

CANADA / JUDGMENT

Sandhu v. Chhabra

2025 BCSC 1631

COURT

Supreme Court of British Columbia

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2025 BCSC 1631 Sandhu v. Chhabra

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sandhu v. Chhabra,

2025 BCSC 1631

Date: 20250822

Docket: M2010139

Registry: Vancouver

Between:

Keerat Sandhu

Plaintiff

And

Nachhatter Singh Chhabra and Navdip Singh Chhabra

Defendants

And

Insurance Corporation of British Columbia

Third Party

Before: The Honourable Justice J. Walker

Reasons for Judgment

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No one appearing

Place and Date of Trial:

Vancouver, B.C.

April 22-25, 28-30

May 1-2, and 5-9, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 22, 2025

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Introduction

- [1] On March 24, 2019, the plaintiff Ms. Keerat Sandhu was the driver of a vehicle that was rear-ended by the defendant Navdip Singh Chhabra who was driving a vehicle owned by the defendant Nachhatter Singh Chhabra. The force of the collision caused Ms. Sandhu's vehicle to rear-end another motor vehicle stopped directly in front of her.

- [2] Ms. Sandhu sues for damages for injuries she sustained as the result of the accident. Under s. 77 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, the Insurance Corporation of British Columbia (ICBC) added itself as a third party to this action. ICBC takes no position with respect to the liability of the defendant Navdip Chhabra and admits that the defendant Nachhatter Chhabra is vicariously liable for the accident.
- [3] It is not disputed that Ms. Sandhu sustained a left tibial plateau fracture, cuts and abrasions to her face and hand, soft tissue injuries to her neck, upper back, shoulders and back. It is also not disputed that she has some ongoing discomfort and pain as a result of the accident. However, the defending parties contest Ms. Sandhu's claims that she suffered a mild traumatic brain injury, suffers from chronic pain and has developed a number of comorbid medical and psychiatric diagnoses. They argue that Ms. Sandhu was not a credible nor a reliable witness and that she failed to mitigate her damages.

The Accident

How the accident happened

- [4] The accident occurred on a clear bright day. The roads were dry, and visibility was good. Ms. Sandhu was alone in her 2013 Honda Civic and was stopped in a dedicated left hand turn lane westbound on 64 Avenue at the intersection of 130 Street in Surrey.
- [5] The defendant driver, Mr. Navdip Chhabra ("Mr. Chhabra") was operating a 2017 Mercedes and was also travelling westbound on 64th Avenue. Mr. Chhabra's vehicle began to careen out of control at a high rate of speed and narrowly avoided colliding with another motorist travelling along 64th Avenue. Mr. Chhabra then made another maneuver and entered the dedicated left-hand turn lane that Ms. Sandhu was stopped in. The Mercedes smashed into the rear of Ms. Sandhu's stationary vehicle at a high rate of speed.
- [6] The impact from behind caused Ms. Sandhu's stationary Honda Civic to be thrust into the rear of the vehicle directly in front of Ms. Sandhu's vehicle, which was also stopped in the left-hand turn lane.
- [7] The force of the collision was significant causing Ms. Sandhu's vehicle to be propelled forward and skid across the entire length of the intersection. The vehicle eventually came to a stop a considerable distance away on the other side of the intersection, after coming into contact with a lamp standard on the opposite curb of the intersection. Car parts, shattered glass and trails of motor oil and engine coolant were distributed throughout the intersection.
- [8] Mr. Chhabra's driving immediately prior to the accident, the collision and the aftermath, were captured on video by a front and rear-facing dash camera of another motorist, as well as on high quality security camera video from a nearby home.

- [9] The video evidence shows that Mr. Chhabra appeared to drive the Mercedes at a high rate of speed and made no attempt to brake or slow the vehicle down before it collided with Ms. Sandhu's vehicle.
- [10] Mr. Chhabra was not represented at trial and was not called as a witness. Ms. Sandhu tendered portions of his examination for discovery as part of her case. In his examination for discovery, Mr. Chhabra acknowledged that he was responsible for the accident. He said that he thought that the left turn lane was a through lane, and that he had entered it to get around slower moving vehicles. He did not appreciate that Ms. Sandhu's vehicle was stopped until it was too late. Mr. Chhabra pleaded guilty to the offence of driving without due care and attention under s. 144 of the Motor Vehicle Act, R.S.B.C 1996, c. 318.

Liability for the accident

- [11] As noted, ICBC takes no position with respect to Mr. Chhabra's liability. The evidence of Ms. Sandhu, the video evidence and the evidence of Mr. Chhabra are all consistent. Mr. Chhabra drove into the rear of Ms. Sandhu's lawfully stopped vehicle in a left-hand turn lane, when Mr. Chhabra attempted to drive around other vehicles travelling in the same direction. His actions caused Ms. Sandhu's vehicle to collide with the vehicle in front of her.
- [12] I find that that the defendant Navdip Singh Chhabra is liable for the accident and that the owner of the vehicle, the defendant Nachhatter Singh Chhabra, is vicariously liable.

The Plaintiff's Evidence

- [13] At the time of the accident, Ms. Sandhu was 21 years old and at trial was 27 years of age. Ms. Sandhu was born and raised in Surrey and has lived with her parents for her whole life. Her mother is a teacher, and her father is a businessman who owns a pub and restaurant called the Fox and Fiddle in Langley. Ms. Sandhu began working at the Fox and Fiddle in Grade 11. In 2018 she became the general manager and remained in that position at trial.

Pre-accident life

- [14] Before the accident, Ms. Sandhu was a happy energetic and social person. She enjoyed physical activity and enjoyed trying new things. She was in good health and had no known physical ailments.
- [15] Ms. Sandhu testified that before the accident she regularly attended the gym, went hiking with friends, and took her dog on long walks. Her work at the Fox and Fiddle was physically demanding and she had no trouble performing tasks such as changing beer kegs and being on her feet for hours at a time.
- [16] Ms. Sandhu's general manager duties included overseeing daily operations, supervising staff, managing customer service issues, and filling in for the hostess and wait staff as needed. She enjoyed dealing with employees and customers.

- [17] Ms. Sandhu's upbringing was strict, but after she graduated from high school her parents respected her freedom. She spent her free time with her friends and loved being social. When she turned 19, she would go out to clubs with her friends and stay out late. She liked being busy and was almost never home.
- [18] In addition to socializing with friends, Ms. Sandhu was involved with her family. She assisted her mother with cooking, cleaning and performing other household tasks. She had no difficulty performing any of these tasks.
- [19] Ms. Sandhu graduated from high school in 2015 and immediately enrolled in general studies at Kwantlen Polytechnic University (KPU). Typically, she took three courses a semester. Her grades indicate that she struggled with her university courses and at the time of the accident was not enrolled in any classes due to an academic suspension. Ms. Sandhu provided inaccurate information about her academic performance which, as discussed in detail below, is central to the defending parties' argument that Ms. Sandhu's evidence is not credible.

The accident

- [20] Ms. Sandhu does not recall the details of the accident, she said she blacked out and only remembers some things about the aftermath. During her testimony she struggled to recall it and was visibly upset when attempting to describe it.
- [21] When her vehicle came to rest after the impact, Ms. Sandhu recalls that she felt pain and was afraid. There was blood everywhere, spilled coffee and shattered glass was all around her. She noted that her car stereo had been dislodged and was in the back seat. She could not feel her left leg and was unable to move. She was screaming and crying.
- [22] Ms. Sandhu was transported to Surrey Memorial Hospital by ambulance where she was treated for her injuries. She was met there by her brother and brother's fiancé (now wife), Ms. Raveen Sandhu. Raveen Sandhu is a nurse and was working at the time Ms. Sandhu was hospitalized. Ms. Sandhu received treatment for her wounds, stitches on her thumb and imaging related to her tibial fracture.
- [23] Ms. Sandhu was discharged from the hospital later in the evening and taken home by her brother. Her leg was in a brace, and she was given crutches.

Post-accident immediate aftermath

- [24] As a result of her injuries, Ms. Sandhu spent much of the following two months in bed. Ms. Sandhu's left leg became atrophied with discoloured skin. She was unable to weight bear and had a removable leg brace for her leg.

- [25] Ms. Sandhu was distressed by the discoloration of her leg. She had to rely on a friend to help her shower until her mother returned from a trip to India. She barely tended to her self-care and appearance because she could not find the energy to look after herself. She avoided showering because she was afraid of falling and hurting herself.
- [26] Ms. Sandhu also worried about her injuries, her health and her future. She had trouble sleeping as a result of the pain and her anxiety. She was uncomfortable when in a car, as she worried about being in another accident. She felt lethargic and detached from her friends and family whom she had been close to.

Injuries and condition

- [27] Ms. Sandhu testified that she is a dramatically different person than she was prior to the accident. She no longer has the physical or mental energy that she once did. She struggles with fatigue, loss of self-esteem and confidence.
- [28] Activities such as hiking, gym work outs, and long dog walks that were routine before the accident, are no longer activities that she engages in. She testified that she has consistent discomfort in her knee that results in a feeling of instability that has reduced her ability to walk distances especially on uneven surfaces or uphill. Standing for more than 20 minutes causes discomfort. Her knee pops or cracks and at times she has a limp.
- [29] Pain and discomfort in her neck, shoulders and back persist. She suffers from frequent headaches. Everyday activities, such as prolonged sitting or standing or driving exacerbate her symptoms.
- [30] Ms. Sandhu no longer contributes as much to household activities. She does not assist her mother with cooking and cleaning in the way that she once did. Her mother sometimes assists her with her own laundry, a task she used to perform on her own.
- [31] Ms. Sandhu no longer enjoys driving, which she did before. As a driver or as a passenger she is anxious. She has flashbacks of the accident and avoids the accident site. She is sensitive to light and to sound. Mainly, she recognizes that she has issues with her mood, minor things annoy her and make her irritable. Her mood is up and down, but mainly down and she is not excited to do many things.
- [32] Before the accident Ms. Sandhu was responsible for caring for the family dog. Since the accident, she does not regularly walk him or feed him. She no longer washes him because it takes 20-30 minutes of constant standing and leaning over the sink which hurts her back, neck and leg.

Treatment

- [33] Ms. Sandhu mainly followed the course of treatment recommended to her by her treatment providers. She had four follow up visits with Dr. Melissa Nadeau, an orthopaedic surgeon in relation to her tibial plateau fracture. The last visit took place on July 8, 2019, and Ms. Sandhu testified that no further follow up was advised.
- [34] At the time of the accident, Ms. Sandhu did not have a family doctor but ended up seeing Dr. Thakkur who was her mother's doctor. Nearly all her appointments with Dr. Thakkur were virtual appointments (some necessitated by the COVID 19 pandemic) and were perfunctory in nature. Ms. Sandhu had 11 appointments related to the accident with Dr. Thakkur between April 3, 2019 and June 18, 2024. Ms. Sandhu did not feel a connection with Dr. Thakkur and was not comfortable discussing her mood issues with her, in part due to cultural concerns. Ms. Sandhu testified that she was trying to find a new family doctor.
- [35] In 2019, Ms. Sandhu undertook extensive massage, physiotherapy and kinesiology treatments. She had 35 separate appointments. Ms. Sandhu testified that she tried to diligently perform the prescribed exercises at home but acknowledged that she did not always do them because at times she didn't have the energy to perform them.
- [36] From 2020 to 2022, Ms. Sandhu continued massage, physiotherapy and kinesiology but with less frequency. She has not had any further treatment since 2022. She testified that she chose to do the recommended exercises at home rather than attend in person as when she attended, she performed the same exercises and was not receiving any other treatment.
- [37] Although Ms. Sandhu can no longer exercise or be as physically active as she was prior to the accident, she has adapted by doing yoga, which she enjoys and finds eases her symptoms.
- [38] Ms. Sandhu has not followed up with any medical practitioner in relation to her ongoing chronic pain, nor has she sought counselling of any kind. Ms. Sandhu testified that she was now willing to speak to a counsellor to address her underlying mood issues. She explained that she had been reluctant to do so because she did not grow up in an environment where feelings were discussed.

Employment

- [39] Ms. Sandhu returned to work about nine weeks after the accident, initially for only a few hours a day and by September 2019 she was back to full-time hours. The nature of her work has changed as a result of the accident. She can no longer perform physically demanding tasks, nor stay on her feet as long as she had done before. She also requires frequent breaks and some of the work she used to do has been delegated to other staff.

- [40] Her job now is more focussed on administrative tasks which she can do in the back of the pub. Although, sitting for too long causes her to have neck and back strain. Working on a computer makes her headache worse. She limits her interactions with customers and staff and no longer enjoys those interactions. Ms. Sandhu has less patience and finds dealing with people in this context irritating. Sometimes she snaps at her staff.

