

CANADA / JUDGMENT

Manhas v. Jaswal

2020 BCSC 586

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2020 BCSC 586 Manhas v. Jaswal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Manhas v. Jaswal,

2020 BCSC 586

Date: 20200417

Docket: M29757

Registry: Chilliwack

Between:

Ashely Manhas

Plaintiff

And

Satnam Singh Jaswal and Harmanpreet Sidhu

Defendants

- and -

Docket: M31521

Registry: Chilliwack

Between:

Ashely Manhas

Plaintiff

And

Sharanjit Bhangoo and Harmanpreet Sidhu

Defendants

Before: The Honourable Mr. Justice Basran

Reasons for Judgment

Counsel for the Plaintiff in Both Actions:

D. Lester, Q.C.

S. Avram

Counsel for the Defendants in Both Actions:

C. Bekkering

C. York

Place and Dates of Trial:

New Westminster, B.C.

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Place and Date of Judgment:

Chilliwack, B.C.

April 17, 2020

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INTRODUCTION

- [1] Ashely Manhas is the plaintiff in two actions, each involving a motor vehicle accident. At the outset of the hearing, Ms. Manhas confirmed that her first name is "Ashely". The parties misspelled her first name in the pleadings and other related litigation documents. I have used the correct spelling of her first name in these Reasons for Judgment.
- [2] On June 25, 2012, Ms. Manhas was in the passenger seat of a vehicle driven by her aunt, Amandeep Jaswal, when they struck another vehicle in an intersection (the "First Accident").
- [3] On October 30, 2015, Ms. Manhas was driving her mother's vehicle when she collided with another vehicle in an intersection (the "Second Accident"). The defendants have admitted liability for both accidents and they are not asserting that Ms. Manhas was contributorily negligent or failed to mitigate her damages. Non-pecuniary damages, loss of future income earning capacity, cost of future care, and special damages are in issue.
- [4] Ms. Manhas was in good health prior to the accidents. The accidents caused injuries to her neck and back. She also developed headaches after the accidents.

[5] For the reasons that follow, I have concluded that Ms. Manhas is entitled to:

- a) \$60,000 for non-pecuniary damages;
- b) \$75,000 for loss of future income earning capacity;
- c) \$6,650 for cost of future care; and
- d) \$6,240 for special damages.

CREDIBILITY ASSESSMENT

[6] For clarity and without intending any disrespect, I have used the first names of some of the witnesses in these Reasons for Judgment.

[7] Ms. Manhas's case relies significantly on her own evidence and that of her sister, Jessy Manhas; friend, Aadit Thathar; and employer, Manmeet Thathar. I find that their evidence was credible. It was clear, reasonable, and consistent internally and with one another. For example, Jessy recalls that her sister expended considerable time and effort maintaining their household and caring for her and their other siblings. Jessy and Aadit recounted that Ms. Manhas was conscientious, hard working, and social prior to the accidents and changed significantly after them. Ms. Manhas describes herself as more irritable and withdrawn than she was prior to the accidents. She is no longer a positive and energetic person. Jessy and Aadit also testified to these changes in Ms. Manhas's demeanour and mood.

[8] The details of these changes were specific, consistent, and clearly described. There was no hint of exaggeration or embellishment. I accept the evidence of Ms. Manhas, Jessy, Aadit, and Manmeet without hesitation.

QUANTUM OF DAMAGES FOR PAIN AND SUFFERING

Relevant Legal Principles

[9] Ms. Manhas must prove that the accidents caused her injuries. She need not establish that the admitted negligence of the defendants was the sole cause of her injuries, but she must demonstrate a substantial connection between the accidents and her physical and psychological injuries: *Thompson v. Helgeson*, 2017 BCSC 927 at paras. 28-30.

[10] Some of the relevant factors in assessing non-pecuniary damages include:

- a) age of plaintiff;
- b) nature of the injury;
- c) severity and duration of the pain;
- d) disability;
- e) emotional suffering;

- f) loss or impairment of life;
- g) impairment of family, marital, and social relationships;
- h) impairment of physical and mental abilities; and
- i) loss of lifestyle

Stapley v. Hejslet, 2006 BCCA 34 at para. 46.

