
CANADA / JUDGMENT

Parmar v. Rink

2019 BCSC 1626

COURT

Supreme Court of British Columbia

DECIDED

30 September 2019

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

2019 BCSC 1626 Parmar v. Rink

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Parmar v. Rink,

2019 BCSC 1626

Date: 20190930

Docket: S31613

Registry: Chilliwack

Between:

Sarbjit Kaur Parmar

Plaintiff

And

Anne Rink and Harold Rink

Defendants

Before: The Honourable Madam Justice Norell

Reasons for Judgment

Counsel for the Plaintiff:

R. Dhami

P. Bal

Counsel for the Defendants:

H. Frost

Place and Dates of Trial:

New Westminster, B.C.

April 8-12, 15 and 17, 2019

Place and Date of Judgment:

Chilliwack, B.C.

September 30, 2019

[1] On the evening of December 17, 2015, the plaintiff Ms. Parmar and two of her children were proceeding on foot northbound in the crosswalk across Huntingdon Road at its intersection with Gladwin Road in Abbotsford, BC. Ms. Parmar and her son, age seven, were struck by a car driven westbound on Huntingdon Road by the defendant, Mr. Rink. Ms. Parmar's daughter, age 11, who had proceeded in front of them, was not struck. Ms. Parmar was thrown approximately 14 metres and suffered a number of injuries for which she claims damages. Mr. Rink denies liability, and in the alternative alleges contributory negligence on the part of Ms. Parmar. Damages are in issue.

Liability

- [2] The intersection where the collision occurred is in a rural area. The northeast and northwest corners of the intersection are fields. An autobody shop is located on the southeast corner. A small building and a gravel parking lot are located in the southwest corner. If one proceeds west on Huntingdon Road past the intersection, the road rises and South Poplar Traditional Elementary school is on the south side of Huntingdon, further west and adjacent to the parking lot. There are trees lining both sides of the roads in the southwest corner, partially shielding the school and parking lot from view. There is a marked crosswalk for pedestrians moving north and south, on the west side of the intersection. There is an "X" painted on the road for traffic approaching the intersection from the east, about 75 metres from the crosswalk. There are retroreflective crosswalk signs on both sides of the road, further west of the intersection and crosswalk.
- [3] The accident took place at approximately 7:17 p.m. It was dark at the time. There is a single streetlight at the northeast corner extending diagonally toward the middle of the intersection. The autobody shop on the southeast corner has four lights on or near its roof that are angled toward the building. Ms. Parmar said there was also a light in the gravel parking lot.

- [4] Ms. Parmar and her now 14 year old daughter both said there was "light rain". Mr. Rink described the weather as "terrible" with rain with some snow in it, and winds. The police photographs after the accident show completely wet roads, and a lot of water on Mr. Rink's vehicle. Rain is visible in some of the photographs. There was no evidence the weather changed immediately after the accident. I find there was heavy rather than light rain.
- [5] Ms. Parmar was wearing a knee length "silver" jacket with a black dress, black leggings, and black leather boots. Both her children were wearing dark clothing, except that her son had a white patka on his head and was carrying a pink teddy bear, but it is not known where he was carrying it.
- [6] The posted speed limit on Huntingdon road is 60 km/h but there was a school zone speed limit of 30 km/h between 8 a.m. and 5 p.m. on school days. The accident took place after these hours. Both accident reconstruction experts who testified estimated Mr. Rink's speed at approximately 45 km/h (a range of 41 to 48 km/h) at the time of the accident, below the posted speed limit, and I accept this as his speed.

Ms. Parmar's evidence

- [7] Ms. Parmar gave evidence through an interpreter.
- [8] On the evening of the accident Ms. Parmar and her two youngest children were attending her son's holiday concert at the school. There were many people in attendance. Ms. Parmar parked on the north side of the intersection on Gladwin Road. There were other cars parked near her. The concert ended about 7:00 p.m. After the concert, she walked with her two children east along the southern edge of Huntingdon Road until they reached the intersection. There were no other pedestrians walking on Huntingdon Road in either direction, or in the crosswalk, but there were people in cars exiting the gravel parking lot in the southwest corner of the intersection.
- [9] At the crosswalk she stopped and looked both ways for 4-5 seconds. Nothing was coming from the left (west), and she saw one car coming from the right (east), "but it was far". She did not know and could not determine how far away the car was, but she thought she could cross the intersection. She could not tell the speed of the car. She said "I cannot have any idea". She could not determine if the car was slowing down or if it was moving fast. She did not make eye contact with the driver because the car was far away.
- [10] Her daughter proceeded into the crosswalk an arm's reach in front of her. Ms. Parmar was holding her son's hand and started walking at a normal speed. She does not remember anything after that until she was in the hospital. When she was struck, Ms. Parmar was in the north side of the crosswalk, having already crossed the eastbound lane.

The daughter's evidence

- [11] Ms. Parmar's daughter gave evidence similar to that of her mother. When she got to the crosswalk she looked both ways. There was nothing to the left and a car "far away" to the right. At that point, she crossed the road at a normal walking speed. When she started out, she was about two steps in front of her mother. She did not look behind her at any time after she started to cross. She heard her mother scream and a noise. She looked back and saw her mother and brother on the road.

Mr. Rink's evidence

- [12] Mr. Rink was driving a 2014 Mercedes 250 SUV. His wife, who is the other defendant and owner of the car, was a passenger in the car. She did not testify at trial as she has difficulty with memory. Mr. Rink is a retired teacher and was 79 years old at the time of the accident. He was in good health then and now. He and his wife were returning home to White Rock from an early dinner with friends in Chilliwack. He took this route rather than the highway because he does not like driving on the freeway, this was a slower route, and the weather was terrible.
- [13] He was familiar with this route. He knew there was a school in the area, but did not know there was a holiday concert that night. He could not see the parking areas to the sides of the road as it was too dark. He did not see parked cars or their headlights in the area, nor any pedestrians. He could see the road signs and he knew there was a crosswalk with large white stripes. Just before the accident there was no oncoming traffic.
- [14] He was driving with his low beams as he found it harder to see with high beams because of the glare. Visibility was "terrible" and he could only see 30-40 feet ahead. He was looking straight ahead and not to the sides. He agreed he needed to scan the sides as well, but could not look any other place as "he had no choice" because it was so dark and rainy and poorly lit. The light at the intersection did not help much. He estimates he was going about 50 km/h, but he did not look at his speedometer. I accept his evidence that he did not change speed as he approached the crosswalk.
- [15] He first saw Ms. Parmar and her son when they were directly in front of his vehicle, a split second before the accident. Ms. Parmar had her right arm up around her head. He had no time to brake or take evasive action before the collision. He jammed on the brakes. He said there was nothing he could have done to avoid the accident. He did not see Ms. Parmar's daughter cross in front of him.

Mr. Craig Luker, professional engineer

- [16] Mr. Luker was called by Ms. Parmar. On June 1, 2017, he was asked to investigate the accident. Using information from the police report, photographs, and various studies, Mr. Luker opined as follows:

- a) Ms. Parmar was struck at the car's left headlamp area and her son was struck near the car's centre line;
 - b) based on the distance the pedestrians were thrown, the car's most likely impact speed was in the range of 45 to 48 km/h;
 - c) the damage from Ms. Parmar's interaction with the vehicle is consistent with her walking rather than running;
 - d) the pedestrians had likely walked from 8.6 to 10.0 metres and 4.8 to 5.6 seconds in the crosswalk before impact occurred;
 - e) the car would have been 67 to 93 metres away from the crosswalk when Ms. Parmar and her son started to cross;
 - f) after Mr. Rink noticed the pedestrians, and his perception response time elapsed, he could have brought his vehicle to a complete stop from a speed of 60 km/h in 14.9 to 16.7 metres, and from a speed of 50 km/h in 10.3 to 11.6 metres. The distance Mr. Rink would have travelled during the perception response time would have to be added to this. Mr. Luker did not comment on that distance.
- [17] Mr. Luker also opined on two other matters. The first was in a section of his report entitled "Factors Affecting Visibility". He opined there were several factors that would have aided Mr. Rink in noticing the pedestrians. These included: the street light at the northeast corner of the intersection; the light colour of Mr. Parmar's jacket and her son's pink teddy bear; Ms. Parmar's daughter who made it across the road; and the large number of other people that had exited the school building in the immediate vicinity.
- [18] I have disregarded portions of this section of his report. It is the court's duty to maintain a gatekeeper function with respect to any expert evidence. Beyond the explanations regarding reflective surfaces and how flash may affect pictures, much of Mr. Luker's opinion in this section is not an engineering opinion based on evidence or assumed facts. For example, statements that "the school itself, along with the lights coming through its windows and the headlights of vehicles in the parking lot, would have been the largest source of light beyond the two street lights" is argument. Mr. Luker did not visit the scene. He did not know how many cars were in the parking lot or parked on the side of the road, or if their headlights were on. Mr. Luker did not take measurements of the light from these sources, nor was there evidence of light from headlights of other vehicles. Similarly, "activity and commotion of all the other families leaving the school would have alerted eastbound drivers to the presence of numerous people in the vicinity" is argument because he did not know how many people there were or where they were. Ms. Parmar said there were no other pedestrians along the road or in the crosswalk as she was walking toward it. Mr. Luker did say there is research on perception, for example on how movement and contrast affects ability to perceive, but that was not the opinion being offered.