Schooling

- [41] Since 2015 Ms. Sandhu has been taking courses at KPU towards her degree. Her goal is to become an elementary school teacher. Ms. Sandhu has struggled to attain good grades at KPU. After her first semester in the Fall 2015 she was placed on "academic warning" and by the Fall of 2016 she was on "academic probation". As a result of her overall academic performance, she was required to withdraw after the Fall 2018 semester.
- [42] At the time of the accident Ms. Sandhu was not enrolled in any courses at KPU. She returned in the Fall of 2019 and enrolled in three courses but withdrew from one. She obtained a C in one course and a D in the other. As a result, she was suspended from KPU. In order to be eligible to re-enroll Ms. Sandhu had to meet with an academic advisor. Part of the process included writing a letter explaining why she had not done well and the steps she would take to ensure that she would do better if re-admitted.
- [43] Ms. Sandhu was re-admitted to KPU and took three courses in the Spring of 2021. In that semester, Ms. Sandhu attained better marks than she had before: a C+, a B- and a B+. She continued to take courses towards completing her requirements for her sociology degree, and overall, her grade point average was better than it had been before the accident. In the summer of 2023, Ms. Sandhu took her final course required for her degree. She successfully applied to graduate and commencement was scheduled for the spring of 2024. However, sometime between the fall of 2023 and the spring of 2024, she was advised that she was not eligible to graduate because her math mark was too low. At the time of trial, Ms. Sandhu was re-taking the math course.
- [44] Ms. Sandhu applied for admission to the teaching program at Simon Fraser University (SFU) in January 2024. She was not accepted because she did not have her degree, and she needed to complete a Canadian geography course. She expects to have the geography course completed by September 2025 and will then resubmit her application to SFU.
- [45] Ms. Sandhu was cross-examined extensively about her academic performance. She attributed her poor grades before the accident to a variety of factors. She was working full time at the Fox and Fiddle and did not have as much time to spend on her course work. During her high school years, her parents were super strict, and she could not hang out with her friends much. Once she graduated from high school, her parents were lenient, and she enjoyed her newfound freedom. She was out with friends a lot and didn't pay sufficient attention to her schoolwork. Ms. Sandhu also struggled to find an area of interest to major in and changed her major three times. The courses she performed the worst in were courses

she did not enjoy, she did better in courses she liked. She also noted that her marks for the Fall 2018 semester were impacted by the unexpected passing of her cousin.

- [46] Ms. Sandhu testified that her poor performance in the Fall 2019 semester was related to the accident. She found that her ability to study was challenging because she had trouble concentrating and focussing. She was also generally unmotivated.
- [47] When asked to explain why her marks had improved since 2021 despite her reported ongoing symptoms from the accident, Ms. Sandhu explained that she was more motivated. After having time off from school, she decided that she really did want to be a teacher and really focussed, compared to what she did before. Meeting with an academic adviser helped her change for the better. Her marks were still not great, and she felt that she has had to work harder than most students just to achieve the grades that she has. She had to push herself because her symptoms were not getting better, she had to figure out ways to get through it.

Relationships

- [48] Ms. Sandhu testified that she no longer has the relationships with friends or family that she had before the accident because she is a different person. She does not socialize with the people she did before the accident because she is no longer as interested in going out due to fatigue, anxiety and sensitivity to light and noise.
- [49] At home, she doesn't engage with her family or participate in family events in the way that she did before, preferring to spend time alone in her room. Ms. Sandhu feels guilty about the assistance her parents provide her because she should be taking care of them, and they should not be taking care of her.

The Plaintiff's Lay Witnesses

Ramandeep Mann

- [50] Mr. Mann lived close to the accident scene and attended after hearing the sound of the accident. He observed the debris caused by the accident and approached Ms. Sandhu's car as it appeared to be the most damaged. He noted that Ms. Sandhu appeared to be shaken, scared, frightened, shocked, and in pain. Mr. Mann saw blood on Ms. Sandhu's face, and she was crying and screaming. He tried to comfort her as much as possible.

Raman Gill

- [51] Raman Gill is one of Ms. Sandhu's closest friends. They have known each other for about 15 years. Ms. Gill testified that before the accident, Ms. Sandhu was outgoing, cheerful, spontaneous and adventurous. She loved to participate in outdoor activities and they would go on hikes together. She did not observe Ms. Sandhu to have any physical limitations or appear to have any mental health issues before the accident.

- [52] Since the accident, they do not do as many things as they did before. They don't go out as much, they tend to eat at restaurants or just stay home. Ms. Sandhu walks slower, and Ms. Gill often helps her lift things. When they travel, she helps her carry her luggage. Ms. Sandhu appears forgetful, gets irritated easily and is moody. When they drive together, Ms. Sandhu appears very anxious, she tells Ms. Gill to slow down. Ms. Gill has observed her to grab the door handle or pretend to brake.
- [53] They have travelled together to New York, Turks and Caicos, Los Angeles and Toronto. They have a trip to Miami planned.

Gurpratap (Gary) Sandhu

- [54] Gary Sandhu is one of two of Ms. Sandhu's brothers. He is four years older than her. On the night of the accident, he was home when she returned from the hospital. She had a hard time going up the stairs and he had to help her. Her knee was in a brace; she could not bend it and there were scratches on her face.
- [55] He worked at the Fox and Fiddle for about eight years until 2024. Mostly he worked part-time but he worked full-time for a period of 2-3 years until 2019. Ms. Sandhu's duties included working as a hostess, server, picking up liquor and produce, and scheduling staff for their shifts. Much of her work was physical and she could handle it all. She was very energetic and dealt with people in a calm manner.
- [56] Since the accident, additional employees have been hired to perform some of the physical tasks that Ms. Sandhu can no longer handle. Ms. Sandhu does not appear to have the drive to work the way she did before and spends more time in the back instead of being out in the front of the pub interacting with staff and customers. Mr. Sandhu has observed her to get easily irritated and forget to do tasks.
- [57] Before the accident, Ms. Sandhu was outgoing, active and socialized a lot. She was happy and never in a bad mood. At home, she helped clean and vacuum, and she walked the dog. Now, Ms. Sandhu spends most of the time in her room in the dark and doesn't hang out with her family much anymore. When she does, she turns the lights off.
- [58] Mr. Sandhu said that he and his siblings grew up in a loving but strict home. His parents wanted to make sure that they were on the right track and were focussed on education. Education was very important.
- [59] Growing up, mental health and feelings were hardly discussed in the family, until the last four or five years, after their mother had concerns about Ms. Sandhu after the accident. Mr. Sandhu does not know whether Ms. Sandhu has had any mental health counselling.

- [60] He did not have specific awareness of how Ms. Sandhu was performing at KPU but understood that she was not failing, and her grades were average. He also understood that her schooling had been delayed because of the accident, she was not taking as many courses as before. He had no knowledge of any academic suspension or whether Ms. Sandhu had been required to withdraw from KPU.

Raveen Sandhu

- [61] Raveen Sandhu is Ms. Sandhu's sister-in-law. She is a nurse and was at the hospital the day of the accident. Raveen assisted Ms. Sandhu at the hospital.
- [62] Raveen and Ms. Sandhu are not particularly close. Raveen is seven years older than Ms. Sandhu, but when she first met Ms. Sandhu, Ms. Sandhu was sweet, cheerful and welcoming.
- [63] In December 2024 and January 2025, Raveen and her family stayed with Ms. Sandhu at the family home. She noted that Ms. Sandhu was in her room a lot, and that she liked the dark. Ms. Sandhu had babysat her oldest child, aged three at the time of trial, and had a good relationship with him, but Raveen wished that Ms. Sandhu would spend more time with her children.

Satnam Sandhu

- [64] The plaintiff's mother, Mrs. Satnam Sandhu testified in detail about her daughter's upbringing and about the changes she had noted in Ms. Sandhu since the accident. Mrs. Sandhu has been an elementary school teacher for 32 years and was clearly enthusiastic about her profession. At the same time, she described the physical, mental and emotional challenges of the job.
- [65] Mrs. Sandhu testified that the whole family was very physically active. Before the accident, she and Ms. Sandhu would go jogging together and Ms. Sandhu would go on hikes with her friends. Ms. Sandhu was very active, social and outgoing. As she was in her early twenties, she was totally enjoying her life. At times, Mrs. Sandhu would tell her daughter that she needed to be home more and be more focussed, but she was more into her social life.
- [66] Mrs. Sandhu said that before the accident her daughter was responsible, and the family relied on her. She would take Mrs. Sandhu's parents to appointments and would help with household tasks.
- [67] Before the accident, Ms. Sandhu did not appear to have any physical, cognitive or mental health limitations or issues. She was motivated and focused on her goal of becoming a teacher.

- [68] Now, six years after the accident, Mrs. Sandhu has seen a dramatic change in her daughter. Ms. Sandhu is withdrawn and quiet. She prefers to be alone in her dark room, and it is hard to get her to leave. When Mrs. Sandhu pulls up the blinds to let light in, Ms. Sandhu gets mad.
- [69] Ms. Sandhu gets tired easily from performing household tasks like vacuuming her room. Mrs. Sandhu and her husband have to help her a lot. Ms. Sandhu limps after getting up from being seated and she doesn't like to take the stairs; she prefers to use an elevator.
- [70] Ms. Sandhu becomes emotional easily. Mrs. Sandhu has seen her crying alone in her room, but Ms. Sandhu will not discuss it. She is easily irritated and does not like noise.
- [71] Ever since high school, Ms. Sandhu would generally not tell her mother what her grades were. Mrs. Sandhu described it as Ms. Sandhu's "rebellion" and no matter how much she asked her, Ms. Sandhu would simply say that she was doing fine. Ms. Sandhu has never disclosed her grades from KPU to her mother, both before and after the accident. Eventually, Mrs. Sandhu stopped asking.
- [72] Ms. Sandhu told her mother that she has completed her Bachelor of Arts degree, with "flying colours", but Mrs. Sandhu didn't believe her as she hasn't seen any transcript. She only knows that she graduated because Ms. Sandhu asked her if she wanted to attend her convocation.

The Plaintiff's Expert Witnesses

- [73] Ms. Sandhu tendered expert reports and testimony from several clinicians in support of her claim that her ongoing health problems were caused by the accident. For the most part, the defending parties do not take issue with the opinions provided; however, they submit that the opinions should be scrutinized carefully since they invariably rely on Ms. Sandhu's self-reporting, which is not credible nor reliable.

Dr. Andrei Krassioukov, Physiatrist

- [74] Dr. Krassioukov was qualified as an expert in physical medicine and rehabilitation. In Dr. Krassioukov's opinion, Ms. Sandhu suffered the following as a result of the accident:

- Mild traumatic brain injury
- Development of posttraumatic headaches
- Soft tissue injury to the neck
- Soft tissue injury to the upper back and shoulders
- Soft tissue injury to the low back
- Laceration of the left thumb (healed)

- Fracture of the left tibial plateau
- Development of a chronic pain condition
- Development of symptoms of depression and anxiety

[75] Dr. Krassioukov's opinion that Ms. Sandhu suffered a mild-traumatic brain injury is based on the fact that Ms. Sandhu was hit in the face upon impact when the airbag deployed. Her confusion following the accident supports his conclusion.

[76] With respect to Ms. Sandhu's tibial plateau fracture, Dr. Krassioukov opined that this is a significant fracture that has directly compromised joint stability resulting in limited mobility in various planes, especially when forward bending. This injury frequently results in tightness of the hamstrings, further contributing to mobility limitations.

[77] Dr. Krassioukov's examination of Ms. Sandhu's neck, back and shoulder showed that she had a full range of motion but muscle tension was prominent especially in the shoulder area. These areas are commonly trigger points for sensitivity and are consistent with chronic myofascial pain, commonly observed after trauma.

[78] In Dr. Krassioukov's view, trauma survivors like Ms. Sandhu often develop secondary psychological conditions, that must be treated along with the physical injuries.

[79] Ms. Sandhu's reported limitations are consistent with the injuries she sustained in the accident and considering that it has been six years from the accident her symptoms should be considered to be chronic. Even with additional treatment, Dr. Krassioukov opined that Ms. Sandhu is likely to experience some pain and discomfort in the future. The longer pain is present, the less likely a patient will fully recover. Her chronic pain and ongoing limitations also predispose her to a worsening of her symptoms of depression.

[80] Dr. Krassioukov recommended that Ms. Sandhu undergo a number of rehabilitative treatments including: referral and evaluation by a chronic pain clinic, referral to a psychiatrist, access to a gym and/or other exercise based treatment, referral to an occupational therapist for work, home, and recreational activities, referral to an orthopaedic surgeon for evaluation of her knee pain, and referral to a neurologist for Ms. Sandhu's persistent headaches.

Dr. Gordon Robinson, Neurologist

[81] Dr. Robinson is a neurologist who specializes in the diagnosis, treatment, and prognosis of headache disorders. He conducted an assessment of Ms. Sandhu and reviewed some of her medical records.

[82] He concluded that considering that Ms. Sandhu sustained trauma to her head and that she experienced a brief loss of awareness, Ms. Sandhu possibly sustained a mild traumatic brain injury.

- [83] Ms. Sandhu's report of concentration difficulty is likely best explained by the distracting effects of pain, particularly her ongoing headache pain. Her ongoing mild to moderate headache pain is most likely caused by the accident.
- [84] Dr. Robertson opined that Ms. Sandhu will likely continue to experience ongoing headaches indefinitely. He also believes that Ms. Sandhu has ongoing chronic pain affecting her quality of life and her psychological distress likely aggravates her headaches.
- [85] He recommended that Ms. Sandhu attempt Botox treatments and/or oral prescription medication that can be used to treat her persistent headaches. He also recommended that Ms. Sandhu seek treatment from a psychiatrist or psychologist as her chronic pain complaints and mental health issues are interrelated.

Dr. Sheila Patton, Psychiatrist

- [86] Dr. Patton is a forensic psychiatrist who opined that Ms. Sandhu meets the DSM-5 TR diagnostic criteria for the following psychiatric diagnoses:
- Major Depressive Disorder
 - Post Traumatic Stress Disorder
 - Somatic Symptom Disorder
 - Generalized Anxiety Disorder
 - Panic Attacks
- [87] Dr. Patton opined that Ms. Sandhu suffered a mild traumatic brain injury caused by the accident. The persistence of cognitive problems are not due to the injury itself, rather these difficulties are more likely driven by her psychiatric conditions which can impair cognitive function.
- [88] Dr. Patton explained that psychiatric diagnoses are not exclusionary and overlapping symptoms across disorders must be parsed carefully. Psychiatric disorders, especially when comorbid, are often chronic. Full remission is elusive for many. Ms. Sandhu's combination of diagnoses creates a vicious cycle. Her lack of emotional insight and her pattern of avoidance makes treatment all the more difficult.
- [89] In her opinion, Ms. Sandhu's mild traumatic brain injury caused by the accident led to Ms. Sandhu's psychiatric diagnoses. The resulting impact of the psychiatric diagnoses caused or materially contributed to the loss of her quality of life and her ability to function in the manner that she did prior to the accident.

