

CANADA / JUDGMENT

Huang v. Beatch

2023 BCSC 2085

COURT

Supreme Court of British Columbia

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2023 BCSC 2085 Huang v. Beatch

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Huang v. Beatch,

2023 BCSC 2085

Date: 20231128

Docket: M174533

Registry: New Westminster

Between:

Hong Huang

Plaintiff

Garry Charles Beatch

Defendant

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

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Place and Dates of Trial:

New Westminster, B.C.

February 6-10 and 13-14, 2023

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Table of Contents

Introduction. 3

Background Facts. 3

Pre-Accident 4

The Accident 5

Post-Accident 8

Headaches. 9

Sleep Disturbance. 10

Back and neck pain. 10

Leg Injury. 11

Depression and Anxiety. 12

Level of Recovery while in Canada. 13

Evidence Regarding Circumstances in France. 16

Cost of Prescriptions and Treatments in France. 22

Expert Evidence. 26

Evidence of Dr. Wei Li 26

Evidence of Dr. Hiram Mok. 31

Evidence of Dr. Eugene Okorie. 34

Credibility and Reliability. 39

Nature and Scope of Ms. Huang's Injuries. 42

Causation. 44

Damages. 45

Non-pecuniary Damages. 46

Mitigation. 50

Cost of Future Care. 52

Special Damages. 55

Disposition. 56

Costs. 56

Introduction

[1] The plaintiff, Ms. Huang, was injured on December 22, 2013, while walking across a marked crosswalk on Imperial Street in Burnaby, British Columbia. She was struck by the defendant's slow moving vehicle ("Accident"). On the third day of trial, the defendant, Mr. Beatch, admitted liability for the plaintiff's personal injuries.

[2] The issues before me at trial were:

- a) the nature and extent of Ms. Huang's injuries arising from the Accident;
- b) the credibility or reliability of Ms. Huang's evidence;
- c) the nature and scope of non-pecuniary damages;
- d) causation;
- e) whether Ms. Huang failed to mitigate her damages;
- f) cost of future care; and
- g) special damages.

[3] There is no claim for past or future wage losses, although Ms. Huang claims that she is unable to work as a result of the Accident.

[4] The parties have agreed in large measure on the quantum of special damages. I address the amount in dispute later in these Reasons for Judgment ("Reasons").

Background Facts

- [5] At the onset of this trial, counsel for Ms. Huang requested that she be permitted to testify remotely by video-link. He explained that his client was still living in Paris, France and was experiencing delusions that prevented her from renewing her passport. Counsel for the defendant agreed to proceed by video-link. Under these unusual circumstances, I granted leave for Ms. Huang to testify remotely.
- [6] Ms. Huang required and was provided with the assistance of a mandarin interpreter.
- [7] Ms. Huang was born in Mainland China in August 1973. She was married in 1996, separated from her husband around 2008, and is now divorced. She has one child, Ms. Wu, who is now an adult, but was in high school on the date of the Accident.

Pre-Accident

- [8] During her direct examination, Ms. Huang testified that she moved to Canada so that her daughter could go to school here. She agreed on cross-examination that she moved to British Columbia not only because of her daughter's schooling, but also because of threats from her now ex-husband, as well as the political situation and environmental pollution in China.
- [9] Ms. Huang testified that her ex-husband was an alcoholic, and was verbally, emotionally, and physically abusive. In 2008, she separated from her husband and she and her daughter lived with her parents. In 2010, Ms. Huang and her daughter moved to Beijing and lived with her brother so that her daughter could go to school there. Prior to moving to Beijing, she worked as a public servant. Ms. Huang testified that she did not quit her public servant job. Rather, she "retired" at that time.
- [10] During direct examination, Ms. Huang was asked if she was depressed as a result of her relationship with her husband; she responded, "Yes". When asked by her counsel whether she received treatment in China for depression, she responded that she had. She stated she "went to a hospital" and a doctor gave her medication for depression and anxiety. She did not have a clear recollection of how long she took medication for her depression and anxiety while in China but agreed that she took it for "more than a year" and "closer to two years".
- [11] Ms. Huang testified she her mood was better in the few months before she immigrated to Canada in 2012, so she stopped taking her medications. She added that she had "no symptoms of depression" at that time and was "completely free of depression". Ms. Huang testified that the depression she suffered in China was different than what she suffered in Canada after the Accident. She testified:

[] After I came to Canada, I was healthy. I left the environment I was and in China, my depression was due to my ex-husband, he was alcoholic and he posed a threat to my body and also because of the political environment in China, I did not like it and also the air pollution. All of these things have changed since I came to Canada because I was not in that environment anymore. There was no threat from my ex-husband and there was no - no threat whatsoever any - any longer and there was no political environment my - in China and no air pollutions.

So, the depression I suffered in China, it has nothing to do with what I had after the car accident in Canada, because when I came to Canada, I was healthy and well.

[12] While living in Canada, Ms. Huang and her daughter (14 years old at the time) were financially supported by others and she was not required to work. She testified that she "was not allowed to work" because she "was accompanying a student". She did not have a Canadian work permit and did not seek employment. She added that her English was "very poor". As such, she was never employed in Canada.

[13] In 2016, Ms. Huang moved to Paris, France with her daughter so that her daughter could attend a fashion design program. She testified that her French visa allows her to stay in France, but not to work there. She has not sought employment opportunities or work for any period of time while in France.

[14] Ms. Huang testified that she did not have any physical pain prior to the Accident. When asked if she had hobbies in Canada, Ms. Huang responded that she enjoyed hiking and shopping with her friends. Her hiking included hikes at "Grouse Mountain or Garibaldi". She also liked to play Ping Pong.

[15] Ms. Huang also stated that prior to the Accident, she did the cooking, cleaning, and grocery shopping.

The Accident

[16] Ms. Huang recalls that the Accident occurred between 7 a.m. and 8 a.m. in the morning as she was walking to meet a friend. She recalled that the roads were a little slippery as it had been snowing. It was dark, but "just about to lighten-up". She was wearing dark clothing: a black and grey jacket and black pants. She pressed the walk "button," waited for the walk sign, and started to cross the intersection. She testified:

A Then I started to walk crossing the intersection in the crosswalk. About halfway through, there was a car or a truck -- or actually SUV, coming from the other side of the road and turning left. The car struck me. That was when I was about halfway in the crosswalk.

I was struck and fell to the ground and then after that, I didn't know what happened. My -- my mind, my head went blank and I was on the ground. I fell, and I didn't know what happened after this.

Q What's the next thing you knew?

A After that, when my mind was a little bit -- a little bit more clear, I -- what I knew was the driver and his wife, mainly his wife, helped me up from the ground and helped me to move to the side of the road.

Q Okay. What then happened?

A And then, after that, they said they were going to actually take an airplane to fly, so they made a phone call, called someone to come and drove me home.

Q Do you know who drove you home?

A It was a lady. I don't know her name.

Q Were you feeling any pain at the scene of the accident?

A Just my leg that was injured. At the time, there was no obvious pain. After I returned home, several hours later, I felt the pain.

[17] Ms. Huang also testified that she thought she lost consciousness. Counsel for Ms. Huang then asked the following question:

Q Where did you feel the pain besides your leg that was injured?

A My neck and my back and also my head, still confused.

Q And how did you know your leg was injured?

A Because when the lady drove me home, while I was sitting in her car, I was looking at my left leg. I saw scratch -- scratches on the leg and bruise and a little bit of blood as well.

Q Emotionally how did you feel after the accident?

A After I was struck to the ground, when my mind became clear, I cried.

[18] At her examination for discovery on May 9, 2016, Ms. Huang testified that "a girl" whose name she could not remember drove her to the hospital on the day of the Accident, but that "because I have no, like, health card, so the girl eventually took me home". Ms. Huang added that the hospital she was driven to was "not too far away, so close to Burnaby". She testified that she did not see anybody at the hospital. Ms. Huang was asked to produce her hospital records. No hospital records were disclosed. During her cross-examination at trial, Ms. Huang agreed that she did not go to the hospital on the day of the Accident after all.

[19] Mr. Beatch testified about the circumstances of the Accident in a clear and straightforward manner. Mr. Beatch is retired and lives in the Okanagan Lake District with his wife. He has two grown children.

[20] At the time of the Accident, Mr. Beatch was on his way to pick-up his daughter. They were travelling to Calgary to visit his son for Christmas. It was their grandson's first Christmas.

[21] He recalled approaching the intersection. The light was red and he stopped. When the light turned green, he proceeded to turn left. He recalled that as he was making the turn, he was moving "pretty slow"; he "wasn't completely turned yet" when he heard a knock on the side of his car. He stopped immediately. He did not know what caused the sound. He put his car in park, opened his door, stepped out of his vehicle, and saw the plaintiff sitting on the road:

[] this lady was sitting, like, right behind my door, like, when I moved my door to close my door, she was sitting right there. And so then - I mean, that was kind of a surprise []

[22] When asked what "stopping immediately" meant, Mr. Beatch responded that he slammed on his brakes and thought it would have taken about "a second or two" to stop because he "wasn't going very fast".

[23] When Mr. Beatch first saw Ms. Huang sitting on the road by his car, he remembers her looking up at him and they made eye contact. He asked her if she was alright and needed help. He believes he helped her up and suggested that they move over to the curb to get out of the traffic.

[24] When asked what he observed about the plaintiff as they walked towards the curb, Mr. Beatch stated that he "didn't think there was anything really the matter with her".

[25] Mr. Beatch was shown a photograph of both him and Ms. Huang taken by the parties shortly after the Accident occurred. He testified that the photograph showed Ms. Huang "stepping up on the curb there and walking, she's talking on her cell phone []". He testified that she seemed to be walking fine and added:

[] You know, we thought maybe she was shaken up or anything, but we certainly didn't think there was anything the matter with her. She's - from what I recall, it - it seemed she was walking fine. I don't remember thinking she was injured or anything.

[26] Mr. Beatch explained that his wife "didn't see me hit her" and "didn't know what was going on". He recalled that his wife got out of their car, she came running around the vehicle, and was standing with him talking to Ms. Huang.

[27] Mr. Beatch confirmed that the timestamp on the photograph was 7:56 a.m. and that was "probably just a couple minutes after the accident happened". Mr. Beatch stated that he felt bad about the Accident, and "was just asking her questions to help her out or drive her back home or drive her to her friend's house, wherever she wanted to go".

[28] Subsequent medical examinations found Ms. Huang suffered no broken bones or fractures as a result of the Accident.

Post-Accident

[29] Ms. Huang saw Dr. Wei Li, a family physician, the day after the Accident. She complained of neck and left leg pain, as well as feeling nervous and sad. She reported "crying for no reason". Ms. Huang reported "no depressive episodes in the past". She had not been treated by Dr. Li prior to this date.

[30] On cross-examination, Ms. Huang testified that she was truthful when she saw Dr. Li, but admitted that she did not tell Dr. Li that she had suffered from depression while living in China:

Q But fair to say that you did not tell Dr. Li about your previous depression episode in China, correct?

A No, because the depression that I had after the car accident was different from the depression I had in China. It was a new depression. It had nothing to do with the depression I had in China.

Q I'm going to ask you again. It's a yes or no question. Did you tell Dr. Li about your previous depression episode in China?

A No, I did not.

