
CANADA / JUDGMENT

Sawatzky v. Sicilia

2021 BCSC 2319

COURT

Supreme Court of British Columbia

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2021 BCSC 2319 Sawatzky v. Sicilia

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sawatzky v. Sicilia,

2021 BCSC 2319

Date: 20211129

Docket: M175290

Registry: Vancouver

Between:

Nicole Sawatzky

Plaintiff

And

Massimo Elio Sicilia

Defendant

Before: The Honourable Mr. Justice A. Ross

Reasons for Judgment

Counsel for the Plaintiff:

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Place and Date of Trial:

Vancouver, B.C.

August 9-13, 2021

Place and Date of Judgment:

Vancouver, B.C.

November 29, 2021

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Introduction

- [1] The plaintiff claims for injuries suffered from a motor vehicle accident on June 23, 2015 (the "Accident"). She seeks non-pecuniary and special damages as well as damages for loss of housekeeping capacity and cost of future care.
- [2] Liability for the Accident is admitted.
- [3] In response, the defendant says that the plaintiff had significant pre-Accident health problems. He argues that the Accident was a mere blip in the overall context of her health.
- [4] The main issues for the court to decide are:
 - a) What is the difference between the plaintiff's health and functioning before versus after the Accident?
 - b) What damages are associated with that change, if any?
- [5] The determination of those issues turns on the reliability of the testimony of the plaintiff and collateral witnesses as well as the expert opinions.

Background Facts, Pre-Accident Health Issues, and Reliability

- [6] The plaintiff is 38 years old. She is married with two teenage daughters. She is not employed outside the home. She has a high school education.
- [7] The plaintiff has a significant relevant pre-Accident medical history:
 - a) She has suffered from cluster migraines since age 11.
 - b) At age 21, in 2004, she was diagnosed with fibromyalgia.
 - c) She suffers from gastroesophageal reflux disease.
 - d) To some degree she suffered from depression and anxiety.
- [8] With respect to the plaintiff's cluster migraines, she says that she had tried all of the available medications and none have a real effect. Both before and after the Accident, when she felt a headache coming on, she inhaled from a pure oxygen tank. She also took Advil on a regular basis in an attempt to improve her sleep.
- [9] The plaintiff's pre-Accident fibromyalgia was described as overwhelming joint and deep tissue pain.
- [10] As a result of her pre-Accident medical issues, the plaintiff applied for Canada Pension Plan ("CPP") disability benefits in 2011. Benefits were approved, and the payments were back-dated to 2008 (when she was 25). She continues to receive those benefits at the time of trial.

- [11] At the same time the plaintiff applied for CPP disability benefits she applied to the Canada Revenue Agency ("CRA") for the disability tax credit. That application was supported by a nursing assessment from 2011 (the "2011 Nursing Assessment"), which describes the state of the plaintiff's health in 2011. It states:

At around 11 years old, Nicole Sawatzky started suffering with sporadic headaches with no discernible reason. Despite being relatively healthy, Nicole continued to suffer with headaches which continue to persist to this day. During this time period, other physical and cognitive function impairments began to manifest and by the time Nicole reached 18 years of age, she was having extreme difficulty maintaining any semblance of a reasonably normal and healthy life.

By 21 years of age, Nicole was physically and mentally incapable of continuing any type of gainful employment without suffering severe/prolonged pain and cognitive/social dysfunction.

Despite treatment, Nicole's condition continued to deteriorate and in February of 2005, she was no longer capable of working due to the debilitating physical, cognitive, emotional and social challenges she was experiencing.

- [12] The 2011 Nursing Assessment also described problems with different areas of the plaintiff's functional abilities, including the following:

Walking:

Nicole suffers with overwhelming joint and generalized deep tissue pain throughout her body substantially all the time and as a result, she is unable to walk 100 feet without taking an inordinate amount of time and frequent rest periods. Additionally, she is unable to stand for long periods and frequently suffers from overwhelming fatigue.

Vision:

Nicole frequently experiences; diplopia, presbyopia and spots of light and halo's in her visual fields. These visual disturbances have an impact on her ability to focus on achieving simple completion of other vital functions necessary for activities of daily living.

- [13] In addition to vision and walking problems, the nursing assessment noted problems with mental function, slurred speech, and mood issues. The assessment concluded that Ms. Sawatzky suffers from "prolonged impairments" that significantly restrict "two or more basic activities of daily living".
- [14] In cross-examination, the plaintiff agreed that the 2011 Nursing Assessment was accurate. As discussed below, she testified that her condition improved between 2011 and the Accident.
- [15] On June 26, 2013, the plaintiff was injured in a motor vehicle accident. She says that her injuries from the 2013 accident had largely resolved and she was doing very well in the period prior to the Accident on June 23, 2015.

[16] The plaintiff described her condition after the 2013 accident and in the period leading up to the subject Accident in the following terms:

- a) Her cluster migraines were not really affected by the 2013 accident, but continued.
- b) Her physical injuries may not have fully recovered, but her functional abilities had returned to a very good place. She was going to the gym every week with a friend, lifting weights, and doing Zumba classes.
- c) She was attending chiropractic treatments and massage treatments for "maintenance".
- d) She had started a small cottage-business making crafts. (There is no claim for any financial loss associated with that enterprise.)

