

CANADA / JUDGMENT

Jasuja v. Monson

2026 BCSC 10

COURT

Supreme Court of British Columbia

DECIDED

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2026 BCSC 10 Jasuja v. Monson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jasuja v. Monson,

2026 BCSC 10

Date: 20260106

Docket: M178740

Registry: Vancouver

Between:

Meena Jasuja

Plaintiff

And

George Marvin Monson, H&R Transport Limited, Insurance Corporation

of British Columbia, John Doe/Jane Doe 1 and John Doe/Jane Doe 2

Defendants

And

Rekha Thapar

Third Party

Before: The Honourable Madam Justice Morellato

Reasons for Judgment

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H.S. Nirwan

R.K. Sandur

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Place and Dates of Trial:

Vancouver, B.C.

June 30, July 2-4 and

September 5, 2025

Place and Date of Judgment:

Vancouver, B.C.

January 6, 2026

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I. INTRODUCTION

- [1] This personal injury case arises from a motor vehicle accident that occurred on the evening of February 12, 2016 ("Accident"), while the Plaintiff, Ms. Meena Jasuja, was the front seat passenger in a 2006 Honda Civic ("Honda"). Ms. Jasuja claims that the Honda was sideswiped by a tractor-trailer truck ("Truck") driven by the Defendant, Mr. Monson, causing her injuries. The Honda was being driven by the Third Party, Ms. Rekha Thapar, at the time of the Accident, and was travelling eastbound on Highway 1 in Langley, British Columbia. Mr. Monson was driving the Truck as an employee of the Defendant, H&R Transport Limited ("H&R Transport").
- [2] This case deals only with the issue of liability. The question of damages has been severed and is not before me. The action against ICBC, John Doe/Jane Doe 1 and John Doe/Jane Doe 2 was discontinued on April 14, 2023.
- [3] Ms. Jasuja alleges that Mr. Monson was negligent and that he caused the Accident by driving without due care and attention and by failing to maintain proper control of the Truck. She submits H&R Transport, as Mr. Monson's employer, is vicariously liable for Mr. Monson's negligence.
- [4] Mr. Monson and H&R Transport do not dispute that Mr. Monson was operating the Truck and was travelling eastbound on Highway 1 on the night of the Accident. However, they deny any liability, submitting that the Accident did not take place as alleged by Ms. Jasuja, or Ms. Thapar, or at all.
- [5] Ms. Thapar denies liability for the Accident, submitting she was driving within the speed limit and within the confines of the right lane when her Honda was sideswiped by the Truck driven by Mr. Monson. As third party, she submits that she did not cause or contribute to the Accident and that the third-party claim against her ought to be dismissed.

II. BACKGROUND FACTS

- [6] Three parties testified on the issue of liability: Ms. Jasuja, Ms. Thapar, and Mr. Monson. In addition, the Plaintiff produced the expert report of Mr. Derek Wong, an engineer, who was qualified to provide an assessment of the circumstances of the Accident. Mr. Wong assessed the Accident on the hypothetical assumption that a collision occurred between the Honda and the Truck.

A. Evidence of the Plaintiff, Ms. Jasuja

- [7] Ms. Jasuja was born on July 4, 1972, making her 43 at the time of the Accident. She is a widow with two children. Her testimony was clear, cogent, and I found her to be a credible witness.
- [8] Ms. Jasuja testified she was a passenger in Ms. Thapar's Honda when the Accident occurred. Ms. Jasuja and Ms. Thapar were coworkers at the TD Bank since 2011 and became friends. On the night of the Accident, Ms. Jasuja recalled that Ms. Thapar worked until about 9 p.m. (in Abbotsford) while she was looking after her children. Ms. Thapar pick up her children after work at Ms. Jasuja's home and then immediately drove her children for an overnight sleepover. Ms. Jasuja testified she went along for the ride, they dropped off the children, and the Accident occurred when Ms. Thapar was driving Ms. Jasuja back home before Ms. Thapar drove home to her place in Mission. Ms. Jasuja thought the Accident occurred around 10:45 p.m., although she acknowledged she could not be "100% sure" of the time.
- [9] Ms. Jasuja recalled that, on the evening of February 12, 2016, they were travelling east on Highway 1 when she felt something hit the Honda and "we jolted forward". She testified that right after the impact she noticed a "big semi-truck" passing the Honda and she "got scared", adding that "it was not even one foot away" when it sped by them.
- [10] Ms. Jasuja testified that their Honda was still drivable and they were looking for a "shoulder to stop", so that they could exchange information with the driver of the Truck. However, the driver did not stop. Ms. Jasuja recalled that the driver of the Truck started driving "even faster" and started "zig zagging" from the "left lane, right lane, left lane, right lane" but she "managed" to take a picture of the truck on her iPhone "because it was not stopping".
- [11] Ms. Jasuja described how she "zoomed-in" with the camera on her iPhone and was able to take two photographs; one photograph depicts most of the numbers on the trailer of the Truck (i.e., 1237) and the company name (i.e., "H&R"); the other photograph was not as clear but clearly showed the "H&R" logo on the back of the trailer and some of the numbers on it. The photographs were introduced as exhibits at trial.
- [12] Ms. Jasuja testified that Ms. Thapar is "a very good driver" and, on the night of the Accident, Ms. Thapar "was driving fine". She confirmed on cross-examination that Ms. Thapar was not changing lanes when the Accident occurred.

- [13] Ms. Jasuja testified there was "very light traffic" on the night of the Accident. She confirmed that they were travelling in the right-hand lane when the Accident occurred and the Truck passed them. She estimates Ms. Thapar was travelling at "100 or a little less" and confirmed the speed limit was "100". The evidence does not establish that Ms. Thapar was speeding at the time of the Accident.
- [14] Ms. Jasuja confirmed that the Truck was going "faster than us" but could not say how much faster, noting that the Truck passed their Honda. Ms. Jasuja testified that after the Accident, they needed to speed up to take the photograph of the back of the Truck because the Truck had sped up and was not stopping. She assumed it was the front right tire of the Truck that hit Ms. Thapar's Honda but could not be sure. She did not see any damage to the Truck as it sped by.
- [15] Ms. Jasuja candidly acknowledged she did not see the "big semi-truck" hit the Honda because she was looking forward and the impact happened behind them, but she repeated that the Truck "was passing so close after hitting us" and "there was nothing else around us at that time, only the truck".
- [16] Ms. Jasuja explained when she arrived back at her home after the Accident, she and Ms. Thapar looked at the damage to the Honda and started making calls to report the Accident to the police. They made a police report the night of the Accident ("First Police Report") which states: "Date of Collision" as "16/02/12"; "Date Reported" as "16/02/12" and "Time (24 hour)" as "22:43". Ms. Thapar was identified in the Police Report as the driver of the Honda that was struck. However, the Police Report did not identify the name of the driver or the Truck that collided with Ms. Thapar's Honda. The driver of the truck who sideswiped them, and the particular H&R Transport truck he was driving had not yet been identified at that time, although both were eventually identified.
- [17] Ms. Jasuja was taken to the First Police Report while under cross-examination. Counsel for the Defendants first stated to Ms. Jasuja:

And it looks like this report was made out at 10:43 p.m. that's when the officer wrote out this.
That's the second line from the top

- [18] Counsel then directs Ms. Jasuja to the portion of the Police Report he is referring to and to the "10:43" notation and asks "So, that's around the time you said the accident took place", to which Ms. Jasuja responds "yes".
- [19] An investigation was launched by the police. On March 4, 2016, the police issued another report relating to the Accident ("Second Police Report"). Ms. Jasuja was taken on cross-examination to this Second Police Report, which identifies "George Marvin Monson" as the driver of a truck owned by "H&R Transport Limited" and Ms. "Rekha Thapar" as the driver in the "Motor Honda Collision" on "16/02/12". Ms. Jasuja agreed on cross-examination that it was "probably" the case that this Second Police Report was made after the police identified Mr. Monson from the information in the photograph she took of the Truck, which she had

previously provided to the police.

B. Evidence of the Third Party, Ms. Rekha Thapar

- [20] Ms. Thapar was born on November 21, 1976, making her 39 years old on the date of the Accident. She was employed with the TD Bank at the time of the Accident and remains employed there to this day. I also found Ms. Thapar to be a clear, credible and reliable witness.
- [21] She confirmed that she was the owner of the Honda and was driving it on the night of the Accident, with Ms. Jasuja as her only passenger in the front seat. Ms. Thapar testified that the Accident occurred at "approximately 10:00, 10:30-ish", although she did not remember the exact time. She confirmed that she was coming from Surrey where she had dropped off her children for the evening at her parents' home, and then proceeded to drive Ms. Jasuja home to Abbotsford, before driving to her home in Mission.
- [22] Ms. Thapar did not recall the precise location of the Accident, although she remembered that "when the Accident happened, they were travelling east on Highway 1 and there was a sign that said 22 km to Abbotsford" so they were "somewhere in Langley". She recalled it was raining that night, but the roads were not slippery. Ms. Thapar testified there were two lanes travelling east, and she was in the right lane. She explained it was her practice on the highway to travel in the right lane and just stay in the right lane until she needed to exit. She did not remember exactly what her speed was but thinks it was in the "90, 95, in that range", travelling at "highway speed".
- [23] Ms. Thapar recalls that "when the accident happened, it was like a "big shock to the Honda", they swerved further into their lane, and then "saw the truck pass by". She described the impact as "quite strong like the whole Honda just shook off" and that she "felt it from the back end". She recalls seeing a big semi-truck pass by them in the left lane. She added that when she looked to her left after the impact, she saw the back of the trailer of the Truck. She also recalled clearly seeing the company name on the Truck, which was H&R Transport. She affirmed that, on the night of the Accident at the approximate location of the Accident, visibility was quite good.
- [24] Ms. Thapar testified that after the Truck drove past them, she noticed that it was moving back and forth from the right and left lanes. She recalls following the Truck for a while and that Ms. Jasuja was trying to take a photograph. She added once Ms. Jasuja took the photograph of the Truck, they stopped following it, noting the Truck was "just going too fast". She recalls taking the Abbotsford exit to Ms. Jasuja's home.

- [25] Ms. Thapar remembers that Ms. Jasuja took photographs of the damage to her Honda. She identified both the photographs taken by Ms. Jasuja of the damage to her Honda, as well as photographs of the back of the Truck taken the night of the Accident. On cross-examination, Ms. Thapar affirmed that the damage to the body of her Honda was by the rear driver's side wheel well, as depicted in the photographs Ms. Jasuja took. She confirmed her Honda was damaged and repaired.
- [26] On cross-examination, Ms. Thapar testified that her shift at the bank might have ended before 9 p.m. the evening of the Accident, adding that she probably left the bank branch, after it closed at 8 p.m. and "around 8:30-ish". Ms. Thapar testified that it probably only took her "seven or eight minutes, not even" to drive from the bank after her shift to Ms. Jasuja's home. Ms. Thapar recounted that she quickly picked up her kids at Ms. Jasuja's home and then took them to her parents' house in Surrey for the night. Ms. Jasuja said she was bored and would come along for the ride, and the children were then dropped off. Ms. Thapar explained that her parents' home was very close to the highway and they stayed "5, 10 minutes maybe" at her parents' home after dropping off the children and getting back on the road to drive Ms. Jasuja home. Ms. Thapar recalled traffic was light, and this trip took about 30 minutes.
- [27] Ms. Thapar's testified she was not changing lanes when she felt the jolt or impact from the Truck. She was travelling straight on a straight road and stated she was not drifting into the left lane when the Accident occurred. When asked whether she drove her Honda a little too far too the left, or a little far to the right, she stated she did not remember doing that. She candidly acknowledged the Accident occurred nine years ago and she did not recall every detail but affirmed that it is her practice to "always" drive in the middle of the right lane when travelling on the highway.
- [28] Like Ms. Jasuja, Ms. Thapar did not see the Truck until after the Accident, although she saw the Truck "right after" the impact and after being "shook" by the impact. On cross-examination, Ms. Thapar reaffirmed the Truck sped up and she had to speed up so Ms. Jasuja could take the photograph of the back of the Truck. She also re-affirmed the Truck was moving back and forth between the left lane and the right lane after it sped by them. After Ms. Jasuja took the photographs of the truck, Ms. Thapar recalled the Truck exiting the highway but was uncertain of the specific exit, although it was before the Abbotsford exit.
- [29] Ms. Thapar testified that when they arrived at Ms. Jasuja's home after the Accident, she had to call various numbers before finding the right police officer "in charge of that area". She called the Abbotsford Police Department, then the Langley Police Department, then 911, and then the Port Mann RCMP Patrol. When asked what time she made these calls, Ms. Thapar said she would have made the calls at "roughly 11:00-ish". She testified that the police asked them to drive to the police station, but she recalled being exhausted at that point in the evening and "so shaken up". She testified that she felt like she was "in shock" and so could not drive back to the police station in Burnaby and then drive back home to Mission. The police agreed she could email her report to them, instead, along with the photographs taken

by Ms. Jasuja. Ms. Thapar affirmed she sent an email to the RCMP on February 12, 2016 at 11:59 p.m., which reads, in part, as follows:

I was driving on highway 1 eastbound in the right lane and a semi truck hit from the backside. All I could feel was a big shock to the Honda. By the time I realized what had happened, I could see the sign on the road that said Abbotsford 22 km. Truck did not stop and drove fast after that. I was so nervous after that, my instant reaction was to try and get the plate number of the truck so I followed the truck and my friend took pictures of the back of the truck. I will be attaching pictures to this email.