[90] Ms. Sandhu's prognosis is guarded. While she has positive indicators, including: a supportive family, work productivity, and continued schooling; her risk factors include the nature and extent of the psychiatric diagnoses and the fact that it has been over five years since their onset.

[91] Dr. Patton recommended that Ms. Sandhu undergo a significant course of psychological treatment for her diagnosed disorders. Dr. Patton also recommended referral to a pain program, exercise and use of bright-light therapy.

Dr. Pieter van den Berg, Psycho-Vocational Consultant

[92] Dr. van den Berg is a registered psychologist and certified vocational rehabilitation consultant. He met with Ms. Sandhu for one and a half hours, and a member of his office conducted a battery of tests and inventories to understand the impact of the accident on Ms. Sandhu's vocational capacity.

[93] Dr. van den Berg noted that Ms. Sandhu's reported symptoms included:

- Chronic pain
- Fatigue
- Concentration difficulties
- Depressive mood
- Anxiety

[94] As a result of the administered tests and his interview with Ms. Sandhu, Dr. van den Berg concluded that Ms. Sandhu meets the DSM-5-TR diagnostic criteria for the following comorbid psychiatric disorders:

- Major Depressive Disorder
- Somatic Symptom Disorder
- Neurocognitive Disorder
- Post Traumatic Stress Disorder
- Generalized Anxiety Disorder.

[95] In Dr. van den Berg's opinion, Ms. Sandhu has sustained a permanent partial vocational disability as a result of her ongoing symptoms in combination with her multiple cognitive disorders and functional limitations from the accident. While Ms. Sandhu has the capacity to pursue a career as a teacher, it is likely that accommodations will be necessary. Although she has the capacity for full-time employment, she is at risk for repeated and prolonged periods of unemployment, reduced hours as she ages, and eventually early retirement.

- [196] Dr. van den Berg was not aware that Ms. Sandhu's grades at KPU had improved since the accident. In cross-examination Dr. van den Berg confirmed that he expected that Ms. Sandhu's cognitive decline resulting from the accident would manifest at work or school. When asked how this cognitive decline could be reconciled with her improved school performance and full-time work, he said "that would be the million-dollar question".
- [197] Dr. van den Berg recommended that Ms. Sandhu undergo cognitive behavioural therapy and referral to a psychiatrist with experience in treating complex comorbid conditions. He also recommended referral to a pain program, referral to an occupational therapist and ergonomic supports for Ms. Sandhu's workplace.

Ms. Natalie Hull, Occupational Therapist

- [198] Ms. Hull is an occupational therapist who provided a functional capacity assessment of Ms. Sandhu as well as comprehensive recommendations and cost estimates for Ms. Sandhu's future.
- [199] Ms. Hull conducted a full-day assessment of Ms. Sandhu and her evidence reflects a "snapshot" of Ms. Sandhu's functional capacity at the time of the assessment.
- [100] Ms. Hull does not have the expertise to diagnose, but having an understanding of the diagnoses made by clinicians is important to her assessment. At the time of Ms. Sandhu's assessment, she had reviewed Dr. Krassioukov's and Dr. Robinson's reports but did not have Dr. Patton's report. She later became aware of Dr. Patton's diagnoses.
- [101] Ms. Hull performed a series of tests to assess Ms. Sandhu's physical capacity. The tests were objectively measurable, and Ms. Hull made her own observations of Ms. Sandhu's efforts and functionality. Ms. Hull found that the test results were consistent with Ms. Sandhu's self-reporting and that Ms. Sandhu made a high effort to perform the administered tests.
- [102] Ms. Hull concluded that Ms. Sandhu has limitations with respect to her tolerance for overhead reaching, neck extension, forward reaching, rigid prolonged sitting, standing, stooping, kneeling, lifting, and activities requiring non-neutral positions of the spine.
- [103] Ms. Hull opined that Ms. Sandhu's capacity for work intensive sitting appears to be adversely impacted by a reduced tolerance for static positioning, fatigue, and reports of headaches. In Ms. Hull's opinion, Ms. Sandhu is not suited for jobs that require extensive standing, sitting, or reaching overhead.
- [104] Ms. Sandhu is not suited to teach a primary elementary grade because of the intensive seated postural demands which are not altogether avoidable. Ms. Hull also anticipates that Ms. Sandhu's capacity to teach physical education classes will also be compromised. Therefore, Ms. Sandhu's ability to work as a teacher will be contingent on her particular classroom assignment and necessary accommodations.

[105] Ms. Hull opined that Ms. Sandhu is capable of performing housekeeping and domestic duties but anticipates that she will have difficulty with activities that require repetitive or sustained stooping. Should Ms. Sandhu have children, Ms. Hull expects that Ms. Sandhu will have challenges with the demands of early parenthood which requires sustained neck inflexion and seated postures. Ms. Hull also expects that Ms. Sandhu will find the stooping, bending and lifting of children challenging.

Mr. Darren Benning, Economist

[106] Mr. Benning is an economist who provided a report and testified with respect to the assessment of Ms. Sandhu's past and future income loss and future cost of care. Mr. Benning's calculations are based on a number of assumptions and is submitted that the assessment is not tendered as a mathematical calculation of Ms. Sandhu's pecuniary damages or loss of opportunity claim. Rather, it is said to be tendered to assist the court in assessing Ms. Sandhu's past and future losses.

The Defending Parties' Witnesses

Dr. Niti Thakur, Family Doctor

[107] Dr. Thakur was called to explain her interactions with Ms. Sandhu and in support of the defending parties' argument that Ms. Sandhu has failed to mitigate her damages.

[108] Dr. Thakur confirmed that most of her appointments with Ms. Sandhu were not in person. On more than one occasion Dr. Thakur advised Ms. Sandhu to attend her office in person, but Ms. Sandhu did not. Ms. Sandhu did raise her mental health issues with her and Dr. Thakur recommended counselling. There was also a brief discussion about prescription anti-depressants.

Suzanne Dibbs, SFU

[109] Ms. Dibbs is employed in the faculty of education at SFU and processes applications to the teaching program. She testified that grade point average comprises only a small part of the admissions assessment and SFU puts more weight on experience with children.

[110] She confirmed that Ms. Sandhu had applied for the Fall 2024 semester but was not offered admission to the elementary program because she did not have her degree and was missing a Canadian geography course.

Dr. Colleen Quee Newell, Vocational Consultant

- [111] Dr. Quee Newell prepared a vocational assessment at the request of the defending parties in response to Dr. van den Berg's assessment. The defending parties appear to mainly rely on Dr. Quee Newell's evidence to support their argument that Ms. Sandhu's evidence should not be accepted. They rely on statements made by Ms. Sandhu to Dr. Quee Newell which are alleged to be incorrect or different from her evidence or reports she made to other experts.
- [112] In Dr. Quee Newell's opinion, regardless of the accident, due to Ms. Sandhu's academic limitations, Ms. Sandhu was unlikely to become a teacher. In her view, Ms. Sandhu will not be a competitive applicant to SFU's teaching program due to her grade point average and vocational test results.
- [113] Dr. Quee Newell did expect that Ms. Sandhu would be able to manage the light strength physical demands of employment as a teacher given autonomy to employ symptom management strategies such as moving between sitting, standing, and walking as needed.
- [114] Dr. Quee Newell acknowledged that in reaching her opinions she did not have all of Ms. Sandhu's medical background including knowledge that Ms. Sandhu may have suffered a mild traumatic brain injury and that Dr. Krassioukov had diagnosed chronic pain. In her assessment of Ms. Sandhu, Dr. Quee Newell noted mild to moderate symptoms of anxiety and severe depression. She acknowledged that individuals with chronic pain and comorbid psychiatric conditions may experience reduced vocational durability and versatility, meaning that their ability to maintain stable employment or adapt to new roles could be compromised.

Robert Corcoran, Occupational Therapist

- [115] Mr. Corcoran authored a rebuttal report in response to Ms. Hull's report. His role was limited to reviewing and critiquing Ms. Hull's methodology and conclusions. He could not offer definitive clinical opinions, and he did not assess Ms. Sandhu. The defendant acknowledges that the weight that can be placed on Mr. Corcoran's critique is therefore limited.
- [116] Mr. Corcoran found that it was challenging to reconcile Ms. Hull's opinion about Ms. Sandhu's capacity to work as an elementary school teacher when her work and school history demonstrated durable employment as a restaurant manager.
- [117] When provided with additional information in cross-examination or when challenged through hypotheticals, Mr. Corcoran readily acknowledged that his critique of Ms. Hull's assessment could change. Mr. Corcoran also proposed several practical adaptive tools that could assist Ms. Sandhu in the workplace.

Mark Gosling, Economist

- [118] Mr. Gosling is an economist who provided evidence in response to Mr. Benning's report. Mr. Gosling said that Mr. Benning's calculations failed to account for average labour market contingencies for labour force non-participation and part time work. Mr. Gosling provided alternative calculations for the court's consideration.

Credibility and Reliability

- [119] The defending parties challenge the credibility and reliability of Ms. Sandhu's evidence. They submit that Ms. Sandhu has a lengthy history of embellishing her pre-accident abilities, selective memory, and underrepresenting her post-accident status.
- [120] In the main, the defending parties rely on Ms. Sandhu's repeated erroneous reporting of her academic status to call into question her credibility and reliability. They argue that any suggestion that Ms. Sandhu's errors are as a result of a poor memory and is merely an unreliable witness, is without merit. They submit that Ms. Sandhu's "poor memory" operates exclusively to benefit her claim.
- [121] Ms. Sandhu submits that she was a credible witness. She acknowledged her inaccurate reporting of her academic standing and situation at KPU but argues that these inconsistencies must be viewed in light of the way in which she conceded them in cross-examination, the explanations she gave, in combination with the passage of time, her reported symptoms and her social and cultural context.

The law

- [122] The assessment of both credibility and reliability is context-specific and multi-factorial. Factors that inform the assessment include: the opportunity and capacity of the witness to observe or perceive the events; the ability to remember those events; whether, or the extent to which, a witness can resist being influenced by an interest in a particular outcome when recalling those events; inconsistency in the witness's evidence at trial or between prior accounts; whether the witness's evidence harmonizes with, or is contradicted by, other reliable evidence; whether the evidence seems unlikely, unreasonable, or improbable in light of the probabilities affecting the case; and the witness' demeanour, meaning the way they presented while testifying: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296.
- [123] As is generally the case in personal injury actions, the most important witness is the plaintiff herself. Once an assessment of the credibility and reliability of plaintiff is assessed, the court is generally in a position to determine causation, usually with the assistance of medical opinion evidence. A plaintiff who accurately describes her symptoms and circumstances without embellishment will generally be found to be credible and reliable: *Henry v. Fontaine*, 2022 BCSC 930 at paras. 54-55.

[124] A court must be cautious when assessing credibility based on the lack of clinical records, inconsistencies in clinical records and the contents of those records, was explained in *Edmondson v. Payer*, 2011 BCSC 118:

[34] The difficulty with statements in clinical records is that, because they are only a brief summary or paraphrase, there is no record of anything else that may have been said and which might in some way explain, expand upon or qualify a particular doctor's note. The plaintiff will usually have no specific recollection of what was said and, when shown the record on cross-examination, can rarely do more than agree that he or she must have said what the doctor wrote.

[35] Further difficulties arise when a number of clinical records made over a lengthy period are being considered. Inconsistencies are almost inevitable because few people, when asked to describe their condition on numerous occasions, will use exactly the same words or emphasis each time. As Parrett J. said in *Burke-Pietramala v. Samad*, 2004 BCSC 470, at paragraph 104.

...the reports are those of a layperson going through a traumatic and difficult time and one for which she is seeing little, if any, hope for improvement. Secondly, the histories are those recorded by different doctors who may well have had different perspectives and different perceptions of what is important. ... I find little surprising in the variations of the plaintiff's history in this case, particularly given the human tendency to reconsider, review and summarize history in light of new information.

[36] While the content of a clinical record may be evidence for some purposes, the absence of a record is not, in itself, evidence of anything. For example, the absence of reference to a symptom in a doctor's notes of a particular visit cannot be the sole basis for any inference about the existence or non-existence of that symptom. At most, it indicates only that it was not the focus of discussion on that occasion.

[37] The same applies to a complete absence of a clinical record. Except in severe or catastrophic cases, the injury at issue is not the only thing of consequence in the plaintiff's life. There certainly may be cases where a plaintiff's description of his or her symptoms is clearly inconsistent with a failure to seek medical attention, permitting the court to draw adverse conclusions about the plaintiff's credibility. But a plaintiff whose condition neither deteriorates nor improves is not obliged to constantly bother busy doctors with reports that nothing has changed, particularly if the plaintiff has no reason to expect the doctors will be able to offer any new or different treatment. Similarly, a plaintiff who seeks medical attention for unrelated conditions is not obliged to recount the history of the accident and resulting injury to a doctor who is not being asked to treat that injury and has no reason to be interested in it.