[17] The defendant does not accept the plaintiff's description of her pre-Accident condition. He points to pre-Accident records indicating the following:

- a) In the six months leading up to the Accident, the plaintiff attended 34 massage therapy treatments. All of those massage treatments were for treatment of her neck, upper back, and shoulders (primarily the right shoulder).
- b) She saw a chiropractor regularly (at least monthly) before the Accident.
- c) She also saw her family doctor, Dr. Mason, for ongoing complaints of neck and shoulder pain. Dr. Mason testified at trial and confirmed the clinical records. The three most recent records preceding the Accident were dated November 18, 2014, January 7, 2015, and June 10, 2015, and are replicated below (the entries are paraphrased based on my understanding of the notes as derived from Dr. Mason's testimony):

November 18, 2014:

Neck has been bad - started back to the gym last [week]. (she had not been able to go regularly when her children were out of school in Sept.) Had to do more around the house because her husband was away last [week]. Saw her massage therapist on the [weekend] - "everything was seizing up". Jaw is tight when her neck is bad. Headaches have been worse. States that it feels as though she's been "hit by a bar across her shoulders."

January 7, 2015:

Neck is still tight. Was unable to exercise over Christmas because they were ill. Some days are "incredibly bad". Often has difficulty sleeping because her [right] shoulder is so sore and she can't sleep on that side. Can't sleep on her back due to back pain - this has been like that for years. Still needs to go for massage therapy [twice per week].

June 10, 2015:

experiencing pain radiating into [her left] arm and also had chest pain. The pain was apparently triggered by a "difficult strata [meeting] with their neighbors".

- [18] As discussed in detail below, the plaintiff's medical experts provided opinions on the Accident's impact on her physical and psychological condition. There is debate over the plaintiff's mental state before the Accident.
- a) Dr. Anderson, a psychiatrist, opined that there was no evidence that Ms. Sawatzky had a major depressive disorder or a severe somatic symptom disorder before the Accident. I discuss the problems with those opinions below.
 - b) Dr. Koo, a psychiatrist, felt that the plaintiff had a somatic symptom disorder prior to the Accident.
- [19] The overlay of a pre-existing (and ongoing) somatic symptom disorder complicates the assessment of pain and physical dysfunction both before and after the Accident.
- [20] In my opinion, there is significant anecdotal evidence that the plaintiff suffered from psychological problems, including depressive symptoms and somatic symptom disorder, before the Accident. The evidence (from the June 10, 2015 appointment) that a stressful meeting caused her to experience pain (sufficient to book and attend a doctor's appointment) indicates a strong relationship between her stress and pain.
- [21] As I discuss below, given the plaintiff's significant pre-Accident health conditions, this case is really about the plaintiff's ability to function within her environment. The evidence is clear that, before the Accident, she was not employable due to her multiple conditions. However, she says that she was capable of performing the responsibilities associated with raising her two teenage daughters, including most, if not all, of the housekeeping and some gardening. She says she used coping strategies, such as performing parts of the house-cleaning each day.
- [22] The plaintiff called her husband, her mother, and one of her friends (Amanda Preston). Each of these witnesses described the plaintiff as functioning better before the Accident than at present.
- [23] However, it was evident that the memory of each of the witnesses was tinted with somewhat rose-coloured glasses. For example, Mr. Sawatzky testified that his wife had few limitations in the period before the Accident. He also provided this same background information to Mr. Shew, who performed the Functional Capacity Evaluation ("FCE"). However, in cross-examination, counsel put the 2011 Nursing Assessment to Mr. Sawatzky and asked if that description accorded with his memory of the plaintiff in 2011. Mr. Sawatzky replied, "I don't know."

- [24] The plaintiff's mother acknowledged the plaintiff had pre-existing health issues. She described the plaintiff growing up and her ability to "push through" by employing strong coping mechanisms. The plaintiff's mother felt that, following the Accident, the plaintiff had lost her ability to cope. The 2011 Nursing Assessment was not put to her. However, in my opinion, the 2011 Nursing Assessment does not describe a person who was "pushing through" nor a person who was employing strong coping mechanisms.
- [25] The plaintiff's friend, Ms. Preston, confirmed that she and the plaintiff engaged in activities, including attending at the gym and Zumba classes, in the year before the Accident. Those exercise classes ceased after the Accident.
- [26] However, in grand overview, the witnesses called by the plaintiff provided a picture of a pre-Accident plaintiff that did not accord with the severe restrictions described in the 2011 Nursing Assessment nor the other pre-Accident medical records. While the plaintiff acknowledges that she had pre-existing health problems, she says she was generally able to work within the home, and she was pursuing outside activities. Her claim in this action is that her function has been limited by her Accident-related injuries.
- [27] I note that the plaintiff presents a relatively modest claim regarding her change in function. She does not claim that the Accident caused her to decline from a fully-functioning person to a non-functioning person. Instead, the plaintiff acknowledges that she had pre-Accident limitations, and that she continues to have some capacity within the home environment. However, I have difficulty accepting the plaintiff's description of her pre-Accident health. This is not an issue with the plaintiff's credibility. Instead, it is an issue of the reliability of the plaintiff's perception of the difference between her pre- and post-Accident condition and level of function.
- [28] In short, the documentary evidence does not support the history provided by the plaintiff or the witnesses called on her behalf.
- [29] The medical problems and limited function noted in the 2011 Nursing Assessment are brought into sharper focus by a 2016 medical record. The plaintiff applied to CRA for a continuation of her eligibility for the disability tax credit. As part of that application, Dr. Mason re-submitted the 2011 Nursing Assessment and wrote a note at the top of the page indicating that the symptoms (as reported in 2011) had continued to 2016.
- [30] Dr. Mason's notation suggests that the plaintiff's complaints had remained relatively consistent during the five years from 2011 to 2016.
- [31] The 2011 and 2016 CRA forms were the subject of much testimony at trial which I discuss in more detail below.