[31] Dr. Li prescribed amitriptyline 25mg nightly for poor sleep, and physiotherapy for her neck pain. Ms. Huang continued seeing Dr. Li who eventually also prescribed medication for depression.

[32] Ms. Huang testified that after the Accident she did not continue hiking and lost interest in it because of the "physical pain" caused by the Accident. She recalled that her sleep was "not good" and that she took sleeping pills.

Headaches

[33] When asked in her direct-examination to describe her head pain, Ms. Huang stated that she gets headaches at the "front and top of her head [] not everyday", but "occasionally". She testified that she has neck pain not at a "regular time" and that the pain varies from "time to time depending".

[34] On cross-examination, Ms. Huang testified as follows relating to her headaches:

Q Ms. Huang, before the break, I had asked you about your frequency, intensity of your headaches going - decreasing and you disagreed with me. Is that right?

A Yes.

Q And you gave your examination for discovery, the first one on May 9th, 2016, correct?

A Yes.

Q And on that day you affirmed to tell the truth?

A Yes.

Q I'm going to read you two question and answers, okay?

136 Q And are you still suffering from headaches?

A And still some, but not like before. Not as frequent as before.

137 Q And has the intensity of the headaches also decreased, or just the frequency?

A It have decreased.

Do you remember giving these answers to these questions that day?

A That happened many years ago. Of course I cannot - I won't have a clear recollection.

Sleep Disturbance

[35] When asked on cross-examination whether she reduced her sleep medication before moving to France, Ms. Huang responded she "just followed what her doctor prescribed". When asked if she recalled her doctor prescribing less sleep medication before moving to France, she responded, "Not more, not less, just usual". Dr. Li testimony confirms that she had in fact reduced Ms. Huang's sleep medications before Ms. Huang's move to France.

[36] Ms. Huang provided inconsistent responses at her examination for discovery on this topic on May 9, 2016:

210 Q: And you're still taking the sleeping pill at the present time?

A: I have reduced the dosage now and now I only take it when I cannot fall asleep.

Back and neck pain

[37] When asked about her back pain, Mr. Huang testified that her back pain was "the same" as her neck pain, and explained she had "irregular symptoms". She stated that "sometime out of the blue the [back] pain would start".

[38] Ms. Huang recalled that when she was in Canada, the physiotherapist gave her exercises to do and she did the exercises at home. She did exercises with a ball and some bands, and also did stretching exercises. She testified during cross-examination that "these things helped a bit" and agreed on cross-examination that the exercises improved her symptoms.

[39] Ms. Huang was also cross-examined on a Progress Report issued by her physiotherapist, Ms. Wu, from Central Park Physiotherapy, dated October 30, 2014:

Q And you see on the top right there's a date, October 30th, 2014?

A Yes, I see it.

Q And this is from Central Park Physiotherapy, correct?

A Yes.

Q Okay. Now in the first full paragraph there is a sentence here, I'll highlight it for you, where it reads [as read in]:

She reports no significant changes in her symptoms since I last updated you. Reports she is doing okay with her normal daily activities such as cooking and mopping.

A No, I didn't say - I didn't say that.

Q You didn't talk about cooking and mopping with Helen Wu?

A But that's not what I said. I said that I was not able to cook, I was not able to mop, because of physical pain.

Leg Injury

[40] There is inconsistency in the evidence concerning the nature of Ms. Huang's leg injury.

[41] When asked about her leg injury during direct examination, Ms. Huang testified:

Well, my left leg, where I was struck by the car, it was kind of hard in that area and something is bulking out. I don't know what that is, it's just not smooth Even now, it's still there. It hasn't been repaired.

[42] There is no medical evidence before the Court that Ms. Huang's leg needed further treatment or repair.

[43] Ms. Huang also testified at trial that there was an "open wound on her leg" as a result of the Accident which was now "hard", protruding and in need of repair. She claims that she told Dr. Li about this injury the day after the Accident. Dr. Li's clinical entry did not describe an "open wound". Ms. Huang was asked about Dr. Li's clinical entry on cross-examination:

Q I'll take you back to that clinical entry. On the fourth line, it reads, "Left leg scratch". Do you see that?

A Well, I don't know what this scratch means or what you're asking about open wound. It was just injured and there was - there was a scratch on the leg. So the - it was just when the car struck my leg there was a scratch. It was quite a deep scratch to my leg.

[44] Ms. Huang was also asked about her examination for discovery transcript regarding the nature of the injury to her leg in which she testified that she had "an open wound" on her leg immediately after the Accident. Ms. Huang responded:

A What I was saying at the time is my leg was scratched and it was -- just has a mark for the scratch and also it was bruised.

Q But in that answer you differentiated between an open wound and scratched skin, correct?

[]

A Well, my leg was scratched and it was swollen up and had bruise. I don't know how the interpret - interpret what I said, but I - I don't see - I don't say I - sorry, I don't think I said it was open or wound.

Depression and Anxiety

[45] The record establishes that Ms. Huang's family doctor, Dr. Li, prescribed depression medication for Ms. Huang in January 2014.

[46] In May 2014, Ms. Huang also saw a psychiatrist, Dr. Paul Waraich, on a single occasion. On cross-examination, she was asked the following questions regarding his clinical record:

Q And he was a psychiatrist, correct?

A Yes.

Q Okay. Now, under the heading of History of Present Illness, he noted [as read in]:

She feels her depressive symptoms are interfering with her functioning in specific areas, including the ability to work and tasks inside the home, although they are not impairing her social life.

Q Now -

A That's correct. It does affect my social life.

Q So the date you saw Dr. Waraich you're saying that you did not say that it didn't affect your social life?

A I said it affected my social life, so what was written there was not correct.

[]

Q So you're saying that the psychiatrist took down the answer wrong to that question?

A Yes.

[47] On August 7, 2014, Ms. Huang commenced treatment with a registered psychologist, Dr. Du. She did not recall how many therapeutic sessions she had with him, but stated that he helped her with her stress symptoms and that she felt "a little bit better at the time".

Level of Recovery while in Canada

[48] During direct examination, Ms. Huang testified that she had not entirely recovered from the depression or physical injuries when she moved to France, but she also acknowledged improvement in her symptoms:

Q Do you ever remember giving a percentage on your level of recovery before you went to France?

A I don't recall the details. It seems that somewhere between 50 and 60 percent around -- around that.

[49] With respect to her physical injuries, Ms. Huang testified that she went to a physiotherapist. She also went to the gym while in Canada, as recommended by her physiotherapist. She states that this improved her symptoms "a little bit". She attended physiotherapy with Ms. Helen Wu from January 6, 2014 until October 30, 2014.

[50] Ms. Huang also attended an active rehabilitation program. On cross-examination, she confirmed she was initially assessed on November 14, 2014 and discharged from the program on April 24, 2015.

[51] On cross examination, with respect to her psychological conditions and sleep issues prior to moving to France, Ms. Huang acknowledged Dr. Li's clinical entries of on February 10, 2015, which states that she reported her mood had "improved 60 to 70 percent". She also acknowledged Dr. Li's clinical record dated April 27, 2015 which states that exercise "does help her sleep" and that the treatment plan was to "reduce amitriptyline [sleep medication] gradually".

[52] Ms. Huang's last visit with her psychologist, Dr. Du, was on May 7, 2015, over a year before she and her daughter moved to France.

[53] At her examination for discovery on May 9, 2016, Ms. Huang stated that she would go for walks at the beach after the Accident. On cross-examination, she denied going to the beach and stated her walking was limited to walking in the area around her home in Burnaby. Ms. Huang refused to admit that she gave the evidence she did at her examination for discovery:

A I only walked around where I lived. No, I did not go to the beach.

[]

Q Ms. Huang, do you remember giving a discovery on May 9th, 2016?

A Yes.

Q And you affirmed to tell the truth that day?

A Yes.

Q Okay. I'm going to read you the question that was asked to you that day.

So just briefly with the exercises that you're doing right now, you mentioned that you're walking. Is there anything else that you're doing?

[]

I go to the beach and try to have some fresh air and because I live in Metrotown area, so I would take SkyTrain and then went onto the bus and then when I arrived at the beach I stroll along the beach and try to walk. [end of quote from May 9, 2016 Examination for Discovery]

A I did not say that. I don't know how the interpret - the interpreter interpreted what I said, but that's not what I said.

[54] Ms. Huang was taken to an entry in Dr. Li's clinical notes. She testified as follows:

Q And you see the last entry, which is dated June 3rd, 2015?

A Yes.

Q And you recognize that it does - the last line there it does say, "Major depression improved," correct?

A Yes. Yes, I see it. Well, but the improved, that word, I cannot disagree. That's not correct. Maybe just happened on that day when I went to visit the doctor, I felt a little better, but if it's overall improved, I disagree with that.

[55] Ms. Huang's was cross-examined regarding her last visit with Dr. Li was on May 10, 2016.

Q Now, Ms. Huang, you'd agree with me that this date, May 10th, 2016, was your next visit after the June 3rd, 2015, visit, correct?

A Yes.

Q So that's almost a year, right?

A Yes.

Q And that date, May 10th, 2016, that was the last time you saw Dr. Li before moving to Paris, correct?

A Yes.

Q And you never saw Dr. Li again, correct?

A I recall that since then, I - when I went back to Canada, after I came back to Paris, I went back to Canada once. I remember I went to see her once.

Q Do you remember what date that was?

A I don't recall clearly which date.

[56] There is no evidence before the Court that Ms. Huang returned to Canada after moving to France. Dr. Li confirmed on the witness stand that her last clinical visit with Ms. Huang was May 10, 2016. Counsel for both parties advised the Court that they were also in agreement that Ms. Huang's last visit to Dr. Li was May 10, 2016.

[57] Ms. Huang testified that she had a problem taking Wellbutrin. She testified that it was a sleeping medication and not for depression.

Evidence Regarding Circumstances in France

[58] In 2016, Ms. Huang moved to France with her daughter where she testified that she still suffers from depression, anxiety, and is "stressed out". She also has trouble sleeping.

[59] When asked "How do you feel about your pain currently?" Ms. Huang responded:

Well, when I have pain, I feel stressed and I feel anxious. I couldn't have -I couldn't sleep and had a hard time sleeping.

[60] Ms. Huang testified that she takes over-the-counter pain killers and also stated that sometimes the doctor "gives her a prescription". She stated she takes sleeping pills and that she has been given prescriptions for delusions, depression, and anxiety. Ms. Huang's evidence regarding prescribed medication in France was unclear.

[61] She testified that her psychiatrist had prescribed Risperidone for delusions. Ms. Huang produced receipts confirming that she has purchased Risperidone in France. The expert witnesses who testified later in the trial opined that this drug is used to treat delusion disorder. Ms. Huang also testified that Risperidone was prescribed for her depression, "but mostly for her delusions". Ms. Huang also produced receipts for Zopiclone which her doctor prescribed for sleep disturbance in France.

[62] It is accepted by both parties that Ms. Huang suffers from delusions. Neither party took the position that she was not fit to testify and I agree with their assessment. She was focused during her testimony and responded to the questions put to her.

