount that she would have earned simply from her hourly rate on a full-time basis. The following table displays that difference.

Collective Agreement Base Salary

Ms. Gurung's actual T4 Earnings

2011

\$75,405

\$85,957

2012

\$75,960

\$88,121

2013

\$79,875

\$91,673

2014

\$81,180

\$92,016

[203] Included in the plaintiff's actual pay was a stipend based on her education. She will continue to receive that benefit which represents \$1,200 per year. It is unaffected by her change in jobs.

[204] Prior to the Accident, the plaintiff did not work much overtime. The difference between her base salary and her actual annual income consisted of her education stipend (\$1,200) and shift differential payments.

[205] The assessment of the past income claim is complicated by the fact that, in the two years she was off work, the plaintiff drew down on her "sick bank" as allowed by the collective agreement. In that manner, she supplemented the disability benefits she received. However, she is able to "buy back" a certain amount of her sick bank entitlement. "Buying back" her sick bank entitlement will put her closer to the position she was in before the Accident.

[206] I also note that the base salary for nurses increased yearly in accordance with the provisions of the collective agreement.

[207] The questions for assessment are:

- a) If the accident had not occurred, what amount would the plaintiff have earned from the time of the Accident to the date of trial?
- b) What amount did she earn in the same period?

[208] I start with the period immediately after the Accident. As noted, the plaintiff was participating in a graduated return to work at that time. She received WCB benefits, recognizing a disability due to a work-related injury, until July 31, 2015.

[209] I award no income related damages during the period that WCB paid full benefits (July 31, 2015).

[210] The plaintiff says that a reasonable assessment of the trajectory of her low back injury would have had her returning to work at the end of August 2015. She claims for the loss of her WCB benefits for the month of August.

[211] Thereafter, the plaintiff says that she would have worked on a full-time basis to the date of trial. She would have continued working on her pre-Accident schedule, including night shifts.

[212] Still further, the plaintiff had to pay for her family's extended health benefit premiums during the period she was not actively at work. When working, those premiums are paid by the employer.

[213] The plaintiff calculates her lost income to the date of the trial as follows:

Sick bank repayment owing to employer:

\$33,863.69

Income loss (i.e. her expected absent accident income minus actual income during the period August 1, 2015 to date of trial):

\$186,972.75

Premiums paid by plaintiff to Fraser Health to continue extended health benefits (premiums paid by employer while plaintiff actively at work):

\$4,766.73

Total:

\$225,603.17

[214] With respect to the past "income loss" figure of \$186,972.75, I note that, as set out above, that figure is a "past hypothetical". The test is whether it is a real and substantial possibility. I find that that test is met on these facts. Apart from the pre-existing WCB injury, there is no evidence to suggest that the plaintiff would have interrupted her work at Delta Hospital.

[215] However, the contingencies and uncertainties have to be factored into the past loss. As discussed above, there is a possibility that the plaintiff would not have returned to full-time work from her WCB injury as early as September 2015. Her gradual return to work could have dragged on over several more months. If that occurred, she would have lost her base salary as well as the shift differential. Considering those contingencies, I deduct the amount of \$12,000 from the income portion and assess the past income portion of the past loss of capacity at \$175,000 (gross). That figure will have to be netted down in accordance with the provisions of Part 6 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 23.

[216] I accept the amount of \$33,863.69 for sick bank buy-back and \$4,766.73 for the extended medical premiums. I leave it to the parties to determine whether those figures need to be netted down.