I am so shaken up and have to work in the morning again so cannot drive back to Burnaby. I am attaching pictures of my Honda.

[30] When asked on cross-examination "So at that time, Ms. Jasuja sent you the photographs of the Honda, did she send the photographs of the truck?" Ms. Thapar candidly and honestly responded: "I don't 100% remember. I think I would say yes but it would make sense to do them together because they were taken at the same time". Counsel for the Defendants based the cross-examination that followed on an interpretation of the above email, to the effect that Ms. Thapar did not mention the photographs taken of the Truck in her email to the RCMP the night of the Accident. Counsel's interpretation is not aligned with that of the Court and in any event, exemplifies, in my view, Ms. Thapar's commitment throughout her evidence to testifying truthfully, carefully and in considerable detail given the passage of time. Her evidence was coherent, consistent and persuasive in the most important respects.

C. Evidence of the Defendant, Mr. George Monson

[31] Mr. Monson was born August 30, 1950. He is currently 75 years old and works part-time for Paladin Security. He lives in Chase, British Columbia, with his wife.

[32] Mr. Monson retired from H&R Transport in December 2016. He testified he had been working there for about eight months before the Accident. He testified that he had been a truck driver all of his adult life, noting he had left H&R Transport "a couple of times" to go elsewhere but "always ended up coming back to H&R because they treat me very good".

[33] Mr. Monson was asked during direct examination whether he had any issues with his memory since the Accident. He responded that that his "memory is not too good" and "some days it's good, some days it's bad". He added that his hearing "isn't good" "my hearing and my memory is slowly going as is the years".

[34] Mr. Monson confirmed he was an employee of H&R Transport at the time of the Accident and that he was driving the Truck that was photographed by Ms. Jasuja on the night of February 12, 2016. He was driving alone that night, driving "through Langley", and "travelling eastbound on Highway 1". It is not contested that H&R Transport is the owner of the Truck he was operating or that he was employed by H&R Transport the evening of the Accident.

[35] Mr. Monson testified there was no defect with the Truck the night of the Accident, of which he was aware.

[36] Mr. Monson testified that he has no recollection of the Honda and, further, if his Truck had made contact with the Honda, it was his "belief" that he would have been aware of it. He added that he is so familiar with the "feelings of that truck" that when in his bunk in bed at the front of the truck, if "somebody was to come up and pull a little lever underneath the trailer", he would "feel that in the front of the truck ". He added that if he had made contact with the Honda and felt the bump, he would have immediately slowed down "to find out what it was". He explained that in his experience, if it was an "object bigger than your wheel and you hit it, you're going to feel it, like a little curb, a rock for instance, if that flies up and hits, you feel it".

[37] In direct examination, Mr. Monson was asked the following question:

Q. If that type of contact was made with the Honda and as you say, you would have felt something, is it possible that you may not have felt something or you ignored it?

A. It's possible, yes.

[38] In direct examination, Mr. Monson was asked whether he recalled changing lanes or zigzagging between lanes, on the evening of the Accident when driving in the vicinity of Langley in the area where the Plaintiff said the Accident occurred. Mr. Monson said he did not recall. He added that his typical driving practice "is to drive down the road and if I come too close - I don't like tailgating anybody. I move over into the - the other lane to be safe ".

[39] On cross-examination, Mr. Monson affirmed that the Truck he was driving on February 12, 2016, was the Truck in the photographs that were taken by Ms. Jasuja that evening but that he did not recall being in an accident that night.

[40] Mr. Monson gave the following answers under cross-examination:

Q. And you are deducing that from the fact that you believe that if you had collided with something that you would have felt it, correct?

A. That's true.

Q. But you reasonably concede that you could be wrong in that assumption, correct?

A. Most certainly, most certainly, there's that possibility.

[41] Mr. Monson recalled he received a message from H&R Transport's Safety Manager to inform him he "had been in an accident". When he got this message, he testified that he pulled over and walked around his entire truck, including the trailer, but did not see any damage.

- [42] H&R's Safety Manager asked Mr. Monson for photographs of his truck. Mr. Monson testified that because he did not have a camera, he could not take photographs until he arrived at a winery he was travelling towards. Once at the winery, Mr. Monson asked the shipper to take photographs of his Truck to send to his Safety Manager. Mr. Monson confirmed that, at that time, he had no idea about the allegations of the Plaintiff regarding how the Accident happened or where the Truck hit the Honda.
- [43] Mr. Monson agreed under cross-examination that the photographs that were taken by the shipper at the winery were photographs of only the trailer of his Truck and not the front of his Truck. Mr. Monson conceded that no one told him to limit the photographs to the trailer part of the Truck, or that there was an allegation that he had hit another vehicle with his trailer. Mr. Monson contradicted this concession moments later in his cross-examination; he altered his testimony and said that his Safety Manager at H&R Transport had told him to take photographs of the trailer because it had been alleged that he had hit someone with his trailer. Mr. Monson testified, "if I hit somebody with my trailer the truck isn't going to show any damage", referring to the front cab of the truck. He then added: "there was no damage to my truck anyhow". Mr. Monson also conceded that he never produced any photographs of the front of the Truck. He noted he was not asked to produce photographs of the front of the Truck.
- [44] Mr. Monson was taken to the Driver's Motor Vehicle Collision Report that he filled out by hand, which stated that the damage was "none", that the time of the collision was "approximately 9:30 p.m.", and that the closest city was "Langley". However, Mr. Monson also wrote on the second page of this Report that the time of the collision was "Unknown".
- [45] Mr. Monson was also taken to a document entitled "Driver's Written Statement" which he also wrote out by hand. The document states:

I picked up empty trailer at the Delta yard, did pre trip and then left the yard about 9 pm on February 13/16. Drove out Highway 17 and got on the East bound lane of Highway 1. I arrived at Chilliwack, B.C. at approximately [____] [left blank] and went straight into the Bunk. On February 15/2016 I was sent a message to contact H&R Safety Dept. I called Ken Werbicki and he informed me of the supposed Incident which happened on Feb 13/16, near Langley. When I got to Oliver to load I took pictures of the Trailer and also had the shipper check the Trailer and no damage was found, he sent the picture to Ken Werbicki. After loading I stopped at the scale house between Oliver and Penticton. I had the DOT officer come out and also had him check for damage and none was found

- [46] When it was put to Mr. Monson on cross-examination that the references to February 13 in his Driver's Written Statement should actually have been recorded as February 12, Mr. Monson agreed and said that by February 13, 2016, he was back at home in Chase.