[63] Nevertheless, counsel for Ms. Huang acknowledges, and indeed submits, that since moving to France, she has suffered from a number of delusional beliefs and that this explains the significant inconsistencies in her evidence. Counsel for Ms. Huang led the following evidence during her direct examination:

- a) Ms. Huang believes the communist party of China is trying to persecute her and that it was therefore not safe for her to go to the Chinese Embassy to renew her passport to attend the trial;
- b) Ms. Huang believes that COVID-19 is "communist virus" that was deliberately spread by the communist party of China;
- c) Ms. Huang believes people were trying to break into her apartment; and
- d) She believes all people will be moving to outer space.

[64] Ms. Huang described how she does not go out and stays in a "40 square meter apartment" in Paris, where she and her daughter have resided for six years. She testified that that she has not been to the Eiffel Tower, the Louvre, or the Palace of Versailles.

- [65] On cross-examination, Ms. Huang testified that she looks at her cellphone most of the day and that the only place that she has been to is her doctor's office. At the same time, in her video-linked examination for discovery on October 27, 2022, Ms. Huang testified that she had been to the Louvre and the Palace of Versailles, but then changed her evidence to say she only had been to the Louvre:
- [66] When asked why she chooses to stay inside her apartment and does not go out, Ms. Huang responded that it is because of the depression, anxiety, and physical pain. She explained that her anxiety is related to the fear that someone was following her and that she was in danger.
- [67] Mr. Huang testified that currently, when she experiences pain, her daughter helps her by giving her about ten massages a week. Her daughter also helps with "showering and getting dressed when I have pain".
- [68] Ms. Huang stated that her daughter would "help [her] with all the housework, cooking and cleaning".
- [69] Ms. Huang denied on cross-examination that she does some cooking. However, in her examination for discovery evidence of October 27, 2022, she stated that she made "some foods and just simple stuff for a meal" and made just "simple" meals. Ms. Huang testified:

Q. You wouldn't cook you own meals?

A. Yes, a simple meal.

Q. What's a simple meal?

A. Yeah make some food and just simple stuff - for a meal.

[70] Ms. Huang added that what she meant is that her daughter cooked some meals. When asked at trial whether that was the answer she gave at her discovery, Ms. Huang responded:

A What I said on that day is it was my daughter who helped me to cook. I do not cook. My - my daughter looked after me, everything daily life.

[71] On cross-examination, Ms. Huang was pressed on whether she did some cleaning of their apartment in Paris. She responded that her daughter did the cleaning. In her examination for discovery transcript of October 27, 2022, she stated as follows:

Q Do you do any cleaning of the kitchen, bathroom and kitchen?

A My daughter was doing those.

Q Does she do all of that or do you do some of it?

A I don't normally do them. She was the one doing them all because it's not big at all. These rooms are small.

[72] When this evidence was put before her at trial, Ms. Huang responded:

A I didn't say those things.

[73] Ms. Huang's evidence as to whether she goes to a gym in France was inconsistent. During her direct examination at trial she testified:

Q Okay, what about going to exercise or at a gym? Do you do that in France?

A No, because where I am now here, it's not as convenient as it is in -- it was in Canada.

Q Did you work out in a gym in Canada after the accident?

A No.

[74] Similarly, at the examination for discovery on October 22, 2022, when asked if she went to a gym in France, she responded: "no, not even once". Her evidence at trial during cross-examination changed:

Q And since being in Paris you have not gone to a single gym, correct?

A Well, I wouldn't say not - not even once. I went with my daughter. I've been there once or twice, because she's got a gym card - a membership card, so I went, but I did not recall how many times.

[75] Ms. Huang's evidence was also inconsistent and unclear on the question of whether she would go walking in Paris. She stated that, for a time she followed her psychologists advise to go walking.

[76] Ms. Huang later testified during cross-examination that she did not want to exercise in France because of what she described as the "strike" to her "mentally and her pain". She acknowledged that while in Canada, she was educated on the need to keep up with her exercise routine and shown how to do exercises. She agreed she did these exercises in the winter of 2015 while living in Canada, and that when the weather improved she "walked outside". She testified that she is not doing that now in Paris, reiterating that in France:

[] the reason I did not go out or I do not go out was because I was afraid - I am afraid and because of the delusion for being persecuted. is because of delusions of being persecuted.

[77] When asked when she first started to believe she was being persecuted, Ms. Huang testified that it "was when I came over to France [] 2016 or 2017 []". When asked by her counsel whether she "has depression now", Ms. Huang responded in the affirmative. When asked by her counsel if she had delusions when she was in Canada, Ms. Huang responded, "I cannot say for sure". However, in cross-examination, she testified that the delusions started in France.

[78] When asked whether she had goals and plans before the Accident, Ms. Huang responded that she did. Ms. Huang stated that she would like to "look after a child". She also stated she had other plans for the future:

A And also I have plans to open a high-end restaurant and also be supermarket and also be organic food processing factory.

[]

Q Anything else?

A I wanted to share the Chinese delicacy, delicious food with the whole world, but the pain I suffered because of the car accident made those plans cannot be realized.

[79] Ms. Huang testified that as a result of the Accident, she can no longer pursue these plans for her future. She stated that she did not have any experience with farming or running a restaurant, but added "I can hire people".

[80] When asked by her counsel whether she thought she had the ability to work at a job in her current state, Ms. Huang responded:

A No, I cannot, because I don't have such desire or intention, and also, because physically I am unable to do it.

[81] On cross-examination, as regards her stated plan to open a high-end restaurant, Ms. Huang agreed she had not looked into the cost of purchasing land in Canada or France, had not looked into the cost of starting a business, and had never developed a business plan in Canada or France.

[82] When asked whether she could live alone without her daughter, Ms. Huang responded that she could not. She testified that her daughter pays for the rent and food, but could not say how much she earned. She testified that her daughter was supporting her.

[83] When asked during direct examination "how much money would you get from your parents and how often?" Ms. Huang replied: "[t]hat is irregular. Sometimes more money, sometimes less". She testified that her parents were "not really wealthy", but "compared to the average people, maybe they're a little bit better off".

[84] During cross-examination, Ms. Huang agreed that receiving funds from her parents was one of the ways she was financially supported. When asked if she received any money from her ex-husband, she responded: "I don't know. Usually he contacted with my parents, not me". Ms. Huang testified that she felt financial stress in Canada after the Accident, and also in France. She also testified that she did not feel financial stress in Canada before the Accident.

[85] Under cross-examination, Ms. Huang was taken to a portion of a consultation report written by Dr. Waraich, dated May 13, 2014, where he states: "[s]he denies any financial stress issues; she states she is living on savings from investments and separation". Ms. Huang denied she said this to Dr. Waraich and responded, "No, I did not say that". She also denied that she said anything about having "investments or anything you just mentioned".

[86] Ms. Huang was asked whether she is afraid to cross the street when she goes out to see her doctors in Paris:

Q Do you have any fear of being hit by a car now? Do you have any fear when you cross the street, or around vehicles?

A Yes.

Q Are you able to cross the street when you go out?

A No because I do not go out, so I don't know.

Q Okay. The doctors you have in France, do they see you in your house, or do you go out to see them?

A I go to the doctor's.

Q Okay. So when you go out to see the doctors, are you able to cross the street?

A Yes, I have to cross roads, and -- but I was a bit afraid. I had to be very, very, careful when I walk on the road. Anyway, I had my fear.

[87] Ms. Huang testified that she was threatened by the Chinese Communist party and was unable to sleep. She also stated:

I just felt that someone, for example, when I went - when I went out, I felt that someone was behind me and they would harm me and maybe by poisoning or with a knife to threaten me. Anyway, I don't feel safe that "when I went out I felt like someone was following behind me. []

I just told the doctor I always feel that someone was following me and - and monitoring or watching me.

[88] The family physician, psychiatrist, or psychologist that treated Ms. Huang in France did not testify. Ms. Huang agreed in cross-examination that while she reduced her sleep medication dosage in Canada, her sleep is now worse in France because of her fears. She said she is taking sleeping pills everyday.

[89] Ms. Huang also agreed that while in France, her doctor changed her medication from the Wellbutrin she was taking in Canada to Risperidone.

Cost of Prescriptions and Treatments in France

[90] Ms. Huang provided the following estimates of her medical costs while in France. She stated that her medical prescriptions were "maybe around 50 euros" per month, but added that she "could not say for sure".

[91] When asked during her direct examination how much she paid to see a psychiatrist if she needed to get a prescription, Ms. Huang stated it would cost 70 Euros about every three months. When asked how much she paid to see her family doctor in France, Ms. Huang responded that she did not "have a clear recollection", but thought the cost was around 35 or 40 Euros. She added that she saw her doctor about ten times a year. In addition, she said she paid 80 Euros a session for her psychologist last year and saw her psychologist ten times.

[92] When asked what sort of treatment, if any, she intended to undertake in the future for her current condition, Ms. Huang responded:

A Well, that would include a family doctor. To see the psychiatrist. And counselling with the psychologist. Physiotherapy and many others. I cannot think of them now, but anyway, there would be a lot of treatment

[]

And also some treatment with advance technology.

Q What do you mean by that?

A That means some treatment may require some advanced technology and to see - to try them and see if the - my symptoms can be relieved in a short period of time. No, no, no, it's not. Because they require time. It needs a long time to - to treat.

Q Has any medical doctor recommended specific advanced technology for you?

A No, that's just my wild thinking so we can strike that out.

Q In the coming year, can you give an approximate amount in euro that you think you will actually pay for treatment related to your condition? All of it together. Not - strike out the advanced technology.

A For the following how long period of time?

Q Just one year. The next year.

A Next year, all kinds - next year, all kinds of treatment, several hundreds of thousands.

Q Several hundred thousand euro?

A Yes.

Q Okay, let me try it this way then. Do you have a rough idea -

[]

Q Do you have a rough idea how much you've spent on treatment in the last year?

A For the last several years?

Q No, just the last year.

A Several thousands or several tens of thousands. I don't have a clear recollection.

[93] Ms. Huang produced very few receipts concerning her medical treatment in France. As noted earlier, she did not produce any receipts relating to her treatment sessions with a psychologist. She produced one receipt apparently from a general practitioner, Catherine Decrock Rodriguez, for 23 Euros that is dated November 8, 2016, although the receipt does not specify what service or product was provided.

[94] A handful of prescription receipts from France were also tendered at trial:

- November 1, 2016: Zyban for 89 Euros;
- November 9, 2016: An illegible receipt for 4.38 Euros;
- July 11, 2019: Risperidone and Zopiclone for 34.11 Euros;
- October 17, 2019: Risperidone and Zopiclone for 28.81 Euros;
- February 14, 2020: Risperidone and Zopiclone for 29.14 Euros;
- June 17, 2020: Risperidone and Zopiclone for 30.90 Euros.

[95] Ms. Huang testified that she has not been to any physiotherapy treatments in the last year, although she intends to go to physiotherapy in the future. The evidence does not establish that Ms. Huang had gone to physiotherapy after moving to France. Ms. Huang testified that physiotherapy treatment would cost "more than a 100" Euros per session.

[96] Later in her testimony, Ms. Huang stated that she wanted to "make a correction to her previous testimony about the cost of her medical care while in France. She testified:

A [] But I want to make a correction for the cost, the number for the cost of my medical treatment. I want to make a correction. It was not very correct.