Future Loss of Capacity to Earn Income

[217] The parties agree on the evidentiary standard for a claim of loss of future earning capacity. In *Perren v. Lalari*, 2010 BCCA 140, the Court of Appeal set out the test:

- [30] Having reviewed all of these cases, I conclude that none of them are inconsistent with the basic principles articulated in *Athey v. Leonati*, [1996] 3 S.C.R. 458, and *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229. These principles are:
1. A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation [*Athey* at para. 27], and
 2. It is not loss of earnings but, rather, loss of earning capacity for which compensation must be made [*Andrews* at 251].
- [31] Furthermore, I conclude that there is no conflict between *Steward* and the earlier judgment in *Pallos*. As mentioned earlier, *Pallos* is not authority for the proposition that mere speculation of future loss of earning capacity is sufficient to justify an award for damages for loss of future earning capacity.
- [32] A plaintiff must always prove, as was noted by Donald J.A. in *Steward*, by Bauman J. in *Chang*, and by Tysoe J.A. in *Romanchych*, that there is a real and substantial possibility of a future event leading to an income loss. If the plaintiff discharges that burden of proof, then depending upon the facts of the case, the plaintiff may prove the quantification of that loss of earning capacity, either on an earnings approach, as in *Steenblok*, or a capital asset approach, as in *Brown*. The former approach will be more useful when the loss is more easily measurable, as it was in *Steenblok*. The latter approach will be more useful when the loss is not as easily measurable, as in *Pallos* and *Romanchych*. A plaintiff may indeed be able to prove that there is a substantial possibility of a future loss of income despite having returned to his or her usual employment. That was the case in both *Pallos* and *Parypa*. But, as Donald J.A. said in *Steward*, an inability to perform an occupation that is not a realistic alternative occupation is not proof of a future loss.
- [218] The plaintiff submits that, with respect to Ms. Gurung's claim for damages for loss of future earning capacity, I should consider the principles set out by the Court of Appeal in *Palmer v. Goodall* (1991), 53 B.C.L.R. (2d) 44 (C.A.) and *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353:
- a) she has been rendered less capable overall from earning income from all types of employment;
 - b) she is less marketable or attractive as an employee to potential employers;
 - c) she 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
 - d) she is less valuable to herself as a person capable of earning income in a competitive labour market.

[219] As set out above, I accept the opinions of Dr. Chow and Dr. Koch that the plaintiff will not be able to return to her prior position as a bedside nurse. She will, however, continue to be employable on a full-time basis in an accommodated position. The plaintiff is a union member and has significant seniority. Her employer recognizes its duty to accommodate her. There are multiple roles, with varying physical requirements, available for nurses with the plaintiff's qualifications.

[220] The evidence establishes that, in her current role, the plaintiff works regular hours on regular days (Monday to Friday). She is not required to do overnight shifts or weekends.

[221] Based on the plaintiff's pre-Accident earnings, plaintiff's counsel calculated that her total income was, on average 14.5% higher than the base salary paid to nurses (hours x hourly rate). Since returning to work in her current position (February 2018), the plaintiff has had the following yearly income:

Year

T4 earnings

Earnings but-for the accident (base salary + 14.5%)

Income Loss (Plaintiff's calculation)

2018

\$87,917.00

\$98,142.53

\$10,225.53

2019

\$89,925.47

\$101,457.30

\$11,531.83

2020

\$94,077.60

\$103,457.30

\$9,379.70

[222] The plaintiff submits that, but for the Accident, she would have continued to work as a bedside nurse at Delta Hospital. She also submits that she would have increased her overtime hours as her children aged. Further, she would have worked to normal retirement age, and then returned to work on a casual basis.