- [47] Mr. Monson signed this Driver's Written Statement and dated it April 14, 2016. When asked in direct examination: "Do you think it's possible you might have just inadvertently made a mistake when writing down the date?", Mr. Monson responded "It's very, very possible". However, he did not explain this error.
- [48] Mr. Monson also corrected this Driver's Written Statement by saying that he did not take pictures of the trailer, and that in fact, it was the shipper at the winery that took the pictures, as he had previously testified.
- [49] When it was put to him in direct examination that "you're denying that any such collision took place", Mr. Monson replied: "I am not denying anything. I'm just saying I don't recollect having an incident of any sort".
- [50] Mr. Monson agreed the trailer number of the Truck he was driving on the night of the Accident, was 123720. He agreed that this trailer number mostly aligns and correspond with the trailer number in the photograph taken by the Ms. Jasuja. He testified he did not dispute the trailer caught on camera in Ms. Jasuja's photographs was the trailer he has hauling on the night of the Accident.
- [51] Mr. Monson explained that on the night of the Accident, he was probably travelling "about a hundred, a hundred and one, a hundred and two kilometres". He explained his truck was programmed not to exceed 104 km/h. Mr. Monson testified that there were two lanes of traffic travelling east on Highway 1 eastbound. When asked what his normal practice was around the time of the Accident and whether he preferred to stay in the inside lane or the outside lane (by the shoulder), he responded:

It didn't matter to me. I usually set my cruise control at around a hundred and, yeah, if I come up on the back of traffic I would move to the left side to - - to pass, and after I passed, I would pull over, back to the right lane when it was safe to do so.

- [52] Mr. Monson had no memory of whether he was using his cruise control on the night of the Accident. He confirmed he did not receive a ticket as a result of the Accident, nor was not contacted by the police. No charges were laid, and no fines were imposed on either Defendant.
- [53] During his cross-examination, Mr. Monson was taken to his electronic driver's log dated February 12, 2016. He explained that some of the information in the log is automatically entered and some of it is not. He indicated he would manually enter the time when: he was driving the Truck, off duty (coffee break, dinner etc.), in his bunk resting or sleeping, fueling up, or doing brake checks. He also entered the unit number of his vehicle and the licence plate number. The start time of his daily work cycle and its end time are logged automatically, as is his driving time. Mr. Monson acknowledged his logs could be edited manually. This driver's log states that on February 12, 2016, Mr. Monson logged being in his sleeper at 10:37 p.m. PST.

D. Expert Report of Mr. Derek Wong, B.Sc., B.A. Sc., P. Eng.

[54] Both the Plaintiff and the Defendants relied on the expert report of Mr. Derek Wong ("Expert Report"), although he was retained by the Defendants. Mr. Wong is an Associate with the Collision Reconstruction Group in the Calgary office of 30 Forensic Engineering. He holds a Bachelor of Applied Science (Mechanical Engineering), with a specialization in Automotive Engineering, and a Bachelor of Science in Biology. His Expert Report was entered into evidence with the consent of the parties pursuant to Rule 11-7(2)(b) of the Supreme Court Civil Rules, without cross-examination.

[55] In his Expert Report, dated June 16, 2025, Mr. Wong states that he was engaged to assess the likely physical circumstances of the incident and provide a determination of the collision's severity. He summarizes his findings as follows:

The damage to the left rear of the Thapar Honda was consistent with contact with the rotating front wheel of a tractor-trailer, such as the H&R truck. Based on the damage, the collision engagement between the vehicles was a shallow angle involving contact with the left rear of the Thapar Honda and the right front of the H&R truck.

There was a lack of evidence to determine whether the H&R truck contacted the Thapar Honda, the Thapar Honda contacted the H&R truck, or whether both vehicles moved towards each other, leading to contact. These scenarios are all possible based on the available evidence.

Based on the damage to the Thapar Honda, it likely experienced a peak acceleration below 2.8 g in its collision with the H&R truck. The collision forces were likely directed primarily forward, with a rightward component.

[56] The materials provided to Mr. Wong for purposes of his analysis were described in his Expert Report as follows:

1. Email re Photographs, dated February 15, 2016;
2. Six Photographs -Tractor Trailer, undated;
3. Nine Photographs- Plaintiff's Vehicle, undated;
4. Mediation Brief of the Defendants, George Marvin Monson and H&R Transports Limited (Jasuja action), dated April 14, 2025 (not set out in the Expert Report);
5. Mediation Brief of the Defendants, George Marvin Monson and H&R Transports Limited (Thapar action), dated April 14, 2025 (not set out in the Expert Report);
6. Mediation Brief of Plaintiff, Meena Jasuja, undated (not set out in the Expert Report);
7. Mediation Brief of the Third Party, Rekha Thapar, dated April 11, 2025 (not set out in the Expert Report);

8. Defendant's summary of the Examination for Discovery of Ms. Rekha Thapar (part of which was set out in his Expert Report);
 9. Defendant's summary of Examination for Discovery of Ms. Meena Jasuja (part of which was set out in the Expert Report); and
 10. Defendant's summary of his Examination for Discovery (part of which was set out in the Expert Report).
- [57] Mr. Wong was also provided with photographs showing the tires of the Truck's trailer, as well as the photographs taken by Ms. Jasuja of the rear of the Truck. He was not provided with the year, make, model, or VIN for the tractor or trailer of the Truck.
- [58] Mr. Wong noted, from the photographs provided to him, that there was damage to the left (driver's side) corner of the Honda with "light curved scrape marks on the left side of the rear bumper cover, behind the left rear wheel, and a dent on the left quarter panel behind and above the left rear wheel well".
- [59] Mr. Wong opined that the nature of the damage to the Honda was consistent with contact between the rotating wheel of a heavy truck, which typically features exposed and protruding lug nuts, and the body panel of a passenger vehicle. He was also of the view that the damage pattern is consistent with the truck moving faster than the car, likely with the vehicles moving at speeds within 10 km/h. He observed there was no evidence to indicate that the Truck "moved rightward into contact with the Thapar Honda" and, likewise, there was no evidence that the Thapar Honda moved leftward into contact with the H&R Transport Truck. Mr. Wong concluded that both scenarios are possible and "it is also possible that the two vehicles moved towards each other, leading to contact".