Well, because of the delusion of being persecuted, I hate Communist Party, when that topic was mentioned, my mind was not running properly, it was not doing well and I lost control so the lawyer asked me about the treatment cost, how much money required for the treatment. And then I was asked - I was asked about how much money I spent for a year, last year and each year. It was around 10,000 euro for purchasing the medicines and also to see doctors.

Q Ten thousand euro over what period of time?

A A year.

Q Last year?

A Yes, last year.

Q Do you have any other receipts other than what we've gone through today?

A Well, the receipts I paid out of my own pocket but I already paid them but I haven't asked them for receipts.

- [97] Ms. Huang's daughter, Ms. Wu, testified. She also did so remotely by video-link at trial, with the assistance of an interpreter.
- [98] Ms. Wu is now 25 years old. She currently lives in Paris with her mother. She works full-time, drawing fashion designs and "purchasing materials"; she describes herself as a "freelancer". She works Monday through Saturday and earns about 1800 euros a month after taxes. She testified that speaks Mandarin, English, and French.
- [99] Ms. Wu corroborated her mother's testimony about her mother being "afraid and unhappy" while living in China because her father "drank alcohol". She agreed on cross-examination that her mother was depressed before leaving for Canada. She testified that the reasons for coming to Canada were to learn English and for her mother to leave her father. Ms. Wu described the move from China to Canada as quite sudden and that it "felt unusual". She had to learn English from scratch.
- [100] Ms. Wu testified about the period after they moved to Canada and before the Accident. She described her mother as "stable". She also described her as "retired" and "very healthy" and stated that her mother enjoyed outdoor activities, hiking, and shopping. She recalled that her mother made Chinese friends in Canada.
- [101] Ms. Wu confirmed that neither she nor her mother worked while in Canada and that her mother has not worked while in France.
- [102] Ms. Wu testified that her mother did the cooking and cleaning before the Accident, although sometimes she would help out on the weekends.
- [103] After the Accident, Ms. Wu saw her mother had a "big scratch" on her leg and also on her back. She stated that her mother's leg injury was "her most serious injury". She added that she remembers that "there were some red marks" on her mother's back, but "that's all I remember. I don't remember anything else".
- [104] Ms. Wu stated that after the Accident, her mother:
always stayed in her bed and did not really come out to do cooking or housework usually. Mostly it was me who did those things.
- [105] Ms. Wu described her Mother's mood as "very low, sometimes very unsure" after the Accident.
- [106] Ms. Wu recalled her mother went to the physiotherapy, counselling, and took medications after the Accident.

- [107] Ms. Wu confirmed that she moved to France with her mother in 2016 and completed a "Bachelor of fashion design" which took about three years. When it was put to her that her mother supported her financially, Ms. Wu responded that that it was "mostly" her maternal grandmother and grandfather and sometimes her father, but not often. She acknowledged that she did not pay her rent or her tuition. Her tuition was approximately 10,000 Euros a year and her rent is currently 1667.96 Euros a month.
- [108] When asked what she did currently to help her mother, Ms. Wu responded that she helps her with massage three or four times a week and takes her to see a psychologist. Ms. Wu testified that she also cooks and cleans.
- [109] Ms. Wu testified that, while in France her mother is "not wanting to talk, staying at home a lot, reluctant to go out". She confirmed that her mother has delusional beliefs now about the communist party and outer-space, but did not have delusional beliefs in Canada.

Expert Evidence

Evidence of Dr. Wei Li

- [110] Dr. Wei Li was Ms. Huang's family doctor in Canada. She is clearly able to give lay evidence regarding her treatment of Ms. Huang. She was also tendered "as an expert in the field of family medicine capable of giving opinion evidence on the diagnosis, treatment, causation, and prognosis of musculoskeletal injury following trauma, and depression or anxiety".
- [111] After cross-examination on Dr. Li's qualifications and submissions from both parties, counsel agreed that Dr. Li could testify as a family doctor capable of giving opinion evidence on the causation, diagnosis, treatment, and prognosis of musculoskeletal injury, as well as depression and anxiety. Having considered Dr. Li's credentials and experience as a family doctor, along with the parties' submissions and the applicable case law, I qualified Dr. Li as a family practitioner capable of giving opinions as on the topics as agreed by the parties.
- [112] Counsel agreed that Dr. Li was qualified as a family doctor who, in that capacity, has experience and expertise in treating patients with anxiety and depression, and that would include diagnosis, treatment, and prognosis. Counsel further agreed that if there was concerns about the weight to be given to Dr. Li's evidence, that would be addressed in closing submissions.
- [113] Dr. Li agreed that she was not a specialist in psychiatry, although she has expertise as a family physician having practiced as such for about 16 years. In the course of her practice, she regularly diagnoses and treats depression. She explained that that about 20% of her patients suffer from depression and that not all of her depressed patients are necessarily referred to psychiatrists.

- [114] Dr. Li's undated report began by providing some history of Ms. Huang's injuries after the Accident. Ms. Huang first came to see her on December 23, 2013, the day after the Accident. She complained of neck pain and left leg pain, and felt nervous and sad "with poor sleep". She also stated that Ms. Huang reported that she felt like "crying for no reason". Ms. Huang reported no history of depression to Dr. Li.
- [115] On examination, at the December 23, 2013 visit, Dr. Li found Ms. Huang's left leg "had a superficial scratch", her "neck range of motion was normal", and her cervical spine and bilateral muscles on palpation showed no tenderness. Dr. Li diagnosed Ms. Huang with depressed mood and neck sprain. She prescribed amitriptyline 25 mg nightly for her poor sleep and physiotherapy for her neck sprain.
- [116] Ms. Huang was seen by Dr. Li at subsequent clinical visits on January 6, 2014, February 27, 2014, April 23, 2014, May 21, 2014, July 3, 2014, November 10, 2014, February 10, 2015, April 26, 2015, June 3, 2015, and May 10, 2016.
- [117] The following description of these visits are taken from Dr. Li's undated expert report. A careful review of her expert report coupled with her evidence shows that Ms. Huang's physical and psychological symptoms improved significantly by the Spring of 2015.
- [118] On January 6, 2014, Ms. Huang complained of headache, numbness on her scalp and "that her right side was worse". She also reported blurred vision occasionally. Her sleep had improved with medication. She had her first physiotherapy session and reported her neck pain had improved. She reported that she "still felt tired and sad after the MVA". She also had suicidal ideas. Dr. Li diagnosed her with major depression and anxiety and prescribed Cipralext for three months, in addition to Amitriptyline each night.
- [119] On February 27, 2014, Dr. Li reports that Ms. Huang complained her depressed mood was not better with the medication. She expressed, "wish of dying, but not plan for suicide". Dr. Li changed Ms. Huang's medication from Cipralext to Wellbutrin and referred her to Burnaby mental health for a psychiatrist consult where she was assessed by Dr. Waraich.
- [120] On April 23, 2014, Ms. Huang advised that: her depression was not better, she did not want to go out such as her to physiotherapy appointments, and she had developed upper back pain. Dr. Li states that she realized during that visit that Ms. Huang's major depression had not been controlled by her treatment regimen and hoped a psychiatrist would be able to help manage her symptoms.
- [121] On May 21, 2014, Ms. Huang reported that: 1) her depressed mood had slightly improved, but that she still felt depressed; 2) her neck pain had improved from physiotherapy, but was still present; and 3) she had developed back pain. On examination, Dr. Li found tenderness at the cervical, thoracic and lumbar spine, and bilateral muscles, although she had a normal range of motion "of cervical and lumbar spines". Dr. Li reports that at that visit she also diagnosed Ms. Huang with major depression with general anxiety disorder. Dr. Li adds that she also diagnosed Ms. Huang with "neck sprain and upper and lower back

mechanical". She prescribed physiotherapy for her neck and back symptoms and continued her prescription for Wellbutrin and Amitriptyline

- [122] On July 3, 2014, Dr. Li saw Ms. Huang to "follow up on her MVA". Ms. Huang reported that her mood had improved dramatically. She also reported feeling "sleepy all the time" and Dr. Li prescribed more counselling.
- [123] On September 21, 2014, Ms. Huang reported that she was unable to control her temper, and felt nervous and confused when talking to friends. She reported that she still had lower back pain and neck pain.
- [124] On November 10, 2014, Ms. Huang reported that her depressed mood had improved with counseling and medications. Dr. Li testified that she "prescribed continuous counseling and medications for [Ms. Huang's] major depression".
- [125] Dr. Li stated that on February 10, 2015, Ms. Huang reported that she still had a low mood sometimes, but that her mood had improved 60 to 70%; and that she had started to take English lessons and was exercising on weekends. Dr. Li also noted that Ms. Huang's "function had improved". Dr. Li prescribed exercises in all ranges and Wellbutrin and Amitriptyline for a three-month period.
- [126] On April 27, 2015, Dr. Li reports that Ms. Huang was discharged from her physiotherapy and started doing exercises on her own. At the clinical visit with Dr. Li, Ms. Huang reported that physical exercises "helped her sleeping" and she started to reduce her sleeping pill gradually.
- [127] On June 3, 2015, Dr. Li reported that Ms. Huang's "mood was improved and she started to cut down her Wellbutrin gradually, although she still needed amitriptyline for her poor sleeping which was "on and off" and she prescribed a low dose of Wellbutrin for a period of four weeks.
- [128] At the last clinical visit with Dr. Li on May 10, 2016, which Dr. Li again describes as a "follow up for her MVA," Ms. Huang reported that she would leave the country soon and that she still felt pain on the right side of her head, and on the right side of her neck and mid-back when she was doing house work and carrying weights. Ms. Huang reported that she "still suffered poor sleep sometimes" and needed sleeping pills. Ms. Huang reported that her depressed mood was not totally better. She felt tired and cried without reasons. She denied suicidal ideas.
- [129] Dr. Li physically examined Ms. Huang at this final clinical visit. On examination, Dr. Li found that Ms. Huang's neck and low back range of motion was normal. She had tenderness on palpation at the cervical and thoracic area by the shoulder to rib cage. No medications were prescribed for Ms. Huang's physical or mental conditions.
- [130] Dr. Li concluded her report as follows:

In summary, Ms. Huang suffered severe mood disorder which presented with depressed mood and anxiety due to MVA. She reported no history of depression prior to MVA. She suffered neck and lower back pain caused by soft tissue inflammation after MVA. The diagnosis of her MVA related symptoms are major depression and anxiety disorder, chronic and recurrent neck sprain and lower back pain, mechanical [...]

[131] Dr. Li opined that that Ms. Huang's depressive symptoms were chronic, recurrent, and resistant to medication treatments, but that she had a good response to psychological counselling.

[132] Dr. Li also opined that her recurrent neck sprain and lower back pain was treated with physiotherapy and physical exercises and that Ms. Huang reported the "effectiveness of these treatments". Dr. Li added that Ms. Huang's pain "severely affected her life quality and abilities to take care of her teenage daughter". She opined that the prognosis for Ms. Huang's major depression, neck, and lower back pain was guarded:

Her symptoms of depression, neck and back pain may recur with any triggering factors, such as stress or physical exertion or lack of exercise.

[133] Dr. Li explained that the chronic nature or "on and off" nature of Ms. Huang's neck and back pain indicates that the pain might come back.

[134] On cross-examination, Dr. Li confirmed that on her last visit with Ms. Huang on May 10, 2016, she did not prescribe any medication for depression because she found Ms. Huang's symptoms were "mild".