- [223] The report of Darren Benning, an economist, sets out the present value multipliers of future losses, taking into account the present value of future earnings, survival probability and labour market contingencies.
- [224] The plaintiff urges upon me an award of \$250,000 for her future loss of capacity to earn income. That figure represents the yearly loss of shift differential and overtime opportunities of approximately 14.5% per year. It also includes the prospect that the plaintiff may have to retire early due to her ongoing problems. Further, it assumes that, absent the accident, the plaintiff would have worked to a normal retirement age and then returned to do "casual" work on an as-needed basis.
- [225] In assessing the claim for future loss of capacity to earn income, I am considering the following factors:
- a) It is unlikely that the plaintiff will return to a role that involves shift differential or overtime payments.
 - b) I do not find any evidence to support the submission that the plaintiff may be unable to continue working to her normal retirement age. I do not see that as a real and substantial possibility. If she should choose to retire early, I cannot ascribe any connection between that future decision and the Accident.
 - c) Although the plaintiff's counsel made submissions suggesting that, absent the Accident, the plaintiff may have increased the amount of her overtime hours that she works, I see insufficient evidentiary basis for that submission.
 - d) I do not find that the plaintiff's ability to retire and then return to the hospital to do casual work has been limited.
- [226] I estimate that if the Accident had not occurred, the plaintiff's annual income would have been higher by approximately \$10,000 per year from shift differential and holiday pay.
- [227] Mr. Benning's report provides that the economic multiplier (taking into account labour market contingencies, survival and the present value of an award) of a recurring loss from the trial to the plaintiff's 65th birthday (17 years) would be 9.638. Hence, a purely mathematical approach to her loss would suggest that if the plaintiff will lose \$10,000 per year would result in an award of \$96,380.
- [228] The plaintiff submits a number of cases involving awards to nurses under this head of damage. I do not find those cases helpful, primarily because each case turns on its own facts. The age of each plaintiff, and his or her ability to work on a full-time basis can result in significant awards. As noted, I find that the main loss to the plaintiff is the inability to return to bedside nursing which required shift work.
- [229] Considering the contingencies, both positive and negative, I assess the loss of capacity to earn future income at \$100,000.

Future Care Costs

[230] The plaintiff seeks an award for future care in the amount of \$150,000.

[231] The plaintiff relies on the report of Ms. Dionne Sellick, an occupational therapist. Ms. Sellick's report recommends a number of items that, when costed out over the plaintiff's lifetime, would result in Accident-related expenses in excess of \$245,000. The bulk of that figure is comprised of Botox injections (for life) in the amount of \$105,748 and housecleaning (to age 80) in the amount of \$175,574. Additional amounts are claimed for medication and physiotherapy (for life).

[232] The plaintiff's counsel acknowledges that Ms. Sellick's recommendations exceed the evidentiary basis adduced at trial. On the basis of the evidence at trial, the plaintiff seeks an award of \$150,000. The majority of that award (\$126,543) consists of household cleaning to age 80.

[233] Ms. Sellick's report provides the cost that would be incurred if the plaintiff underwent Botox injections on a regular basis, for the rest of her life. Ms. Gurung's counsel acknowledges that Dr. Robinson recommended those injections for her headaches in 2016, but the plaintiff has not pursued that option. Hence, counsel suggests an award of \$8,000 to allow the plaintiff to pursue ten such injections, if she so chooses.

[234] The remainder of the plaintiff's submissions for items of future care are comprised of:

- a) a functional driving evaluation and rehabilitation;
- b) occupational therapy ergonomic assessment and related equipment;
- c) psychological counselling; and
- d) future medications (including Advil, Tylenol, Nortriptyline, Cymbalta and Melatonin).

[235] The defendants' position on future care costs can be summarized as follows:

- a) Botox injections: These were recommended by Dr. Robinson in June 2016. The plaintiff did not pursue it. In her testimony, the plaintiff said that she would not try Botox at present, but might if her headaches worsen. Hence, they are not warranted.
- b) Other medications: The plaintiff was taking Advil and Tylenol prior to the Accident for her lower back and was likely to continue to need those medications because of her back. Nortriptyline and Cymbalta were prescribed predominately to treat the plaintiff's headaches, thus an award including these medications is dependent upon the issue of causation of the plaintiff's headaches. Melatonin was taken by the plaintiff upon her own initiative and was not recommended to her by her treating professionals.
- c) Ergonomic assessment and recommended work-related items: Ms. Stalker, the Fraser Health representative, confirmed the employer's recognition of its obligation to accommodate the plaintiff. There should be no cost to the plaintiff.