- [19] Mr. Luker was also asked to comment on a "safe" travel speed if visibility was limited to 30 to 50 feet (9.1 to 15.2 metres). He opined it would be no more than 16 to 25 km/h. Any speed above those would not enable a driver to notice a hazard and stop before hitting it. Mr. Luker assumed a "safe speed" was where a driver could "react to any hazard that suddenly appears on the roadway and stop before hitting it". What is admissible is his calculation of the speed required to stop, and not the further opinion on a legal issue.

Mr. Kurt Ising, professional engineer

- [20] Mr. Ising was called by Mr. Rink. Mr. Ising attended the accident scene in the dark on December 19, 2018, three years after the accident. He based his opinion on information in the police report, photographs, various studies, and light measurements he took at various points along the crosswalk.
- [21] Mr. Ising found the least luminance is in the south end of the crosswalk, increasing toward the north and closer to the street lamp in the northeast corner. At the farthest south end, the luminance is 1.3 lux. At the middle of the westbound lane, near where Ms. Parmar was hit, the luminance is 2.9 lux. Mr. Ising opined that the light from the streetlight alone would not have sufficiently illuminated the pedestrians to allow for their detection when they were crossing in the south side of the intersection, which is where detection would have had to take place for the collision to be avoided by Mr. Rink. He therefore ignored any light from the streetlight and opined on Mr. Rink's ability to detect the pedestrians using light only from the car's headlights. He also opined on Ms. Parmar's ability to perceive and react to Mr. Rink's car. Mr. Ising opined:
- a) the car was probably travelling at a speed of about 41 to 48 km/h at impact;
 - b) if the pedestrians had been wearing white clothing, an average older driver's detection could have occurred about 18 metres away from impact. If the pedestrians had been wearing dark clothing, an average older driver's detection could have occurred about 10 metres (95% confidence range of 7 to 14 metres) away from impact;
 - c) Ms. Parmar's detection of the car would have been possible when she was at the south end of the crosswalk. At this point the car was up to 115 metres away;
 - d) Ms. Parmar would have had a sightline to the car's headlights up to at least 250 metres away;
 - e) if Mr. Rink had a typical response time upon detection of the pedestrians, then his expected response time was about 1.5 seconds (range of 1.0 to 2.2 seconds);
 - f) based on Mr. Rink's range of initial speeds, detection distances, and response times, there was likely no time for him to respond or brake sufficiently to avoid impact;
 - g) if an average older driver in Mr. Rink's position encountered these pedestrians wearing white clothing he probably could have stopped short of the pedestrians from a speed of about 28 km/h;

- h) if an average older driver in Mr. Rink's position encountered these pedestrians wearing dark clothing, then he probably could have stopped short of the pedestrians from a speed of about 19 km/h; and
 - i) If Ms. Parmar had a typical response time upon detecting the hazard presented by the approaching car then her last opportunity to stop short of the car was when she was about 3.7 metres away from impact. This distance corresponds to about the middle of the eastbound lane.
- [22] In cross-examination, Mr. Ising agreed the measurements of light from the streetlight did not include any illuminance from headlights. He agreed a lux of 3.0 is equivalent to "civil twilight", which means there is enough light for most outdoor activities without artificial light. It is the light level at which drivers put on their headlights. However, he said that perception is more complex and depends on factors such as contrast and movement. He agreed the pedestrians would have become more visible as they moved from south to north, and as they moved into the beam of the headlights from Mr. Rink's vehicle. He said what was important was their visibility when they started out in the southwest corner, as that is where they would have to be detected to avoid a collision.
- [23] In cross-examination, the studies which Mr. Ising relied upon to come to his conclusions were reviewed. One study addressed the time it took an older driver to see a darkly clad pedestrian. That study was based on a single pedestrian, standing on the side of a completely dark road, with no warning or reflective signs, and with different headlights from those in Mr. Rink's vehicle. This was contrasted with this case which involved three pedestrians who were moving, in a crosswalk, with a streetlight, with warning signs, and high-end headlights on Mr. Rink's vehicle.
- [24] Mr. Ising took data from the above study and doubled the time required to respond to a hazard because of another study which measured the reaction time for unexpected versus expected hazards. The reaction time for unexpected hazards is about double that of expected hazards. The difference between this second study and the current case was highlighted in cross-examination. In the study, the hazard was a single stationary dummy on the road. There was no light, no warnings and no crosswalk, and the headlights were from a vehicle from the 1930's. Mr. Ising acknowledged the differences between conditions of the studies, but said he considered those differences in coming to his opinion. He said the second study is the best data available for assessing the effect of expectation. No data will ever match a scenario exactly. For example, the streetlight in this case would make visibility better, but the rain would make it worse.
- [25] Mr. Ising agreed high beams shine further forward and more to the left side than low beams, but did not agree they would have necessarily provided more visibility in this case because of the glare and masking from the rain. Mr. Ising agreed that based on his calculations, Mr. Rink was outrunning his headlights.

- [26] Mr. Ising took a photograph of the scene from his own car on a dark night, using low beams at 113 metres from the intersection. The intersection is clearly visible from that distance, although it was not raining at the time.
- [27] Mr. Ising agreed the damage to Mr. Rink's vehicle was consistent with Mr. Parmar and her son walking. He was cross-examined on the studies he used to estimate Ms. Parmar's walking speed and her reaction time and ability to avoid the collision, but in my view his opinion on this issue was not undermined. He agreed it would be difficult for Ms. Parmar to estimate the speed of Mr. Rink's vehicle when she first started out, but said at some point when a car gets closer, a person is able to judge the speed of an oncoming car.

Analysis

Law

- [28] The relevant provisions of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 are:

179(1) Subject to section 180, the driver of a vehicle must yield the right of way to a pedestrian where traffic control signals are not in place or not in operation when the pedestrian is crossing the highway in a crosswalk and the pedestrian is on the half of the highway on which the vehicle is travelling, or is approaching so closely from the other half of the highway that he or she is in danger.

- (2) A pedestrian must not leave a curb or other place of safety and walk or run into the path of a vehicle that is so close it is impracticable for the driver to yield the right of way.

181 Despite sections 178, 179 and 180, a driver of a vehicle must

- (a) exercise due care to avoid colliding with a pedestrian who is on the highway,
- (b) give warning by sounding the horn of the vehicle when necessary, and
- (c) observe proper precaution on observing a child or apparently confused or incapacitated person on the highway.

- [29] The above provisions are not an exclusive code. Pedestrians and drivers using a roadway still have a common law obligation to exercise due care for their own and other's safety: *Cook v. Teh* (1990), 45 B.C.L.R. (2d) 194 (C.A.).

- [30] I have reviewed the cases cited by counsel, which are: *Cairney v. Miller*, 2012 BCSC 86 [Cairney]; *Suedat v. Kara*, 2014 BCSC 1837 [Suedat]; *Guitierrez v. Covvey*, 2015 BCSC 369 [Guitierrez]; *Farand v. Seidel*, 2013 BCSC 323 [Farand]; *William v. Ross*, 2017 BCSC 2200 [William]; *Hmaied v. Wilkinson*, 2010 BCSC 1074; *Funk v. Carter*, 2004 BCSC 866; *Paskall v. Scheithauer*, 2014 BCCA 26; *Bell v. Thorner*, 2009 BCSC 44 [Bell]; *Olson v. Farran*, 2016 BCSC 1255 [Olson]; and *Vandendorpel v. Evoy*, 2018 BCCA 442.

- [31] The principals are summarized in *Suedat* at paras. 16-19:

- [16] Once a pedestrian has safely entered a crosswalk, absent any negligence on the pedestrian's part that could mislead a motorist into thinking he or she could proceed safely, the pedestrian may assume that motorists will yield the right of way to them and will share no responsibility if struck in the crosswalk (*Miksch v. Hambleton*, [1990] B.C.J. No. 1810 (S.C.)).
- [17] Negligence on the part of a pedestrian in a crosswalk must be proven by the defendant on the balance of probabilities. In *Feng v. Graham* (1988), 25 B.C.L.R. (2d) 116 (C.A.), Wallace J.A. stated at page 120:

In my view the plaintiff in the circumstances of this case was entitled to assume that the defendant was going to obey the law and yield the right-of-way to her. Her right to rely on that assumption continued until such time as she knew, or ought to have known, that the defendant was not going to grant her the right-of-way, whereupon the plaintiff's obligation to avoid injury to herself superseded her right to exercise her right-of-way. The onus is on the defendants to establish that the plaintiff knew or ought to have known, that the defendant driver was not going to grant her the right-of-way, and that, at that point of time, the plaintiff could reasonably have avoided the accident.

[Emphasis added.]

- [18] Pedestrians in crosswalks are not required to exercise "extreme vigilance" to ensure they won't be struck (*Jung v. Krimmer* (1990), 47 B.C.L.R. (2d) 145 (C.A.), leave to appeal ref'd 135 N.R. 201n (S.C.C.)). To prove contributory negligence on the part of a pedestrian, the defendant must show more than inattention. A defendant must also establish (1) at what distance the pedestrian should have realized from the speed of the approaching vehicle it was not going to yield; (2) it would it have been possible for a pedestrian to avoid being impacted; and (3) that a reasonable person in the circumstances of the plaintiff should have taken evasive action to avoid the impact: *Foreman v. Mortz*, 2001 BCSC 95; *Dionne v. Romanick*, 2007 BCSC 436; *Farand v. Siedel*, 2013 BCSC 323; *Paskall v. Scheithauer*, 2014 BCCA 26.
- [19] The fact that the plaintiff was wearing dark clothing and using a dark umbrella is not evidence in and of itself that she was contributorily negligent. She was entitled to wear whatever colour and clothes that was appropriate that evening and there was no evidence that her failure to wear light clothing would have prevented being struck (*Achilleos v. Nix*, 2000 BCSC 1422).