[135] Dr. Li acknowledged that there was almost a year between Ms. Huang's last two clinical visits with her on June 3, 2015 and May 10, 2016. Dr. Li was taken to a letter she received from Ms. Huang's legal counsel, dated April 26, 2016, asking that she prepare a medical legal report and requesting that she address various topics including whether Ms. Huang had "[a]ny long terms complications or vocational restrictions as a result of her condition". Dr. Li acknowledged this topic was not addressed in her report and stated:

Q. Okay. And you'd acknowledge that, in your report, there's no mention of any sort of restrictions or vocational restrictions in your medical legal report?

A Correct. I still don't - don't believe she needs to be restricted.

[136] Dr. Li also acknowledged that there were a number of clinical visits in 2014 and 2015 before her last one with Ms. Huang where Ms. Huang did not mention neck or back pain.

[137] On cross-examination, Dr. Li confirmed that Ms. Huang had not advised her of her history of depression in China.

Evidence of Dr. Hiram Mok

[138] Dr. Hiram Mok, a psychiatrist, was tendered as an expert witness in psychiatry by counsel for Ms. Huang.

[139] Dr. Mok was qualified, without objection, as an expert in psychiatry capable of "giving opinions of the effects of trauma in car accidents on mental health".

[140] Dr. Mok speaks English and Mandarin fluently. He agreed that because he can speak Mandarin, there was no issue communicating with Ms. Huang.

[141] He assessed Ms. Huang on June 22, 2016. He issued his expert report on that same date. He opined as follows:

It is my impression that [Ms. Huang] sustained Somatic Symptom Disorder, with predominant pain, persistent current severity = moderate, and Major Depressive Disorder, chronic, with anxious distress, current severity = severe, as a direct result of her motor vehicle accident on December 22, 2013. There were no pre-existing emotional difficulties that predated the said motor vehicle accident.

[142] At the conclusion of his report, Dr. Mok recommended that Ms. Huang should:

- 1) be restarted on Wellbutrin XL, 150 mm, or switch over to Cymbalta (duloxetine); and
- 2) be referred to concurrent psychotherapy for another set of cognitive behavioural therapy for depression, anxiety and pain management. He opines that with such treatment he "would expect her to make further gains in terms of symptom reduction and improvement of quality of life", although "her final prognosis would be much dependent on her Somatic Symptom (chronic pain) disorder".

[143] During his cross-examination, Dr. Mok confirmed that he did not know when he rendered his opinion that Ms. Huang suffered from depression before she came to Canada. He at first testified that he did not ask, and she did not tell him of her history of depression in China. He then stated that he thought he did ask her if she had a history of depression but Ms. Huang did not tell him she did. He agreed that because he spoke Mandarin, there was no issue communicating with Ms. Huang.

[144] Dr. Mok agreed that when he interviewed Ms. Huang, they discussed her history but she denied a history of physical, sexual, or emotional abuse. He testified that Ms. Huang did not share that her ex-husband was an alcoholic or that she received threats from him while they were living in China. Dr. Mok testified that Ms. Huang advised him that she separated from her husband due to incompatibility. He stated, she "alluded to the fact that her husband wasn't nice to her" and that "the marriage was a tough one".

[145] As regards the years that have passed since he rendered his psychiatric opinion in 2016, Dr. Mok acknowledged that "a lot can change in 6.5 years" in relation to a person's mental health. He acknowledged that such change could alter his opinion. Nevertheless, Dr. Mok stated during his re-examination that he would not change his opinion.

- [146] Dr. Mok agreed on cross-examination that he had not seen or spoken to Ms. Huang since June 22, 2016. When asked what medical documentation he had seen relating to Ms. Huang's treatment after June 2016, Dr. Mok stated that he could not recall. He did recall reading Dr. Okorie's medical opinion dated October 13, 2022.
- [147] Dr. Mok agreed that in the portion of his expert report that lists the medical records which he reviewed in formulating his opinion, he does not refer to the consultation report of Dr. Waraich, dated May 13, 2014. Dr. Mok did not recall seeing this consultation report, noting it was a long time ago and that he "could not be sure" if he saw it. Dr. Mok was then taken to a portion of his own expert report that states:
- In terms of psychological and psychiatric treatment she has only seen clinical psychologist, Dr. John Du, at the Rainbow Psychological Services following the motor vehicle accident of December 22nd, 2013.
- [148] He agreed that Dr. Waraich's consultation report was dated before Dr. Du's report of July 16, 2015. He agreed that when he was forming his opinion, he had not seen Dr. Waraich's May 13, 2014 consultation report.
- [149] Dr. Mok was taken to the portion of Dr. Waraich's psychiatric consultation report which stated that Ms. Huang "screens positive for personality disorder symptoms on the SAPAS, scoring 5/8". Dr. Mok confirmed that SAPAS is an acronym for Standardized Assessment of Personality Abbreviated Scale. Dr. Mok acknowledged that he did not do any psychometric testing for personality disorders. In his opinion, he was "pretty sure this is not something that is done in usual medical practice, not just IMEs", stating that personality screening is what psychologists do.
- [150] Dr. Mok also would not have been aware at the time of rendering his opinion that Dr. Waraich's consultation report states that Ms. Huang "reported severe depressive symptoms that are somewhat out of keeping with her affect presentation during the interview, which was done with a translator".
- [151] In his expert report and during his cross-examination, Dr. Mok opined that at the time of his assessment of Ms. Huang, he found no evidence of delusional beliefs.
- [152] Dr. Mok stated in his report that there was subjective and clinical documentation to indicate that Ms. Huang had responded well in the treatment of depressive disorder to a combination of individual psychotherapy and antidepressant treatment. He added, however, that more recently, Ms. Huang was partially compliant in taking Wellbutrin, an anti-depressant medication, "because of fear of further weight gain, which is usually not the case for this particular recommendation". He was of the view that Ms. Huang's partial compliance with taking anti-depressant medication and stopping psychotherapy resulted in her mood deteriorating by the time he saw her in June 2016. However, Dr. Mok agreed that there was a period of time when she completed her treatment with Dr. Du in 2015 where she was doing better; her mood had improved.

[153] Dr. Mok also agreed that he was not qualified to opine on chronic pain. He agreed that treating physical pain was not his area of expertise.

Evidence of Dr. Eugene Okorie

[154] Dr. Okorie is a psychiatrist. He was qualified, without objection, as an expert in the field of psychiatry, with expertise providing diagnosis, prognosis, and treatment of mental health diseases and disorders.

[155] Dr. Okorie assessed Ms. Huang by remote video-link on August 2, 2022. He issued his report on October 13, 2022.

[156] In forming his opinion, Dr. Okorie reviewed a number of medical documents and clinical records including:

- 1) the consultation report of Dr. Waraich--whose psychiatric assessment was referred to during the cross-examination of Dr. Mok;
- 2) a progress report, dated June 2015, by Dr. John Du who was the psychologist that treated Ms. Huang from August 7, 2014 to June 7, 2015; and
- 3) the medical legal report of Dr. Mok, dated: June 22, 2016.

[157] Dr. Okorie noted Dr. Waraich's report of May 2014. In that report, Dr. Waraich found that Ms. Huang's symptoms were "diagnostic of depression", and "positive for personality disorder, NOS on screening". Dr. Okorie noted that Dr. Waraich referred Ms. Huang to counselling and recommended that she switch from Wellbutrin and Amitriptyline medications to either Zoloft or Effexor.

[158] In his expert report, Dr. Okorie also took note of Dr. Du's progress report dated June 16, 2015, in which Dr. Du stated that Ms. Huang sustained an adjustment disorder with mixed depressed mood and anxiety from the Accident, and that by May 2015, her mood had significantly improved, such that the counseling stopped at that time.

[159] Dr. Okorie considered Dr. Mok's expert report in his expert report, which I summarized earlier in these Reasons. Dr. Okorie noted Dr. Mok's assessment that Ms. Huang responded well to Wellbutrin and psychotherapy was based on her self-reports and medical records.

[160] Dr. Okorie noted that Ms. Huang's psychiatrist in France signed a prescription dated September 1, 2020 for Risperidone 4mgs and Zopiclone 7.5 mgs.

[161] Dr. Okorie opined that the "relationship between headache/pain and emotional distress is often seen in clinical practice". He explained that pain triggers emotional distress which "causes muscle tension that manifests in pain/headache which thereby creates a self-perpetuating vicious cycle". Dr. Okorie also opined that improvements in Ms. Huang's pain "would benefit her emotional distress and vice versa".

[162] Dr. Okorie opined further as follows:

Ms. Huang's history and medical show that she developed depression with anxious distress after the subject MVA which responded well to the combination of Wellbutrin and therapy. By May 2015, she had started exercising, taking ESL course, and considering volunteering, and felt that she had learned coping skills to manage her residual pain related mood fluctuations and mild anxiety.

[163] In cross-examination, Dr. Okorie also clarified:

A Remember I said, you know, everything that I saw was that her depression remitted in 2015

Q So - so again, we're talking about the difference between improved and remitted?

A Yes. Yes.

Q Okay. So - so when you read that paragraph and you say, "her mood was improved", you would - you would have said her mood - her depression had remitted?

A No. It's - it's when I take everything together, you know, I took what Dr. Wei Li wrote, I took what Dr. Du wrote, and to me that meant remission. Remember, remission does not mean absence of symptoms. So for neurotic problems like depression and anxiety, you and I feel it all the time. It is only when you can't manage it and it is causing you distress or impairment of function that we begin to call disorder, so there's nothing that I have seen - or that I saw in the reports or records that did not suggest that her - her depression remitted in 2015.

[164] Dr. Okorie disagreed with Dr. Mok's diagnosis of Somatic Symptom Disorder. He opines that Dr. Mok incorrectly equates the presence of chronic pain to somatic disorder:

Chronic pain is a medical condition not a psychiatric condition. Somatic symptom disorder, with predominant pain requires persistent and excessive preoccupation about the seriousness of pain, persistently high anxiety about pain, or devotion of excessive time and energy to pain for its diagnosis.

Neither Dr. Mok's report nor Ms. Huang's medical records show that she ever satisfied criteria for somatic symptom disorder since the subject MVA.

[165] Dr. Okorie acknowledged that during his assessment in August 2022, Ms. Huang reported persistent depressed mood, anxiety, nervousness, insecurity, and poor memory and concentration in the context of financial stress, among other symptoms. Ms. Huang also reported concerns about an uncertain future, loneliness, anhedonia, fatigue, low motivation, social isolation, and ongoing pain and headaches. However, Dr. Okorie opined that these symptoms do not satisfy the diagnostic criteria for somatic symptom disorder. He concludes:

In my opinion, Ms. Huang's diagnosis is major depressive disorder with anxious distress, recurrent, current episode, moderate severity.

[166] Dr. Okorie addresses Ms. Huang's depressive episodes in China and subsequently.

By self-report, Ms. Huang's first episode of depression occurred in China and in the context of spousal abuse. She had other episodes notably the episode caused by the subject MVA which had remitted by May 2015 according to Dr. Du's report, and the 2016 episode caused by poor treatment compliance according to Dr. Mok's report.