- d) Occupational therapy sessions and driving rehab: Ms. Sellick's report was written in September 2018. The plaintiff has now participated in lengthy occupational therapy and driving rehabilitation programs. She drives more than an hour a day to and from work. No award is warranted.
 - e) Physiotherapy: The defence submits that no amount should be awarded because the plaintiff attended physiotherapy regularly prior to the Accident. Given her lower back issues, and her other complicating orthopedic issues, it is likely that the plaintiff would require physiotherapy in any event of the accident.
 - f) Psychology: The plaintiff was treating with Dr. Sutherland but has not continued with that treatment. The last time the plaintiff saw Dr. Sutherland was November 30, 2017, which suggests she is unlikely to return for treatment.
 - g) Housecleaning: Prior to the WCB injury in December 2014, the plaintiff and her husband split the housework, cooking, and parenting responsibilities. Of note, the plaintiff's shift work required her to be at work for long periods. Thus, before the Accident, the plaintiff's husband was performing a significant amount of the housework. Subsequent to the workplace injury, the plaintiff testified that her husband was helping out more. After the Accident, the plaintiff's husband was said to be doing 80% of the housework, although there was conflicting testimony as to the duties performed by the plaintiff before and after the Accident. The Gurungs have not hired anyone to clean their house in the five years after the Accident. Hence, the defence submits that no award is warranted.
 - h) Gym membership and kinesiology program: The plaintiff testified that she has an exercise program, which she does at home. Her intention is to continue doing this program at home.
- [236] On the basis of those submissions, the defence argues that any award for future care should be nominal.
- [237] In considering the plaintiff's submissions, I note that she relies, in part, on the recommendations of Dr. Robinson (2016) and Ms. Sellick (2018). To some extent, events have overtaken those recommendations. The plaintiff has returned to work. She drives at least 40 minutes to work each day. She does not require a driving assessment. She does not require an ergonomic assessment or equipment because they have been provided by her employer.
- [238] Before assessing Ms. Sellick's remaining recommendations, I wish to comment on a feature of her report that I find concerning. It is a small item, but, in my opinion, it reflects an attitude, or a viewpoint, that is to be discouraged.

- [239] In her report, Ms. Sellick recommends that an award be made to compensate the plaintiff for the over-the-counter medications that she may require in the future. In providing the associated cost for those medications, Ms. Sellick calculated the expense based upon the price of name-brand medications. In cross-examination, she readily conceded that generic medications are lower in price.
- [240] In my opinion, the role of an expert in assessing the future care costs of a plaintiff must involve an outline of the full range of costs that may be incurred by the plaintiff to mitigate the damages suffered. If an item is available in a range of costs, that range should be included in the report.
- [241] Outside of the litigation sphere, if an individual retained an occupational therapist to assess the need and cost for future treatments, one would expect the expert to recommend the most economical forms of treatment, medication, and assistance. Should issues of quality arise, the expert would, I assume, provide the client a range of options and related costs. The client would decide whether to expend additional funds to obtain higher quality.
- [242] In the litigation sphere, the duties are slightly altered, but the obligations are no different. Experts owe a duty to the court to assist with the proper assessment of the reasonable care costs that will be incurred as a result of the plaintiff's injuries. They acknowledge that duty in their reports. The inclusion of higher expense items, to the exclusion of lower expense items (whether in the unit cost of one Advil tablet or any other form of treatment) suggests a concerning slant to the report. The concern I perceive is that the expert is attempting to assist the plaintiff to increase the damage award, as opposed to assisting the court with a reasonable assessment of damages.
- [243] In this case, my concern carries over to the recommendation for housekeeping services, which represents the bulk of the damages sought under this head of damage. Ms. Sellick recommends an award for housekeeping services representing four hours of cleaning per week. She prices the cost of that service at between \$5,720 and \$9,776 per year. The plaintiff submits that she will require this service until age 80.
- [244] Based upon Ms. Sellick's recommendation, the housekeeper would be working four hours per week at either \$27.50 or \$47.00 per hour.
- [245] First, I do not think that Ms. Sellick's opinion in this area falls into realm of "expert" opinion. The information is not outside my ken, nor the knowledge of any average adult. If asked, the average adult would be able to describe the time required to clean his or her residence. He or she would further be able to estimate what it would cost to hire someone for that purpose. Neither of those items are "expert" opinions. However, I acknowledge the need for some evidence on the subject.
- [246] Based on common sense and experience, the cleaning of the plaintiff's townhome (vacuum, dust, and clean bathrooms and kitchen) should take approximately four hours per week. At present, there are two children at home. They have a responsibility to assist.