The Plaintiff's Position on Non-Pecuniary Damages

- [11] Ms. Manhas submits that the accidents caused soft tissue injuries that have become chronic. She has ongoing pain in her neck and upper back and associated headaches. Furthermore, her mood has become irritable, withdrawn, and short-tempered. She points out that the First Accident took place over seven years ago and the Second Accident was over four years ago, but her neck and upper back pain symptoms have not changed in the last two to three years except when she avoided the dual responsibilities of studying and working.
- [12] Ms. Manhas describes herself as leading an active lifestyle prior to the accidents that involved playing basketball and soccer recreationally and socializing with friends. She is no longer able to do these activities and usually does not go out with friends. She also reduced the amount of housekeeping work she does and the pace at which she completes these tasks.
- [13] Ms. Manhas asserts that she has been stoic throughout her post-accident period. She avoided sharing details of her pain with her family, did not disclose her injuries to Manmeet until he asked her to work additional hours, and under-reports her limitations as noted by Russell McNeil, an occupational therapist.
- [14] In applying the factors set out in Stapley, Ms. Manhas urges the Court to consider that she is only 24 years old and has several injuries including ongoing pain in her neck, shoulders, upper and mid back, and associated headaches. Her prognosis is fair and her symptoms have been ongoing for a significant number of years.
- [15] Ms. Manhas submits that the following cases provide guidance in assessing the amount that should be awarded to her for her pain and suffering:
 - a) De Groot v. Heller, 2018 BCSC 14: A 35 year-old woman suffered soft tissue injuries in her low back and hip arising from a motor vehicle accident that had happened five years earlier. She did not miss time from work but was limited in her ability to do household chores, sit at a desk, and care for her daughter. She was awarded \$75,000 in non-pecuniary damages.

- b) *Afework v. Correa*, 2019 BCSC 1672: The plaintiff, a bookkeeper, developed neck and back pain and headaches because of a motor vehicle accident. She was very physically active and involved in religious activities prior to the accident but was unable to do these things to the same degree after it. The plaintiff's credibility was in issue because she exaggerated her symptoms. There was an expectation that her symptoms would improve but not resolve. She was awarded \$90,000 in non-pecuniary damages.
 - c) *Audet v. Chan*, 2018 BCSC 1123: A 19 year-old plaintiff sustained injuries 12 years earlier that included a concussion, soft tissue injuries to her neck, shoulders, and back and chronic headaches. She also suffered from psychological problems. The plaintiff was able to do some recreational activities but with some pain. She had difficulty concentrating but there was no delay in her schooling or loss of work opportunities. She was awarded \$95,000 in non-pecuniary damages.
 - d) *Sekhon v. Gill*, 2019 BCSC 811: A 25 year-old plaintiff sustained injuries in three motor vehicle accidents that happened over a three-year period when she was a student. She had neck and back pain, chronic pain syndrome with psychological features, and a high risk for aggravation of symptoms in the event of future trauma. Her prognosis was poor. She received \$110,000 in non-pecuniary damages.
- [16] Based on these cases, Ms. Manhas submits that she should be awarded \$90,000 in non-pecuniary damages.

Defendants' Position on Non-Pecuniary Damages

- [17] The defendants concede that the accidents caused Ms. Manhas's injuries. They suggest a range of non-pecuniary damages of \$45,000 to \$60,000 is appropriate.
- [18] The defendants rely on the following cases with respect to the quantum of Ms. Manhas's non-pecuniary damages:
- a) *Haroon v. Basran*, 2015 BCSC 794: The 27 year-old plaintiff sustained soft tissue injuries from a motor vehicle accident on June 11, 2011. The plaintiff's upper body injuries were largely diminished by 2012 but there was ongoing injury to the low back. The Court awarded \$45,000 in non-pecuniary damages.
 - b) *McBurney v. Levesque*, 2019 BCSC 1897: The 23 year-old plaintiff was in a 2016 motor vehicle accident. He suffered soft tissue injuries to his neck and upper back along with headaches, dizziness, fatigue, disrupted sleep, and difficulty concentrating. His symptoms persisted for between eighteen months and two years and were largely resolved. The Court awarded him \$50,000 in non-pecuniary damages.
 - c) *Randhawa v. Chiang*, 2014 BCSC 631: The 28 year-old plaintiff was involved in a 2010 collision and suffered soft tissue injuries. At the time of the accident, the plaintiff worked part-time in a doctor's office and attended school full-time to obtain a certificate as a special education teacher assistant. She completed the program. The Court found that the plaintiff's injuries to

the upper back and neck had resolved but she continued to experience lower back pain. The Court concluded that the plaintiff was entitled to an award of non-pecuniary damages of \$40,000.