Although Ms. Huang suggested that her current depressive episode extended from her 2016 episode, it seemed that her psychiatrist, Dr. Lou, views depression to be less of an issue in 2020. Instead, her treatment (Risperidone 4 mgs and Zopiclone 7.5mgs) has focused on the new MVA-unrelated diagnosis of persistent delusional disorder characterized by delusions associated with fears that disrupt her sleep.

[167] Dr. Okorie explained that Ms. Huang's case exemplifies how depression is a recurrent or episodic disorder for most people:

She [Ms. Huang] has had depressive episodes before and after the subject MVA. Relapses into depression may or not be associated with identifiable stressors. As her persistent post- MVA pain complaints have not always been associated with depression, it is not logical to blame her current depressive episode wholly on the MVA-related pain.

Although headache and back which she relates to the accident may contribute to her current depression, other factors including her persistent delusional disorder, high dose risperidone, social hardship, social isolation, loneliness, and an uncertain future also have causative roles in her current depressive episode.

[168] Of significance, when pressed on the witness stand, Dr. Okorie stated that the depressive episode Ms. Huang was experiencing when he interviewed her in 2022 was not a result of the Accident in 2013.

[169] During his cross-examination, Mr. Okorie agreed that Ms. Huang had chronic pain, but explained that it was not at the level of Somatic Symptom Disorder. As regards Ms. Huang's depression, he stated:

[] chronic pain is a recognized risk factor, so if somebody's in chronic pain, it wouldn't - it wouldn't be right for me to say, oh, it has nothing to do with your chronic pain, so that's why I said that. It wouldn't be the only cause.

[170] Notably, he also stated in his expert report that he would not opine on the nature, causes, effect, treatments and prognoses for Ms. Huang's back complaints and headaches. This is understandable given his specialized expertise in psychiatry.

[171] Dr. Okorie was of the view that by the time Ms. Huang came to Canada, her depression was in remission. He testified:

[] So I was saying that depression can spontaneously remit without any formal treatment. So the episode that started in China was in the context of spousal violence. When she came to Canada, she said that it remitted without any treatment. Then the accident happened and she developed another episode of depression following the accident, which I blame the accident for. And for that episode of depression, she received antidepressants and psychotherapy, and according to Dr. Du's records, by May of 2015 that episode of depression had remitted.

[172] Dr. Okorie testified that even Dr. Mok noted that Ms. Huang's depressive symptoms had improved when he saw her in June 2016. He opined that the depressive episode arising from the Accident had remitted before she saw Dr. Mok.

[173] Dr. Okorie explained remission as follows:

So remitted means that you no longer have symptoms that are clinically relevant. So we don't typically use resolved simply because of what I explained, because it comes in episodes.

[174] As regards Ms. Huang's situation, Dr. Okorie elaborates:

So when you look at Dr. Du, he is saying that this woman's depressed mood has improved, she has returned to activities, and she has the capacity to cope with fluctuations in her mood due to pain. That is not clinical depression, in my view. It doesn't matter whether you said it was remitted or you - you didn't say that. In my mind, when your symptoms are not distressing, you can cope with them, and you are - you are now doing things that you didn't do before, it's - it's remission for me.

[175] Dr. Okorie explained that even after a depressive episode goes into remission, it is important to keep a patient on anti-depressant medication for at least another year before being weened off:

So when we treat you for depression and you attain remission, we will ask you to stay on your medication for at least another year before it can be slowly weaned off, and the reason for that is that a natural cycle of depression is about a year, so we want to make sure that you are still taking your medications until you're well out of that cycle before we can slowly wean it off. When we can. Sometimes we cannot and you may have to remain on your medication.

[176] Dr. Okorie opined that depression can spontaneously remit without medication, although "you are more likely to get better quicker and sooner if one takes medication". He opined that the natural cycle of depression is about a year in length.

[177] Notably, by the time of Ms. Huang's last visit with Dr. Li, Ms. Huang had been weened off of depression medication. Dr. Li did not prescribe her Wellbutrin in May 2016.

[178] Dr. Okorie testified that he could not say when Ms. Huang's depressive episode that he had diagnosed in 2022 first started.

Credibility and Reliability

- [179] The factors contributing to an assessment of credibility and reliability were aptly summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* in 2012 BCCA 296:
- [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. [354] (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).
- [180] In reviewing Ms. Huang's testimony at trial and the excerpts presented from her examination for discovery, I was mindful that English is not Ms. Huang's first language and that she testified through an interpreter.
- [181] Having carefully reviewed the evidence as whole in this light, I nonetheless have significant concerns about the reliability of Ms. Huang's testimony relating to the scope, severity and duration of her symptoms, as well as her evidence regarding her future work plans and work capacity. These concerns inform both the quantum of her non-pecuniary damages and the reliability of the expert opinions that relied on Ms. Huang self-reports.
- [182] There are a number of inconsistencies between Ms. Huang's evidence at trial and her sworn evidence at her examinations for discoveries, as well as inconsistencies between her evidence and that of other witnesses. These inconsistencies compromise the persuasive value of her evidence.
- [183] Examples of Ms. Huang's inconsistent or unpersuasive evidence include:
- 1) With respect to the severity of Ms. Huang's physical injuries stemming from the Accident, she claimed to have an "open wound" on her leg that was swollen and bruised. This was inconsistent with Dr. Li's clinical note which described the injury as a scratch. Upon cross-examination, Ms. Huang attempted to modify her description of the injury as, "a deep scratch". Furthermore, Ms. Huang has described her leg injury as something that "hasn't been repaired"; however, there is no medical evidence of any continuing impairment.

- 2) Ms. Huang testified that she was driven to the hospital by an unidentified woman on the day of the Accident and was not accepted for treatment because of her status as a landed immigrant. On cross-examination, she agreed that she did not go the hospital on the day of the Accident.
- 3) Ms. Huang's testimony of the circumstances surrounding the Accident is unclear at best regarding the question of whether she lost consciousness. I accept Mr. Beatch's recollection of events, which was clear, plausible, and essentially unshaken on cross-examination. Mr. Beatch testified that he stopped his car immediately after the Accident, opened his car door and made eye contact with Ms. Huang. He testified that she was talking to him, seemed fine and was walking normally. His evidence does not support the conclusion that Ms. Huang was knocked unconscious. While I have no doubt that she felt very shaken by the incident, her statement that she was knocked unconscious is less than persuasive.
- 4) Another example of Ms. Huang's testimony not being reliable or persuasive is her evidence about her last visit with Dr. Li. When it was put to Ms. Huang that her last clinical visit with Dr. Li was May 10, 2016, she initially agreed and then added that she came back to Canada and went to see her again at a later time. Counsel agreed that was not the case and so advised the Court. Dr. Li confirmed her last clinical visit with Ms. Huang was May 10, 2016.
- 5) With respect to the affect of the Accident on Ms. Huang's prospects of employment, she testified that she was advised by doctors that she could not work due to her physical pain and mental health. Yet, she could not remember their names. On cross examination, Dr. Li provided her expert opinion that Ms. Huang was not restricted vocationally as a result of her injuries. Neither Dr. Okorie's report nor Dr. Mok report contained any statements or recommendations that Ms. Huang would not be able to find employment due to injuries from the Accident.
- 6) Ms. Huang initially testified that while in Canada her walking/hikes after the Accident were restricted to her neighborhood. However, she also testified she took transit to go walking along the beach. While in France, she testified that she could not leave her home but then admitted going to the gym and to a public attraction.
- 7) Ms. Huang testified during direct examination that her physical symptoms improved "a little bit" as a result of physiotherapy and have continued to this day such that they are incapacitating and "severe". However, Ms. Huang also testified that her symptoms improved 50-60% before she went to France. Dr. Li testified to the "on and off" nature of Ms. Huang's physical injuries while in Canada, after the Accident. Mr. Huang also testified that her back pain and neck pain were "the same", and that they were "irregular symptoms". She added that "sometime out of the blue" the pain would start.

- [184] These are examples of some of the testimony that caused the Court considerable difficulty in accepting Ms. Huang's evidence as to the nature, severity and duration of her symptoms. I find that Ms. Huang tended to exaggerate and confabulate her injuries, and also that her memory of her symptoms was not wholly reliable.
- [185] This conclusion also requires that I proceed with caution in accepting the evidence of experts who necessarily relied on Ms. Huang's statements of fact to inform their opinion. For example, none but Dr. Okorie had been informed that she had a prior episode of depression while living in China: *Samuel v. Chrysler Credit Canada*, 2007 BCCA 431 at para. 44.
- [186] Of note, it has been acknowledged by counsel for Ms. Huang that the delusions that she experiences may affect the consistency of her testimony. I appreciate that psychiatric ailments in and of themselves do not justify a blanket determination of unreliability. In *Pickwell v. Rotter*, 2022 BCSC 18, Justice Grauer, as he then was, at para. 37 held: "[i]t does not necessarily follow that because the respondent's evidence is unreliable, her position is untenable". I have made no such conclusions. Nevertheless, respectfully weighing the evidence through this lens does not resolve the considerable inconsistencies and contradictions in the evidence.
- [187] Ultimately, Ms. Huang bears the legal burden of proving the nature, scope and duration of injuries arising from the Accident. I now address my findings in this regard in light of the evidence as a whole.

Nature and Scope of Ms. Huang's Injuries

- [188] The evidence in its entirety supports the conclusion that Ms. Huang suffered injuries to her neck and back as a result of the Accident, along with a superficial scratch on her left leg. The evidence also supports the conclusion that the Accident was a cause of Ms. Huang's headaches, an episode of clinical depression, related sleep disturbance, and anxiety for a time. However, I am unable to conclude that the severity and duration of her injuries arising from the Accident are as asserted by Ms. Huang and her counsel. Rather, based on the evidence as a whole, I find that the headaches, neck and back pain, anxiety, and depressive episode caused by the Accident had largely resolved by the Spring of 2015.
- [189] I find that after the spring of 2015, Ms. Huang's symptoms of neck and back pain were "irregular", and that they had largely improved with physiotherapy and exercise. I also accept her evidence that her neck and back pain "were the same", and that "out of the blue" she would get pain. I find that the frequency of her headaches has decreased and is less intense than they once were, as she testified at the 2022 discovery.

- [190] I accept the evidence of Dr. Li that Ms. Huang suffered a "superficial scratch" on her left leg as a result of the Accident and find that this injury likely resolved in matter of a few short weeks. The conclusion that it did not is speculative at best. Ms. Huang's evidence about the "wound" or "deep scratch" in her left leg that required "repair" is not persuasive.
- [191] By April 27, 2015, Ms. Huang was discharged from her physiotherapy treatments, had completed her psychological treatment with Dr. Du, was exercising on her own, was sleeping better, and was taking an ESL course. Further, she admitted on cross-examination that she reported feeling much better in the Spring of 2015.
- [192] As Ms. Huang herself acknowledged, I find that before moving to France her neck and back pain, as well as headaches, had reduced in frequency and intensity.
- [193] I also accept Dr. Li's evidence that Ms. Huang's sleep difficulties had significantly improved and she had also reduced her sleep medication in the Spring of 2015.
- [194] I accept that the Accident was a cause of a clinical episode of depression. I prefer the evidence of Dr. Okorie over that of Dr. Mok and Dr. Li in this regard. Dr. Okorie's clear and coherent opinion supports my conclusion that the episode of clinical depression suffered by Ms. Huang as a result of the Accident had remitted by the Spring of 2015. I find any other conclusion unsupportable on the evidence and rather speculative. Both Dr. Li and Dr. Mok rendered their opinions on the false premise that Ms. Huang did not have a history of depression. However, Dr. Okorie obtained and rendered a more fulsome clinical history and, further, he analyzed the record before him in a more comprehensive manner. I found his evidence compelling and most aligned with the evidence before me as a whole. I am unable to conclude that the Accident was a direct cause of the depressive symptoms experienced by Ms. Huang while living in France.
- [195] I am satisfied that the Accident affected Ms. Huang's capacity to do housework for a time. However, as discussed above, I have concluded that by the Spring of 2015, her Accident related injuries were largely resolved such that she was able to cook and clean, although I also find that her ability to do housework is likely to be impaired in the future by flare-ups of neck or back pain from time to time. This has been considered in assessing Ms. Huang's non-pecuniary damages.
- [196] I accept that Ms. Huang's injuries limited her recreational activities until the Spring of 2015.