Discussion

[125] For the reasons that the follow, I find that Ms. Sandhu was a credible witness. Ms. Sandhu testified in a forthright manner, there were no significant differences between her evidence in chief and in cross-examination, and the main parts of her evidence were corroborated. With the exception of her school records, no evidence was tendered to contradict her testimony. When confronted with her errors Ms. Sandhu readily conceded them. She was not argumentative nor was she evasive. Despite her erroneous reporting about her grades, I find that Ms. Sandhu was an honest witness.

[126] However, in my view, the reliability of Ms. Sandhu's evidence is called into question as a result of her erroneous reporting of her attendance and achievement at KPU. As a result, I have carefully scrutinized her evidence in my assessment as to the accuracy of her recollection of events.

The plaintiff's KPU records

[127] The centrepiece of the defending parties' submission is Ms. Sandhu's erroneous reporting of her pre-accident academic standing. They submit that her evidence is "fundamentally divorced from reality, creating a situation where there are two plaintiffs: the one she describes to others and the actual plaintiff".

[128] There is no question that Ms. Sandhu did not accurately report her academic situation to anyone. She hid her poor performance from her family, friends and experts. Specifically, she reported that she was in school at the time of the accident, when she was not, and she reported that her academic standing was better than it actually was. She also failed to advise the experts that her grades at KPU were better after the accident. She was consistent in her erroneous reporting, she related the same errors over and over again including in her examination for discovery.

[129] Ms. Sandhu was cross-examined on her answers given in her examination for discovery where she explained that she was in school at the time of the accident; provided details about completing her coursework after the accident; and explained that she could not remember whether she took classes in the fall of 2019. When cross-examined about the inconsistencies between her examination for discovery answers and her KPU transcript, Ms. Sandhu readily acknowledged that her examination for discovery answers were incorrect.

[130] The defending parties submit that Ms. Sandhu also falsely testified about the impact on her cousin's death on her academic performance and the impact of the accident on her ability to handle her studies.

- [131] While Ms. Sandhu was clearly wrong about her reporting of her pre-accident status and grades at KPU, in my view, she was not intentionally deceitful. She did not misstate her grades to advance her position in the litigation or to achieve some other benefit. More likely, Ms. Sandhu was wilfully blind to her poor grades. Importantly, her inaccuracies were consistent. There is no evidence that she disclosed the true state of affairs to anyone.
- [132] I agree with the defending parties' submission that Ms. Sandhu has not been wholly truthful with herself, but that does not mean that her testimony was not credible.
- [133] The testimony of Ms. Sandhu's mother, who I find to be a credible witness, confirms my assessment of Ms. Sandhu's evidence. Mrs. Sandhu testified that since high school Ms. Sandhu has been secretive about her school grades and Mrs. Sandhu had no knowledge of her daughter's grades at KPU. When told that Ms. Sandhu had met the requirements for graduation, Mrs. Sandhu was sceptical, she testified that she told her daughter that she did not believe her.
- [134] In my view, this evidence supports my conclusion that Ms. Sandhu's secrecy about her grades led to her own wilful blindness about the truth of them. I am satisfied that she was not intentionally deceitful.
- [135] Ms. Sandhu also repeatedly reported that she was enrolled in classes at the time of the accident, when clearly, she was not. Again, in my view, this error was not designed to deceive or to achieve some personal benefit and it does not cause me to disbelieve her evidence. Frankly, Ms. Sandhu came across as someone who didn't pay much attention to details such as when she was enrolled in school, her hours of work, or for that matter her grades. Her lack of detailed and accurate recollection of her school status was consistent with her overall evidence.
- [136] With respect to suffering academically during the Fall 2018 semester due to the death of her cousin, the defending parties, relying on Mrs. Sandhu's testimony, submit that Ms. Sandhu's evidence should be disbelieved. Ms. Sandhu testified that she missed a few weeks worth of classes because she had to spend time with the family while her mother said that this was limited to one to two weeks.
- [137] I do not accept the defending parties' submission that this discrepancy adversely impacts Ms. Sandhu's credibility. First, the difference between one to two weeks and few weeks is a minor difference; second, as already noted, Mrs. Sandhu did not have clear knowledge of Ms. Sandhu's school situation; and third, I accept that Ms. Sandhu was clearly impacted by the unexpected death of her cousin. She had a photograph of him in her car at the time of the accident and was emotional when discussing his death in her testimony.

The plaintiff's pre-accident employment

- [138] The defending parties challenge Ms. Sandhu's assertion that she worked full time before the accident as inconsistent with tax and business records, and her examination for discovery evidence. The records indicate that she was working approximately 15 hours per week in 2018.
- [139] The defending parties also point to Gary Sandhu's evidence where he testified that in his estimation Ms. Sandhu worked approximately 15-30 hours per week; however, he also explained that it was not his role in the business to keep track of her hours and that it was possible that she worked more hours than were recorded.
- [140] In her examination for discovery, Ms. Sandhu appeared to agree that she was working part-time before the accident and agreed with the suggestion that she was working around 20-30 hours per week. Therefore, the defending parties argue that when Ms. Sandhu said she was working full-time hours that was exaggerated and false. The defending parties also note that over five years after the accident Ms. Sandhu told every single expert that she was working full-time (35 to 40 hours) before the accident and that this is another example of her inability to tell the truth and exaggerating for her own benefit.
- [141] I do not accept the defending parties' submissions. In my view, the distinctions drawn by the defending parties are minor discrepancies that do not impact the credibility of Ms. Sandhu. Given the passage of time recalling whether she worked on average 30 hours a week or 40 hours per week is not significant. I accept Ms. Sandhu's evidence that in her examination for discovery she was describing what was on her pay stub which did not reflect her actual hours worked. I also accept that Ms. Sandhu did not usually report all of the hours she worked since it was a family business. It is readily apparent that in her role as general manager, working for a family business, and attempting to balance school and her social life, her hours were inconsistent and variable.

The plaintiff's post-accident employment

- [142] The defending parties allege that Ms. Sandhu reported her post-accident work hours inconsistently to many of her experts and that in her direct examination she did not mention that she was working six to seven days a week. This submission ignores that Ms. Sandhu's evidence was that her work hours were inconsistent and that in weeks she worked six to seven days, she sometimes only worked a couple of hours a day. Although there were variations in how she reported hours worked, she was consistent that she was working full time.

- [143] One of the reasons why Ms. Sandhu's work hours have been inconsistent since the accident is because her injuries caused a change in her work duties. She testified that sometimes she would go into work for a few hours and then go home to rest, before coming back. Her role now is more administrative in nature and she testified that she would sometimes come in for a short period of time only to deal with the more pressing administrative matters.
- [144] In my view, there is very little difference between what Ms. Sandhu has variously reported about her work hours and her testimony. The variations do not impact my assessment of her credibility.

The plaintiff's post-accident symptoms

- [145] The defending parties also argue that Ms. Sandhu has exaggerated her mental and physical symptoms. In advancing this argument, they rely heavily on the lack of corroboration in Ms. Sandhu's family doctor's clinical notes, a detailed comparison between what Ms. Sandhu testified to and what she reported to six expert witnesses. As well, they rely on Dr. van den Berg's opinion that Ms. Sandhu has exaggerated her symptoms.
- [146] With respect to reliance on Dr. Thakur's clinical notes to assess Ms. Sandhu's credibility, I accept the proposition advanced by the defending parties that clinical notes can be the best evidence of a plaintiff's medical history and condition at material points in time. However, whether they are in a particular case is dependent on the surrounding circumstances. In this case, the records corroborate Ms. Sandhu's account of the circumstances of her visits. The appointments with Dr. Thakur were mainly not in person and were perfunctory in nature. Ms. Sandhu testified, and I accept, that she was not comfortable with Dr. Thakur and in particular was not comfortable discussing her mental health with her.
- [147] Therefore, I am unable to agree with the defending parties that Ms. Sandhu's failure to report or seek assistance from Dr. Thakur means that Ms. Sandhu's account of her injuries, symptoms or mental health is less worthy of belief.
- [148] The defending parties rely on differences between what Ms. Sandhu testified to about her symptoms as opposed to what she told the medical experts to argue that Ms. Sandhu was a dishonest witness. For example, they point to differences in how Ms. Sandhu reported the intensity and frequency of her headaches. In my view, given the nature of the symptoms, the nature of the inquiries made of her about them, some differences are to be expected. I do not accept that the variations in how Ms. Sandhu reported her symptoms, particularly in the context of her diagnoses, adversely impacts her credibility.
- [149] The defending parties argue that Dr. van den Berg's report supports their contention that Ms. Sandhu has exaggerated her symptoms. In his report, Dr. van den Berg noted that the results of Ms. Sandhu's pain and pain related psychological testing are likely somewhat exaggerated due to symptom overreporting, and although the test results were valid, they were somewhat exaggerated.

- [150] However, Dr. van den Berg explained that the results of the psychological testing indicated that Ms. Sandhu did not attempt to present an unrealistic or inaccurate impression. She was not intentionally exaggerating her symptoms, any overreporting was a symptom or a function of her psychological conditions. Exaggerating or overreporting is a hallmark of somatic symptom disorder. The physical and psychological symptoms cannot be separated.
- [151] The defending parties' submission that Dr. van den Berg's opinion supports their contention that Ms. Sandhu is prone to exaggerate her symptoms and thus her testimony about her symptoms is not credible does not withstand scrutiny when the whole of Dr. van den Berg's evidence is considered.

Conclusion

- [152] In my view, Ms. Sandhu was a credible witness. Her errors were honest ones. However, given that Ms. Sandhu has inaccurately reported her attendance at school and her school performance the reliability of her evidence is called into question. I have considered her evidence carefully when reaching my conclusions that solely depend on the accuracy of her evidence.

Causation

The parties' positions

- [153] Ms. Sandhu submits that based on the totality of the lay and expert evidence, there is no genuine issue of injury causation. She submits that she has clearly established that her current physical and emotional symptoms and limitations arose as a direct result of the accident.
- [154] As noted, the defending parties accept that Ms. Sandhu suffered posttraumatic headaches, soft tissue injuries to her neck, upper back, shoulders, lower back, as well as a left tibial plateau fracture and that she has some ongoing discomfort and pain as a result. However, they dispute the severity of her diagnoses, largely based on their submission that the diagnoses were based on Ms. Sandhu's reports that are not credible nor reliable.

The law

- [155] Causation is established when the plaintiff proves that defendants or one of them caused or contributed to her injuries. The negligence need not be the sole cause of the injuries so long as it is a necessary cause and causation need not be determined by scientific precision: *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at para. 130; *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at paras. 13-17; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.

- [156] The primary test for causation asks whether the plaintiff would have suffered the injuries but for the defendant's negligence. This test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the defendant's conduct is present: *Resurface Corp. v. Hanke*, 2007 SCC 7 at paras. 21-23; *Zenone v. Knight*, 2024 BCCA 200 at para. 55.
- [157] It is well accepted that the plaintiff must be placed in the position she would have been if not for a defendant's negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for a normal person (the "thin skull" rule). A defendant is fully liable for the unexpectedly severe injuries of the thin skull plaintiff because liability cannot be apportioned between causes: *Dornan v. Silva*, 2021 BCCA 228 at para. 41. However, the defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced anyway (the "crumbling skull" rule): *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at paras. 32-35.

Discussion

- [158] The evidence before me demonstrates that before the accident Ms. Sandhu was a healthy, fit and active individual with no mental health concerns. I am satisfied that Ms. Sandhu has proven that as a result of the accident she suffered the following physical injuries: post-traumatic headaches; soft-tissue injuries to her back, neck, and shoulders; a laceration to her left thumb, and a significant fracture to her left tibial plateau.
- [159] I am also satisfied that as a result of the accident Ms. Sandhu has developed a chronic pain disorder, generalized anxiety disorder, major depressive disorder, somatic symptom disorder, and post-traumatic stress disorder.
- [160] While the defending parties argue that Ms. Sandhu did not suffer a mild traumatic brain injury, whether she did or not, is not critical to my assessment, since I have found that she has proven the effect of the injuries she sustained and her ongoing symptoms.
- [161] There is no dispute amongst the experts that Ms. Sandhu's ongoing cognitive symptoms are the result of the psychiatric and psychological disorders caused by the accident.
- [162] Having found that Ms. Sandhu's evidence was credible, I do not accept the defending parties' argument that the extent of the diagnoses proffered by her experts should be questioned. While the reliability of the frequency of her reported symptoms might be open to question, I accept that, for example, she has suffered ongoing headaches as a result of the accident. Whether they have been daily or several times a week or weekly is not significant to my overall analysis. They have been frequent, ongoing for many years and caused by the accident.

- [163] The defending parties also submit that little weight should be placed on the plaintiff's expert evidence on the basis that the experts spent limited time with Ms. Sandhu. Further, they emphasize that the experts were unaware of Ms. Sandhu's eventual post-accident improved academic performance.
- [164] The difficulty with the defending parties' submission is that they did not present any expert medical evidence to contradict or to warrant this court to weigh the affirmative expert evidence tendered by Ms. Sandhu.
- [165] As it relates to Ms. Sandhu's improved academic performance, all of Ms. Sandhu's experts were asked about whether it impacted their provided opinions and none of them said that it did.
- [166] While in some ways, the impacts of the accident as described by Ms. Sandhu are difficult to reconcile with her improved academic performance, in my view that is so when only viewed by focussing on her letter grades in isolation.
- [167] As Dr. Patton testified, there are a myriad of reasons why Ms. Sandhu's academic performance has improved despite her diagnoses. First, while grades are an objective indicator of success, they are not the only indicator. How someone feels about their performance is not necessarily tied to grades. Second, it is not uncommon for post-secondary students to improve as time goes on for a number of reasons including motivation, familiarity and finding subject areas that the person likes.
- [168] Dr. Quee Newall confirmed Dr. Patton's evidence. She testified that it is not uncommon for students to struggle at the start of their post-secondary career. Better marks are commonly seen in later years and can depend on a student finding a major that is of more interest. Dr. Quee Newall agreed that students can become motivated to perform better after being put on academic warning or probation. She has seen that before.
- [169] I accept Dr. Patton and Dr. Quee Newall's evidence, and it is consistent with Ms. Sandhu's evidence. Ms. Sandhu testified that after her academic suspension she had to decide whether get serious about her desire to become a teacher. She testified that she focussed more and worked harder. I note that Ms. Sandhu was very young at the time of the accident and was more mature when her grades improved. Ironically, the change in her lifestyle brought about by the consequences of the accident may have led to her improved grades. Ms. Sandhu's ability to achieve higher grades does not mean that she did not suffer the effect of the injuries she testified to or that she has exaggerated her symptoms.