Mr. Rink's alleged liability

- [32] Ms. Parmar alleges that Mr. Rink failed to keep a proper look out and yield the right of way to her when she was lawfully in the crosswalk. Counsel argues there is no reasonable explanation why Mr. Rink did not see Ms. Parmar until the split second before his car struck her. Ms. Parmar was struck when she had already crossed one full lane and was in the middle of the westbound lane. Her daughter had crossed ahead of her and Mr. Rink did not see her. There is no evidence that Ms. Parmar did anything to confuse or mislead Mr. Rink to

think that he did not have to yield the right of way to her.

- [33] Mr. Rink's counsel argues Mr. Rink could not have seen Ms. Parmar and reacted in time to avoid the accident. Visibility was terrible and counsel relies upon the opinion Mr. Ising.
- [34] In my view Mr. Rink was negligent. There is a very high standard of care on a driver approaching a marked crosswalk: Guitierrez at para. 31. I find that Mr. Rink failed to keep a proper look out and yield the right of way to Ms. Parmar while she was in the crosswalk. While I accept that the rain made visibility more difficult, I find Ms. Parmar was there to be seen. I do not accept all of Mr. Ising's conclusions regarding Mr. Rink's ability to perceive and react because the studies upon which he bases his opinion involve very different situations from the circumstances in this case, and he does not take into account any light from the streetlamp. Unlike the studies, there were three pedestrians, who were moving across lanes of traffic, in a lit intersection, in a marked sidewalk, in the middle of the lane, with crosswalk warning signs, in a known school zone. Although Mr. Rink would not have known there was a school concert that evening, I accept Ms. Parmar's evidence that there were cars about as people were leaving the school. This should have alerted Mr. Rink that there was some activity and to be more cautious. I do not accept visibility was only 30-40 feet, which would be extremely limited, and which does not appear consistent with the police photographs which do not show fog or rain heavy enough to obscure visibility to that extent. Even if that were the case, Mr. Rink was negligent for outrunning his headlights. The photograph Mr. Ising took, albeit on a clear night, shows the intersection clearly visible at 113 metres.
- [35] Ms. Parmar's counsel alleges that Mr. Rink was also negligent by using low beams. Given Mr. Rink's evidence that the high beams made it harder to see because of the glare from the rain, which I find is a reasonable explanation for using the low beams and was supported by Mr. Ising, I find that Ms. Parmar has not established this particular of alleged negligence.

Ms. Parmar's alleged contributory negligence

- [36] Mr. Rink alleges Ms. Parmar had a duty to take reasonable care for her own safety. He alleges she was negligent by leaving a place of safety and walking into the path of his vehicle, and by not maintaining a proper or continuous lookout. Mr. Rink's counsel argues that Ms. Parmar was not in a position to make a reasoned assessment of whether she was putting her own safety at risk. She did not know the speed of the vehicle and could not tell how far away it was. Further, she and her children were wearing dark clothing, on a dark and rainy night, at an intersection that was poorly lit. While it is not negligence to wear dark clothing, Ms. Parmar should have appreciated that it would be difficult for a driver on such a night to see a person dressed in dark clothing. As a result, she had a duty to wait until she could make an assessment of the speed of the oncoming vehicle, and to ensure that the driver saw her and her children and was slowing.

- [37] Ms. Parmar's counsel argues Ms. Parmar looked both ways prior to crossing, that at the time Mr. Rink's vehicle was some distance away, and that it would have been difficult to assess the speed of Mr. Rink's car. Ms. Parmar did not do anything to confuse or mislead Mr. Rink.
- [38] I find that Ms. Parmar was contributorily negligent. She was not able to determine the speed or distance of the oncoming car. It should have been in her mind that she and her children might not be seen for the reasons outlined by Mr. Rink. She therefore could not make a reasoned assessment that she could safely proceed. Given these, she had an obligation to watch the approaching car until she could make a determination of its speed and whether it was slowing prior to starting out or continuing to cross. Because Ms. Parmar has no memory of the accident after she left the curb, there is no direct evidence of whether she did watch Mr. Rink. However, I have concluded she did not. Had she been watching Mr. Rink's car, she would have seen that it was not slowing and she would have and could have either not entered the crosswalk or stopped crossing in time to avoid the accident. I accept Mr. Ising's opinions on Ms. Parmar's ability to see and react to Mr. Rink's vehicle. His opinions with respect to Ms. Parmar's ability to avoid the accident were not undermined in cross-examination. I find that Mr. Rink has established the three criteria for contributory negligence as set out in *Suedat* at para. 18.
- [39] This case is distinguishable from those cited by Mr. Parmar's counsel where no contributory negligence was found. In *Cairney*, the pedestrian looked and saw the driver slowing and reasonably concluded that the driver saw him. In *Suedat* and *Gutierrez*, the plaintiffs were proceeding on a walk signal in a marked sidewalk and were hit by a left turning driver. In *Farand*, the plaintiff was walking in a marked crosswalk in midday in good weather. In *William*, the plaintiff was walking in a marked crosswalk in midday in good weather and hit by a left turning car that had previously been observed when it was stopped. The cases cited by Mr. Rink are also distinguishable, but I find the comments in *Bell* and *Olson*, where contributory negligence was found, to be applicable. In *Bell* at para. 36 the Court stated:

The plaintiff has not satisfactorily explained why he did not see an approaching vehicle with its headlights illuminated that was there to be seen. It was a dark rainy night. He was dressed in dark clothing. He was crossing a through street at an unmarked uncontrolled intersection. A bus had just passed in front of him, indicating the presence of traffic. Mr. Bell left a place of safety and stepped out into the unmarked crosswalk at the intersection, wearing dark clothing on a dark rainy night, without checking adequately or at all to see that there was no oncoming traffic from his left. There is no other available conclusion, given that the *Thorner* vehicle, headlights on, was there to be seen, approaching on the roadway. Mr. Bell should have been aware that it would be difficult for a driver on such a night to see a person dressed in dark clothing. It seems obvious that he did not take reasonable care for his own safety. I find that Mr. Bell was contributorily negligent.

[Emphasis added.]

- [40] In *Olson* at para. 114, the Court stated:

For her part, the plaintiff saw the defendant's vehicle when it was about three car lengths from the roundabout as it approached from her right on Nelson Street. Ms. Olson was not able to estimate the speed of Ms. Farran's vehicle at that point. Without some sense of the speed of the defendant's vehicle, which was only three car lengths from the roundabout when she observed it, Ms. Olson was in no position to make a reasonable assessment of whether she was putting her own safety at risk before she stepped into the crosswalk. The plaintiff was also engaged in a conversation with her mother, which continued until she was struck by the defendant's vehicle. I find it is more probable than not that Ms. Olson was distracted by her telephone conversation. After she left the curb she was unaware of the location of the defendant's vehicle until a moment before it struck her.

[Emphasis added.]

Apportionment

- [41] Section 1(1) of the Negligence Act, R.S.B.C. 1996, c. 333 requires that apportionment be based on "the degree to which each person was at fault". The analysis is not based on degrees of causation. Fault refers to blameworthiness. The court considers the risks the two parties' respective conduct created, the effect and potential effect of that risk, and the extent to which each party departed from the standard of care: *Cempel v. Harrison Hot Springs Hotel Ltd.* (1997), 43 B.C.L.R. (3d) 219 (C.A.) at paras. 19 and 24.
- [42] I find that Mr. Rink created a more significant risk than that of Ms. Parmar. I find that his failure to see Ms. Parmar's daughter at all, and seeing Ms. Parmar and her son only a split second prior to the accident indicates a significant and greater departure from the standard of care than that of Ms. Parmar. I find Mr. Rink 75% responsible and Ms. Parmar 25% responsible for the accident.

Damages

Ms. Parmar's evidence

- [43] Ms. Parmar was 41 years old at the time of the accident. She was born and grew up in India, graduated high school there, and immigrated to Canada with her family in 1996 when she was 21 years old. Because she did not speak English she worked as a labourer on farms, in nurseries and in canneries. She took English classes in 1997 and 1998. She and Mr. Parmar were married in early 2000 in India. Ms. Parmar returned to Canada and worked seven days a week at a nursery and at a hotel as a housekeeper while she waited for her husband to arrive in Canada. Mr. Parmar immigrated in early 2001. Ms. Parmar worked hard that year to save money so that she could put her husband through college when he arrived. After he arrived she continued to work seven days a week until their first child was born. They have three children, born in 2002, 2004 and 2008. After her first maternity leave she worked part time on the weekends at a hotel as a housekeeper. However, her husband started working seven days a week, and they decided she should stay at home while the children were

growing up. She had stopped working outside the home by the time her second child was born. When her youngest child was three or four years old, she returned to seasonal work in the summer months, working long days picking berries. Up until the accident there was a traditional division of household work. Ms. Parmar looked after the inside of the home, did all of the cooking and cleaning, and took care of the children, taking them to all of their activities. Mr. Parmar did yard work and worked seven days a week. He is now an insurance broker.