Findings of Fact on Non-Pecuniary Damages

- [19] Ms. Manhas was born on September 24, 1995. She was 16 years old at the time of the First Accident. She was healthy and did not have any physical limitations. Specifically, she did not have any issues relating to her neck, back, or shoulders, nor did she suffer from headaches. She took on significant household responsibilities by caring for her siblings and maintaining their home. She also engaged regularly with her family and friends.
- [20] Ms. Manhas is the eldest of four siblings. Her mother worked evenings and her father was disabled and had a drinking problem. As a result, Ms. Manhas was responsible for helping care for her younger siblings and maintaining their household. Her sister, Jessy, testified that the plaintiff was like a second mom to her and her siblings and did many household chores including cooking, dishwashing, mopping, sweeping, and babysitting.
- [21] Ms. Manhas was examined in a local hospital on the day of the First Accident and reported pain in her neck, shoulders, back, and a headache. In the following days, she experienced further headaches and ongoing pain in her neck, shoulders, and back.
- [22] On August 28, 2012, Dr. Ernest Pauls, her family physician, examined Ms. Manhas. He noted injury symptoms to Ms. Manhas's upper body, mid-back, and shoulders. Dr. Pauls recommended exercises, physiotherapy sessions, and medication for pain relief.
- [23] Ms. Manhas attended physiotherapy treatment through the fall of 2012 and was discharged in January 2013. Her physiotherapist gave her a home exercise program and she did these exercises regularly but experienced only temporary relief. Her condition improved over the following three years but she did not fully recover.
- [24] I accept that Ms. Manhas minimized and underreported some of her pain symptoms because she did not want to cause problems in her family. She was aware that Ms. Jaswal's family expressed displeasure with the commencement of the First Accident action. Mr. McNeil found that Ms. Manhas tended to understate her symptoms.
- [25] The First Accident took place in the early summer of 2013. This was the summer between eleventh and twelfth grade for Ms. Manhas. Ms. Manhas worked at BC Frozen Foods Ltd. in July and August 2013. She missed a few shifts because of her injuries but she made up the lost time. When she returned to school, she found it harder to study for classes that were more intensive because her neck and shoulder pain caused headaches and she had a sore back. Her grades declined from a high B average in tenth and eleventh grades to a low B average in twelfth grade. This is consistent with her sister's observations and her reports of difficulty studying.

- [26] In September 2013, Ms. Manhas began post-secondary studies in the Arts program at the University of the Fraser Valley ("UFV"). The following year she transferred to the Business Administration program and graduated with a bachelor's degree from this program in 2019.
- [27] I accept that Ms. Manhas did not attend physiotherapy between January 2013 and September 2014 because she downplayed and underreported her pain symptoms. During this period, her pain persisted. I believe that her family dynamic was such that she did not want to create problems or attract further criticism by complaining about an accident caused by her aunt.
- [28] Ms. Manhas found it difficult to maintain her housework and tried to delegate some of it to her siblings. She did it at a slower pace and took more breaks. Crouching and reaching aggravated her pain symptoms. She eventually told her mom she was experiencing pain. Her mother insisted that she resume treatment. In August 2014, Dr. Pauls gave her a further referral for physiotherapy and she recommenced this treatment, which consisted of heat, massage, exercises, and stretching.
- [29] The Second Accident took place on October 30, 2015. Ms. Manhas was driving her mother's vehicle when she collided with another car in an intersection. Ms. Manhas has a gap in her memory of this accident. She does not recall the vehicles colliding but recalls someone walking her to the side of the road.
- [30] The Second Accident caused a sore back, fracture of a bone in her hand, and some chest and right knee pain. Her back was very sore the day after the Second Accident and she took intensive medication for the following three days. The symptoms from the Second Accident were generally worse than after the First Accident. The frequency of her headaches subsided over time but the intensity of her other pain symptoms worsened.
- [31] After the Second Accident, Ms. Manhas attended physiotherapy, massage therapy, and active rehabilitation treatments but received only temporary relief from her pain symptoms.
- [32] Jessy described her sister squirming, stretching her back, and holding her neck when they are together and recalls witnessing these actions when Ms. Manhas tried to study. She also became withdrawn, easily frustrated, and short tempered, particularly when she had longer days of school and work commitments. Jessy also explained that her sister often isolated herself in her room after the Second Accident because she needed time to recover and mentally reset after the day's activities.
- [33] For five years, Aadit and Ms. Manhas attended the same program at UFV. They had some common classes and often studied together. Aadit recounted that Ms. Manhas could not sit for long periods and could not study for two hours without a break. She recalled that during three-hour classes, Ms. Manhas needed to walk during a break to stretch her neck and back. She also remembers Ms. Manhas becoming sad and withdrawn during the time between the accidents and then more sad and depressed after the Second Accident. She does not see Ms. Manhas as frequently as she used to because Ms. Manhas declined a number of invitations,

presumably due to her pain symptoms and mood issues, so over time, Aadit stopped asking her to go out.