III. LEGAL FRAMEWORK

A. Negligence and Causation

- [60] In *Mustapha v. Culligan of Canada Ltd.*, [2008] 2 S.C.R. 114 at para. 3, the Court affirmed the following four essential elements of negligence: 1) the defendant owed a duty of care to the plaintiff; 2) the defendant's conduct breached that standard of care; 3) the plaintiff sustained damage or injury; and 4) that plaintiff's damage or injury was caused, in fact and law, by the defendant's breach.
1. Duty of Care
- [61] Both the Motor Vehicle Act, R.S.B.C. 1996, c. 318, and the common law inform the duties and obligations of the parties in this case.
- [62] In *Wood v. McCauley*, 2023 BCSC 979, the court reasoned as follows in regard to the duty of care:

[57] Drivers have a common law duty to exercise due care for others and themselves in all the relevant circumstances: *Petes v. Petersen*, 2021 BCSC 1838, at paragraph 53.

[63] There is no question that Mr. Monson and Ms. Thapar each had a duty of care towards other drivers and persons while driving on Highway 1 on the night of the Accident. The next issue is whether these drivers breached the standard of care imposed on them by the Motor Vehicle Act and the common law.

2. Standard of Care

[64] The standard of care is informed by both by the rules of the road as prescribed by the Motor Vehicle Act, as well as the reasonableness of the parties' actions: see *Salaam v. Abramovic*, 2010 BCCA 212 at para. 21; *Kilian v. Valentin*, 2012 BCSC 1434 at para. 28. I address each below.

a) Motor Vehicle Act

[65] Given the factual matrix before me, s. 144(1) of the Motor Vehicle Act is instructive. The Plaintiff also relies on s. 151(1)(a) of that Act.

[66] Section 144(1) of the Motor Vehicle Act reflects the common law duty to drive with due care and attention:

(1) A person must not drive a motor vehicle on a highway

(a) without due care and attention,

(b) without reasonable consideration for other persons using the highway, or

(c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

[67] Section 151(a) of the Motor Vehicle Act states:

Driving on laned roadway

151 A driver who is driving a vehicle on a laned roadway

(a) must not drive it from one lane to another when a broken line only exists between the lanes, unless the driver has ascertained that movement can be made with safety and will in no way affect the travel of another vehicle.

[68] While these provisions do not set out an exclusive code relating to the prudent course of conduct for motorists, they do supplement the common law duty to exercise due and reasonable care in the circumstances: *Hmaied v. Wilkinson*, 2010 BCSC 1074 at para. 21.

b) The Common Law

[69] In *Stewart v. Dueck*, 2012 BCSC 1729, Justice Dardi ably summarizes the applicable principles that inform the nature and scope of the obligations placed on motorists by the common law:

- [38] The authorities establish that all motorists have an overarching common law duty to exercise what constitutes, in all the circumstances, reasonable and due care. All motorists have a general duty to keep a proper look-out and to take reasonable precautions in response to apparent potential hazards: *Hmaied v. Wilkinson*, 2010 BCSC 1074 at para. 23.
- [39] It is a well-settled proposition that drivers in this province are entitled to assume, within reason, that the other users of the roads in British Columbia will obey the law: *Mills v. Siefred*, 2010 BCCA 404 at para. 26.
- [40] The Court's task is to determine whether each of the parties in an accident met their common law duties of care. The analysis of the standard of care, which is relevant to the particular circumstances, is informed by both the reasonableness of the parties' actions and by the rules of the road; *Salaam v. Abramovic*, 2010 BCCA 212 at para. 21; *Kilian v. Valentin*, 2012 BCSC 1434 at para. 28.
- [70] The driver's duty of care includes the responsibility to be attentive to the road and those travelling on it. This includes "a responsibility to be on the lookout for unsafe and unexpected events on the road, including unsafe manoeuvres by other drivers" but a driver will not be found negligent simply because they failed to take extraordinary steps to avoid an accident: *Salaam v. Abramovic*, 2010 BCCA 212, paras. 21 and 25.
- [71] Case law regarding the use of direct and circumstantial evidence is also of assistance in this case, as Ms. Jasuja relies on both forms of evidence to support her assertion that Mr. Monson was negligent. The reasons of the Supreme Court of Canada in *Fontaine v. British Columbia (Official Administrator)*, [1998] 1 S.C.R. 424, are of considerable assistance in shaping the requisite assessment of the Defendants' liability in this case. In *Fontaine*, the Court concluded, at para. 25, that "whatever value" the doctrine of *res ipsa loquitur* "may have once provided is gone". Instead, the Court provides the following analytic approach in assessing circumstantial evidence:
- [25] [Circumstantial evidence] is more sensibly dealt with by the trier of fact, who should weigh the circumstantial evidence with the direct evidence, if any, to determine whether the plaintiff has established on a balance of probabilities a *prima facie* case of negligence against the defendant. Once the plaintiff has done so, the defendant must present evidence negating that of the plaintiff or necessarily the plaintiff will succeed.
- [72] Accordingly, I must first weigh the circumstantial evidence to assess whether Ms. Jasuja has established a *prima facie* case of negligence against the Defendants, bearing in mind that the plaintiff always bears the burden of proof. If there is no *prima facie* case of negligence, then Ms. Jasuja had failed to prove her claim against the Defendants.

- [73] If a prima facie case has been established, the second step in the Fontaine analysis requires that I then assess the Defendants' evidence to see whether it negates Ms. Jasuja's prima facie case. This includes a consideration of how the Accident may have occurred without the negligence of the Defendants and whether the defence is speculative: *Haynes v. Haynes*, 2017 BCCA 131.
- [74] Ms. Jasuja further submits that a prima facie case of negligence and causation may be established by reasonable inference rooted on the facts before the court: *Michel v. Doe*, 2009 BCCA 225 at para. 25; *Clements v. Clements*, 2012 SCC 32, at paras. 6 and 8.
- [75] Also informing my analysis are the additional cases advanced by the Defendants including but not limited to: *Nason v. Nunes*, 2008 BCCA 203; *Salo v. Insurance Corporation of British Columbia*, 2017 BCSC 1418; *Singh v. Chand*, 2019 BCSC 932; *Singleton v. Morris*, 2010 BCCA 48; *Waters v. Mariash*, 2012 BCSC 927.
- [76] Of significance in this case, there is considerable direct eyewitness testimony and consistent accounts of the events surrounding the Accident that were provided by Ms. Jasuja and Ms. Thapar. The evidentiary matrix before me is not limited to circumstantial evidence.