- [44] Ms. Parmar returned to full-time employment in March 2015 in a nursery. She and her husband had discussed that their children were growing up and their oldest daughter would get her driver's licence in two years. The work at the nursery ended in July 2015. She then worked for the remainder of July and August in a cannery and another nursery. She stopped working in August 2015.
- [45] In June 2015, she and her husband decided they should have their own business, and started Magic Touch Cleaners ("Magic Touch"), a commercial home, retail, and office cleaning business. They thought this would fit well with Ms. Parmar's housekeeping experience and provide flexibility so she could still look after the children. Ms. Parmar wanted to save money for the children's higher education and pay their mortgage. She did not work at Magic Touch initially because she was then working at a nursery. Magic Touch had three part-time employees as it was just starting to do business and was getting contracts. When her work at the nursery finished in August 2015, she was told by her husband not to look for other work because the Magic Touch work would grow. They didn't feel they could lay off their existing employees.
- [46] She started working for Magic Touch on December 1, 2015. The work of the company had increased by that point. She was paid \$15 per hour, worked an average of 40 hours per week, and worked 17 straight shifts until the date of the accident. She was supervising as well as cleaning. Her duties included picking up and dropping off the workers at job sites, high and low dusting, baseboard cleaning, taking the garbage out, and vacuuming with a vacuum that is carried on the shoulders. She planned to continue working with Magic Touch as long as she was able to work.
- [47] Ms. Parmar and her family live in a home in Abbotsford. Her father-in-law lives with them, and a nephew has moved in with them since the accident.
- [48] Ms. Parmar described her physical injuries as a broken left wrist, a broken left shoulder, stitches to the left side of her head, a broken right leg in two places requiring two surgeries, and scratches to her left knee, nose and eyebrow. She said her back hurts constantly, her neck and both shoulders hurt and she forgets "a lot of things". She gave examples that she forgets to put salt on vegetables, and to take medication, and what to buy when shopping. She has to put reminders of appointments in her phone calendar.

- [49] Ms. Parmar was in hospital for seven days. When she went home, she stayed in the bottom floor of her house as she was unable to walk or move without assistance. She had to keep her leg straight for six weeks. Her son was upstairs in the house. She was not able to see him often as he had also suffered a fracture to his leg and it was difficult for him to move within the house. Care aides came to the house to assist her with personal care, to do housework and to prepare dinner until June 2016. She was in a lot of pain, taking medications, and not sleeping well. She would have many visitors during the day, but was lonely at night. She had to have a sponge bath only for six weeks. She described the embarrassment of requiring personal care by aides and her daughter. She had to use a wheelchair for four months, a walker for 1.5 months, and a cane for three weeks. Her mood was very bad from December 2015 to June 2016. She was angry and crying, she saw everyone else was independent, and she asked herself why this had happened to her.
- [50] She described her current condition. Her ankle hurts. Socks bother her. She only wears running shoes. Her right leg hurts. Her right knee was painful, but recently her left knee is starting to become painful because she is putting more weight on it. She cannot kneel. If she has to get items from a bottom cupboard she has to sit on a stool. She cannot stand more than 10-15 minutes or walk more than 20-25 minutes. She can only sit without support for five minutes. She uses a heating pad when sitting and sleeping. She puts a pillow between her legs to sleep. Her neck is painful all the time. She cannot turn her neck much to the side, although it is getting better. She started driving after nine months. She can't drive long periods of time and only drives locally.
- [51] She feels angry and frustrated and cries without reason. If the children are fighting she gets frustrated. If music is too loud she gets a headache. When she tries to read she gets a headache. She is sad because she is in constant pain and worries when she will ever be normal again. She is sad she has missed events like field trips with her children. Her doctor suggested medicine for depression but she declined. Her doctor then sent her to counselling, which was not helpful. She went back to her doctor, and now she takes anti-depressants.
- [52] She did physiotherapy at home until June 2016. She continued physiotherapy and exercises at her gym until October 2016. She went to India for three weeks in November 2016. She took other physiotherapy after that. She tried massage and acupressure. She continues to exercise at her gym. She has tried injections into her shoulder and neck and they have not helped. She takes Advil almost every day for pain and headache and a muscle relaxant and an anti-depressant. She also has an ointment for her shoulders and knees which stops the pain for about 15 minutes.
- [53] Previously she did everything around the house. Now she is not able to do everything, and what she does, she does slowly and she takes a lot of breaks. Her children do some cleaning as they have grown older, but for deep cleaning, she has employees from Magic Touch come every four to five months.

- [54] She tried to return to work at Magic Touch in September 2017. An occupational therapist was involved. She tried for three months but could not do it. She was only able to sweep and mop floors and take the garbage out. She could not do low or high dusting. She could not carry the vacuum on her back. She only worked two hour shifts and had to take breaks.
- [55] A vocational rehabilitation consultant, Mr. Dhaliwal, was then hired to assist her after her attempt to return to work at Magic Touch. She was asked to apply for a job at a thrift store. She started in April 2018 and worked two hours twice per week from April to June 2018. She could not do the job because there was a lot of standing and walking. She was then asked to apply to work at a dollar store. She worked there as a cashier for two hour shifts two times per week. After one hour, her leg started to ache. Her shoulders hurt a lot. She was given a chair to sit on, but then could not open the till. She was forgetful on the till and forgot to charge for grocery bags. She was told she was not cheerful enough. She would massage her shoulders and customers would look at her. She now volunteers once a week for two hours stocking small boxes. She takes a break every hour. The manager will only accept her as a volunteer and not as a paid employee as she cannot complete four hour shifts.
- [56] Her injuries have affected her social life. She vacations, shops and visits other people less often. Her husband sometimes gets upset he has to go to events alone. She does not want to go to parties because of the noise and she has to dress up and she is not able to wear heels. She does not take the children out as much. She has low interest in activities.
- [57] Her relationship with her children and husband has been affected, but they understand she is injured. Her husband is supportive and tries to encourage her and tell her the injuries could have been worse.
- [58] In cross-examination she agreed she did not do regular exercise or recreational activities prior to the accident other than walking with her children. She now drives her youngest to school and takes the children to activities but her husband does that as well. She now goes to the gym three to four times per week, and walks in the summer. She cooks and does chores in the house, but takes frequent breaks. If she shops with the children, she sits or takes breaks.
- [59] All of her children speak English, and she hears them speak English, but they speak Punjabi to her. She attends parent-teacher interviews which are conducted in English. She uses English when shopping and in her volunteer roles. She watches English television with her children. She has not explored taking English courses to improve her English. She agreed it was important for her to do this if she wants to find a wider range of jobs.
- [60] Her tax returns show the following income:
- a) 2013: \$9,897 for seasonal or hotel work, plus EI of \$2,674;
 - b) 2014: \$8,043 for seasonal work, plus EI of \$4,346; and
 - c) 2015: \$11,853 for seasonal work, plus EI of \$5,461, plus \$1,622 from Magic Touch.

- [61] She agreed her pattern of work was to work in the summer and not in the autumn, and that was consistent with what took place in 2015 even after she and her husband started Magic Touch. A December 18, 2015 consultation report from the hospital record was put to her where she is described as "currently laid off from working in a nursery". She does not recall the consultation or saying that. She was being given medication at the time. As she did not adopt the statement it is not admissible for the truth. Further, it is not established that the statement is a prior inconsistent statement as the source of the information was not proved.
- [62] With respect to her evidence that she worked every day from December 1-17, a total of 104 hours, she agreed the only document she has is a Statement of Earnings from Magic Touch, which was issued on December 31, 2015, after the accident. She noted down the hours she worked but did not keep a time sheet. She does not know where she put the piece of paper. She denied the suggestion that she did not work those 104 hours. She denied this was simply a way of income splitting. She denied this was a way of establishing that she was working full-time to make a wage loss claim. She planned to work full time every single day for Magic Touch. With respect to her duties, she denied that once the business was established, she would only supervise or that she would work part time. She wanted to do the cleaning and owners have to work alongside the employees.
- [63] She agreed she wanted flexibility with their own business so she could take the children to activities. She agreed she would not be doing seasonal work if she was working for Magic Touch. She also agreed that at the time they started Magic Touch, her oldest child was only 13 years old and would not be eligible to drive for another three years.
- [64] When she tried to return to work at Magic Touch she could do dusting at arm level but not low or high dusting. She used a pole for high dusting, but her shoulder hurt. She did not try modified equipment. She discussed the situation with her husband and neither of them could come up with anything she could do in the business. She is a part owner of the business but when she tried to return to work at Magic Touch she did not try driving the workers or doing just supervising. In each role she has to clean and she can't do just paperwork. She agreed she can speak to people and see what they are doing. She said she cannot drive the employees. She feels she cannot lay off the woman who is working now as a supervisor.
- [65] She has never spoken to anyone about working in a job where she could speak Punjabi. She has not spoken to anyone she knows about a possible job; she said "no one helped me". She agreed her husband's business as an insurance broker is doing well. She is happy to be at home as it is important to her to spend time with her children, but she is not happy she is not working.
- [66] As for her psychological difficulties, she tried one Punjabi speaking counsellor, and went for eight sessions, but they were not helpful. Her doctor told her there were no other Punjabi speaking counsellors. She did not try to find one herself. She declined taking antidepressants in January 2018. When she eventually agreed to take them in September

2018, she was only taking them once per week rather than every day as prescribed. She said she would fall asleep. She spoke to her doctor who changed the medications. She does not recall if she took those regularly, but said she tried two or three medications. She agreed she did not always take them as prescribed.