- [34] While continuing her full-time studies at UFV, Ms. Manhas worked part-time at Sears in December 2015 and January 2016. Next, at the end of January 2016, she obtained a part-time position at La Vie en Rose, a women's clothing retailer. She worked there for over a year. In May 2016, Ms. Manhas began working at MS Tax & Accounting Inc. ("MS Tax") as a part-time assistant. Manmeet is a Professional Certified Bookkeeper and the owner of MS Tax. He accommodates Ms. Manhas's needs by providing flexible hours, allowing her to take frequent breaks, and facilitating her working from home by providing her with a laptop computer.
- [35] Ms. Manhas did not attend any treatments from September 2016 to October 2017 because she had a low level of pain, her flare-ups had not intensified during this period, and treatment provided only temporary relief.
- [36] Ms. Manhas's current symptoms are neck, shoulder, mid-upper back pain and headaches. Since finishing her studies at UFV in March 2019, she finds that her neck pain flares up approximately twice a month and usually results in a headache. Her shoulder and back pain have improved since March 2019 but have plateaued. Her back sometimes hurts when she walks on an incline but her ability to walk on level ground is unrestricted. To manage her pain, she takes Tylenol daily and Advil when she has a flare up.
- [37] Ms. Manhas finds it easier to work full-time than to balance attending full-time classes and working part-time. The improvement in her symptoms supports this contention.
- [38] Ms. Manhas was not involved in organized sports prior to the accidents but she enjoyed playing basketball and other recreational sports with her siblings and other children in her neighbourhood. Since the accidents, she is not able to do physical activities with her family and friends such as bowling, go-karting, or going on rides at the Pacific National Exhibition. She tried playing basketball on one occasion but was unable to continue due to pain.
- [39] Aadit also noted that Ms. Manhas's personality changed. Aadit testified that Ms. Manhas does not go out and socialize, is sadder, and stays to herself as compared to before the accidents. Ms. Manhas believes that her relationships with her family and friends have suffered because of the accidents. I accept that Ms. Manhas's relationships and outlook have deteriorated since the accidents. She has become less social and more irritable, withdrawn, and short-tempered.

Medical Expert Evidence

- [40] Ms. Manhas was assessed by her family doctor, Dr. Pauls; a physical medicine and rehabilitation specialist, Dr. Zeeshan Waseem; and an orthopedic surgeon, Dr. Olli Sovio. Their expert reports made diagnoses of pain in the neck, shoulder and back, and associated headaches. The experts concluded that these injuries were likely the result of the accidents. None of them found that Ms. Manhas embellished or exaggerated her pain symptoms.
- [41] Dr. Pauls found that Ms. Manhas probably had chronic pain because her symptoms had persisted for over two years.
- [42] Dr. Waseem completed two reports: one in 2017 and another in 2019. In his 2017 report, he found that Ms. Manhas had soft tissue injuries in her neck and back and developed headaches because of the First Accident. He found that she reinjured her neck and developed worsened headaches and additional soft tissue injuries to her lower back from the Second Accident. He opined that the combined effects of the accidents resulted in chronic myofascial pain of her neck and back and associated cervicogenic headaches. He found that prolonged sitting and sustained neck postures "ignite" her pain and limit her ability to study.
- [43] Dr. Waseem indicated that Ms. Manhas may have difficulty balancing the demands of full-time work with studying for a Chartered Professional Accountant ("CPA") designation and that this may put her at a competitive disadvantage as compared to able-bodied peers. Dr. Waseem concluded that Ms. Manhas's prognosis for a full symptomatic recovery was poor because she had little tangible recovery of her symptoms, which had been longstanding for a period of well over two years. He found that the cumulative toll of the accidents had weighed on her and affected her recovery. Although some improvement is possible, he believes that Ms. Manhas will continue to experience pain and that her condition is chronic, unremitting, and therefore permanent.
- [44] In Dr. Waseem's 2019 report, he noted ongoing neck pain and associated headaches as Ms. Manhas's primary symptoms, consistent with myofascial pain of the cervical spine and chronic cervicogenic headaches. He found that her condition had improved, but if she obtained a CPA designation, there remained a substantial risk that her neck pain and headaches would continue to limit her in comparison to her able-bodied peers. He concluded that her prognosis was fair, full recovery from her injuries is unlikely, and she will probably continue to experience pain. He complimented her resilience in resuming most of her normal activities.
- [45] Dr. Sovio examined Ms. Manhas on August 9, 2019 and produced an expert report on the same day. He believed that Ms. Manhas required no further investigation or treatment. He also "recommended" no limitation in respect of her work or recreational activities. He concluded: "I do not feel that there is any fear of long term issues arising in relation to these 2 motor vehicle accidents." He reached this conclusion despite his finding that Ms. Manhas continues to experience "discomfort" and "aching" well past two years after the Second Accident.