Causation

- [197] In *Clements v. Clements*, 2012 SCC 32 at paras. 7 to 13, the Supreme Court of Canada reaffirmed the "but for" test for factual causation in negligence. That is, the plaintiff must demonstrate, on the balance of probabilities, that "but for" the defendant's negligence, they would not have suffered their injuries. The defendant's negligence need not be the only cause of the plaintiff's injuries; it need only be a cause of the injuries sustained: *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 (S.C.C.) ; *Blackwater v. Plint*, 2005 SCC 58 at

para. 78.

[198] Tortfeasors must take their victims as they find them, even in circumstances where the plaintiff's injuries are more severe than they would be for a normal person (i.e., the "thin skull" rule). However, the defendant is not obliged to put the plaintiff in a better position than they were prior to the Accident. The following passage from *Athey* is instructive:

[35] [] The defendant need not put the plaintiff in a position better than his or her original position. The defendant is liable for the injuries caused, even if they are extreme, but need not compensate the plaintiff for any debilitating effects of the pre-existing condition which the plaintiff would have experienced anyway. The defendant is liable for the additional damage but not the pre-existing damage [citations removed]. Likewise, if there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award [citations removed]. This is consistent with the general rule that the plaintiff must be returned to the position he would have been in, with all of its attendant risks and shortcomings, and not a better position.

[Emphasis added.]

[199] In sum, tortfeasors are only liable for injuries that are caused by their negligence.

[200] The evidence clearly established that Ms. Huang had a pre-existing history of depression. As noted earlier in these Reasons, Dr. Okorie opined that Ms. Huang experienced an episode of depression in China which had remitted by the time she immigrated to Canada. He also opined, however, that the Accident triggered a new episode of depression; although, as I discuss above, I have accepted his opinion that it had remitted by the Spring of 2015 before the move to France.

[201] The evidence before me does not establish a causal link between the Accident and the delusions that have manifested since Ms. Huang moved to France. Ms. Huang admitted on cross-examination that the delusions began while she was in France. Her daughter also confirmed this finding. Dr. Li's clinical notes and her report do not reference any delusions. Neither Dr. Mok nor Dr. Okorie attribute the delusions to the Accident. Dr. Mok's expert report expressly opines that at the time of his assessment in 2016, there was no evidence of delusional beliefs. Dr. Okorie states in his expert report that Ms. Huang was "quite reticent and guarded about her psychosis" such that he could not garner enough information during his interview to make his own independent diagnosis of a delusional disorder.

[202] The evidence before me falls far short of establishing that the Accident caused Ms. Huang to be vocationally disabled. I do not find Ms. Huang's evidence in this regard plausible or coherent. No expert opinion supports this conclusion and, moreover, the evidence as a whole does not support this conclusion.

Damages

[203] A key principle that underpins the proper assessment of damages is that, so far as is possible, the plaintiff must be restored to the position he, she, or they would have been in, absent the defendant's negligence. In properly assessing damages, the Court is mindful of considering both the pre-accident and post-accident circumstances of the plaintiff, as articulated in the following, often-cited passage in *Athey* at para. 32:

[] The essential purpose and most basic principle of tort law is that the plaintiff must be placed in the position he or she would have been in absent the defendant's negligence (the "original position"). However, the plaintiff is not to be placed in a position better than his or her original one. It is therefore necessary not only to determine the plaintiff's position after the tort but also to assess what the "original position" would have been. It is the difference between these positions, the "original position" and the "injured position", which is the plaintiff's loss []

[204] Accordingly, tortfeasors must take their victims as they find them. However, a defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced in any event and in the absence of the defendant's negligence: *Blackwater v. Plint*, 2005 SCC 58, [2005] 3 S.C.R. 3 at para. 78.

Non-pecuniary Damages

[205] Non-pecuniary damages are intended to compensate plaintiffs for their past and future pain, suffering, disability, and loss of enjoyment of life: *Javorovic v. Booth*, 2021 BCSC 336 at para. 54. In determining non-pecuniary damages, each case must be assessed based on the particular facts before the court: *Trites v. Penner*, 2010 BCSC 882 at paras.188-189. When making that assessment, the following factors delineated in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46 are key considerations:

[46] The inexhaustive list of common factors cited in *Boyd* that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life.

I would add the following factors, although they arguably are subsumed in the above list:

- (g) impairment of family, marital and social relationships;

- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff) [Citations omitted except *Giang v. Clayton*, 2005 BCCA 54].

[206] Further, as noted by our Court of Appeal in *Moskaleva v. Laurie*, 2009 BCCA 260, the amount of the non-pecuniary award should compensate for more than just direct injuries:

[95] The underlying purpose of non-pecuniary damages is to "make life more endurable" and should be seen as compensating for more than just a plaintiff's direct injuries [citations omitted]. In *Lindal*, at 637, Dickson J. for the Court emphasized that the quantum of an award is determined through a functional approach and should not necessarily correlate with the gravity of the injury:

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". 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".

[207] Accordingly, an appreciation of Ms. Huang's particular loss is key. Her award has been tailored to meet the specific circumstances of her individual case.

[208] Counsel for Ms. Huang advances non-pecuniary or general damages in the amount of \$200,000. He submits that the duration of Ms. Huang's injuries has lasted a decade, with a guarded prognosis. My findings of fact, as delineated above, do not support this conclusion.

[209] Counsel for Ms. Huang relies on the decisions in the following cases, suggesting a range of approximately \$ 150,000 to \$210,000 in non-pecuniary damages.

- a) *Senner v. GE Canada Leasing Services Co.*, 2017 BCSC 1939: involving an award of \$150,000 arising from Major Depression Disorder, PTSD, mild traumatic brain injury and chronic pain from a 2014 Accident. That case concerned a 60-year-old retired RCMP officer with a history of Major Depressive Disorder and PTSD, similarly, these were in remission at the time of the loss.

This case is distinguishable on the basis that Ms. Huang did not suffer from mild traumatic brain injury or PTSD. I have also found the episode of depression largely resolved by the Spring 2015.

- b) *Anssari v. Alborzpour*, 2019 BCSC 512 involving an award of \$175,000 for a 54-year-old plaintiff suffering from depression anxiety, PTSD, and minor soft tissue injuries since a 2014 accident.

Again, the facts are distinguishable in this case as discussed above.

- c) *Gill v. Stephens*, 2019 BCSC 798: involving an award of \$200,000 for a 49-year-old plaintiff who suffered soft tissue injury, depression and anxiety as a result of a car accident in 2015; notably, Mr. Gill suffered pain symptoms arising from spinal sprain/strain injuries including facet mediated pain and post-traumatic headaches. The court found that Mr. Gill continued to suffer from major depressive disorder with predominant anxious features arising from the accident which continued to the date of trial and were ongoing.

In contrast, I have found that Ms. Huang's episode of depression remitted within two years of the Accident and that her physical injuries had largely resolved, albeit with flare-ups from time to time.

- d) *Martin v. Steunenbergh*, [2021] B.C.J No. 1589 (S.C.): involving an award of \$210,000 for a 46-year-old firefighter, previously active, who suffered soft tissue injury, anxiety and depression. Of note, Justice Walker found the plaintiff not only led an active lifestyle but was also in top physical shape. The Court found he "intended to write his officer's exam and looked forward to the next stage of his career as an Acting Lieutenant, en route to what he hoped would be a full-time Lieutenant's position and ultimately a Captain's position before he retired at the mandatory age of 60". In 2020, Mr. Martin suffered a psychological breakdown and was not able to work at the time of trial. The Court concluded the injuries Mr. Martin sustained from the collision "turned his life upside down" and caused him to be "a shell of the person he once was". Mr. Martin was found to be "consumed with uncontrollable anxiety over the thought of losing his job as a firefighter with the VFD".

The case before me is clearly distinguishable in light of my findings of fact. I need not repeat them here.

[210] Counsel for the defendant submits that the proper range of non-pecuniary damages for Ms. Huang is between \$65,000 and \$75,000. They rely on the following cases:

- a) *Bunuan v. Serka*, 2020 BCSC 800: involving an award of \$70,000 to a 25 year-old who suffered injuries to her neck and back, and who also suffered from depression for two to three years following the accident.

This case is distinguishable in that the court in *Bunuan* found the plaintiff's physical symptoms were fully resolved three years after the accident.

That is not the situation in Ms. Huang's case. I have concluded that while her physical injuries are largely resolved, it is very likely she will have flare-ups in her symptoms from time to time.

- b) *Bhumrah v. McLeary*, 2021 BCSC 560: involving an award of \$80,000. Mr. Bhumrah was injured in a car accident approximately two-and-a-half years prior to trial. He suffered from chronic pain to his neck and shoulder blade. He also suffered chronic injuries to his hip and lower back although these were resolved at the time of trial. The plaintiff also suffered from depression as a result of the accident. The court found that the depression like his physical injuries had become chronic.

I find that the facts in *Bhumrah* are more aligned with the facts before me, although Ms. Huang's physical injuries, while largely resolved, are not entirely resolved.

- c) *Eaton v. Riddell*, 2020 BCSC 734: involving an award of \$75,000 to a 43-year-old plaintiff who suffered chronic pain to his upper back and neck, as well as psychological injuries that affected his ability to work, participate in recreational activities, do housework, and be involved with his children. He was also diagnosed with a major depressive disorder.

While I find that Ms. Huang retired and was not limited to work or pursue a career as a result of the Accident, I note that she also struggled with not being able to do housework or better care for her daughter in the months that followed the Accident. Following the Accident, and until she largely recovered from it, Ms. Huang was particularly vulnerable as a single mother in a foreign country with limited language skills and no family support. This interplay between her living situation as a single mother and her injuries, including the symptoms of depression, must be accounted for in assessing her damages. In my view, this warranted a higher award than in *Eaton*.