Mr. Parmar's evidence

- [67] Mr. Parmar gave evidence through an interpreter.
- [68] He is an independent insurance broker. He gave similar evidence to Ms. Parmar with respect to her work history, their plan that when the children were young one of them would stay home with the children and when the children were grown up both of them would work, and their decision to start Magic Touch. By 2015 the oldest was 13 years old and the children had started to take care of themselves.
- [69] Currently, Magic Touch has 15 employees, ten full-time, and others as needed. There are two supervisors who pick up and drop off workers and make sure the work is being done. The supervisors do cleaning work as well. He occasionally has to do supervision and also does the cleaning. The employee who took over Ms. Parmar's job is still with Magic Touch and last year became a part owner. She is paid \$3000 per month and if she does extra work, gets further pay of \$700 to \$800, and shares in the profit. The other supervisor is paid \$20.50 per hour. The cleaners are paid minimum wage. Since 2016, employees of Magic Touch have health, dental and other benefits, but no details of how this is funded were given.
- [70] Each month, Magic Touch employees provide Mr. Parmar with the number of hours worked and he gives this to an accountant who writes cheques. Magic Touch doesn't record hours of employees. They trust their workers.
- [71] The only record of the hours Ms. Parmar worked is the Statement of Earnings produced by the accountant after the accident. He denied the Statement of Earnings was for the purpose of income splitting; he said they would have started earlier if that was the case. He denied Ms. Parmar simply helped out Magic Touch in December 2015. He said there was more work to do because they obtained more contracts. The plan was for Ms. Parmar to work seven days per week and to look after Magic Touch. Now he does it. He also takes the children to activities out of town and does more work around the house such as getting groceries. He said he works from home and goes out to meet clients. When Ms. Parmar returned to full time work in March 2015 he was able to take over some of the driving of the children to activities as he works from home.
- [72] He gave evidence of Ms. Parmar's injuries and said her mood is mostly low and when she is stressed she fights with the children and him.
- [73] He agreed he has learned English. They speak Punjabi at home.

Expert reports

Dr. Tony Giantomaso, physiatrist

[74] Dr. Giantomaso's report was filed by Ms. Parmar. Mr. Rink's counsel did not require him for cross-examination. He assessed Ms. Parmar on one occasion on July 25, 2018 in the company of an interpreter.

[75] Dr. Giantomaso concludes Ms. Parmar has suffered the following physical injuries:

1. Mild traumatic brain injury (concussive force through the body or head, reported loss of consciousness or alteration of consciousness, no reported GCS less than 15, normal CT head). No significant sequelae of brain injury;
2. Left temperoparietal scalp laceration requiring stitches. Resolved.
3. Post-traumatic right tibia and fibula segmental displaced fracture requiring open reduction and internal fixation by Dr. Rose. Followed by hardware removal of proximal screw, again by Dr. Rose. Ongoing proximal medial tibial pain.
4. Left comminuted clavicle fracture managed nonoperatively. Mild ongoing left shoulder pain.
5. Left distal radial styloid fracture managed nonoperatively. No issues.
6. Post-traumatic cervical sprain-strain injury consistent with a WAD-II injury. Chronic.
7. Post-traumatic thoracic sprain-strain injury grade 1-2. Chronic.
8. Post-traumatic lumbar sprain-strain injury grade 1-2. Chronic.

[76] In addition, Dr. Giantomaso, diagnoses the following which he says is outside the scope of his speciality but possibly related to the accident:

1. Decreased mood and increased fatigue and anxiety post-trauma.

[77] He recommends: an active rehabilitation program of at least 16 to 24 sessions; a referral to a psychologist or psychiatrist to address coping with chronic pain, mood and anxiety issues; consideration of trigger point injections, Botox or cortisone injections if conservative therapies fail; and medications for treatment of pain. He opined passive therapies such as massage, chiropractic, and acupuncture are unlikely to affect prognosis but may be helpful in maintaining the ability to do household work and if she returns to competitive employment.

[78] In Dr. Giantomaso's opinion, it is unlikely Ms. Parmar will be able to return to work in a janitorial, berry-picking, or similar job. It is possible she could work very part time at these jobs, but this would likely increase her pain and she would require work accommodations. He notes Ms. Parmar is only 44 years old and otherwise in good health apart from her orthopaedic and musculoskeletal injuries. She seems to have "fairly reasonable English language skills". He opines that retraining in a vocation that requires light to sedentary work could be helpful and strongly recommends a vocational assessment to determine areas of further study or training.

[79] As for prognosis, Dr. Giantomaso opines that "she will likely continue to have chronic pain to some degree long-term", but by following his recommendations she may experience less pain and increased function. However, this should be considered part of a long-term pain management strategy and not necessarily curative.

[80] He summarizes:

Essentially, prolonged standing, squatting, reaching or repetitive flexion-extension maneuvers and walking can cause right lower leg pain and left shoulder pain as well as some spinal soft tissue pain. Although she can perform most life activities, in my opinion, her tolerance and capacity for these activities have significantly declined post-trauma.

As mentioned, hopefully further rehabilitation, pain control, as well as retraining can return her to the workforce in some capacity. However in my opinion, she is unlikely to return to work competitively in her previous vocations and will likely have some limitations in her ability to perform housework compared to pre-accident levels in the future.

Dr. Manoj Bhargava, orthopaedic surgeon

[81] Dr. Bhargava's report was filed by Ms. Parmar. Mr. Rink's counsel did not require him for cross-examination. He assessed Ms. Parmar on one occasion on July 12, 2018 in the company of an interpreter.

[82] Dr. Bhargava opines there is no evidence of ongoing orthopaedic impairment that would limit her ability to return to her work as a cleaner or carry out household tasks. Range of motion and other special testing of the neck, lower back, right knee and ankle, and left shoulder were all normal. However, there was tenderness to palpation over the soft tissues of the lumbar spine. Dr. Bhargava states that despite the lack of orthopaedic impairments, there is evidence of ongoing significant functional limitations related primarily to a suspected chronic pain condition. Ms. Parmar reports ongoing concerns of depression, anxiety and irritability since the accident. Dr. Bhargava opines these may be contributing to perpetuation of her symptoms but defers to a specialist. In Dr. Bhargava's opinion, the functional limitations limit Ms. Parmar's ability to engage in her previous employment and household duties, the limitations will likely continue for the foreseeable future and are likely permanent at this point. He defers definitive comment to a chronic pain specialist.

[83] Dr. Bhargava recommends that her suspected chronic pain condition receive further evaluation and management at a comprehensive interdisciplinary program. He states:

Given the time elapsed since the subject incident, the nature of her traumatic injuries, and her self-reported functional limitations, my prognosis for a complete recovery is guarded at this point.

Dr. Michael Tseng, psychiatrist

- [84] Dr. Tseng's report was filed by Ms. Parmar. Mr. Rink's counsel did not require Dr. Tseng for cross-examination. He assessed Ms. Parmar on one occasion on July 13, 2018 in the company of an interpreter.
- [85] Dr. Tseng opines that as a result of the accident, Ms. Parmar has an adjustment disorder with depressed mood. Her prognosis is dependent on her ongoing physical symptoms. Given that she continues to experience pain 2.5 years after the accident, it is likely that the pain and her associated psychological symptoms will also persist. He recommends 12 to 16 sessions of cognitive behavioural therapy to focus on developing techniques to deal with chronic pain. Dr. Tseng did not formally test memory and cognition but commented they seemed grossly intact.
- [86] As for ability to work, Dr. Tseng opines that from a psychiatric point of view, Ms. Parmar's psychological symptoms do not interfere with her overall functioning, including work, activities of daily living, recreational, social or household activities. From a psychiatric viewpoint, she does not have a vocational disability at present.

Dr. Donald Cameron, neurologist

- [87] Dr. Cameron's report was filed by Ms. Parmar. Mr. Rink did not require Dr. Cameron for cross-examination. He assessed Ms. Parmar on one occasion on October 2, 2018 in the company of an interpreter.
- [88] Dr. Cameron opines that Ms. Parmar probably suffered a mild traumatic brain injury. The "symptoms include headaches, dizziness, disturbed sleep pattern, decreased memory, decreased concentration, decreased attention span, decreased interest in socializing, decreased multi-tasking abilities, decreased ability to make decisions, irritability, mood swings, anger outbursts, phonophobia [fear of loud sounds] and decreased libido". Ms. Parmar told him these symptoms had improved but not resolved. He states it is very difficult to differentiate to what degree her ongoing cognitive complaints are due to the mild traumatic brain injury, chronic pain, or anxiety and depression. At the time of the assessment Ms. Parmar told Dr. Cameron she was no longer depressed.
- [89] Dr. Cameron opines that Ms. Parmar remains partially disabled as a result of her ongoing cognitive problems, chronic pain and anxiety. She will probably remain permanently partially disabled. She is a candidate for prophylactic pain medication and a trial of Botox injections for neck and shoulder pain and headaches.