- [46] I do not accept Dr. Sovio's conclusion and find his report to be minimally helpful. His findings understate Ms. Manhas's condition and are inconsistent with the other medical evidence and the clear evidence of the lay witnesses regarding Ms. Manhas's ongoing pain symptoms.

Functional Capacity Evaluation

- [47] Mr. McNeil, a qualified occupational therapist, assessed Ms. Manhas on August 26 and 30, 2019 and completed a functional capacity evaluation and job site assessment report on September 4, 2019. He found that her reports of pain and physical restrictions were consistent with measured and observed abilities. He observed that she put forth a high level of effort and that she had a tendency to underestimate her restrictions in performing activities that require spinal positioning and reaching.
- [48] Mr. McNeil determined that Ms. Manhas had restrictions in bending, looking up and down, and sitting tolerance. She requires frequent changes in position and the ability to periodically move and stretch throughout the day. She also has restrictions in her capacity to perform the stamina requirement of sedentary work and requires accommodations to be able to pace herself. He concluded that she can work full-time but will struggle to maintain a productive work pace and will require accommodations, and that the need for these accommodations will likely adversely affect her ability to compete for work in the open job market.
- [49] Mr. McNeil recommended the following assistive devices to allow Ms. Manhas to manage her pain:
- a) an ergonomic chair;
 - b) a sit/stand height adjustable desk;
 - c) a height adjustable keyboard and computer monitor arm; and
 - d) a footrest.

Analysis

- [50] I accept that Ms. Manhas was in good health physically, mentally, and emotionally prior to the Accident. Her sister and friend, whose evidence I accept without reservation, described her as hardworking and conscientious with no physical restrictions.
- [51] The physicians who examined Ms. Manhas agree, as do I, that the accidents caused her injuries. In my view, there is no practical distinction in the expert reports between the references to "pain" used by Dr. Pauls and Dr. Waseem, and Dr. Sovio's description of "discomfort" and "aching". Dr. Sovio acknowledged that his use of "discomfort" throughout his report was his choice, not a term Ms. Manhas used to describe her symptoms. He did not ask her to quantify the frequency of her "discomfort" and "aching".

- [52] Ms. Manhas's condition is chronic so although her symptoms may improve, complete resolution is unlikely.
- [53] As noted above, all of Ms. Manhas's friends and family who testified noted that her personality changed following the Accident. She became short-tempered and withdrawn.
- [54] The observations of Ms. Manhas's sister and friend are consistent with her evidence and with the observations and opinions of the expert witnesses.
- [55] Ms. Manhas's pain and mood symptoms are ongoing after more than seven years and the experts agree that her prognosis is fair at best. Her physical symptoms plateaued in early 2019 and have not improved since then. She continues to have low levels of daily neck pain, semi-monthly flare ups of more serious neck pain, and associated headaches. During these flare ups, she is unable to function until her medication takes effect. Ms. Manhas is stoic and hardworking but needs time to recover at the end of each work day.
- [56] Having considered all of the relevant cases referred to by the parties and Ms. Manhas's circumstances and prognosis, I conclude that she is entitled to \$60,000 in damages for pain and suffering.

ENTITLEMENT TO DAMAGES FOR FUTURE LOSS OF WORKING CAPACITY

Relevant Legal Principles

[57] The principles applicable to the assessment of future loss of working capacity are:

- A plaintiff should be put in the position she would have been in absent the accident, to the extent possible.
- The court should compare the plaintiff's likely future working life absent the accident to what is likely to occur with the accident having happened.
- The assessment must be based on evidence, but is not a mathematical calculation.
- The plaintiff must prove that there is a "real and substantial possibility" of various future events leading to an income loss.
- Comparison to other cases is generally of limited utility, though other cases can provide some guidance.
- The court can employ the "earnings approach" or the "capital asset" approach in assessing the loss.
- The capital asset approach is typically used in cases where the plaintiff has an uneven earnings history and involves the following factors:
 - o Has the plaintiff been rendered less capable overall of earning income from all types of employment?