Non-Pecuniary Damages

The plaintiff's position

[170] Ms. Sandhu seeks damages in the range of \$220,000 to \$240,000. She submits that a substantial award is justified emphasizing the life altering impact of the accident on all facets of her life: physically, emotionally, domestically, socially, recreationally, and vocationally. Ms. Sandhu was only 21 years of age at the time of the accident and continues to suffer its effects, many of which are likely to persist for the rest of her life.

[171] In support of her position, Ms. Sandhu cites the following decisions:

- Danks v. Middelveen, 2024 BCSC 174 (\$190,000);
- Martin v. Steunenbergh, 2021 BCSC 1411; (\$210,000 or \$242,000 with inflation);
- Kempton v. Struke Estate, 2020 BCSC 2094, (\$200,000 or \$234,000 with inflation);
- Knight v. Zenone, 2022 BCSC 99 (\$200,000 or \$220,000 with inflation);
- Ranahan v. Oceguera, 2019 BCSC 228 (\$160,000 or \$191,000 with inflation);
- Pololos v. Cinnamon-Lopez, 2016 BCSC 81 (\$180,000 or \$230,000 with inflation);
- Sebaa v. Ricci, 2015 BCSC 1492 (\$180,000 or \$234,000 with inflation);
- Ali v. Padam, 2017 BCSC 1849 (\$190,000 or \$233,000);
- Gill v. Apeldoorn, 2019 BCSC 798 (\$200,000 or \$234,000 with inflation); and
- Wang v. McNaught, 2017 BCSC 454 (\$175,000 or \$215,000 with inflation).

The defending parties' position

[172] The defending parties submit that an award of \$100,000 is appropriate and rely on the following cases in support of their position:

- Maher v. Tsegaye, 2024 BCSC 822 (\$100,000);
- Omerovic v. Merced, 2023 BCSC 727 (\$100,000);
- Kim v. Baldonero, 2022 BCSC 167 (\$90,000); and
- L'Heureux v. Deegan, 2022 BCSC 382 (\$110,000).

The law

[173] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities: Langford (City) v. Matthews, 2024 BCCA 214 at para. 44. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide and damage awards in each case will vary to meet the specific circumstances of that case: Howes v. Liu, 2023 BCCA 316 at para. 26.

[174] An award for non-pecuniary damages is determined by a functional approach that depends not only on the gravity of an injury, but also on the plaintiff's circumstances: *Langford (City) v. Matthews*, at para. 44. Assessment of non-pecuniary damages is necessarily influenced by the individual plaintiff's personal experiences in dealing with his or her injuries and their consequences, and the plaintiff's ability to articulate that experience: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[175] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages:

[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).

Discussion

[176] I accept that Ms. Sandhu has experienced ongoing fatigue, pain, headaches, and functional limitations in her neck, back, and left leg, which negatively impacts her recreational activities and daily routine. When combined with her comorbid psychiatric diagnoses, these impairments will continue to have a significant impact on Ms. Sandhu's prospective employment and career trajectory, durability, career longevity and overall quality of life.

[177] In my view, the decisions in *Danks* and *Ranahan* are the most comparable to Ms. Sandhu's circumstances.

[178] In *Danks*, the 46-year-old plaintiff was injured as a passenger in a rear-end motor vehicle collision. She suffered injuries to her neck, back and shoulders, resulting in headaches and disruption of sleep. Her soft tissue injuries were compounded by her psychological injuries

of anxiety and depression. Being self-employed, and despite experiencing collision-related symptoms, the plaintiff did not take time off work following the collision. However, her drive and enthusiasm to grow and expand her business and her ability to durably perform all aspects of the required work was found to have diminished due to both physical and emotional factors. She continued to struggle with ongoing psychological impacts and depressive symptoms; she had become socially withdrawn and less physically active. The court awarded \$190,000.

- [179] In Ranahan, the 45-year-old plaintiff was a sports physiotherapist with passion for physical activity. She suffered neck, shoulder, and back injuries and related headaches after a rear end collision which became chronic. She developed anxiety and depression. She also suffered a concussion and developed cognitive problems including issues with memory and focus challenges. Her accident-related injuries had a significant effect on her active lifestyle, her work, and her relationships. She was awarded \$160,000 (\$191,000 with inflation) in non-pecuniary damages exclusive of housekeeping.
- [180] The plaintiffs in Danks and Ranahan were more physically active than Ms. Sandhu before the accident and as a result their reduced ability to be physically active after the accident impacted them greater than Ms. Sandhu. I accept the defending parties' submission that the physical injuries Ms. Danks and Ms. Ranahan suffered appear to be more severe than those suffered by Ms. Sandhu. As well, as both plaintiffs had young children, their lives were more significantly disrupted.
- [181] However, Ms. Sandhu is significantly younger, and it is very likely that she will experience the consequences of the accident both physically and mentally for the rest of her life. I accept that her chronic pain combined with her psychiatric diagnoses are debilitating and her prognosis for improvement is guarded. Ms. Sandhu has legitimate concerns about whether she will even be able to fully realize the ability to have a family and participate in child rearing.
- [182] In my view, the defending parties' cases are of less assistance. In all of them, the plaintiffs did not suffer as significant consequences from their respective accidents as Ms. Sandhu has. In Maher, while Mr. Maher suffered from a major depressive disorder, it was accepted that both his physical and mental symptoms had improved, and treatment would make them manageable. In Omerovic, Ms. Omerovic only suffered from physical impacts from the accident. In Kim, Mr. Kim's injuries and anxiety did not appear to impair his social activities, or his marital and family relationships. In L'Heureux, the plaintiff was unlikely to fully recover from the accident, her prognosis was fair, but she did not appear to have any negative prognostic indicators. She suffered from some anxiety, but did not have psychiatric diagnoses like Ms. Sandhu.

[183] Invariably, the circumstances of each case will differ including for example, the age of the plaintiff and the specific nature of their various injuries. I am also mindful that other cases serve only as some guidance to my assessment of the inexhaustive list factors identified in Stapley and I am required to apply a functional approach in the assessment influenced by Ms. Sandhu's individual personal experiences in dealing with her injuries and their consequences.

[184] In my view, considering her young age, the nature of her injuries, the severity and duration of her pain, and the impact on her mental health, Ms. Sandhu has established that an award at the higher end of the range is warranted in all the circumstances, and I assess Ms. Sandhu's non-pecuniary damages at \$190,000.

Mitigation

The defending parties' position

[185] The defending parties submit that Ms. Sandhu's actions and inactions warrant a reduction of 30 to 50% in her award for non-pecuniary damages and future loss of earning capacity. They say that Ms. Sandhu could have avoided all or portions of her loss and raise the following issues:

- a) She failed to raise any mental health issues until June 2024 and when she raised the issues with Dr. Thakur, Ms. Sandhu was referred for counselling, but she has not yet attended.
- b) She failed to seek advice from Dr. Thakur. Her visits were limited and she did not attend in person when requested to do so.
- c) She was advised by Dr. Thakur to be active but was not.
- d) She was referred to physiotherapy and massage but did not attend.
- e) She was repeatedly told by her treaters to do her exercises, but she has not done so consistently.
- f) She has done nothing meaningful to improve since 2022.

The plaintiff's position

[186] Ms. Sandhu argues that the defendant has not proven that she failed to mitigate her damages. Ms. Sandhu did not unreasonably fail to follow treatment recommendations and relying on the expert evidence tendered, Ms. Sandhu submits that had she followed what the defendant characterizes as treatment recommendations, the defendant has not proven that her damages would have been reduced. Ms. Sandhu points out that, the defending parties did not call a psychiatrist, physiatrist or neurologist in response to Ms. Sandhu's evidence.

The law

- [187] A plaintiff has an obligation to take all reasonable measures to reduce her damages, including undergoing treatment to alleviate or cure injuries. The principle of mitigation is based on the general proposition that a defendant should not be held liable for loss and damages the plaintiff could have reasonably avoided: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 201.
- [188] Once the plaintiff has proved the defendant's liability for his or her injuries, the defendant must prove that the plaintiff acted unreasonably, and that reasonable conduct would have reduced or eliminated the loss. Whether the plaintiff acted reasonably is a factual question and it involves a consideration of all of the surrounding circumstances: *Gilbert* at para. 202
- [189] In *Chiu v. Chiu*, 2002 BCCA 618 the court set out the test for failure to mitigate by not pursuing recommended treatment:
- [57] The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably
- [190] A defendant bears the onus of proving both branches of the Chiu test on a balance of probabilities: *Haug v. Funk*, 2023 BCCA 110, at paras. 55 and 61.
- [191] In assessing whether a defendant has met their onus, the plaintiff's personality and condition is a relevant circumstance. The law does not require perfection in the pursuit of rehabilitation and the defendant must take the victim as found, which may affect what is to be reasonably expected. The law requires that the plaintiff make contextually reasonable and sincere efforts to limit her damages and loss: *Gilbert* at para. 203.
- [192] In cases involving a cognitively impaired plaintiff, the reasonableness of a plaintiff's reluctance to pursue psychological treatment or counselling, must be viewed from the plaintiff's point of view. The failure to follow or pursue treatment recommendations can be the result of the plaintiff's major depressive disorder. A plaintiff cannot be found to have failed to mitigate damages where that failure stems from a condition that the defendant's themselves have caused: *Gilbert* at para. 203; *Ali v. Padam*, 2017 BCSC 1849 at para. 225; *Kempton v. Struke Estate*, 2020 BCSC 2094 at paras. 196-197.

Discussion

- [193] In my view, there is little merit to the defending parties' position that Ms. Sandhu failed to mitigate her damages by failing to see her family doctor more often or by failing to attend more physiotherapy and massage treatments. While Dr. Thakur testified that she requested that Ms. Sandhu make an in-person appointment and Ms. Sandhu did not do so, it is

difficult to see, in light of Ms. Sandhu's chronic pain diagnosis coupled with her psychiatric diagnoses how a general practitioner could have assisted Ms. Sandhu advance her rehabilitation.

- [194] The defending parties rely on a number of decisions including *Antoniali v. Massey*, 2008 BCSC 1085; *Abdalle v. British Columbia (Public Safety and Solicitor General)*, 2012 BCSC 128; *Pond v. Bucsis*, 2013 BCSC 2001; *Park v. Targonski*, 2015 BCSC 555; and *Latuszek v. Bel-Air Taxi (1992) Limited*, 2009 BCSC 798, where the courts accepted that a reduction in damage awards were warranted in circumstances where the defendants' established that the plaintiffs' failure to engage in a recommended course of treatment such as active rehabilitation, taking prescribed medication, or participating in active rehabilitation.
- [195] Each case depends on its own facts but common in these cases were conscious decisions on the part of the plaintiffs to not follow a clear recommended course of action and evidence that had the plaintiff followed that recommended course, their symptoms would have been improved or even eliminated.
- [196] In relation to their submission that Ms. Sandhu ought to have attended more physiotherapy, the defending parties rely on the evidence of Dr. Krassioukov who said that doing physiotherapy in 2023 and continuing exercises would have helped; however, he added that it would have been more maintenance focussed and would not lead to improvements. He confirmed that yoga was helpful but would do very little on its own and that massage therapy would only provide temporary relief.
- [197] Ms. Sandhu initially did aggressively pursue her rehabilitation by attending 83 different appointments for massage, physiotherapy and kinesiology. Ms. Sandhu also transitioned to yoga which she found provided symptom relief, and she performed her prescribed home-based exercises. The experts all agreed that early active rehabilitation is most likely to yield the most favourable results, which is exactly what Ms. Sandhu did. When symptoms do not resolve, maintenance focussed treatment is the best that can be hoped for.
- [198] Ms. Sandhu explained, and I accept, that she saw no point in attending further massage and physiotherapy. Massage treatments only provided her with temporary relief. Ms. Sandhu did not attend in-person physiotherapy appointments because she did the prescribed exercises at home. When she did attend for physiotherapy, she was simply directed to perform the same exercises she was doing at home and saw no point in attending to do them there.
- [199] Ms. Sandhu candidly acknowledged that while she tried to perform the prescribed exercises diligently, at times she did not feel physically able to do them and at other times she simply didn't have the energy. In light of her diagnoses, this is hardly surprising.