Dr. Farida Jan, family physician

- [90] Dr. Jan's report of July 11, 2018 was filed by Ms. Parmar. Mr. Rink's counsel did not require Dr. Jan for cross-examination.

[91] Dr. Jan has been Ms. Parmar's family physician since 2004. Dr. Jan outlines very briefly the course of Ms. Parmar's treatment. He first saw her following the accident on January 21, 2016 when she was in a wheelchair. He removed stitches from her scalp and prescribed pain medication. She developed low mood. Her fractures healed well and mood settled. She continues to feel pain in her right ankle and foot. She has been disabled since the accident. She is still attending programs aimed at rehabilitation and Dr. Jan did not "know exactly" when she will be able to return to her job. He opines it is too early to give any reasonable prognosis.

Ms. Crystal Fong, occupational therapist and functional capacity evaluator

[92] Ms. Fong's report was filed by Ms. Parmar and she was cross-examined by Mr. Rink's counsel. Ms. Fong assessed Ms. Parmar on November 26 and 28, 2018 in the company of an interpreter.

[93] Ms. Fong opines that Ms. Parmar is not able to competitively meet all of the job demands of a full-time janitorial service worker. Ms. Fong summarized:

Ms. Parmar was able to competitively meet her pre-MVA job demands in the areas of occasional overhead level reaching, occasional shoulder level reaching, frequent sustained waist level reaching, frequent gross dexterity (at waist level), occasional sustained kneeling, occasional repeated/sustained kneeling [sic bending], occasional repeated crouching, occasional twisting, and occasional stair climbing. Ms. Parmar was also able to competitively meet her pre-MVA job demands in the areas of light amounts of lifting between floor and waist level (10-20 lbs), sedentary amounts of lifting between waist and overhead levels (0-10 lbs), light amounts of two-handed carrying on an occasional basis, and pushing/pulling in the lower end of the medium range (20-50 lbs).

Ms. Parmar's FCE [functional capacity evaluation] scores and clinical observations suggest that she is not presently capable of competitively meeting her pre-MVA job demands in the areas of repeated kneeling, sustained crouching, occasional balance, frequent walking, frequent standing, and one-handed carrying of up to light amounts.

It is this writer's opinion that Ms. Parmar is also not presently capable of tolerating sustained postures for a full work day. Ms. Parmar presented with decreased endurance over the course of the FCE day, requiring frequent rest breaks in order to manage her symptoms. She was observed to rely on wall/shelves for external support, particularly when completing tasks in standing. It is likely that her requirement for frequent breaks would limit her efficiency at work.

[94] Ms. Fong opines that should Ms. Parmar obtain work within her limitations she anticipates her durability for full time work would be improved.

[95] Ms. Fong's report contains details of the testing. Ms. Parmar performed either at or better than industrial standards for all of the tests measuring reaching, bending, twisting, stair climbing, and five minute walking, but the testing was often accompanied by indications or

complaints of increased pain. She had difficulty with repeated kneeling and was unable to do sustained crouching. Ms. Parmar's balance was poor, although she reported this was worse than normal because of increased fatigue in her legs. With respect to the five minute walking test on the treadmill, Ms. Fong noted that during this test Ms. Parmar "was observed to walk at a brisk pace, with an even gait, and was able to converse with this Evaluator without obvious issues/signs of discomfort. During untested observations, not on the treadmill, Ms. Parmar appeared to walk with a slight antalgic gait, favoring her left side." Testing at the end of the day showed that Ms. Parmar's scores on the five minute walking and stair climbing tests had improved. Ms. Parmar reported that her pain was significantly exacerbated following the day of testing. Functional testing of manual dexterity of the hands showed results at or below the industrial standards. Ms. Fong found that Ms. Parmar "demonstrated the ability to perform virtually all household tasks", but with observable signs of discomfort and requiring frequent micro-breaks.

- [96] Ms. Fong's report also contains recommendations for cost of future care. Some recommendations were not prescriptive, but simply costing of all possible future treatment suggestions made by the other experts. The recommendations include an interdisciplinary pain program, various physical and passive therapies, medications Ms. Parmar is currently taking in addition to those that may be tried in the future, psychological therapy, a periodic occupational assessment, a vocational rehabilitation assessment, and regular and seasonal housecleaning services.

Mr. Harj Dhaliwal, vocational rehabilitation consultant

- [97] Mr. Dhaliwal's report was filed by Ms. Parmar. Mr. Rink's counsel required Mr. Dhaliwal for cross-examination. He provided Ms. Parmar with vocational services from February to 2018 to January 2019. He was not involved in Ms. Parmar's attempt to return to work at Magic Touch in the autumn of 2017.
- [98] Mr. Dhaliwal arranged for two unpaid work placements in the community. The first was a 12-week placement at a thrift shop as a retail worker. Ms. Parmar enjoyed this job and developed the skills required. However, she was not able to increase her capacity beyond two hours per shift, two days per week, as Ms. Parmar reported the job aggravated her pain, primarily in her right ankle due to walking. The placement was terminated after 12 weeks as Ms. Parmar was unable to increase her work tolerance.
- [99] Mr. Dhaliwal then arranged an unpaid placement at a dollar store as a cashier. Again, Ms. Parmar was not able to increase her work tolerance beyond 1.5 hour shifts twice per week as she reported exacerbation of pain in her neck, upper back, and right ankle. She was given a sit/stand stool and an anti-fatigue mat, but was unable to increase her work tolerance. She also complained of difficulty concentrating on the job because of pain, and had difficulty managing mood and anxiety. She expressed decreased motivation.

- [100] In January 2019, Mr. Dhaliwal administered a test that measured the ability to read, spell, and understand written English and do math. Ms. Parmar scored in the kindergarten to grade 3 level. Her level of English competency does not equip her to be presently enrolled in formal retraining. She would benefit from improving her English skills to optimize her future vocational potential.
- [101] Mr. Dhaliwal opines that without a resolution of the chronic pain and effective management of mood and cognitive challenges, Ms. Parmar will continue to be competitively unemployable in any capacity. Ms. Parmar's current level of English competency will require further language education before she is able to take any formal training for alternate employment. Mr. Dhaliwal recommends continued vocational services.
- [102] In cross-examination, Mr. Dhaliwal agreed he assumed the symptoms Ms. Parmar reported to him were true. He agreed the interviews Ms. Parmar did for the two positions were in English. He agreed the math and language testing he did was in written English. The only oral testing of language skill was in spelling. He did not do any skills testing in Punjabi. He only had Ms. Parmar try two job placements to help him assess her abilities. He knew Ms. Parmar had never trained as a cashier and did not have formal customer service training. When Ms. Parmar was at the dollar store, she told him she had decreased motivation and desire to engage. Her confidence was affected at the dollar store. She liked the job at the thrift store. With respect to Magic Touch's ability to accommodate a family member's work, he said it depends on that person's function and the constraints it places on the company.

Mr. Curtis Peever, economist

- [103] Mr. Peever provided two reports making various calculations on sets of assumptions for past and future loss of earning capacity, and the present value of the items listed in the cost of future care section in Ms. Fong's report.
- [104] Mr. Peever calculated the total of a past stream of income assuming Ms. Parmar would have worked full-time, 42 hours per week, initially at \$15 per hour (approximately 33,000 per year), with an annual wage increase in accordance with wage inflation, without any deduction for labour market contingencies, from the date of the accident to trial. The total is \$97,489, net of deductions. This assumes no residual earning capacity.
- [105] Mr. Peever calculated the present value of a stream of future wage loss based on statistical data of average full-time, full-year earnings of foreign-born B.C. females in the job classification of janitors, caretakers and building superintendents. The average wage used for 2019 was \$36,847 per year. Assuming retirement at age 67, the present value without negative labour market contingencies is \$689,534, and with contingencies is \$611,037. Mr. Peever also calculated the present value of a stream of income of \$35,000 per year until the end of 2020 and \$40,000 per year until age 67. The present value is \$722,170. None of these calculation include any non-wage benefits (which is estimated at 8%) or assume any residual earning capacity.

[106] Mr. Peever calculated the present value of the future care items listed in Ms. Fong's report. The range was \$131,574 to \$161,486, depending on whether services were covered by the public health care plan.

Dr. Preet Chahal, neurologist

[107] The only expert report filed by Mr. Rink was that of Dr. Chahal. He was not required for cross-examination by Ms. Parmar's counsel. Dr. Chahal is fluent in both English and Punjabi and was able to assess Ms. Parmar without the assistance of an interpreter. He saw her on one occasion on October 16, 2018.

[108] Dr. Chahal opines that Ms. Parmar sustained a mild traumatic brain injury, also known as a concussion. Ms. Parmar described ongoing symptoms of headaches, cognitive symptoms including difficulty with concentration and multitasking. Dr. Chahal opines these are a result of the concussion. In his experience, patients with persistent post-concussive symptoms past 12-24 months tend to have persistent symptoms for the foreseeable future which are likely to interfere with their day to day functioning at home and at work. Should the symptoms persist, he recommends neuropsychological testing.

Experts not called: adverse inference

[109] Ms. Parmar attended independent assessments with the following health care providers at the request of the defence: Dr. Brian Scarth, psychiatrist; Dr. Dina Popovic, orthopaedic surgeon; and Ms. Nina Aggarwal, occupational therapist. Mr. Rink did not tender reports from these experts. Ms. Parmar's counsel argues there should be an adverse inference that the reports are consistent with or more favourable to the defence position.