- o Is the plaintiff less marketable or attractive as a potential employee?
- o Has the plaintiff lost the ability to take advantage of all job opportunities that might otherwise have been open?
- o Is the plaintiff less valuable to herself as a person capable of earning income in a competitive labour market?
- The overriding principle is the "overall fairness and reasonableness of the award".

See: Pololos v. Cinnamon-Lopez, 2016 BCSC 81 at para. 133; Gregory v. Insurance Corporation of British Columbia, 2011 BCCA 144 at paras. 32-33; Brown v. Golaiy (1985), 26 B.C.L.R. (3d) 353 at para. 8 (S.C.); Gilbert v. Bottle, 2011 BCSC 1389 at para. 233; and Rosvold v. Dunlop, 2001 BCCA 1 at paras. 10-11.

- [58] Ms. Manhas must show that there "is a realistic possibility [that] she will be less able to compete in the marketplace--with economic consequences, not merely psychological ones": Kim v. Morier, 2014 BCCA 63 at para. 8.

The Plaintiff's Position on Future Loss of Working Capacity

- [59] Ms. Manhas believes that her inability to do sedentary work without accommodations will delay her completion of the requirements to become a CPA. This is because she will be unable to work full-time while doing the necessary course work. She will be limited to working part-time during the period when she is completing the CPA accreditation requirements.
- [60] Ms. Manhas notes that Manmeet is not a CPA so she will need to find employment elsewhere, with a CPA firm, to further her career. To date, she has been unable to find part-time employment with a CPA firm. Even if she is able to secure employment with a CPA firm, she is unsure if they will accommodate her needs.
- [61] Ms. Manhas suggests that her best-case scenario is a two-year delay in completing the CPA program. This is based on her plan to continue working with MS Tax while completing the CPA coursework, then completing the CPA work requirements once she successfully completes this coursework.
- [62] In any event, Ms. Manhas believes that she is entitled to compensation in respect of the accommodations she will require and because she will be at a disadvantage in finding work because of her physical limitations.
- [63] Using an estimated salary of \$62,500 for a first year CPA and the capital asset approach, Ms. Manhas submits that she is entitled to two years of salary, \$125,000, as damages for future loss of working capacity.

The Defendants' Position on Future Loss of Working Capacity

[64] The defendants submit that the accidents have not impaired Ms. Manhas's ability to study for or work as a CPA and she has therefore not suffered any loss of working capacity. They suggest that if compensation is awarded, it should be awarded as part of non-pecuniary damages because insufficient evidence has been provided to use either the earnings or capital asset approaches.

Factual Findings and Analysis on Future Loss of Working Capacity

- [65] Ms. Manhas's efforts to obtain a part-time CPA student position consisted of doing an online search. She contacted two firms; one directed her to their website, the other did not respond to her inquiry.
- [66] Ms. Manhas enrolled to begin the CPA coursework in January 2020. She intends to try doing the coursework while working for MS Tax to determine if she can handle the workload. Manmeet is not a CPA and therefore does not have the necessary credentials to supervise the work experience required for a CPA student.
- [67] Mr. Rudy Paxian worked as a CPA at KPMG for 31 years. After retiring in 2017, he joined a regional accounting firm, Manning Elliott. He was involved in human resources at KPMG for over 20 years and is familiar with the student hiring and education process at KPMG and Manning Elliott. Mr. Paxian was not qualified as an expert. From his observations over the course of his career as a CPA, he estimated that CPA students work approximately 40 hours per week from May to December; 60 hours per week from January to April, the period known as "tax season"; and 20-30 hours per week on the CPA coursework.
- [68] Mr. Paxian swore an affidavit in which he deposed that first year accounting students at KPMG and Manning Elliott are paid between \$40,000 and \$42,000 per year and second year students earn between \$44,000 and \$47,000 per year. First year CPAs earn between \$58,000 and \$67,000 per year.
- [69] Manmeet, Ms. Manhas's current employer at MS Tax, testified that she is a good and valuable employee who has been working full-time for at least four months. He would be happy to have her continue working for him but he is aware of her interest in becoming a CPA.
- [70] Ms. Manhas has daily neck pain coupled with semi-monthly neck pain flare-ups that often cause headaches. Her condition is chronic, unlikely to resolve, and requires employer accommodation. I am satisfied that Ms. Manhas will require the type of accommodations and flexibility offered by Mr. Thathar throughout her working life. These include flexible hours, the ability to take frequent breaks, and periodically work from home.