- [32] As discussed below, on the basis of the documentary evidence, and the manner in which it contrasts with the testimony of the plaintiff and her collateral witnesses, I find that I have to approach the viva voce testimony with care. It follows that I need to consider carefully the medical history that was provided to the medical experts for their reports.

The Accident

- [33] As noted, liability for the Accident is admitted.
- [34] The Accident occurred at the T-intersection of 160th St. and 56th Ave. in Surrey. The plaintiff was northbound on 160th Street, attempting to turn right (east) onto 56th Avenue (which is the busier street). There is an angled right turn lane that provides room for right-turning drivers to achieve some speed in order to merge safely with the traffic travelling eastbound on 56th Avenue.
- [35] The plaintiff was driving her Dodge Durango. As she was waiting her turn to merge into the eastbound traffic, she was hit from behind. She testified that the defendant "gunned it" before impact, but it is unclear how she would know that information. She did not describe the impact in any detail, but testified that she immediately suffered from headache and pain in her jaw, teeth, neck, left shoulder, mid-back, low-back, right hip, and left knee. She was scared and felt nauseous and upset.
- [36] The defendant testified and described the accident in less violent terms. His evidence was that he bumped her vehicle at slow (walking) speed, striking the driver's side rear bumper of the plaintiff's vehicle.
- [37] The defendant's testimony, and his counsel's submissions, attempted to minimize the severity of the impact. However, it was clear from the defendant's evidence that he had poor recall of the incident. When shown a picture of the plaintiff's Durango, he denied that it was the vehicle involved in the Accident.
- [38] Regardless of the severity of the impact, no evidence was tendered indicating that the incident could, or could not, have caused injury to the plaintiff. Further, it stands to reason that a person with the plaintiff's pre-existing conditions would be the most vulnerable to further injury.
- [39] The plaintiff did not call for any emergency services. After a discussion with the defendant, she drove home.

The Injuries, Treatment, and Functioning Post-Accident

- [40] The plaintiff testified that a number of areas of her body were injured in the Accident but that some were more significant than others. The Accident caused minor injuries and pain in her jaw, teeth, and left knee. Those injuries resolved or decreased to their pre-Accident levels within a few months.

- [41] The plaintiff says she continues to suffer from the following conditions caused, or worsened, by the Accident:
- a) increased headaches;
 - b) neck and upper back pain;
 - c) mid-back pain;
 - d) low back pain; and
 - e) left shoulder pain.
- [42] The plaintiff also says that her mental and emotional state has worsened since the Accident. In addition, she began having trouble sleeping after the Accident. She estimated that before the Accident, she would be sleepless twice a year. Now, she has problems sleeping every night.
- [43] The plaintiff says that, before the Accident, her cluster headaches would last either a day, or up to two weeks. Since the Accident, she has experienced headaches that have lasted up to six weeks.
- [44] The plaintiff testified that she did not have left shoulder pain before the Accident. She now has continuous pain in her left shoulder, and she says it affects her functioning. She was recently diagnosed with calcific tendonitis. There was no evidence about the causation of that condition.
- [45] In addition, the plaintiff testified that she had significant weight gain after the Accident. However, she has been able to shed the majority of that weight through dieting.
- [46] The plaintiff testified that after the Accident, she was unable to clean the windows, bath, or dishes. She says she is limited in her tolerance of standing. She could shop for groceries, but needed assistance in carrying the bags. The family hired a housekeeper for approximately two years, funded by the Insurance Corporation of British Columbia ("ICBC") under her Part 7 Benefits. When ICBC terminated those benefit payments, the family discontinued the housekeeper. The plaintiff testified that much of the burden of housekeeping was then off-loaded to the couple's children.
- [47] The plaintiff also noted that, since the Accident, the family purchased a house on a larger lot in Abbotsford. Before the Accident they lived in a townhome where she assisted with the gardening, including the plants in raised beds, raking, and weed-trimming. She acknowledges that her husband always did the majority of the work in the garden, but says that she is no longer able to contribute to the same extent that she had done prior to the Accident. In response, the defendant notes that there can be no comparison between the upkeep requirements of a townhome versus a large suburban property.