[110] Mr. Rink's counsel advises that she produced the clinical notes of the experts who conducted assessments. She argues it was open to Ms. Parmar to have called any of the experts as witnesses and she did not do so.

[111] Generally, an adverse inference should only be drawn against a party bearing the onus of proof on an issue: *Tan v. Mintzler*, 2016 BCSC 1183 at para. 42. Here, the plaintiff bears the onus of proof of her injuries. Other than Dr. Chahal's report (which reaches similar conclusions to that of Dr. Cameron), Mr. Rink has not called expert evidence. As stated by Mr. Justice Sigurdson in *Reitsema v. Lammers*, 2017 BCSC 1374 at para. 121, the plaintiff's "case and the extent of her injuries is not proven or enhanced by the failure of the defendant to call its own expert evidence". In the circumstances, I decline to draw any adverse inference.

Non-pecuniary damages

[112] In *Stapley v. Hejslet*, 2006 BCCA 34, Madam Justice Kirkpatrick reiterated the principals of assessing non-pecuniary damages:

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

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

[Emphasis added.]

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

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

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

- (g) impairment of family, marital and social relationships
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[113] Ms. Parmar was 41 years old at the time of the accident. She suffered significant physical injuries in the form of multiple fractures requiring surgeries and which caused a long period of convalescence. She also suffered sprain-strain injuries to her back. Because she had fractures in her leg, wrist and shoulder, she was rendered largely immobile for months and had to depend on others for basic self-care which caused her embarrassment. Her injuries limited her ability to get out and she felt alone. Although the fractures have healed

and Dr. Bhargava states she has no orthopaedic impairments, she continues to have pain. She has developed a suspected chronic pain condition, with an adjustment disorder and anxiety. The pain limits sustained walking, standing, sitting, bending, kneeling and reaching, and affects her sleep. She occasionally appeared to have neck stiffness while in the witness stand. Although she has suffered a mild traumatic brain injury, I do not find that it is significantly disabling for her, and I accept Dr. Cameron's comments that the symptoms she reports could be from the adjustment disorder and pain as well. Ms. Parmar testified for 1.5 days and was focused throughout. Her marital and family relationships have been affected although her family is loving and supportive of her. She is unable to do all of the duties of her previous work, and is unlikely to be able to return full time to labour positions in the future. She has been able to return to doing household work, but she requires breaks. She had a sad effect while testifying. She said her "mood is very off" and she is "very angry, sad and I don't want to do anything". She told Ms. Fong, "I'm always angry. I'm never happy." Her statements are consistent with my overall impression that her mood and chronic pain are the most disabling features of her current condition.

- [114] Ms. Parmar's counsel submits that non-pecuniary damages should be in the range of \$250,000 to \$300,000 and cites: *Zacher v. Prescesky*, 2019 BCSC 500; *Lines v. Gordon*, 2006 BCSC 1929; *Young v. Anderson*, 2008 BCSC 1306; and *Gabor v. Boilard*, 2015 BCSC 1724. Mr. Rink's counsel submits non-pecuniary damages should be in the range of \$100,000 to 125,000 and cites: *Kweon v. Roy*, 2016 BCSC 2305; *Kim v. Lin*, 2016 BCSC 2405; *Bellaisac v. Mara*, 2015 BCSC 1247; *Hill v. Murray*, 2014 BCSC 1528; and *Shapiro v. Dailey*, 2010 BCSC 770, *aff'd* on other grounds at 2012 BCCA 128.
- [115] I have reviewed the cases cited by counsel. Although I must consider the individual effect of the injuries on Ms. Parmar, and how an award may provide her with solace, other decisions offer some guidance. In general, the cases cited by Ms. Parmar's counsel involve injuries that in my view involved more functionally disabling injuries, particularly brain and psychological injuries. The cases cited by Mr. Rink's counsel, while addressing chronic pain, did not involve the significant orthopaedic injuries Ms. Parmar suffered. Taking all of the evidence particular to Ms. Parmar into consideration, I assess non-pecuniary damages at \$200,000.

Past and future loss of capacity

- [116] Ms. Parmar is entitled to be put in the position she would have been in had the accident not occurred. The test to be applied, for both past and future hypothetical events, is whether there is a real and substantial possibility that the events in question would occur. They are given weight according to their likelihood: *Rousta v. MacKay*, 2018 BCCA 29 at paras. 13 -16.
- [117] In *Shongu v. Jing*, 2016 BCSC 901, Mr. Justice Sewell summarized the principles for assessment of future loss of capacity:

- [186] The applicable principles in assessing loss of future income earning capacity have been the subject of a number of recent decisions of our Court of Appeal. In *Parker v. Lemmon*, 2012 BCSC 27, at para. 42, Savage J, as he then was, succinctly summarized the principles set out in *Perren v. Lalari*, 2010 BCCA 140:
- (1) A plaintiff must first prove there is a real and substantial possibility of a future event leading to an income loss before the Court will embark on an assessment of the loss;
 - (2) A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation;
 - (3) A plaintiff may be able to prove that there is a substantial possibility of a future income loss despite having returned to his or her employment;
 - (4) An inability to perform an occupation that is not a realistic alternative occupation is not proof of a future loss;
 - (5) It is not the loss of earnings but rather the loss of earning capacity for which compensation must be made;
 - (6) If the plaintiff discharges the burden of proof, then there must be quantification of that loss;
 - (7) Two available methods of quantifying the loss are (a) an earnings approach or (b) a capital asset approach;
 - (8) An earnings approach will be more useful when the loss is more easily measurable;
 - (9) The capital asset approach will be more useful when the loss is not easily measurable.
- [187] In *Jurczak v. Mauro*, 2013 BCCA 507, the Court explained that while assessing an award for future loss of income is not purely mathematical, if available the Court should use factual mathematical anchors as a starting foundation to quantify the future loss of income.
- [118] Ms. Parmar has established that she has suffered physical injuries and the subsequent development of an adjustment disorder, depressed mood and chronic pain, which by all expert evidence has and will continue to impair her ability to work in the future, in particular in physically demanding jobs.
- [119] Ms. Parmar's counsel argues that Ms. Parmar has established a real and substantial possibility that she would have continued to work full time for Magic Touch until she was 67. Counsel points to Ms. Parmar's history of hard work, and her return to the work force as her children grew older. Counsel argues an award should be made based on the calculations made by Mr. Peever, which assumes Ms. Parmar has no residual earning capacity. Counsel says the assumptions Mr. Peever made are conservative based on what current employees are earning in comparable positions. Magic Touch is flourishing, and the earnings approach is the most appropriate method of assessment. Ms. Parmar seeks \$97,489 for past loss of capacity and \$722,170 for future loss of capacity.

- [120] Mr. Rink's counsel argues that the assumptions underlying Mr. Peever's calculations are not at all likely or realistic and there is no real and substantial possibility that Ms. Parmar would have returned to work full time 42 hours per week starting December 2015 until she was 67. Counsel argues that past work behavior is the best predictor of the future and that any award for income earning capacity should be based on Ms. Parmar continuing to work part time. Counsel points to Ms. Parmar's history of working seasonally and argues that Mr. and Ms. Parmar's evidence that Ms. Parmar did not go to work for Magic Touch in September 2015 because they had already hired employees does not make sense. They knew when they started the business in June that Ms. Parmar's work was seasonal and would end in August. Ms. Parmar had only worked for Magic Touch from December 1-17, 2015 when the accident took place. It is too speculative to say that Ms. Parmar would have continued to work at that pace going forward every day, full time, when this was her first attempt at full time work with three children then aged 7, 11 and 13. As Ms. Parmar was 100% responsible for the children and the household, it is likely she would not have returned to work full time. Further, it is unlikely Ms. Parmar would have worked even to age 65 given the physical nature of the work. Counsel argues Ms. Parmar's loss of capacity should be based on income for the three years prior to the accident less some amount for negative contingencies. The average is \$13,000 per year. Mr. Rink's counsel submits that past wage loss should be \$35,000. Counsel submits that future wage loss should be \$175,000, which is a loss of \$8,000 to \$10,000 per year for 15-20 years.
- [121] In this case, there is no lengthy established history of full time work, but Ms. Parmar and her husband say they had just started to fulfil this plan. There is uncontroverted evidence of the establishment of Magic Touch six months prior to the accident. However, Ms. Parmar started work for Magic Touch only two weeks prior to the accident, after years of having either no or a small amount of part-time seasonal work outside the summer months. The same pattern of work took place in the autumn of 2015. Mr. and Ms. Parmar explained that Ms. Parmar did not work in Magic Touch during the autumn of 2015 as the business was just starting and they did not want to lay off existing employees.
- [122] What is absent is the lack of any contemporaneous documents or evidence from other witnesses who might have either confirmed Ms. Parmar's evidence or supported Mr. Rink's contention. Magic Touch has the odd practice of not requiring or recording hours of their employees. No documents were filed in evidence of payroll records, work records, or contracts. Such documents would be expected to confirm or refute whether employees were away, whether work had increased, or to show jobs that were done. The only document is a summary Statement of Earnings for Ms. Parmar issued after the accident. In addition to the lack of documentary evidence, no employees of Magic Touch testified.
- [123] Despite the lack of any corroborating documents, I accept Ms. Parmar's evidence that she worked for 17 days for Magic Touch in December 2015. I also accept it was Mr. and Ms. Parmar's plan to have Ms. Parmar work at Magic Touch. That plan makes sense given her work experience, and Mr. Parmar's commitment to his own career. The issue is to what

extent and when that would have taken place. Given the history of Ms. Parmar's work pattern, I do not accept nor do I find there is a real and substantial possibility that Ms. Parmar would have worked full time, seven days a week from December 2015 until she was no longer able to do so, or until age 67 as submitted by her counsel. While I find Ms. Parmar worked for two weeks leading up to the accident, I do not find there was a real and substantial possibility that she would have maintained this level of work in the next few years given her responsibilities for the household and her children's activities. However, I do find there is a real and substantial possibility that she would have returned to full time work when her youngest child was older, likely by the time he was 13 years old in 2021. This is consistent with the division of the workload in the household, and with Mr. and Ms. Parmar's plans for one of them to be at home with the children until they were grown up, and consistent with Ms. Parmar's strong work ethic. Contrary to Ms. Parmar's evidence, in December 2015, her oldest child was at least four, not two years away from obtaining a full driver's licence, and this is another reason I do not find she would have immediately returned to full time work during the school year. Until her youngest child was older, I find there is a real and substantial possibility that she would have continued to do part-time work or occasional very short periods of full time work for Magic Touch.