3. Damages

- [77] The parties have severed the issue of damages in this case and have agreed this issue is not before the Court.

4. Causation

- [78] In *Clements*, at paras. 6 and 8, the Court reasoned that the test for establishing whether the negligence in question caused damage is the "but for" test:
- [6] On its own, proof by an injured plaintiff that a defendant was negligent does not make that defendant liable for the loss. The plaintiff must also establish that the defendant's negligence (breach of the standard of care) caused the injury. That link is causation.
- [8] The test for showing causation is the "but for" test. The plaintiff must show on a balance of probabilities that "but for" the defendant's negligent act, the injury would not have occurred. Inherent in the phrase "but for" is the requirement that the defendant's negligence was necessary to bring about the injury — in other words that the injury would not have occurred without the defendant's negligence. This is a factual inquiry. If the plaintiff does not establish this on a balance of probabilities, having regard to all the evidence, her action against the defendant fails.
- [79] To be compensable, a defendant's negligence does not have to be the sole cause of the injury sustained by the plaintiff, providing the negligence is "a" cause: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-17, 1996 CanLII 183. Furthermore, at para. 9 of *Clements*, the Court reasoned that the "but for" causation test "must be applied in a robust common sense fashion and there is no need for scientific evidence of the precise contribution the defendant's negligence made to the injury". The Court added that common sense inferences

of causation may be made by the trier of fact:

- [10] A common sense inference of "but for" causation from proof of negligence usually flows without difficulty. Evidence connecting the breach of duty to the injury suffered may permit the judge, depending on the circumstances, to infer that the defendant's negligence probably caused the loss.
- [80] As I address later in these Reasons, the direct observations of Ms. Jasuja and Ms. Thapar on the evening of the Accident are instructive and persuasive in drawing the reasonable inference that Mr. Monson struck the Honda with his Truck. For example, Ms. Jasuja's testified how immediately after experiencing the impact of the Accident, the Truck accelerated and passed very close to them on the left, within a foot. Ms. Jasuja also observed the Truck "zigzagging" across the two lanes of highway in front of the Honda after it passed and struck them.

B. Positions of the Parties

1. The Plaintiff

- [81] Ms. Jasuja asserts that a reasonable inference can be drawn from the direct and circumstantial evidence, that Mr. Monson did not exercise due care and attention when he strayed onto Ms. Thapar's path of travel, "sideswiping" and scraping her Honda, thereby causing the Accident. She further asserts that a prima facie case of negligence has been made out and, further, has not been successfully rebutted by the Defendants, adding that the Defendants' "non-negligent" explanations are unreasonable and speculative.
- [82] Ms. Jasuja relies on the reasons in *Greenfield v. Tran*, 2024 BCSC 309. In *Greenfield*, at paras. 48- 49, the court assessed a sideswipe collision where the key issue concerned which vehicle changed lanes and caused the accident. In this context, the court focused on the importance of assessing the credibility and reliability of witness testimony, noting that the question of reliability included a consideration of a witness' ability to observe, recall and recount events, while the issue of credibility related to the assessment of the witness' veracity or truthfulness.
- [83] In assessing credibility and reliability, the court in *Greenfield* also assessed the inherent believability of the testimony, its consistency with the evidence of other witnesses and the documentary evidence, as well as how the evidence aligned with a preponderance of probabilities. Counsel for Ms. Jasuja underscored that the court in *Greenfield* found the defendant liable based on the plaintiff's reliable testimony which was supported by the expert testimony, as compared to the defendant's diminished reliability given the inconsistencies in his evidence. He emphasizes the parallels between *Greenfield* and the instant case.

- [84] Ms. Jasuja acknowledges that at page 15 of Mr. Wong's Expert Report, he "notes a lack of evidence to determine whether the H&R Truck moved rightward, the Thapar Honda moved leftward, or both converged". However, her counsel submits that the most probable scenario, based on the preponderance of probabilities and the evidence at trial, is that Mr. Monson's truck drifted into the right lane.
- [85] Further, counsel for Ms. Jasuja submits that H&R Transport is vicariously liable for Mr. Monson's actions as he was acting within the scope of his employment at the time of the Accident: *Bazley v. Curry*, [1999] 2 S.C.R. 534. He notes that the evidence before the Court established that Mr. Monson was dispatched by H&R Transport to drive the Truck, and that the Truck was leased to H&R Transport by Penske; these facts were not contested by the Defendants.
- [86] Ms. Jasuja addresses the Defendants' position that Ms. Thapar contributed to the collision by moving leftward into Mr. Monson's lane. She underscores that there is no evidence to support this allegation. She adds that her consistent accounts and the physical evidence outweigh Mr. Monson's speculative assertions and his lack of recollection. Counsel again relies on the reasoning in *Greenfield*, at paras. 85-86, where the defendant's claim of contributory negligence was rejected in circumstances where the plaintiff's testimony was reliable and supported by expert evidence while the defendant's recollections were inconsistent and unreliable. Counsel for Ms. Jasuja argues that, similarly, no contributory negligence should be attributed to Ms. Thapar.

2. The Third Party

- [87] Ms. Thapar also submits there is no evidence to support the Defendants' assertion that she was negligent by drifting left into Mr. Monson's lane. She and Ms. Jasuja both affirmed she was driving straight on a flat highway and was not changing lanes when they both experienced the jolt and then immediately saw the Truck drive by on their left and then move into the right lane in front of them.
- [88] Ms. Thapar submits that her testimony and that of Ms. Jasuja's are consistent with Mr. Wong's expert opinion that the damage to the Honda aligns with a sideswipe collision involving a rotating front tire of a semi-truck, such as the H&R Transport Truck. Counsel for Ms. Thapar asserts that while Mr. Wong determined three scenarios were possible, the testimonies of Ms. Jasuja and Ms. Thapar are consistent with the scenario that the H&R Transport Truck moved to the right into the Honda. Counsel for Ms. Thapar submits that the "plaintiff and defendant were both unequivocal in their testimony that the Honda did not move to the left prior to the collision". Counsel for Ms. Thapar underscores that Mr. Monson had no recollection of seeing the Honda at all and, therefore, "the second and third scenarios offered by Mr. Wong as possibilities are not supported by the evidence in this case".