- [48] Hence, the plaintiff's description of her pre- and post-Accident functioning indicates that, before the Accident she was physically capable of carrying out most of the housekeeping and some of the gardening. Since the Accident, she says that her ability to perform those functions has been limited by her pain.
- [49] The plaintiff's friend Ms. Preston testified that since the Accident, the plaintiff has been less willing to be involved in social activities. As noted, the plaintiff no longer attends at the gym. Ms. Preston noted that she has invited the plaintiff to go to the firing range (to shoot guns) and to do some axe throwing. The plaintiff declined Ms. Preston's invitation. When questioned, Ms. Preston acknowledged that she and the plaintiff had never participated in those two activities before the Accident.
- [50] The treatment modalities pursued by the plaintiff are in issue. The plaintiff says that she pursued all avenues of treatment that she could physically withstand. The defendant argues that the plaintiff reverted back to the passive modalities that she sought before the Accident. This is an area where the plaintiff's somatic symptom disorder plays a role. The defendant submits that the plaintiff has pursued passive treatments when active treatments were recommended.
- [51] At the request of ICBC, the plaintiff attempted an active rehabilitation program. The plaintiff testified that she was unable to pursue it due to pain and fatigue. The program lasted only a few months and entailed only a few physiotherapy treatments.
- [52] In the six years since the Accident, the plaintiff has attended:
- a) eight physiotherapy sessions;
 - b) 239 massage therapy sessions;
 - c) 363 chiropractic sessions.
- [53] It is evident from these figures that the plaintiff has undertaken significant passive therapies since the Accident. The plaintiff presented a list of out-of-pocket expenses totalling \$61,221.17, although the plaintiff's claim for Special Damages was limited to a portion of that figure to account for the pre-Accident usage. Of that total, \$49,306.10 was paid for passive treatments (massage or chiropractic) or the mileage to travel to those appointments. A further \$9,209.44 was paid to house cleaners.
- [54] With respect to the massage therapy sessions, the defendant notes that:
- a) 239 visits over six years averages out to 48 visits per year;
 - b) the plaintiff attended 34 sessions in the six months before the Accident.
- [55] As noted, the plaintiff's claim is primarily rooted in her allegation that she has suffered a reduction in her functional ability since the Accident. She presented three experts who opined on her functional limitations (plus one who made financial calculations)

Expert Evidence

[56] The plaintiff relies on four experts:

- a) Mr. Dominic Shew, who conducted an FCE and provided a cost of care report;
- b) Dr. David Koo, a physiatrist;
- c) Dr. Stephen Anderson, a psychiatrist; and
- d) Mr. Darren Benning, an economist.

[57] I discuss each report in order below.

Dominic Shew

[58] Mr. Shew conducted an FCE and cost of care assessment on March 16, 2021. Because the plaintiff's claim revolves around her alleged loss of functionality, I have set out his findings in detail.

[59] I note that there are limitations with any FCE testing. Mr. Shew conceded that his evaluation did not seek to determine the cause of any limitations, only their existence. He could not measure the plaintiff's pre-Accident limitations or compare them to the post-Accident period.

[60] Further, in order to present an accurate assessment of a person's functional abilities, any FCE tester relies on the subject to provide full effort. Mr. Shew testified that he informs all subjects at the outset of his testing about the purpose of the testing and the importance of full effort. Despite providing that information to the plaintiff, he noted issues with her consistency of effort and reliability of reporting.

[61] During an FCE, the first test of physical effort is the "grip strength test". Mr. Shew noted that the plaintiff provided inconsistent initial results during that testing. This test is designed to measure the effort being put forth by the individual. He testified that, after obtaining the inconsistent results, he relayed to the plaintiff that the testing indicated that she was not providing full effort. After re-explaining the purpose of the assessment, he re-administered the grip strength test. Thereafter, he says that she provided a relatively consistent level of physical effort.

[62] Later, however, Mr. Shew noted the same problem in measurements of the plaintiff's active range of motion. During the first round of formal testing, the plaintiff displayed limited range of motion in some joints. Mr. Shew formed the belief that the plaintiff had greater range of motion in those joints. Again, he explained the purpose of the assessment and conducted further range of motion testing. The plaintiff's range of motion, as measured the second time, was significantly greater than the first measurement.

- [63] In his testimony, Mr. Shew described that the plaintiff's effort level was an issue at the beginning, but he "nipped this problem in the bud." However, the origin of the problem remains unclear and concerning. Any person undergoing an FCE arranged by their lawyer knows that the report will be used either to negotiate a settlement or as the basis for a damage award from the court. I cannot ignore the prospect that secondary gain may be in play as the reason that a person would exert less than full effort.
- [64] Mr. Shew opined that, overall, the results of his testing are an accurate representation of the plaintiff's present physical and functional residual capacity. However, he was careful to clarify that, with respect to the physical effort, he found that Ms. Sawatzky provided "Near Full Level of Physical Effort". His opinion was that:

When discussing the concerns of Ms. Sawatzky's subjective reports, I am by no means implying directed intent to mislead this writer. However, although she demonstrated physical and functional limitations, it is likely that she is capable of slightly more physical and functional activity than she believes. As such, it is my opinion that her overall physical and functional ability and durability is more accurately based on objective findings (i.e., measured results and clinical observations) rather than fully relying on her subjective reports.