- [200] Furthermore, while I appreciate that there need not be an overt or conclusive statement that a given course of treatment would definitely assist a plaintiff and a treating physician's recommendation is sufficient: *Flynn v. Rai*, 2023 BCSC 1895 at para. 140, there is no clear evidence that had Ms. Sandhu done more, her symptoms would be resolved or lessened.
- [201] Mitigation is not to be judged retrospectively nor to a standard of perfection. The possibility that having more appointments with her doctor or attending for more physiotherapy and massage does not mean that Ms. Sandhu has failed to mitigate her damages. The defending parties did not call any evidence to prove that had Ms. Sandhu been more diligent in pursuing treatment recommendations then her loss would have been reduced: *Martin v. Steunenberg*, 2021 BCSC 1411 at para. 255.
- [202] As for Ms. Sandhu's alleged failure to seek treatment for her mental health issues, the defending parties submit that Ms. Sandhu ought to have raised them before 2024. Further, once she did raise it, she failed to follow Dr. Thakur's recommendation that she attend for counselling. The defending parties point to Ms. Sandhu's 2022 examination for discovery and her amendment to her pleadings in December 2022 to include claims for depression, anxiety and post-traumatic stress disorder as indicative that Ms. Sandhu was aware of her mental health issues but acted unreasonably by failing to pursue treatment.
- [203] The defending parties note the evidence of Dr. Patton and Dr. van den Berg who testified that there are treatments she could undergo that might have some effect and that early intervention is more likely to be met with success. Dr. Patton cautioned though, that given the number of diagnoses, Ms. Sandhu's overall prognosis is guarded.
- [204] In support of their submission, the defending parties rely on *Qiao v. Buckley*, 2008 BCSC 1782 which they submit is similar to the case at bar. In *Qiao*, the defendant established that the plaintiff had failed to mitigate because she had not attended group psychotherapy sessions recommended by her psychiatrist. The plaintiff explained that she did not follow those instructions because she was embarrassed to disclose in a public manner that she was experiencing psychological problems. She explained that the embarrassment might in part be cultural, given her Chinese heritage.
- [205] Noting that there are circumstances where a plaintiff's failure to mitigate may be excused, when for reasons beyond their control, the plaintiff is unable to follow a course of treatment, the court held that embarrassment is not a circumstance beyond the plaintiff's control. It makes it difficult to follow the treatment but not impossible.
- [206] Ms. Sandhu did not testify that she did not seek out assistance because of embarrassment, rather she explained that she did not do so because of her lack of awareness due to her familial and cultural background where acknowledging and discussing anxiety and mood issues was not something that was done. Her witnesses, including her brother, confirmed that feelings and emotions were not something that was discussed in their family. Mrs. Sandhu testified that when Ms. Sandhu was growing up, topics like mood and anxiety were never discussed in the home because there was no need to, Ms. Sandhu had a very smooth

life, and her teachers had never raised any concerns.

- [207] When she did raise her mood issues with Dr. Thakur, all Dr. Thakur did was recommend that she go online and find a free student counsellor. Dr. Thakur did suggest that anti-depressants might be an option, but this was simply a discussion and not a treatment recommendation.
- [208] While Ms. Sandhu was aware that she had mood issues, because she was more likely to snap at her staff, family and friends than before the accident, she was not aware of the extent of her mental health issues until after she met with the experts in preparation for trial.
- [209] Ms. Sandhu was cross-examined on answers she gave during her examination for discovery on November 30, 2022. Ms. Sandhu said that she had a lot of emotional symptoms since the accident. She gets frustrated really fast and doesn't have much patience. She gets flashbacks and anxiety when driving. She felt depressed and did not want to go out or see anyone. Ms. Sandhu acknowledged that she had not told any of her doctors about having depression. She explained that it was not something that people in her culture talk about and it was not something that she talked about with anyone except perhaps with close friends. She said that she might need to talk to her doctor about it, because the issues were not going away. When asked if her plan was to talk to Dr. Thakur about it, she said that it was.
- [210] Ms. Sandhu acknowledged the accuracy of the answers that she gave at her examination for discovery. In cross-examination, in answer to why she had waited until 2024 to speak to Dr. Thakur, she explained that she was not ready to discuss it, it was not something that was ever discussed in her family or culture and she did not know how to go about it. She was not comfortable with Dr. Thakur and since she was also Indian, she felt that if she raised it there could be some kind of judgment.
- [211] In considering whether Ms. Sandhu unreasonably failed to pursue treatment for her psychological conditions, in my view, Ms. Sandhu's personal background is highly relevant to this assessment. The fact that mental health issues were not commonly discussed in her family and in her specific cultural surroundings means that Ms. Sandhu was not as aware of her own psychological conditions as someone else might have been. In some respects, Mr. Sandhu's position is similar to the plaintiff in Chiu, where the Court at para. 58, held that the defendant had not proven that the plaintiff had failed to mitigate his damages because the young cognitively impaired plaintiff did not have a good grasp of his conditions and what treatment he should reasonably pursue.
- [212] Dr. Patton opined that Ms. Sandhu's lack of initiative, insight, reluctance and avoidance in pursuing mental health treatment is at least partially attributed to her diagnoses, particularly the avoidance features of PTSD.

Conclusion

- [213] The onus is on the defending parties to prove that Ms. Sandhu could have avoided all or a portion of her loss by pursuing a course of medical treatment recommended by her doctor. The defending parties must prove that Ms. Sandhu acted unreasonably in not following the recommended treatment, and the extent to which the damages had been reduced if she had acted reasonably. The test is objective, but the mitigation question is "what would be expected of a reasonable person in the circumstances having regard for the plaintiff's medical condition at the material time and the advice given concerning treatment": *Cassells v. Ladolcetta*, 2012 BCCA 27 at para. 26.
- [214] In my view, the defending parties have not discharged their onus on either branch of the Chiu test. In relation to her physical injuries, Ms. Sandhu did follow a treatment regime following the accident. After 2022, Ms. Sandhu did not attend in-person physiotherapy or other forms of treatment, but the evidence does not show that she ignored the advice of medical professionals or that if she had attended further in-person treatments her damages would be reduced. I accept Ms. Sandhu's testimony that she no longer felt that attending in person was beneficial, and that she continued to perform exercises at home and attend yoga classes.
- [215] In relation to her mental health concerns, the evidence does not establish that Ms. Sandhu acted unreasonably in not being more proactive about her mental health concerns when viewed objectively from her circumstances at the time. Neither did Ms. Sandhu unreasonably fail to follow the advice of her doctor when she did not initiate treatment. The defending parties have also failed to demonstrate that had Ms. Sandhu sought mental health assistance sooner, her damages would have been reduced.
- [216] The defending parties have not proven that Ms. Sandhu failed to mitigate her damages.

Past Loss of Income

- [217] Ms. Sandhu submits that she is entitled to compensation for her lost wages for the period of time that she was unable to work following the accident. The defending parties accept that Ms. Sandhu has proven that she lost income as a result of the accident.
- [218] Ms. Sandhu also seeks damages for her past loss of income earning capacity. In her submission, there is a real and substantial possibility that her entry into the teaching profession has been delayed as a result of the accident. The defending parties submit that there is no credible evidence to support Ms. Sandhu's contention. Any delay in entering teacher's training is as a result of her academic performance and not attributable to the accident.

The law

- [219] Compensation for past loss of earning capacity is to be based on what the plaintiff would have earned but for the injury that was sustained: *Hartman v. MMS Homes Ltd.*, 2023 BCCA 400 at para. 64 citing *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.
- [220] The standard of proof for past facts is on a balance of probabilities, but when dealing with hypothetical events, both past and future, the standard of proof is a "real and substantial possibility" which is a lower threshold than a balance of probabilities but a higher threshold than that of something that is only possible and speculative: *Gao v. Dietrich*, 2018 BCCA 372 at paras. 34, 35.
- [221] Establishing a real and substantial possibility means that any employment loss must be shown to be realistic, having regard to what the plaintiff's circumstances would have been absent the injury. There must be an evidentiary foundation to the plaintiff's claim and if the plaintiff establishes a real and substantial possibility, then the court must weigh the hypothetical or future event according to its relative likelihood: *Gao* at paras. 36, 37.

Discussion

- [222] After the accident Ms. Sandhu did not work for a period of nine weeks. At the time, she was earning \$15 per hour, and I find was working approximately 30 hours per week. Thus, her gross loss of income for that time period amounts to \$4,050. After that nine-week period, Ms. Sandhu returned to work on a part-time basis for approximately three months before returning to full-time hours. I find that she lost 10 hours of work per week over a 12-week period and as a result I find that her gross income loss for that time period amounts to \$1,800.
- [223] Pursuant to s. 98 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, a plaintiff is entitled to recover damages for only her past net income loss. This means that in the ordinary course the court must deduct the amount of income tax payable from lost gross earnings: *Hudniuk v. Warkentin*, 2003 BCSC 62.
- [224] Therefore Ms. Sandhu's gross actual lost earnings amount to \$5,850, and amount to \$4,972.50 after deducting the tax payable.
- [225] As for her past loss of income earning potential claim, in my view, Ms. Sandhu has not proven that there is a real and substantial likelihood that her entry into the teaching profession has been delayed by the accident.
- [226] Ms. Sandhu's recent application to the teaching program at SFU was not accepted for two reasons. First, she did not have a degree because her math mark was too low. Second, she has never taken a required Canadian geography course.

- [227] There is no evidence that her low math mark had anything to do with the accident. Ms. Sandhu testified that she struggled with math before the accident.
- [228] More significantly, there is no explanation or evidence before me that Ms. Sandhu's failure to take the geography course was related to the accident. She provided no explanation as to why she had not taken this missing prerequisite course.
- [229] Furthermore, as I have already described, Ms. Sandhu was not in school at the time of the accident, she was ineligible for enrolment due to her academic standing. Following the accident, Ms. Sandhu enrolled in classes in the Fall of 2019, but did not do well and was placed on academic suspension. Unfortunately, this was consistent with Ms. Sandhu's pre-accident academic trajectory, and I am unable to accept that the accident delayed her schooling and in turn delayed her entry into the teaching profession.
- [230] I appreciate that Ms. Sandhu testified that the impacts of the accident made her academic studies even more challenging than they were before the accident; however, her more recent academic performance does not support that contention. I am not satisfied that Ms. Sandhu has established a real and substantial possibility that the effects of the accident have resulted in any past lost earning capacity, when her pre- and post- accident academic performance is considered along with the reasons for her not yet gaining admission to the teaching program. There is an insufficient evidentiary foundation to reach the conclusion that she has suffered a past loss of income earning capacity.

Loss of Future Earning Capacity

The plaintiff's position

- [231] Ms. Sandhu submits that, relying on Mr. Benning's report, an award of \$1,500,000 is a fair and reasonable award for her loss of future earning capacity. Mr. Benning estimated that Ms. Sandhu's future loss of earning capacity was between \$1,382,713 and \$1,938,526, relying on a number of assumptions, including:
- a) There was a 100% probability that Ms. Sandhu will retire as a teacher at age 55 due to the accident, otherwise she would have worked to age 65.
 - b) There was a 100% probability that Ms. Sandhu will miss two days of work per month for the duration of her career.
 - c) There was a 100% probability that absent the accident, after retirement at the age of 65, Ms. Sandhu would work as a tutor for 15 hours per week, nine months of the year.
 - d) Her teaching career was delayed by three years.

- [232] Mr. Benning also assumed that Ms. Sandhu would be unable to work at the Fox and Fiddle during the summer months due to the accident; however, Ms. Sandhu did not testify that she was planning on working at the Fox and Fiddle in the summer months once and if she became a teacher.
- [233] Ms. Sandhu objects to applying the capital asset approach to quantifying her loss of future earning capacity on the sole basis that it would not be fair in the circumstances.

The defending parties' position

- [234] The defending parties submit that no award under this damage head is justified. In the alternative, they submit that the methodology to apply is the capital asset approach and not the earnings approach. They submit that two years of a teacher's salary amounting to \$150,000, should be awarded, subject to their submission on mitigation.

The law

- [235] The central task before the court in considering damages for loss of future earning capacity is to compare the likely future of the plaintiff's working life without the injury to their likely future working life with the injury: *Davies v. Penner*, 2023 BCCA 300 at para. 25; *Rab v. Prescott*, 2021 BCCA 345 at para. 65. A plaintiff is not entitled to an award for loss of earning capacity in the absence of any real and substantial possibility of a future event leading to income loss: *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 14.
- [236] In 2021, the Court of Appeal issued a trilogy of decisions setting out the proper approach to assessing a claim for damages for loss of future earning capacity: *Dornan v. Silva*, 2021 BCCA 228; *Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421. In *Rab*, the court identified a three-step process for assessing damages as follows:
- [47] a three-step process emerges for considering claims for loss of future earning capacity, particularly where the evidence indicates no loss of income at the time of trial. The first is evidentiary: whether the evidence discloses a potential future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in [*Brown v. Golai*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.)]). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring--see the discussion in [*Dornan v. Silva*, 2021 BCCA 228] at paras 93-95.
- [237] At the first step, there are, broadly, two types of cases involving the loss of future earning capacity: (1) more straightforward cases, for example, when an accident causes injuries that render a plaintiff unable to work at the time of trial and for the foreseeable future; and (2) less straightforward cases, for example, those in which a plaintiff's injuries have led to continuing deficits or exposed them to future problems, but the plaintiff's income at trial is

similar to what it was at the time of the accident: Rab at paras. 29-30. In the former set of cases, the first and second step of the analysis may well be foregone conclusions: Ploskon-Ciesla v. Brophy, 2022 BCCA 217 at para. 11.