- [89] Ms. Thapar emphasizes that Ms. Jasuja has not named the third party as a defendant and has not alleged negligence against her. In this case, neither the Plaintiff nor the Third Party has advanced pleadings against each other. Ms. Thapar relies on the decision in *Chen (Guardian ad litem) v. Jose Narvaez*, 2003 BCSC 996, where the court reasoned, at para. 25, that "with respect to the determination on the merits, the defendant bears the burden of proof because, as between it and the third parties, it stands as plaintiff". Ms. Thapar submits that, in this context, the Defendants bear the burden of proof to establish, on a balance of probabilities, that her conduct breached the standard of care and caused the Accident, yet they have failed to meet that burden.
- [90] Ms. Thapar also relies on the decision of the court in *Hercules Forwarding Inc. v. Ski-Hi Scaffolding Ltd.*, 2015 BCSC 1859, where the court reasoned that a claim for contributory negligence can only be successful where the third party is found to be liable to the plaintiff:
- [26] Where a third party claim involves a claim for contribution under the Negligence Act, the Supreme Court of Canada held in *Giffels Associates Ltd. v. Eastern Construction Co.*, [1978] 2 S.C.R. 1346 that a pre-condition to a defendant's right to claim contribution from a third party is that the third party be liable to the plaintiff.

[Citations omitted.]

- [91] Ms. Thapar asserts that where the plaintiff does not prove on a balance of probabilities that the defendant driver was negligent and that their negligence caused or contributed to the Accident, then the defendant's claim against the third party must also fail. Further, if the plaintiff proves the defendant driver was negligent and his negligence caused or contributed to the collision, then the defendant must prove on a balance of probabilities that that the third party was negligent, otherwise the third-party claim ought to be dismissed.

3. The Defendants

- [92] The Defendants submit that based on evidence before the Court, Ms. Jasuja has not established a prima facie case of negligence against them for causing or contributing to the alleged Accident. The Defendants argue that there is little to no direct or corroborating evidence on liability before the Court and, further, Ms. Jasuja is relying "on her own self-serving testimony, some of which is inaccurate and inconsistent". The Defendants further submit that the bulk of the remaining evidence is circumstantial and requires the Court to draw speculative inferences in support of Ms. Jasuja's case: *Fontaine*, at para. 24; *Singh*, at para. 124.
- [93] In the alternative, the Defendants submit that if there was an Accident involving an H&R Transport truck driven by Mr. Monson, "any such collision happened without negligence on their part". They underscore that settled law holds the Defendants do not bear the burden of proving: how the collision happened, or that it happened without any negligence on their part, or that they used reasonable care.

- [94] Furthermore, the Defendants rely on "the defence of explanation whereby an inference of negligence cannot be drawn where there exist alternative and reasonable explanations of how the alleged collision may have occurred". The alternative scenarios upon which the Defendants rely are the possible scenarios set out in Mr. Wong's Expert Report that Ms. Thapar veered into Mr. Monson's lane or the Truck and Honda veered into each other.
- [95] The Defendants assert that they have produced reasonable explanations that are consistent with no negligence having occurred and that this effectively neutralizes the inference of negligence: Michel, at para.19; Fontaine, at para. 23.
- [96] Accordingly, the Defendants seek a finding of "no negligence" on their part and ask that the claim against them be dismissed.

C. Findings and Legal Discussion Analysis

- [97] After assessing of all the evidence before me, I find that Ms. Jasuja's clear and compelling evidence, corroborated by that of Ms. Thapar, at minimum establishes a prima facie case that: Mr. Monson was driving the Truck on February 12, 2016, that he was not exercising due care and attention; and that his negligence caused the Accident when he scraped the rear driver's side of Ms. Thapar's Honda. However, the evidence does not establish to any degree, either on a prima facie basis or on a balance of probabilities, that Ms. Thapar failed to exercise due care or attention.
- [98] I find Mr. Monson did not meet the requisite standard of care of a prudent driver by veering his Truck into Ms. Thapar's lane and into her Honda to cause the Accident. Importantly, I also find that Mr. Monson has not presented evidence that rebuts, negates or compromises Ms. Jasuja's prima facie case against him as required by the Court in Fontaine.
- [99] Mr. Monson not only acknowledged during his testimony that he could not recall the Accident, but he readily conceded that it was possible he could have been in the Accident the evening in question. In contrast, Ms. Jasuja and Ms. Thapar remembered the Accident and the impact of it. Again, I found them to be very honest, credible and reliable witnesses. In comparison, Mr. Monson's evidence in defence was, at best, vague, unclear and unpersuasive.
- [100] I accept Ms. Jasuja's and Ms. Thapar's corroborative testimonies that they were travelling straight and in the right lane, on a straight highway, when they felt the impact of the Accident and then immediately saw the H&R Transport Truck travelling at a greater speed and passing them on their left. Ms. Jasuja recalls the Truck was travelling very close to them after the impact and that she was frightened by the incident. Both Ms. Jasuja and Ms. Thapar testified the Truck kept travelling after the impact, did not stop, and then changed lanes in front of them. Ms. Jasuja manage to take photographs of the rear of the Truck while both vehicles were moving. The Truck was later identified, through the photographs taken by Ms. Jasuja, as the Truck that was driven by Mr. Monson the evening of the Accident. Mr. Monson conceded he was also travelling east on the very road and on the same evening the

Accident occurred.

- [101] I have weighed and assessed Ms. Jasuja and Ms. Thapar's coherent and compelling recollections of the Accident, the photographs of the Truck, and the damage to the rear, driver's side of the Honda. I have also weighed and considered the weakness and unreliable nature of Mr. Monson's evidence, who could not recall the event. The underlying evidentiary matrix, when assessed in its entirety, leads me to the reasonable inference that Mr. Monson veered his Truck into Ms. Thapar's lane and path of travel, causing the Accident and scraping the driver's side of her Honda. I have also accepted the uncontroverted evidence of Ms. Jasuja and Ms. Thapar, who both testified the Honda was travelling straight in their lane on a straight road when the Accident occurred.
- [102] I find, on a balance of probabilities, that Mr. Monson was not driving with due care and attention, and in a reasonable and prudent manner, when he sideswiped the Honda and caused damage to it. Further, I also find that H&R Transport, as his employer, is also vicariously liable: Bazley, at paras. 30-31.
- [103] To be clear, my conclusion that Mr. Monson did not exercise the requisite standard of care of a prudent driver is reinforced by the following specific findings:
- a) Mr. Monson affirmed during his testimony that he was driving the Truck for H&R Transport on the night of the Accident;
 - b) Mr. Monson also affirmed he was driving the Truck the night of the Accident on the same highway that the Accident occurred;
 - c) Mr. Monson expressly testified that he does not deny he was in the Accident described by Ms. Jasuja and Ms. Thapar;
 - d) Ms. Jasuja testified that after experience the jolt and impact, the Truck sped by them and she was afraid because it was "so close" to the Honda, "about a foot away", and "there was nothing else around us at that time, only the truck";
 - e) At first, Mr. Monson testified he did not recollect being in an accident on the evening of February 12, 2016, and that he believed he would have remembered being in the Accident; however, later in his testimony, he conceded it was possible his Truck did collide with the Honda; he did not deny he hit the Honda with his Truck;
 - f) Mr. Monson also acknowledged he had difficulties with his memory since the time of the Accident. By contrast, Ms. Jasuja and Ms. Thapar's recollections of the impact of the Accident and seeing the Truck drive by them after the collision were clear and consistent;
 - g) Mr. Monson testified he was not aware of any defect with the Truck; he did not testify any defect caused the Accident;