- [65] Mr. Shew's concerns regarding the plaintiff's reliability arose, in part, from numerous questionnaires that she completed. He noted that the plaintiff's answers on the questionnaires indicated that her perception of her disability was greater than the functional limitations that he observed during formal testing. I discuss that issue in more detail below when discussing Dr. Anderson's report.
- [66] With respect to the plaintiff's ability to work, Mr. Shew found that she was capable of doing work in a sedentary or light capacity and could do certain tasks ranging into a modified medium category. In that respect, he found that she could lift items up to 30 pounds occasionally and up to 20 pounds frequently. He noted that she had limitations using her left hand over her head.
- [67] Mr. Shew conducted his testing, knowing that the plaintiff had been disabled from paid employment for several years before the Accident. Hence, his testing must be interpreted in the context of the plaintiff's functional abilities within the home environment. In measuring her functional limitations and capacities, he found that she had limited range of motion in her neck and shoulders and trunk, but all other ranges of motion were "average". He found that the plaintiff had the ability to conduct the following activities (at least) on an occasional basis: standing, sitting, walking, climbing, bending/stooping, squatting/crouching, and reaching overhead with her right arm. She was limited in activities requiring her left arm "vertical reaching".
- [68] Applying those measured limitations to the plaintiff's work within the home, Mr. Shew opined:

her residual capacity is likely functional for most general, day-to-day demands. As such, I anticipate that she has the physical capacity to manage all her Basic Activities of Daily Living (ADLs) and engage in her chosen lighter day-to-day household activities/Instrumental ADLs (e.g., hand washing dishes, cleaning countertops, et cetera), as long as she breaks up her activities appropriately to manage her symptoms.

[69] With respect to the in-home environment, Mr. Shew opined:

if she is to participate in unpaid activities that require higher-level physical demands (i.e., repetitive and lengthy periods of below-waist level activity, repetitive activities that require working overhead, et cetera) and particularly those that apply significant stress [to] her neck/upper back, right and more so her left upper body, and lower back, there will likely be an aggravation of her symptoms resulting in a gradual reduction in her ability to tolerate such demands over time.

During the completion of tasks she will need to break up her tasks to rest, stretch and change positions, and would likely need assistance with activities that adversely affect her ability to remain functional and/or that significantly aggravate her symptoms.

[70] The plaintiff reported to Mr. Shew that she was able to do the majority of the housework before the Accident but is unable to perform those functions now. However, as noted, Mr. Shew opined that her physical abilities are "more accurately based on objective findings" than her self-report.

[71] I discuss Mr. Shew's pricing of future care costs below. The plaintiff and her husband advised Mr. Shew that, prior to the Accident, she participated in yard work including raking leaves, trimming hedges, and general gardening. On that issue Mr. Shew wrote:

Based on the results of the F/WCEs and medical documentation, she likely requires assistance with the raking of leaves and/or debris [and] with the trimming of the low bushes and trimming the grapevines due to the higher-level and reaching demands.

[72] With respect to general gardening, Mr. Shew stated that he would "encourage her to remain as active as possible but within her abilities and reasonable tolerance."

[73] When the 2011 Nurses Assessment was put to Mr. Shew in cross-examination, he indicated that the limitations on walking and standing described in that assessment were more severe than his findings in 2021.

Dr. Anderson

[74] Dr. Anderson, a psychiatrist, saw the plaintiff for an IME on February 22, 2021. His report is dated February 25, 2021.

[75] Dr. Anderson's findings were that the plaintiff has developed:

a) a "severe persistent somatic symptom disorder (SSD) with predominant pain";

- b) "a moderate to severe major depressive disorder (MDD)"; and
- c) "a mild to moderate generalized anxiety disorder (GAD)".

[76] Dr. Anderson summarized his opinion on causation as follows:

Ms. Sawatzky would not have likely developed her present constellation of physical, cognitive and emotional difficulties if she had not been injured in the 2015 MVA. Ms. Sawatzky has had chronic headache pain, including migraine headaches, since childhood and she was diagnosed with fibromyalgia (FM) at the age of 21. Ms. Sawatzky may have had mild SSD leading up to the June 23, 2015 MVA. Ms. Sawatzky had largely recovered from injuries following an MVA in 2013 and she was able to work part time and do vigorous recreational activities leading up to the June 23, 2015 MVA. There was no evidence Ms. Sawatzky had a major depressive disorder (MDD) or a severe somatic symptom disorder (SSD) leading up to the June 23, 2015 MVA.

[77] It is evident that Dr. Anderson's opinion regarding causation is based on his understanding of the plaintiff's functional abilities and symptom levels before the Accident. That understanding was based on the plaintiff's self-report. He opined that "[m]ost aspects of Ms. Sawatzky's life have been impacted by her pain [including] family/ homemaking activities, recreational activities, social activities, occupational tasks, sexual activities, self-care activities (e.g. dressing) and life-support activities (e.g. sleeping)".

[78] Dr. Anderson noted that he asked the plaintiff to complete a number of questionnaires. On the "Pain Catastrophizing Scale", she scored in the 95th percentile (when compared to other individuals with chronic pain).