- [71] She has not had an educational or vocational delay but her ability to thrive in her chosen career as a CPA will be limited as compared to able-bodied competitors in the workplace and her chronic pain requires accommodation.
- [72] In my view, there is a real and substantial possibility that she will suffer an economic loss. This is because her chronic pain will probably prevent her from working the extended hours that are required of CPAs, particularly during the tax season from January to April.
- [73] Ms. Manhas is on the verge of starting a new career as a CPA. Her past earnings are therefore not relevant to assessing her damages for loss of future working capacity. In my view, it is appropriate in these circumstances to use the capital asset approach.
- [74] Applying the factors in Brown:
- a) Ms. Manhas is less capable of earning income from all types of employment because she is not physically able to work more than an eight-hour day. I accept her evidence in this regard as corroborated by her sister and employer.
 - b) Ms. Manhas is clearly less marketable or attractive as an employee to potential employers because her pain symptoms limit her ability to work prolonged hours and she requires accommodations. Her limitations may limit or delay her career progression as a CPA.
 - c) Ms. Manhas has lost the ability to take advantage of all job opportunities that might otherwise be open to her. For example, she plans to do the CPA program over more than the usual two-and-a-half year period because she cannot work full-time and spend the additional 20-30 hours per week on the CPA courses. She intends to work part-time and do the CPA courses part-time. Then, when this part of the program is completed, she expects to work full-time at a CPA firm to obtain the accredited hours she needs to fulfill the requirements for accreditation as a CPA. This will extend by at least two years the time that she needs to become a CPA.
 - d) Ms. Manhas may well be less valuable to herself as a person capable of earning income in a competitive labour market because of the limitations on her ability to work extended hours.
- [75] In applying these factors, I conclude that two years of income for an entry level CPA is a reasonable basis on which to calculate the value of this asset. Using the information provided by Mr. Paxian, this is approximately \$125,000 based on the average income of entry level CPAs at a large international accounting firm and a smaller local firm.
- [76] This amount should be reduced by two contingencies: First, the possibility that Ms. Manhas's condition may continue to improve as it did in 2019. I am particularly mindful that she will have the benefit of the ergonomic devices that may improve her neck pain symptoms. Use of these devices is unlikely to eliminate her pain but the frequency of flare-ups may decrease. I assess this contingency at 20%.

- [77] A further contingency is the possibility that Ms. Manhas may not have completed the qualifications to become a CPA in any event. Her grades in high school math and her UFV grades in financial accounting and economics suggest that she may have had difficulty with becoming a CPA regardless of the accidents. Given her academic challenges with courses that are more rigorous and taking into consideration that the CPA program is a professional designation with demanding entry requirements, I assess her contingency of failing to complete this program, absent her accident history, at 20%.
- [78] Therefore, the capital asset should be reduced by 40% to account for both contingencies from \$125,000 to \$75,000.

QUANTUM OF DAMAGES FOR COST OF FUTURE CARE

Relevant Legal Principles

- [79] The principles applicable to the assessment of cost of future care are:

Providing adequate damages for future care for an injured plaintiff is of paramount importance. The purpose of such an award is to provide for assistance directly related to the injuries caused by the accident. The test for determining an appropriate award is an objective one based on medical evidence. The focus should be on the plaintiff with fairness to the other party being achieved by ensuring that the expenses are legitimate and justifiable. The plaintiff needs to show: (a) a medical justification for the items claimed; and (b) that the amount claimed is reasonable. "Medical justification" is broader than "medically necessary". Medical experts need not expressly approve specific items of future care; it is sufficient if the totality of the evidence supports the award for specific items. Common sense should be employed in this assessment. No award should be included for items that would be incurred in the absence of the accident.

· A plaintiff must prove that it is likely that they will use the services or treatments for which they are advancing a claim.

See: Thompson at para. 149; *Maltese v. Pratap*, 2014 BCSC 18 at para. 78; and *Izony v. Weidlich*, 2006 BCSC 1315 at para. 74.

The Parties' Positions on Cost of Future Care

- [80] Ms. Manhas seeks \$2,000 for over-the-counter medications. This is based on approximately \$100 per year for Tylenol and Advil. She also seeks \$2,400 for an ergonomic chair and height adjustable table. This amount is based on an estimate she obtained from a vendor of these items. Ms. Manhas also claims \$3,000 for the replacement of the items recommended by Mr. McNeil. Her total claim for cost of future care is \$7,400.
- [81] The defendants submit that the amount claimed for the ergonomic chair and desk is excessive and rely instead on the amounts in Mr. McNeil's report for these items.