- h) Mr. Monson filled out documents relating to the Accident that were inconsistent and which he concedes were inaccurate. For example, he concedes he recorded the wrong date when he filled out the Driver's Written Statement and stated the Accident occurred on February 13, 2016. Mr. Monson acknowledged this date was incorrect because he was back home in Chase by February 13, 2016. Further, in this Driver's Written Statement (which Mr. Monson handwrote), he left out the time he "Arrived at Chilliwack" and "went straight into the Bunk" to sleep (i.e., "I Arrived in Chilliwack, B.C. Approximately [blank] and went straight into the Bunk"). His own narrative leaves the time he arrived in Chilliwack blank and is not filled in or complete. Further, Mr. Monson dated this Driver's Written Statement as "April 14, 2016". In response to his counsel's question suggesting this was not the correct date and that he actually signed the document on February 14, 2016, Mr. Monson responded it was "very, very possible". I have noted and considered the leading nature of this question, and found it compromises the weight of this response somewhat; and
- i) Mr. Monson also stated in this Driver's Written Statement that he took photographs of his truck; however, in his evidence at trial he testified it was the shipper who took the photographs. Notably, no photographs were taken of the front of the Truck where the Mr. Wong opined in his Expert Report that the "collision engagement" occurred.
- [104] While counsel for Mr. Monson argued he was parked and asleep in his Truck at the time the Accident occurred, Mr. Monson's own evidence is confusing and inconsistent in this regard. In this Driver's Motor Vehicle Collision Report, Mr. Monson wrote down the time of the Accident as 9:30 p.m. but on the second page, he notes the time of the Accident as "unknown". In his driver's log, Mr. Monson logged being in his sleeper in the Truck at 10:37 p.m. Notably, Ms. Jasuja was not categorical about the exact time the Accident occurred during the evening of February 12, 2016; she estimated the time to be around 10:45 p.m. yet also acknowledged she could not be sure of the time. Ms. Thapar testified she thought the Accident occurred at "10 or 10:30ish", although she was not sure of the time either. This lack of clarity concerning the exact time of the Accident is not surprising given the Accident occurred almost 10 years before trial. In any event, what can readily and reasonably be inferred from the whole of the evidence before me is that the Accident occurred sometime later in the evening of February 12, 2016.
- [105] Furthermore, I cannot accept the Defendants' submission that a reasonable inference can be drawn that Ms. Thapar either drifted into the Mr. Monson's lane or, alternatively, that Mr. Monson and Ms. Thapar both drifted towards each other while driving, converged and collided. I find these scenarios to be speculative at best. I have already addressed this issue in part: I have accepted the evidence of both Ms. Jasuja and Ms. Thapar that they were travelling straight down the highway and did not drift into Mr. Monson's lane. However, I also underscore the following additional facts and observations, which further undermine the reasonableness of the alternate inferences advanced by the Defendants:

- a) Ms. Thapar testified she was unaware of the Truck prior to experiencing the impact of the collision and that she continued driving in her lane post-impact, suggesting she did not veer leftward;
 - b) Ms. Jasuja testified that the Truck zigzagged and then moved into the right lane after the impact, which supports the conclusion that the Truck's erratic movement caused the collision [see Greenfield, at para. 48];
 - c) Mr. Monson's inability to recall his lane position or specific actions militates against the claim that the Honda initiated contact. His vague testimony about driving "all over Vancouver" and his lack of recollection of stops or destinations suggests he was not entirely attentive to his driving environment [Greenfield at para. 90]; and
 - d) The absence of evidence of damage to the Truck does not negate its contact with the Honda; the Expert Report explains that a truck's robust front wheel could have caused the observed damage to the Honda without visible damage to the truck itself (page 10 of Expert Report). Notably, the photographs of the Truck do not include the front-right wheel, limiting the strength of Mr. Monson's evidence that he saw no damage to the Truck.
- [106] In the instant case, Ms. Jasuja's and Ms. Thapar's evidence is also aligned with Dr. Wong's Expert Report where he states the damage to the Honda could have been caused by a sideswipe from the Truck's front wheel.
- [107] Again, the evidence on the whole, particularly in light of Mr. Monson's poor recollection and the unreliability of his evidence, establishes on a balance of probabilities that Mr. Monson did not exercise due care and attention and drove his Truck into Ms. Thapar's Honda, causing the Accident. Mr. Monson's actions were not only contrary to s. 144(1) of the Motor Vehicle Act but he also contravened the common law duty of care which requires reasonable and prudent driving: see Stewart, at paras. 38-40.
- [108] In regard to the Third Party claim against Ms. Thapar, I have assessed the factual matrix before me and find it does not support the inference that Ms. Thapar was either entirely or partially negligent by driving her Honda into or towards Mr. Monson's Truck. I accept counsel for Ms. Thapar's and Ms. Jasuja's submissions in this regard. I find Ms. Thapar was driving within the speed limit and within the confines of the right lane and did not drift into Mr. Monson's Truck or lane; indeed, there is no evidence to suggest that she did so.
- [109] The evidence does not support the conclusion that Ms. Thapar breached her duty of care or that she caused or contributed to the Accident in any way. Ms. Thapar is not at fault or liable for the Accident.
- [110] The third-party claim is dismissed.

IV. DISPOSITION

- [111] For the Reasons set out above, I find that Mr. Monson was negligent, that his negligence caused the Accident on February 12, 2016, and that the Honda was damaged on the driver's side by the rear wheel of the Truck he was driving. I also find H&R Transport vicariously liable for the Accident.
- [112] The issue of damages has been severed from liability. Accordingly, the parties have not placed the issue of damages for Ms. Jasuja's injuries before the Court. An agreement has been reached between the parties in this regard, subject to this Court's finding on the issue of liability.
- [113] The action against Ms. Thapar is dismissed. The evidence before me does not support a finding of negligence against her, either in whole or in part.
- [114] 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. Jasuja and Ms. Thapar are entitled to their respective costs at Scale B.

"Morellato J."

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