[79] On the basis of his document review, questionnaires, and interview, Dr. Anderson concluded that she had severe somatic symptom disorder. He described the plaintiff as helpless and hopeless.

[80] With respect to his diagnosis of a moderate to severe major depressive disorder, Dr. Anderson maintained that there was no evidence that the plaintiff had a major depressive disorder before the Accident. He opined that her depression is secondary to her increased pain and functional limitations after the Accident.

[81] Similarly, Dr. Anderson opined that the plaintiff "may" have had a somatic symptom disorder before the Accident, but it was not severe. He described the diagnosis of somatic symptom disorder in practical terms. It means that the patient:

- a) thinks that he or she has a serious medical condition and the doctor has missed the correct diagnosis;
- b) has significant anxiety about the underlying medical condition (which condition does not exist);
- c) spends considerable time focussing on the perceived medical condition; and

- d) has a life that revolves around the pain (when the disorder is pain focussed).
- [82] With respect to the diagnosis of a generalized anxiety disorder, he felt that she "may have also had mild anxiety and depressive symptoms leading up to [the] 2015 MVA but this is unclear."
- [83] In short, as set out above, Dr. Anderson opined that, although the plaintiff exhibited symptoms of these conditions before the Accident, she would not have developed her present constellation of conditions, nor the severity, if the Accident had not occurred.
- [84] Dr. Anderson recommended that Ms. Sawatzky receive the following investigations or assistance (I have omitted the items that she has received through the litigation process):
- a) a course of psychotherapy and anti-depressants;
 - b) possible Botox treatments for her headaches;
 - c) referral to a multidisciplinary pain clinic;
 - d) referral to a dietitian or nutritionist; and
 - e) vocational assessment (because she expressed an interest in returning to the workforce in the future).
- [85] With respect to his prognosis, Dr. Anderson opined that the plaintiff had multiple longstanding psychiatric disorders. He stated that the longer a psychological disorder has been in place, the poorer the prognosis. Based on these two overlapping factors, his prognosis is guarded. In his opinion, the plaintiff has had these conditions since the Accident (a period of six years). He opined that it is unlikely that the plaintiff will return to her pre-Accident level of psychological and emotional functioning.
- [86] Dr. Anderson was cross-examined at length especially in relation to her reports of pre-Accident conditions. Of most importance, Dr. Anderson did not review the 2011 Nursing Assessment before writing his report. During his preparation for trial, the document had been brought to his attention. The defence submits that, in the comparison of the plaintiff's pre- and post-Accident functionality, Dr. Anderson's opinion was fully dependent upon the plaintiff's report of her symptoms and activities before the Accident.
- [87] The defendant submits, and I accept, that Dr. Anderson's opinion is significantly weakened
- [88] It follows that Dr. Anderson had also not seen the 2016 follow-up application for continued eligibility for the disability tax credit. As noted, the 2016 document includes a note from Dr. Mason indicating that the symptoms from 2011 continued through 2016.
- [89] I noted above that Dr. Anderson's opinion on whether the plaintiff had pre-existing somatic symptom disorder softened somewhat during cross-examination. He agreed that the 2011 Nursing Assessment indicated that in 2011 the plaintiff complained of a number of symptoms that were consistent with his findings from 2021. Those symptoms were

consistent with somatic symptom disorder. However, he noted that those were symptoms, not diagnoses, and he testified that they were consistent with the history the plaintiff provided to him.

[90] Dr. Anderson also agreed that Dr. Mason had not referred the plaintiff for any specialist treatment regarding her mental or emotional problems either before or after the Accident. He speculated that Dr. Mason did not mention the Accident on the 2016 CRA form because the form was not related to this litigation.

[91] With respect to his opinion on the causation of the plaintiff's major depressive disorder, Dr. Anderson acknowledged that the plaintiff had other significant stressors in her life. He agreed that she had a "difficult life" before the Accident. However, he held to his opinion that the plaintiff now has a moderate to severe major depressive disorder and that condition would not have developed but for the Accident. Hence, despite the fact that he had not considered the 2011 Nursing Assessment in coming to his opinion, he testified that it did not change his opinion. However, he agreed that his opinion on the change in her functionality was dependent upon the accuracy of the history provided by the plaintiff.

[92] Despite Dr. Anderson's testimony that the Accident caused significant deterioration in the plaintiff's depression, I cannot ignore the symptoms recorded in the 2011 Nursing Assessment. I set out below a table showing Dr. Anderson's description of the plaintiff's "present depressive symptoms" and a comparative table of descriptions in the 2011 Nursing Assessment:

Dr. Anderson's "recent depressive symptoms"