Factual Findings and Analysis on Cost of Future Care

- [82] In my view, \$2,000 for over-the-counter medication is both medically justified and reasonable. Ms. Manhas has relied on this medication to manage her pain.
- [83] The ergonomic chair, height adjustable desk, and related accessories recommended by Mr. McNeil are also medically justified and reasonable. Ms. Manhas's ongoing symptoms may be alleviated to some degree with the use of these items. Mr. McNeil estimated the cost of these two items to be \$1,650. I rely on this estimate instead of the one obtained by Ms. Manhas.
- [84] I accept that the amount of \$3,000 is reasonable for the lifetime replacement of the items recommended by Mr. McNeil. I note that he estimated that the chair would need to be replaced approximately every five years and the desk every ten years.
- [85] Ms. Manhas is entitled to \$6,650 for the cost of future care.

QUANTUM OF SPECIAL DAMAGES

Relevant Legal Principles

- [86] The principles applicable to the assessment of special damages are as follows:

Claims for special damages are subject to a consideration of reasonableness, taking into account the nature of the injury sustained, once causation is established. Medical justification for an expense is a factor as to reasonableness, but is not a prerequisite. Subjective factors may also be considered such as whether the plaintiff believes the treatment is medically necessary. \$0.50 per kilometer is a reasonable rate to attend treatment.

See: *Hancott v. Barnes*, 2015 BCSC 1308 at para. 164; *Derksen v. Nicholson*, 2015 BCSC 1268 at para. 78; *Devilliers v. McMurchy*, 2013 BCSC 730 at paras. 72 and 75; and *Liu v. Thaker*, 2012 BCSC 612 at para. 72.

The Parties' Positions on Special Damages

- [87] Ms. Manhas seeks special damages in relation to expenses she incurred for medications, pre-trial treatment, including physiotherapy, massage therapy, chiropractic therapy, active rehabilitation, and mileage to attend these treatments. She also claims \$875 in respect of tuition for two classes she retook after initially failing them.
- [88] The defendants dispute the amounts claimed for chiropractic treatments on the basis that they were not prescribed by a physician. They also seek to reduce the amount claimed for active rehabilitation on the basis that Dr. Waseem recommended a lower frequency of this treatment than received by Ms. Manhas. Finally, they assert that the additional tuition cost incurred by Ms. Manhas is not related to the accidents.

Factual Findings and Analysis on Special Damages

- [89] I am satisfied that the accidents caused the need for the treatments undertaken by Ms. Manhas. There was a lack of evidence regarding the chiropractic treatments but I am satisfied that Ms. Manhas reasonably undertook this treatment to try to alleviate her symptoms. It is not necessary for a treatment to be prescribed by a physician in order for it to be considered reasonable. Ms. Manhas attended the full range of treatments that are generally undertaken for the types of injuries that she sustained in the accidents. This includes physiotherapy, massage therapy, and active rehabilitation. In my view, attempting chiropractic treatment in 2019 was entirely reasonable in this context.
- [90] Active rehabilitation was prescribed by Dr. Waseem and in my view, the frequency with which Ms. Manhas obtained this treatment is reasonable. I presume that she found this type of treatment to be useful and the evidence is clear that she has been diligent in doing exercises to maximize her recovery.
- [91] I am not satisfied that Ms. Manhas has established that her failure to successfully complete two classes more than a year after the Second Accident is causally connected to the accidents. I note that she passed all of her classes in fall 2015, winter 2016, and summer 2016 before failing these two classes in fall 2016. She was also working two part-time jobs during this period. The \$875 amount claimed in respect of retaking two classes is denied.
- [92] Ms. Manhas has established that she has reasonably incurred expenses of \$6,240 that are attributable to the accidents. She is entitled to special damages of this amount plus pre-judgment interest.

CONCLUSION

- [93] Ms. Manhas is entitled to:
- a) \$60,000 for non-pecuniary damages;
 - b) \$75,000 for loss of future income earning capacity;
 - c) \$6,650 for cost of future care; and
 - d) \$6,240 for special damages.

COSTS

- [94] If the parties wish to make submissions on costs, they may be filed within 60 days of the date of this judgment. If no submissions are received, the plaintiff will have her costs at Scale B.

"Basran J."

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