- [247] The evidence established that Mr. Gurung shared in the housekeeping duties before the Accident. Because of the plaintiff's injuries, he does more of that work now. Based on the evidence, I estimate that the additional housework that he does, (because it exceeds the plaintiff's functional limits), represents about two hours per week. The cost to replace that labour should be in the range of \$20.00 per hour. On that basis, I award \$40 per week (\$2,080 per year) in future cleaning expenses. I award that amount to age 70, in the knowledge that it would be reasonable for a couple entering their 70's to retain outside help for housekeeping.
- [248] The multiplier for costs from trial to the plaintiff's 70th year is 17.257 (accounting for survival and present value factors). I award \$36,000 for future housekeeping expenses.
- [249] For the remaining items sought by the plaintiff, I award:
- a) \$5,000 for future physiotherapy or massage treatments;
 - b) \$13,000 for future medications (including over-the-counter and prescription); and
 - c) \$5,000 for future psychological counselling.
- [250] I decline to make any award for Botox injections. As noted, the plaintiff has decided not to pursue that treatment option unless her chronic pain worsens.
- [251] I decline to make any award for future gym membership or kinesiology. The plaintiff has had significant exposure to kinesiology, and she conducts her exercises at home. As noted, the plaintiff will not require an ergonomic assessment nor any related equipment. I decline to award further funds toward mindfulness training.
- [252] On that basis, I award \$59,000 for future care costs.

Special Damages

- [253] The plaintiff seeks an award of \$11,496.78 for special damages.
- [254] That figure consists of:
- a) Prescription Medication: \$2,906.54
 - b) Non-Prescription Medication: \$206.32
 - c) Mileage and Parking: \$2,933.90
 - d) Psychologist Fees: \$2,465.00
 - e) Physiotherapy: \$2,910.00
 - f) Tens Machine (Paingone): \$75.10.00

Total: \$11,496.78

[255] The defendants' position is that the plaintiff has not established that the amounts incurred were necessary because of injuries suffered in the Accident. That position is borne of the defence argument that the plaintiff has failed to establish any causative link to the Accident. I have rejected that argument.

[256] I accept the plaintiff's claim for special damages at \$11,496.78 (subject to reduction for amounts reimbursed by ICBC under Part 7 of the Motor Vehicle Act Regulations, B.C. Reg. 180/2020).

Summary

[257] In summary, I award the following:

a) Non-Pecuniary Damages:

\$130,000

b) Past Loss of Capacity:

i. Sick Bank Repayment:

\$33,864

ii. Lost Income (gross):

\$175,000

iii. Extended Premiums for health benefits):

\$4,767

c) Future Loss of Capacity to Earn Income:

\$100,000

d) Future Care Costs:

\$59,000

e) Special Damages:

\$11,497

Total:

\$514,125

[258] I did not hear submissions on interest, gross-up, or costs. If the parties are unable to reach agreement on those issues, they are free to make further submissions.

"A. Ross J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/16/2020BCSC1643.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/gurung-v-trampleasure-2020>

Prepared on 27 October 2026 · Esheria