- [238] The second step of the analysis requires the plaintiff to prove there is a real and substantial possibility that the future event in question will give rise to pecuniary loss. After determining that the plaintiff may suffer a loss of capacity, the court evaluates the likelihood that it will affect the plaintiff's ability to earn income. The standard of proof "is a lower threshold than a balance of probabilities but a higher threshold than that of something that is only possible and speculative": Gao v. Dietrich, 2018 BCCA 372 at para. 34; Ploskon-Ciesla at para. 15.
- [239] At the third step - the valuation stage - there are two possible approaches to assessing loss of future earning capacity: the earnings approach and the capital asset approach: Davies at para. 28; Perren v. Lalari, 2010 BCCA 140 at para. 32. The earnings approach will generally be more useful when the loss is easily measurable: Lamarque v. Rouse, 2023 BCCA 392 at para. 38; Perren at para. 32. Where the loss "is not measurable in a pecuniary way", the capital asset approach is more appropriate: Perren at para. 12.
- [240] The approach taken to the assessment of loss must be based on the evidence: Rab at para. 75. The ultimate award is a matter of judgment as opposed to purely mathematical calculation: Rosvold v. Dunlop, 2001 BCCA 1 at para. 18. The assessment includes consideration of general contingencies as well as any specific contingencies relied on by the plaintiff or defendant: see Hartman v. MMS Homes Ltd., 2023 BCCA 400 at para. 71 citing Graham v. Rourke, (1990), 74 D.L.R. (4th) 1, 1990 CanLII 7005 (Ont. C.A.). Specific contingencies pertain to the plaintiff in particular and must be grounded in evidence establishing them as realistic possibilities: Dornan at paras. 92-95. To the extent possible, the plaintiff should be put in the position she would have been in but for the injuries caused by the defendant's negligence: Lines v. W & D Logging Co. Ltd., 2009 BCCA 106 at para. 185.
- [241] The earnings approach assesses the plaintiff's estimated annual income multiplied by her remaining years of work and discounted to reflect current value: Pallos v. Insurance Corp. of British Columbia (1995), 1995 CanLII 2871 (BC CA), 100 B.C.L.R. (2d) 260 at para. 43 (C.A.); Ng v. Corness, 2023 BCCA 185 at para. 18.
- [242] The capital asset approach involves consideration of the factors described in Brown v. Golaiy, 26 B.C.L.R. (3d) 353 at 356, 1985 CanLII 149 (S.C.), including whether the plaintiff: i) has been rendered less capable overall of earning income from all types of employment; ii) is less marketable or attractive as a potential employee; iii) has lost the ability to take advantage of all job opportunities that might otherwise have been open; and iv) is less valuable to herself as a person capable of earning income in a competitive labour market: see also Ploskon-Ciesla. Though the capital asset approach is not a "mathematical calculation", the trial judge must still explain the factual basis of the award: Dornan at

paras. 151, 158; *Morgan v. Galbraith*, 2013 BCCA 305 at para. 56. Where economic evidence is available that is relevant to measuring the loss of future income earning capacity, the trial judge should use it as a starting point to quantify damages for loss of future earning capacity: *Aujla v. Boldt*, 2025 BCCA 228 at paras. 64-66.

- [243] In cases where a plaintiff goes back to the same job, in which they may work indefinitely, and suffer no loss of income, an award for loss of earning capacity is still possible. The proper question in such cases is whether there has been an impairment of her earning capacity: *Charters v. Jordan*, 2024 BCCA 351, at para. 123; *Boucher v. Bemister*, 2023 BCCA 17 at para. 10; *Morgan v. Galbraith*, 2013 BCCA 305 at para. 24.

Discussion

Step 1: Potential future loss of capacity

- [244] Ms. Sandhu's case is "less straight-forward" because she has not suffered any income loss to date. As already discussed, I have concluded that Ms. Sandhu has not shown a real and substantial possibility that her delay in becoming a teacher was caused by the accident. While I accept that the prospect of Ms. Sandhu becoming a teacher is possible, on the facts I have found, I find that it is not a real and substantial likelihood, regardless of the accident.
- [245] Ms. Sandhu has already taken 10 years to obtain enough credits to be eligible for her degree. To reiterate, Ms. Sandhu does not have her degree due to her low math mark. A degree is one of the prerequisites for admission to the teacher training program she has chosen to apply to. Ms. Sandhu has also not taken a Canadian geography, a prerequisite for admission to SFU's teaching program. When and if Ms. Sandhu will be admitted to the teaching program, and if so whether she will be able to successfully complete it is far from certain, particularly given her academic track record. Ms. Sandhu does not have an alternative plan for her teacher education if she is not accepted into SFU's teaching program.
- [246] Ms. Sandhu's circumstances are somewhat similar to the circumstances of the plaintiff in *Patterson v. Solymosi*, 2019 BCSC 1508 where Ms. Patterson aspired to qualify as a learning support teacher. The court held that but for the accident this career path was not a real and substantial possibility because Ms. Patterson had only taken minimal steps to investigate and register for the required courses. While Ms. Sandhu has taken more steps than Ms. Patterson, it was only recently that she learned that one reason why she was ineligible for admission to the teaching program was because she was missing a prerequisite course.

- [247] However, I accept that the evidence of Ms. Sandhu and the expert evidence establishes that Ms. Sandhu has suffered a loss of capacity caused by the accident. Her injuries have led to continuing deficits and have exposed her to future problems that are likely to impair her income earning capacity. Ms. Sandhu suffers from some physical limitations, as described by Ms. Hull, which is complicated by Ms. Sandhu's chronic pain and psychiatric diagnoses. While there is some prospect for improvement, Ms. Sandhu's prognosis is guarded.
- [248] Thus, the evidence establishes a potential future event that could lead to a loss of capacity in the future. Ms. Sandhu is potentially less capable of earning income in a competitive labour market: Rab at paras. 48 & 60; Steinlauf v. Deol, 2022 BCCA 96 at para. 52.

Step 2: Potential for pecuniary loss

- [249] I am also satisfied that there is a real and substantial possibility that Ms. Sandhu will suffer a pecuniary loss because of her compromised capacity. I accept that Ms. Sandhu has been rendered less capable of earning income from all types of employment available to her.
- [250] Ms. Sandhu has gained transferable skills from her employment as a general manager at the Fox and Fiddle; however, I accept that as a result of the accident she is less marketable or attractive to a potential employer. She has lost the ability to take advantage of all job opportunities that might otherwise have been open to her. As discussed below, her ability to obtain related employment in a competitive job market has been compromised.

Step 3: The value of the loss

- [251] The task of hypothesizing about Ms. Sandhu's future is challenging. She is young with significant injuries and has not suffered an income loss to date. Ms. Sandhu has returned to full time general manager work at the Fox and Fiddle and has the ability and capability to remain in that position indefinitely. There was no evidence that her position at the Fox and Fiddle is time limited and her father did not testify at trial.
- [252] I accept that if Ms. Sandhu were to seek other general manager positions in a similar business, she would be less marketable or attractive as a candidate. Ms. Sandhu's ability to durably perform many of the typical tasks of a general manager has been compromised. Because Ms. Sandhu works for her father, it appears that she has been able to create her own job description with significant flexibility. Many of the tasks that she used to perform before the accident are more typical of the role of a general manager. I accept that she would have difficulty working in that role in another workplace, given that she cannot lift heavy items, stay on her feet for long periods of time or interact with staff and patrons on a consistent basis.

- [253] I accept the defendant's alternative position that the proper approach to assess Ms. Sandhu's future lost income earning capacity is the capital asset approach. The capital asset approach is typically used when the court makes an award for the plaintiff's loss of opportunity where there is no identifiable loss of income: *McKee v. Hicks*, 2023 BCCA 109 at para. 77.
- [254] The decision in *Charters v. Jordan*, supports applying the capital asset approach in this case. In *Charters*, the plaintiff was 29 at the time of trial and was able to continue to earn a similar income as she had before the accident, with some modifications. However, her future income earning capacity was likely to be impacted as she got older and would as result amount to a probable loss. The majority of the court of appeal held that the capital asset approach was warranted due to the young age of the plaintiff, and that her pre-accident earnings did not reflect her likely future earnings trajectory.
- [255] In my view, in light of my findings of fact, Ms. Sandhu's particular circumstances, and the economic evidence before me, there is no ability to either postulate an annual income loss for Ms. Sandhu's remaining years of work or to award the present value of some nominal percentage loss per annum applied against Ms. Sandhu's expected annual income. The fairest and most appropriate method to assess Ms. Sandhu's future loss of earning capacity is to award Ms. Sandhu her entire income for a number of years.
- [256] The defending parties submit, that if there is a future loss of earning capacity in this case, an award of approximately \$150,000 should be made. This amount represents the equivalent of two years of employment as a teacher. As noted, Ms. Sandhu did not make submissions about the application of the capital asset approach.
- [257] I accept the defending parties' alternative submission, and I award Ms. Sandhu \$150,000. I consider the amount to be a fair and reasonable award reflecting the appropriate balancing of the positive and negative contingencies in the circumstances of this case.
- [258] While this amount reflects two years of a teacher's salary, it is also approximately just over three years of Ms. Sandhu's present income. The number of years of salary is not the important aspect, the amount of the award is the key issue: *Tigas v. Close*, 2024 BCCA 223 at para. 47. For the reasons already stated, I find that Ms. Sandhu's vocational durability and therefore her ability to earn income, is likely to be more significantly impacted as a general manager due to the physical demands associated with that occupation.

Loss of Housekeeping Capacity

- [259] Ms. Sandhu seeks compensation for the loss of housekeeping or domestic capacity as a result of the injuries sustained in the accident. She submits that an award of \$20,000 is appropriate. Alternatively, she submits that if no damages are awarded under this head of damages, then there should be a corresponding increase in the amount of the general damages award.

[260] The defending parties submit that no separate award should be made under this head of damages. Relying on Ms. Hull's evidence, they submit that Ms. Sandhu is capable of performing all day-to-day tasks. They rely on the decisions in *Doberstein v. Zhao*, 2020 BCSC 1788 and *Quezada v. Quezada*, 2019 BCSC 1732, where any difficulties the plaintiffs had in performing household responsibilities were considered as part of the non-pecuniary award.

The law

[261] In some circumstances, it may be appropriate to augment a non-pecuniary award with an award for loss of housekeeping capacity. In *McKee v. Hicks*, 2023 BCCA 109, the court provided guidance on whether a discrete award should be made:

[112] To sum up, pecuniary awards are typically made where a reasonable person in the plaintiff's circumstances would be unable to perform usual and necessary household work. In such cases, the trial judge retains the discretion to address the plaintiff's loss in the award of non-pecuniary damages. On the other hand, pecuniary awards are not appropriate where a plaintiff can perform usual and necessary household work, but with some difficulty or frustration in doing so. In such cases, non-pecuniary awards are typically augmented to properly and fully reflect the plaintiff's pain, suffering and loss of amenities.

See also: *Kim v. Lin*, 2018 BCCA 77, at para. 33; and *Homan v. Modi*, 2024 BCSC 612 at para. 135

Discussion

[262] Prior to the accident Ms. Sandhu contributed to the household responsibilities and since the accident, Ms. Sandhu still contributes but not to the same extent. She testified that she struggles to complete the tasks that she once had no difficulty with, and her parents have had to do more as a result. Mrs. Sandhu corroborated Ms. Sandhu's evidence.

[263] Ms. Hull testified that while Ms. Sandhu is capable of performing all household duties, she anticipates that Ms. Sandhu will have difficulty with some tasks including cleaning tasks that require repetitive or sustained stooping and overhead cleaning.

[264] In my view, this loss falls more appropriately into the category of non-pecuniary damages and I have taken it into account in the general damages I have assessed.

In Trust Claim

[265] Ms. Sandhu submits that a modest claim of \$5,000 is warranted under this head of damages for the care and support her family provided her in the early stages of her rehabilitation following the accident.

[266] The defending parties argue that no award is appropriate given that the more significant assistance was very time limited and there was no evidence of Mrs. Sandhu finding this particularly overbearing or losing any income.

The law

- [267] An in-trust award is one made to a plaintiff in trust for one or more of his or her family members, who are not named as parties to the action, as compensation to the family members for additional work done by them as a result of the impaired capacity of the plaintiff to perform housekeeping chores or to care for themselves, even if those tasks are carried out gratuitously: *Bradley v. Bath*, 2010 BCCA 10 at paras. 43, 48.
- [268] Ms. Sandhu relies on the decision in *Popove v. Attisha*, 2019 BCSC 1587, where Justice Burke summarized the applicable principles relating to a claim for an in-trust award:
- [57] Claims for household duties and other services rendered by immediate family members are allowable where the plaintiff demonstrates the need for such services as a consequence of the injuries sustained. The plaintiff must satisfy the Court, on a balance of probabilities, that the family member providing the services suffered a direct pecuniary loss (because of the time and effort put into those services) or that the family member's efforts replaced housekeeping expenses that would have otherwise been incurred: *Star v. Ellis*, 2008 BCCA 164 at para. 17.
- [58] The law of in-trust claims is governed by the principles set out in *Bystedt (Guardian ad litem of) v. Bagdan*, 2001 BCSC 1735 (B.C.S.C.) at para. 180, *aff'd* 2004 BCCA 124, where the Court identified the following relevant factors:
- [180]
- a. the services provided must replace services necessary for the care of the plaintiff as a result of a plaintiff's injuries;
 - b. if the services are rendered by a family member, they must be over and above what would be expected from the family relationship;
 - c. the maximum value of such services is the cost of obtaining the services outside the family;
 - d. where the opportunity cost to the care-giving family member is lower than the cost of obtaining the services independently, the court will award the lower amount;
 - e. quantification should reflect the true and reasonable value of the services performed taking into account the time, quality, and nature of those services; and,
 - f. the family members providing the services need not forgo other income and there need not be payment for the services rendered.