2011 Nursing Assessment

depressed mood and tearfulness

depression, anxiety and frequent panic attacks

fatigue

mentally fatigued

insomnia

sleep disturbances

cognitive difficulties

cognitive function disturbances

low self-esteem

hopelessness

loss of interest and pleasure in activities

decreased libido

weight gain

passive suicidal thinking

- [93] The 2011 Nursing Assessment did not purport to be a psychological report. It only sets out the limitations in Ms. Sawatzky's functioning from the perspective of her employability. Hence, the final six rows may not have been relevant to that report.
- [94] Dr. Anderson testified that the 2011 Nursing Assessment constituted a "snapshot in time". During his interview, the plaintiff advised him that, in 2013 and 2014, she was going to the gym, lifting the clothes for the laundry, and going to water parks with her children. Those statements indicated that she had improved before the Accident.
- [95] Dr. Anderson agreed that the best person to opine on the plaintiff's pre- and post-Accident functioning would be Dr. Mason, who testified but did not provide a report. Further, as noted above, the plaintiff scored very high on the pain catastrophizing scale. Hence, in my opinion, there should have been a concern about the accuracy (although not the credibility) of her self-report.
- [96] I am unable to reconcile Dr. Anderson's opinion regarding the causation of the plaintiff's major depressive disorder, somatic symptom disorder and generalized anxiety disorder with the symptoms recorded in the 2011 Nursing Assessment. The 2011 assessment outlines the plaintiff's reported difficulties commencing with headaches at age 11 and her total disability from employment by 2003 at age 21. That functional disability continued through 2011 due to "severe/prolonged pain and cognitive/social dysfunction." Dr. Mason assisted the plaintiff in completing a further application for the disability tax credit in 2016 and indicated that the symptoms had continued since 2011. The combination of those statements is inconsistent with the history provided by the plaintiff to Dr. Anderson. It is also inconsistent with Dr. Anderson's opinion that she had significant improvement between 2011 and 2016.
- [97] In short, I am unable to accept Dr. Anderson's opinion. He arrived at his opinions on the basis of the plaintiff's self-report and a review of certain medical records. However, he did not consider the 2011 Nursing Assessment before reaching his diagnosis or opinion on causation. I am unable to accept that the severe symptoms recorded in the 2011 Nursing Assessment, buttressed by Dr. Mason's 2016 notation, would not have affected a fair and balanced opinion on the causation of the plaintiff's mental and emotional problems. In short, the 2011 Nursing Assessment undermines the foundation of Dr. Anderson's opinion.
- [98] The defendant turns Dr. Anderson's prognosis back on the plaintiff. The defendant notes that Dr. Anderson's prognosis was based upon the plaintiff having had her psychological disorders since the Accident (six years). The defendant submits, and I accept, that using Dr. Anderson's theory on prognosis, but applying it to the pre-Accident period, the plaintiff had suffered from significant psychological conditions for many years before the Accident. Hence, the prospect of her recovering (or showing significant improvement) was low,

whether the Accident occurred or not.

[99] On the basis of my analysis set out above, I am unable to accept Dr. Anderson's opinion that the Accident caused the plaintiff to suffer a major depressive disorder, somatic symptom disorder, or a generalized anxiety disorder. Put another way, I am not satisfied that "but for" the Accident, the plaintiff's psychological issues would be different. Further, I do not accept the proposition that, but for the Accident, she would be in a position today wherein she had more functionality and less pain.

[100] Having said that, it would not be surprising, which is to say that "on a balance of probabilities it is reasonable to believe" that a person with significant pre-existing psychological conditions and fibromyalgia might be more affected by a motor vehicle accident than a person without those conditions.

Dr. Koo

[101] Dr. Koo is a physiatrist. His report is dated August 12, 2020.

[102] Dr. Koo's opinion is that the Accident caused a new injury to the plaintiff's neck and left shoulder and aggravations of:

- a) pre-existing conditions in her upper and lower back;
- b) sleep disruption;
- c) headaches; and
- d) adjustment disorder.

[103] Overall, Dr. Koo felt that the plaintiff had reduced physical functioning as a result of the Accident. He opined that if the Accident had not happened, her condition would not be as bad as it is. Based on her self-report, he felt that the plaintiff's pre-Accident fibromyalgia was relatively mild and low-grade although her symptoms waxed and waned.

[104] Dr. Koo's report opined that the plaintiff's prognosis from her Accident related injuries was "very poor" for further significant recovery. He felt that she would not be able to get back to her pre-Accident level of function.

[105] I find Dr. Koo to be a fair and balanced expert witness. He properly conceded points in cross-examination including the following:

- a) His opinion is reliant upon the accurate report of both the plaintiff's pre-Accident condition and her post-Accident trajectory.
- b) He agreed that there was a discrepancy, or inconsistency, between the plaintiff's report of her pre- and post-Accident condition and the 2011 Nursing Assessment. His report discusses the 2011 Nursing Assessment, but he could not recall reviewing Dr. Mason's 2016 notation. Dr. Koo testified that seeing Dr. Mason's 2016 note on the CRA form did not change his opinion because, he believed, it did not refer to the injuries sustained in the Accident. He

speculated that the plaintiff and her doctor may have submitted the form in 2016 and it did not reflect her actual condition. However, he agreed that he was guessing about the plaintiff's condition in 2016. He further agreed that, compared to the plaintiff's condition as reported in the 2016 form, the plaintiff had improved by the time of his examination in 2020.