[211] In summary, I have examined each of the factors in *Stapley* and our Court of Appeal's functional analysis in *Moskaleva* in light of the circumstances before me, including my findings of fact relating to the nature and scope of Ms. Huang's injuries and her subsequent symptoms, as well as her degree of improvement and level of recovery as discussed earlier in these Reasons. Furthermore, I have considered the authorities relied upon by both parties, giving due consideration to what guidance they offer and their relative comparability to the facts before me, keeping in mind that the compensation awarded must be case specific and fair to both parties. I have considered the symptoms Ms. Huang has suffered or will likely suffer as a result of these injuries and how they have impaired her physical health, moods, sleep, anxiety, and recreational abilities. I have also provided an allowance for Ms. Huang's loss of capacity to perform housekeeping tasks as a result of her injuries: *McKee v. Hicks*, 2023 BCCA 109 at paras. 93-114; *Ker v. Sidhu*, 2023 BCCA 158 at 21-32; *Kim v. Lin*, 2018 BCCA 77 at para. 33; *Riley v. Ritsco*, 2018 BCCA 366 at para. 101.

[212] As I had discussed earlier in these Reasons, I did not find Ms. Huang's claim regarding the severity and duration of her symptoms to be entirely reliable or persuasive. Further, I am mindful that her self-reports, in turn, shaped the opinion of the experts to some degree. Nevertheless, the objective evidence of the experts, when coupled with Ms. Huang's evidence and that of her daughter have persuaded me that she sustained injuries in the Accident, which have impacted her personal and recreational life.

- [213] The evidence before me does not establish that Ms. Huang's injuries had affected her vocational life in any material way. She testified that she retired in 2010 and was not permitted to work in Canada. While I have considered, in assessing her non-pecuniary award, that she has and will most likely experience some infrequent headaches and neck and back symptoms from time to time, the evidence does not establish a real and substantial possibility that she will be incapacitated in the future as a result of her Accident-related injuries. Again, as discussed earlier in these Reasons, I have found that Ms. Huang's Accident-related injuries were largely resolved before she moved to France in the Spring of 2015.
- [214] In this light, considering the entirety of the evidentiary matrix, I conclude that a fair and reasonable assessment of Ms. Huang's non-pecuniary damages is \$90,000.

Mitigation

- [215] Counsel for the defendant assert that the plaintiff has an obligation to take all reasonable measures to reduce their damages, including undergoing treatment for her injuries: *Danicek v. Alexander Holburn Beauden & Lang*, 2010 BCSC 111 at para. 234. They submit that Ms. Huang's non-pecuniary damages should be reduced by 25% because Ms. Huang was only partially compliant in taking her anti-depressant medication as directed before moving to France. Alternatively, the defendant argues that Ms. Huang's non-pecuniary damages should be reduced by a percentage "at the Court's discretion".
- [216] Counsel for the defendant also refer to the decision in *Chiu (Guardian ad litem of) v. Chiu*, 2002 BCCA 618, acknowledging that the onus is on them to prove that Ms. Huang could have avoided all or a portion of her loss. They cite the following passage in *Chiu*, which sets out the applicable legal test:
- [57] The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably []
- [217] In assessing whether a plaintiff has failed to mitigate, the plaintiff is not held to a high standard of conduct; that is, where the Court finds that a plaintiff takes steps that a reasonable person would take to reduce the loss, a failure to mitigate will not be made out: *Middleton v. Morcke*, 2007 BCSC 804 at para. 37; *Alden v. Spooner et. al.*, 2002 BCCA 592 at paras. 23-24, leave to appeal ref'd, [2002] S.C.C.A. No. 535; *Rahimi v. Ma*, 2014 BCSC 710 at para. 41.

- [218] In *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 56, Garson J.A., writing for the Court, clarified that the legal test is part subjective and part objective, reasoning that the court is to consider "whether the reasonable patient, having all the information at hand that the plaintiff possessed, ought reasonably to have undergone the recommended treatment".
- [219] Dr. Mok opined that Ms. Huang was partially compliant with taking her Wellbutrin prescription after the Spring of 2015 because of her fear of further weight gain, although weight gain is not considered a side-effect of this medication. Dr. Mok was of the view that Ms. Huang's symptoms of depression before she left for France were linked with her not complying with the prescribed anti-depressant treatment. However, Dr. Li noted that Ms. Huang's symptoms of depression were mild at that time and she did not prescribe any anti-depressants (or pain medication for that matter) in the months before Ms. Huang left for France. Again, Dr. Okorie testified that Ms. Huang was in remission by the Spring of 2015. I have accepted his opinion in this regard.
- [220] I agree with counsel for Ms. Huang that Ms. Huang engaged in and benefited from all her "treatments and by the Spring of 2015 was improved such that Dr. Li decided to taper her antidepressant medication and stop it altogether by 2016, before the Plaintiff moved to France". In this light, I am not persuaded that Ms. Huang eschewed her recommended medical treatments for depression prior to the move to France. Accordingly, no discount of her non-pecuniary damage award is warranted.

Cost of Future Care

- [221] The principles and analytic framework that inform the assessment of future cost of care is well-established. In *Pang v. Nowakowski*, 2021 BCCA 478 at para. 56, the Court reasons:
- [56] The legal framework relevant to a future cost of care award is well-established. Recently in *Quigley*, this Court said:
- [43] The purpose of the award for costs of future care is to restore the injured party to the position she would have been in had the accident not occurred: *Andrews v. Grand & Toy Alberta Ltd.* (1978), 83 D.L.R. (3d) 452 (S.C.C.) at p. 462; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at para. 29. This is based on what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33, adopted in *Aberdeen v. Zanatta*, 2008 BCCA 420 at para. 41.
- [44] It is not necessary that a physician testify to the medical necessity of each item of care for which a claim is advanced. However, an award for future care must have medical justification and be reasonable: *Aberdeen* at para. 42; *Gao* at para. 69.
- [57] Several additional principles are relevant:

i) The court must be satisfied the plaintiff would, in fact, make use of the particular care item: *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 40 and 54; *Hans v. Volvo Trucks North America Inc.*, 2018 BCCA 410 at paras. 86-87.

ii) The court must be satisfied that the care item is one that was made necessary by the injury in question and that it is not an expense the plaintiff would, in any event, have incurred: *Shapiro v. Dailey*, 2012 BCCA 128 at paras. 54-55;

iii) The court must be satisfied that there is no significant overlap in the various care items being sought: *Johal v. Meyede*, 2015 BCSC 1070 at para. 9(f); *Brodeur v. Provincial Health Services Authority*, 2016 BCSC 968 at para. 356; *Myers v. Gallo*, 2017 BCSC 2291 at para. 231.

[58] Assessing damages for future care has an element of prediction and prophecy. It is not a precise accounting exercise; rather, it is an assessment: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21; *O'Connell v. Yung*, 2012 BCCA 57 at para. 55. Nevertheless, the award should reflect a reasonable expectation of what the injured person would require to put them in the position they would have been in but for the incident. This is an objective assessment based on the evidence and must be fair to both parties: *Shapiro* at para. 51; *Krangle* at paras. 21-22. Once the plaintiff establishes a real and substantial risk of future pecuniary loss, they must also prove the value of that loss: *Perren* at para. 32; *Rizzolo v. Brett*, 2010 BCCA 398 at para. 49. See also *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229 at 245-248, 1978 CanLII 1.

[222] Counsel for Ms. Huang submits that Ms. Huang still suffers from "Major Depressive Disorder, moderate severity, chronic pain, sleep disturbance as well as delusions, the cause of which is unknown". He acknowledges Ms. Huang's testimony that her treatment would involve "advanced therapies costing hundreds of thousands of dollars," but he submits her testimony in this regard should not form the basis for an award of future care.

[223] Counsel for Ms. Huang adds:

The cost of her treatment in Canada is a good benchmark for the cost of future treatment she might reasonably require and avail herself to in France, adjusted to inflation and negative contingencies arising from her delusions. Accordingly, the Plaintiff seeks \$10,000 in future treatment costs to be accessed in France.

[224] Counsel for the defendant submits that services that Ms. Huang has not used in the past may not properly be the subject of an award of cost of future care. They submit that she is unlikely to avail herself of such services in the future: *Sahota v. Ho*, 2013 BCSC 639 at para. 229. They acknowledge, however, that if the evidence shows that services previously rejected will become essential or required in the future, the plaintiff can recover such services: *Izony v. Weidlich*, 2006 BCSC 1315 at para. 74; *O'Connell v. Yung*, 2012 BCCA 57 at paras. 55, 60, 68-70. I accept these submissions.

- [225] There is no principled basis upon which I can award the cost of future care for the episode of depression and delusions Ms. Huang experienced while in France. In light of the evidentiary record before me, including the preferred and accepted evidence of Dr. Okorie, I am simply unable to conclude that there is a real and substantial possibility that the depressive episode while in France was caused by the Accident to any degree. Such a conclusion would, in my view, be speculative at best in light of the evidence as a whole.
- [226] However, I have found that Ms. Huang may suffer from infrequent neck and back pain from time to time. She has in the past sought physiotherapy treatment for these symptoms and I accept there is a substantial possibility she will do so in the future. The likelihood of her doing so would not be particularly high, however, given that Ms. Huang tendered no evidence of receiving physiotherapy treatment since she moved to France in 2016. It is a challenge to assess the quantum of the future cost of such service because very little evidence was tendered in this regard by Ms. Huang. Similarly, there is no evidence before me that Ms. Huang was ever prescribed medications for her headaches while in France. Nevertheless, while I have found that her headaches have decreased in duration and intensity, I accept she would likely incur the cost of purchasing over-the-counter medication for her headaches from time to time. With these findings in mind, and while very difficult to assess given the paucity of evidence on the cost of future care, my best assessment considering and is that an award of \$5000 is medically justified and reasonable, as well as a fair present value assessment.

Special Damages

- [227] The parties have agreed to special damages in the amount of \$4,805. Ms. Huang claims an additional amount of special damages in the amount \$345.30 which is in dispute. Counsel for Ms. Huang claims that this additional amount "[i]s the Canadian dollar amount of the doctor's visits and medication the plaintiff has receipts for in France". The defendant submits he should not pay for any expenses in France as they were solely related to the effect of the delusions experienced by Ms. Huang. Counsel point out that Ms. Huang incorrectly identified various receipts from France. For example, she stated that one receipt issued by Dr. Decrock-Rodrigues was from her psychiatrist, yet, the receipt indicates that Dr. Decrock-Rodrigues is a general practitioner. Furthermore, Ms. Huang testified that her psychiatrist in France was Dr. Luo Jing.
- [228] It is well established that a plaintiff is entitled to recover special damages relating to pre-trial expenses incurred as a result of injuries arising from the defendant's negligence, providing the decision to incur them was reasonable: *Trites v. Penner*, 2010 BCSC 882 at para. 240.
- [229] I have reviewed Ms. Huang's evidence regarding the medical expenses she incurred while in France, some of which is reproduced earlier in these Reasons. The evidence falls short of establishing, on a balance of possibilities, that these expenses were incurred to address Accident-related injuries. For example, while in France, Ms. Huang was treated for

delusional disorder and she admitted that the delusions caused sleeplessness; she was prescribed medications for both of these related conditions in France. Further, I have already found that the Accident was not a cause of the delusions..

[230] Accordingly, I award Ms. Huang the sum of \$4,805 in special damages.

Disposition

[231] Ms. Huang is entitled to the following damage award:

Non-pecuniary damages:

\$90,000

Cost of future care:

\$5,000

Special damages:

\$4,805

Total:

\$99,805

Costs

[232] Subject to any submissions, the parties may wish to make on the question of costs, and absent any circumstances of which I am unaware, Ms. Huang is entitled to her costs at Scale B.

"Morellato J."

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