Cases in which awards have been made for in-trust services involve care provided to seriously injured plaintiffs or support services beyond what might normally be expected in a familial relationship. In assessing the appropriateness of an in-trust claim, standard compassion and care of relatives are not to be compensated. The compensation is for the extra services provided by the family member at a reasonable cost.

Discussion

[269] In my view, the evidence does not establish, on a balance of probabilities, a justification for an in-trust award. In the early stages of Ms. Sandhu's recovery, Mrs. Sandhu provided assistance in relation to Ms. Sandhu's self-care; however, I do not consider it to be over and above what might be expected in a family relationship between mother and daughter. Furthermore, there is no suggestion that any members of the family suffered a pecuniary loss, or that their efforts replaced expenses that would otherwise have been incurred.

Costs of Future Care

The plaintiff's position

[270] Ms. Sandhu claims \$239,534 for the costs of her future care, based on the recommendations provided by Ms. Hull. Ms. Sandhu seeks coverage for Botox injections, an interdisciplinary pain program, psychological counselling, an ergonomic assessment, medications and supplements. The total amount sought is based on the multipliers provided by Mr. Benning.

The defending parties' position

[271] The defending parties agree that Ms. Sandhu is entitled to an award for future care but it should be limited because Ms. Sandhu has not undertaken any treatment since 2022, she has minimal knowledge of treatments she could take, or a willingness to pursue them.

The law

[272] A plaintiff is entitled to compensation for the costs of future care based on what is reasonably necessary to restore her to a position as though the accident had not occurred. When full restoration cannot be achieved, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the available medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch*, 49 B.C.L.R. (2d) 33, 1985 CanLII 179 (S.C.); *Quigley v. Cymbalisty*, 2021 BCCA 33 at para. 43.

[273] The test for determining the appropriate award is an objective one based on medical evidence, and it must be fair to both parties: *Pang v. Nowakowski*, 2021 BCCA 478 at para. 58. While it is not necessary that a medical expert testify to the medical necessity of each and every item of care claimed, there must be a medical justification for each item claimed, and the claim must be reasonable: *Milana* at para. 84; *Tsalamandris v. McLeod*, 2012 BCCA 239 at paras. 62-63; *McGuigan Estate v. Pevach*, 2024 BCCA 106 at para. 92 citing *Paur v. Province Health Care*, 2017 BCCA 161 at para. 109. Justification means the cost is both medically necessary and likely to be incurred by the plaintiff. The onus is on the plaintiff to show that there is a reasonable likelihood that she will use the suggested services. If the plaintiff has not used a service in the past, it may be inappropriate to include it in a future care award: *O'Connell v. Yung*, 2012 BCCA 57 at paras. 55, 60, 68-70.

- [274] An award of damages for costs of future care is partly prediction and prophecy. An assessment of damages for cost of future care is not a precise accounting exercise: *Pang v. Nowakowski*, 2021 BCCA 478 at para. 58; *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.

Discussion

Botox treatments

- [275] Ms. Sandhu seeks compensation for Botox treatments for headache relief. The cost of each treatment is \$1,279 and if effective would be required four times per year for the rest of her life.
- [276] Ms. Sandhu has not tried Botox, she testified that before she embarks on any other treatment, she would like to develop a treatment plan with a new family doctor. Ms. Sandhu acknowledged that she has a fear of needles and would prefer not to get Botox treatments but would do so if necessary.
- [277] Dr. Robinson testified that Botox treatments have been proven to be effective treatment for persons with severe headaches or migraines. Botox treatments are also effective for people who suffer from post-traumatic headaches and whose symptoms were not as severe as migraines or severe headaches like Ms. Sandhu. He opined that Botox treatments would be possibly helpful and possibly substantially helpful for Ms. Sandhu. He explained that typically three trials, approximately three months apart would be required to determine whether it was effective treatment for Ms. Sandhu.
- [278] Dr. Robinson also testified that Ms. Sandhu's reported dosages of Tylenol and Ibuprofen were too low to provide effective relief and that she should increase her dosage. He suggested that a course of prescription medication might also be effective.
- [279] Ms. Sandhu testified that she hadn't really thought about trying different medications, and although her preference was not to take prescription medications, she would take them if recommended.
- [280] Ms. Sandhu's circumstances are similar to the circumstances in *Minenko v. Minenko*, 2014 BCSC 628 at paras. 110-111, *Hale v. Keyes*, 2020 BCSC 559 at paras. 126-128, and *LaRocque v. LaRocque*, 2019 BCSC 655 at paras. 152-156, where the plaintiffs sought an award for indefinite Botox treatments, but had not attempted those treatments at the time of trial. The courts awarded a sufficient amount to allow the plaintiffs the opportunity to try the treatment, based on their evidence that they would try it.

[281] Although Ms. Sandhu has not tried Botox treatments and has an aversion to needle injections, I consider there to be a real and substantial possibility that she will try it, but that does not warrant an award of the full cost of indefinite treatments. In my view, Ms. Sandhu should be awarded the cost of four Botox treatments to allow her to try them. I accept that Botox treatments are medically necessary. I find that \$5,116 is a fair and just award.

Medications and supplements

[282] Ms. Sandhu seeks an award for Ibuprofen based on the fact that she presently takes it and Dr. Robinson recommended that she increase her dosage. She testified that based on his advice she has increased her dosage. The cost of Ibuprofen, based on the recommended dosage is between \$5 and \$11 per year. Taking the midpoint of the estimate, I find that a fair and just award is \$8 per year.

[283] Ms. Sandhu also seeks an award for numerous supplements that are recommended by Dr. Patton. The supplements might provide sleep benefits and help with her symptoms of anxiety and depression. The cost of the six separate recommended supplements ranges from \$547 to \$1,379 per year.

[284] I do not accept that there is a reasonable likelihood that Ms. Sandhu will take all six supplements and do so indefinitely. However, I accept that there is a reasonable likelihood that Ms. Sandhu will try some supplements particularly if it is under the supervision of a physician. In my view, these supplements are medically necessary. A fair and just award is \$500 per year.

Ergonomic assessment and adaptive aids

[285] Ms. Hull suggests that Ms. Sandhu will benefit from an ergonomic assessment once she resumes full-time schooling or is otherwise employed. She estimates that the cost for an occupational therapist to conduct such an assessment is \$786.

[286] Mr. Corcoran testified that a number of adaptive aids appropriate for use at a workstation would benefit Ms. Sandhu. The defending parties submit that any award should be limited to \$2,000.

[287] I agree that an ergonomic assessment will benefit Ms. Sandhu and that there is a real and substantial likelihood that she will avail herself of the services of an occupational therapist to conduct an assessment. I also accept that adaptive aids will assist Ms. Sandhu. Through an ergonomic assessment, appropriate adaptive aids are likely to be identified.

[288] I accept that \$786 for an ergonomic assessment and that an additional \$2,000 for adaptive aids are fair and reasonable amounts.

Interdisciplinary pain program

- [289] Dr. Krassioukov and Dr. Patton both recommend that in light of Ms. Sandhu's chronic pain diagnosis and her somatic symptom disorder, that Ms. Sandhu attend a chronic pain management program. Ms. Hull has identified a specific pain management program which has several components. The total cost of the program is \$12,500.
- [290] The defending parties submit that an award for a pain program is not appropriate because there is a lack of evidence that Ms. Sandhu will participate in such a program. They submit that an award of \$2,500 for active exercise related treatment is appropriate.
- [291] In my view, there is a reasonable likelihood that Ms. Sandhu will participate in pain management program and given her comorbid diagnoses a comprehensive program, such as the one recommended will be beneficial to her and is medically necessary.
- [292] In my view, a fair and just award is \$12,500.

Psychological counselling

- [293] Dr. Patton and Dr. van den Berg recommend that following completion of a pain program Ms. Sandhu undergo cognitive behavioural therapy focussed treatments with a registered psychologist to address her accident-related psychological disorders. In total, 64-76 sessions are recommended to address Ms. Sandhu's sleep issues (6-8 sessions), PTSD (16 sessions), generalized anxiety disorder (12-14 sessions), major depressive disorder (12-14 sessions) and panic attacks (6-8 sessions). Dr. Patton also recommends 12-16 "booster sessions" to ensure the transfer of skills to day-to-day life. Each session is expected to cost \$225.
- [294] The defending parties submit that given Ms. Sandhu's unwillingness to attend for psychological counselling thus far, an award of \$3,000 is appropriate.
- [295] While Ms. Sandhu has been slow to recognize and accept that she requires psychological counselling, there are a variety of reasons for that. I accept her evidence she has reached the point that she realizes that she requires professional assistance to deal with her mental health issues resulting from the accident. I note that it was only in the course of obtaining medical legal reports for trial, that Ms. Sandhu received formal diagnoses. I accept that there is a reasonable likelihood that Ms. Sandhu will attend for psychological counselling. I also accept that professional assistance is medically necessary.
- [296] However, based on Ms. Sandhu's evidence I do not accept that she requires specific counselling for sleep issues or for panic attacks. Ms. Sandhu's description of her sleep issues do not amount to a significant disorder in and of itself. Ms. Sandhu testified to having only one panic attack and Dr. Patton found that she does not meet the criteria for a panic disorder. As Dr. Patton acknowledged, there is some overlap between the diagnosed disorders and the disorders will need to be addressed collectively.

[297] In my view an award of \$13,500, representing 60 psychotherapy sessions is a fair and just amount.

Summary

[298] Using Mr. Benning's present value multipliers, the present value for all these items is as follows:

Item

Cost

Replacement

Present Value

Botox

\$5116

One Time

\$5,065

Medications

\$8

Annually

\$283

Supplements

\$500

Annually

\$16,816

Ergonomic Assessment

\$786

One Time

\$778

Adaptive Aids

\$2000

One Time

\$1,980

Pain Program

\$12,500

One Time

\$12,373

Psychological Counselling

\$13,500

One Time

\$13,365

Total

\$50,660

Management fee

[299] Ms. Sandhu submits that a management fee in the amount of \$200,000 should be awarded because she is young and does not have any formal training or life experience in financial planning or investment. It is submitted that she will likely require professional experience with the management of her damages award in the form of prudent professional investment counselling and advice.

[300] The defending parties submit that no management fees should be awarded because Ms. Sandhu has proven herself capable of running a restaurant.

The law

[301] In *Riding-Brown v. Jenkins*, 2015 BCSC 1751, Justice Baird set out the reasons a court might find that management fees are warranted:

[22] Management fees attempt to ensure that personal injury awards are not prematurely depleted as a result of the plaintiff's fecklessness in managing funds. This is done by providing the plaintiff with a sum to cover the costs of taking professional investment advice. The award is not automatic. The plaintiff must establish that he or she is unable, due to incapacity, injury or lack of acumen, to invest the funds so as to generate a sufficient level of return: *Townsend v. Kroppmanns*, 2002 BCCA 365, at para. 41 (affirmed 2004 SCC 10).

Discussion

- [302] Ms. Sandhu relies on *Kempton v. Struke Estate*, 2020 BCSC 2094, where a management fee was awarded. However, in that case there was a significant evidentiary foundation in support of the award. There was evidence from the plaintiff, his spouse, a neuropsychologist, and psychiatrist that the plaintiff was incapable of properly managing his funds and would need assistance in carefully managing the damage award.
- [303] There is no similar evidence before me. Ms. Sandhu did not testify, nor is there any other evidence to suggest that she has difficulty or will have difficulty managing funds. Ms. Sandhu has a post-secondary education and has worked as a general manager where since the accident she has taken on increased responsibilities for administrative tasks.
- [304] Ms. Sandhu has not established that her circumstances warrant increasing her award by an amount to compensate her for professional fees related to managing her finances.

Special Damages

- [305] Ms. Sandhu seeks reimbursement for out-of-pocket expenses in the amount of \$2,297.63, mainly in relation to treatment she has undergone. The defending parties accept that \$1,467.53 of the amounts claimed are justified, but object to paying two fees for missed massage therapy and physiotherapy appointments. The defending parties also object to the claim of \$764.10 for 73 bottles of Advil because it is well beyond what Ms. Sandhu used and there is no evidence of her paying for them.
- [306] I agree with the defending parties' position. They are not liable to reimburse Ms. Sandhu for appointments she did not attend. Neither are they liable for reimbursement for the Advil claimed. Ms. Sandhu testified that she limited her use of Advil and Tylenol. She did not testify or provide any evidence about how much Advil she used and how much she paid in support of her claim. If anything, the inference from her evidence is that she used less than is claimed.
- [307] Ms. Sandhu is entitled to be reimbursed for her out of pocket expenses of \$1,467.53.

Tax gross up and interest

- [308] I accept that an income tax gross up is warranted in the circumstances and that assessment should be left to be agreed upon by the parties or to be assessed by the court.
- [309] I also accept that Ms. Sandhu is entitled to interest on her past wage loss award and special damages; the amount to be agreed upon by the parties or assessed by the court.
- [310] If necessary, the parties may through Supreme Court Scheduling arrange to make further submissions.

Costs

[311] Ms. Sandhu is entitled to her costs of this action. If there are relevant settlement offers or any other matter that would impact the costs award, the parties may through Supreme Court Scheduling arrange to make submissions.

Summary

[312] In summary, I find that the defending parties are 100% responsible for the accident and Ms. Sandhu is entitled to the following damages:

Item

Amount

Non-pecuniary damages

\$190,000

Past lost earnings

\$4,972.50

Past loss of earning capacity

\$0

Future loss of earning capacity

\$150,000

Costs of future care

\$50,660

Loss of housekeeping capacity

Included in general damages

In trust claim

\$0

Management fee

\$0

Special damages

\$1,467.53

Interest

TBD

Tax gross up

TBD

Costs

TBD

Total

\$397,100.03

"Walker, J."

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