- [124] As for Ms. Parmar's residual capacity for work in the future, I find Dr. Giantomaso's report the most helpful as he practices in the areas of treatment and management of chronic neck, back and extremity pain, headache and brain injury. The other expert opinions were of assistance but addressed discreet areas. Dr. Giantomaso opines that although Ms. Parmar will always have some pain, this may be improved with further treatment. He recommends retraining for a vocation that does not require physical labour, and only requires sedentary to light work.
- [125] I find there is a real and substantial possibility that with further physical treatment to address her pain, and with further psychological or psychiatric treatment to address her anger and mood, her symptoms will improve, although not completely resolve. While Mr. Rink's counsel concedes that Ms. Parmar's actions have not reached the level of failure to mitigate, she could do more. She has not fully explored counselling to improve her ability to cope with her mood and pain. She initially declined to take anti-depressant medication, and when she eventually did, took it incorrectly.
- [126] As for any residual earning capacity, I also find that there is a real and substantial possibility that Ms. Parmar will be able to return to the workforce, either with training in a sedentary to light position, or if she improves enough, possibly with Magic Touch in a supervisory capacity. I consider the latter possibility less likely as Mr. and Ms. Parmar say that supervisors must do cleaning work as well, but as the business grows, I do not rule out the possibility that there may be some lighter position or solely supervisory work she can do. Although Ms. Parmar cannot competitively meet all of the duties of a cleaner, it is clear from the functional testing carried out by Ms. Fong that she is not completely disabled from any work. Ms. Parmar scored at or above the industrial standard and was competitive on

almost all physical testing, albeit with some pain. This is consistent with Ms. Parmar's strong work ethic. While Ms. Parmar does not have a complete command of English, she can take courses or simply converse at home in English to improve her skills. There appears to have been almost no consideration of other occupations she might do. Ms. Parmar has made no attempt to look for work outside Magic Touch other than the two voluntary positions she was asked to apply for by Mr. Dhaliwal. There was no evidence of testing for interests or aptitudes, nor any inquiry into other jobs for which she could be retrained. The expressed decreased motivation to do the second job. I do not consider the academic testing carried out by Mr. Dhaliwal to be a reflection of Ms. Parmar's ability, as the testing was almost all based on written as opposed to oral English. It was evident in cross-examination of Mr. Dhaliwal that his opinion of Ms. Parmar's capacity is based on a view of Ms. Parmar's physical and cognitive complaints and prognosis that is more negative than what the functional testing, and examination by medical experts showed.

[127] Although assessment of past and future work capacity is not a mathematical calculation, I have used the multipliers in Mr. Peever's report as a starting point. I find there is a real and substantial possibility that Ms. Parmar:

- a) would have worked for Magic Touch part-time (but at greater hours than seasonal work) until her youngest was older, likely 13 years old. I find a reasonable estimate, taking into account the flexibility she desired and her responsibilities at home is \$20,000 per year until 2020. This is about \$5,000 more than she earned in 2015;
- b) would have proceeded to work full time starting in 2021 at approximately \$40,000 per year until age 65; and
- c) has a residual earning capacity by pursuing treatment, training, and upgrading her English language skills to work in a more sedentary to light job, or less likely if she improves enough, through limited work that she might be able to do with Magic Touch. Given that she will likely always have some persistent pain I find a reasonable residual capacity income is \$15,000 per year starting in 2021. This equates to approximately half time work at what the minimum wage will be in 2021.

[128] I have considered other potential real and substantial possibilities, which would both increase and decrease an award for lost capacity. For example, that due to the physical nature of the work at Magic Touch, that Ms. Parmar may have retired earlier than 65, or she may have made more than \$40,000. Similarly, that her residual capacity for work may be more or less. I have also considered the overall fairness and reasonableness of an award.

[129] I assess past loss of capacity to the date of trial in the amount of \$20,000 gross per year, which equates to \$66,660. After deducting 7.4% as the approximate amount of taxes and EI premiums (which I have based on her 2015 tax return), the total is approximately \$62,000, and I award that amount. Taking all of the factors above into account, and weighting them according to likelihood, and using the multipliers in Mr. Peever's tables, I assess loss of future capacity in the amount of \$425,000. I have considered the overall fairness and

reasonableness of the award.

Cost of future care

- [130] In *Woelders v. Gaudette*, 2016 BCSC 1066, Madam Justice Balance summarized the principles applicable to the assessment of future care:
- [159] Damages for the cost of future care are meant to compensate for the financial loss to be reasonably incurred by an injured plaintiff to sustain or promote his or her mental and physical health: *Bystedt v. Hay*, 2001 BCSC 1735, aff'd 2004 BCCA 124; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at para. 30 [Gignac]. The claimed services and items must be medically justified. Being medically justified is not synonymous with the more stringent requirement of being medically necessary: *Aberdeen v. Township of Langley, Zanatta, Cassels*, 2007 BCSC 993 at para. 198, rev'd on other grounds *Aberdeen v. Zanatta*, 2008 BCCA 420; *Chow v. Nolan*, 2013 BCSC 1383 at para. 71; *Lane v. Pedersen*, 2014 BCSC 1302 at para. 397.
- [160] Recommendations made by physicians and other health care professionals such as an occupational therapist, are relevant in determining whether an item or service is medically justified: *Gregory* at para. 38; *Jacobsen v. Nike Canada Ltd.* (1996), 19 B.C.L.R. (3d) 63 (S.C.), quoted with approval in *Gregory* at para. 38. However, to successfully advance a future cost of care claim it is not necessary that the health care provider testify to the medical justification of each and every item of care being claimed. What is required is some evidentiary link between the physician's assessment of pain, disability, and recommended treatment and the care recommended by a qualified health care professional: *Gregory* at para. 39; *Gignac* at paras. 31-32. General contingencies and those specific to the plaintiff are to be taken into account where and as appropriate: *Gignac* at para. 52. The amount of the award is necessarily affected by the nature of the future care and its anticipated duration.
- [161] The standard of proof for an award for future care is the determination of the real and substantial future possibilities: *Anderson v. Rizzardo*, 2015 BCSC 2349 at para. 209.
- [131] Ms. Parmar seeks the future care costs recommended by Ms. Fong, but concedes exclusions for chiropractic, acupuncture, a number of medications, an occupational ergonomic assessment, an equipment allowance for work, and a vocational rehabilitation assessment. I find the recommendations for medical care and therapy reasonable and justified by the expert reports.
- [132] Even though housekeeping is not a medical expense, I find the recommendations for housekeeping assistance are reasonable as a reflection of Ms. Parmar's current lost housekeeping capacity. However, I find there is a real and substantial possibility that her capacity will increase over time, and therefore the award should be reduced. In my view, there is no need to pay for private medical care. Mr. Peever has also included medication costs for life and I'm not persuaded there is a real and substantial possibility all of the medications will be required for that length of time. Ms. Fong has costed a rehabilitation

program, plus physical therapy, plus the interdisciplinary chronic pain management program. There is likely some duplication in those recommendations from different experts, and I have therefore decreased the amount. Despite Ms. Parmar's concession that vocational rehabilitation services will not be required in the future, I find they will be as I find Ms. Parmar has a residual capacity to work. Taking all of these into account, I assess Ms. Parmar's cost of future care at \$70,000.

Special damages

[133] The parties agree that special damages are \$8,221.93.

Summary of Disposition

[134] Liability for the accident is assessed at 75% to Mr. Rink and 25% to Ms. Parmar.

[135] I assess damages as follows:

a)

Non-pecuniary:

\$200,000.00

b)

Past loss of capacity:

\$62,000.00

c)

Future loss of capacity:

\$425,000.00

d)

Cost of future care:

\$70,000.00

e)

Special damages:

\$8,221.93

Total:

\$765,221.93

less 25% contributory negligence for a total award of \$573,916.45

[136] If the parties do not agree on costs they may make arrangements to appear before me through trial scheduling.

"Norell J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/19/16/2019BCSC1626.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/parmar-v-rink-2019>

Prepared on 29 October 2026 · Esheria