- c) He believed that the plaintiff did have somatic symptom disorder prior to the motor vehicle accident. He also felt that, based on the symptoms reported, the plaintiff had anxiety and depression before the accident. He noted that he has experience treating patients with somatic symptom disorder. However, he would defer to a psychiatrist on those diagnoses.
- d) Although Dr. Koo diagnosed the plaintiff as having severe anxiety and depression, he acknowledged that the only mention of those conditions in the clinical records was one note indicating that she was "frustrated".
- e) Although his report describes the pre-Accident plaintiff as "vulnerable", he agreed on cross-examination that he should have stated that certain conditions were aggravated.

[106] Moving ahead from the date of trial, Dr. Koo recommends gradual reactivation through a supervised exercise program with the goal of increasing her overall level of functional abilities. The defence notes that Dr. Koo's report is more than a year old and plaintiff did not take any steps to institute his recommendations before the trial. The defendant submits this is an issue of failure to mitigate. I discuss his recommendations in more detail below.

Analysis

[107] It is evident from my discussion above that I am faced with a significant disparity between the descriptions of the plaintiff's functional abilities before the Accident. Those different paradigms provide two starting points for determining the changes that have been caused by the Accident-related injuries.

[108] In *Boyetchko v Mentias*, 2021 BCSC 172, Justice Forth ably summarized the state of the law in respect of causation in circumstances where there are pre-existing health conditions:

[78] In order to establish that the Accidents caused her injuries, Ms. Boyetchko must prove on a balance of probabilities that but for the Accidents, she would not have suffered the injuries: *Clements v. Clements*, 2012 SCC 32 at para. 8. The issue raised by the defendants is the extent to which the plaintiff's problems arise from pre-existing conditions and prior injuries.

[79] The defendants are only liable for the injuries caused by the Accidents. As noted in *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 35, if "there is a measureable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award". See also *Moore v. Kyba*, 2012 BCCA 361 at para. 43.

[109] Taken at face value, the plaintiff's case regarding her functional abilities (i.e., leaving aside level of pain and mood issues) is that:

- a) prior to the Accident in 2015, she was regularly going to the gym and had started a part-time business selling clothing. She was responsible for more than 90% of the housekeeping duties, and she helped out in the garden, although she had to pace herself. She was able to go camping with the family (in a tent) several times per year;
- b) since the Accident (and up to the present), she is unable to do any exercise. She could not continue with her clothing business. She is only capable of 5% of the housekeeping duties and none of the gardening. The family still goes camping, but has bought a trailer to accommodate her limitations.

[110] In order to accept the plaintiff's version of her abilities before and after the Accident in 2015, I would have to accept that:

- a) she had severe problems from 2005 through 2011 or 2012;
- b) she then was injured in an accident in 2013;
- c) in the two years between 2013 and 2015, she achieved substantial improvements in her health such that her overall condition was significantly better in early 2015 than it had been 2011;
- d) she was then injured in the Accident in 2015, and her condition became worse than it had been before the Accident, but not as bad as it had been in 2011;
- e) she did not make any recovery; and
- f) she is incapable of performing the majority of the household tasks and any gardening.

[111] To be frank, I find that chronology, and level of functional ability over time, to be improbable. Put another way, the plaintiff has not convinced me, on a balance of probabilities, that her condition in 2015 (before the Accident) was significantly better than it was in 2011 or is now.

[112] I find that the plaintiff's description has to be viewed within the context of the 2011 Nursing Assessment, the plaintiff's propensity to catastrophize, and the diagnosis of somatic symptom disorder. It must also be viewed within the context of the findings of the FCE which indicated that the plaintiff has greater functional ability than she believes.

[113] Based on the documentary, lay and expert evidence, I find the more probable chronology is as follows:

- a) During her entire adult life, the plaintiff had significant limitations arising from medical and psychological issues. As a result of those limitations, she discontinued working outside the home. She did as much as she could and was successfully working within the home and raising the couple's two daughters. The level of her limitations was memorialized in the 2011 Nursing Assessment. She required ongoing massage and chiropractic treatments to manage her pain levels.
- b) She suffered soft-tissue injuries in the 2015 MVA. As one would expect, those injuries aggravated her pre-existing chronic pain related to her fibromyalgia and also affected her mood. There is also evidence of a new injury to the left shoulder.
- c) I am unable to determine, on the evidence, how long the plaintiff was affected by the physical injuries she suffered in the Accident.
- d) However, the plaintiff had, as of the date of the FCE (March 2021), greater functional capacity than she had in 2011. The FCE testing indicates that the plaintiff is capable of performing the household and gardening tasks for which she seeks compensation in this action.
- e) Similarly, when considering the plaintiff's mental and psychological condition, it is reasonable to believe that the Accident would have had a negative effect for some period of time. However, I find that she is in a better emotional state at the date of trial than she was at the time of the 2011 Nursing Assessment.
- f) On the evidence presented at trial, I am unable to determine the length of time that it took for the plaintiff's injuries and conditions to return to their pre-Accident state. However, I find that she did return to her pre-Accident state.

[114] On that basis, I find that the Accident:

- a) caused a soft-tissue injury to her left shoulder;
- b) aggravated pre-existing chronic pain in the plaintiff's neck and right shoulder;
- c) aggravated her pre-existing fibromyalgia;
- d) aggravated her pre-existing psychological conditions;
- e) aggravated her pre-existing headaches and migraines;
- f) in the context of the plaintiff's pre-existing health problems, none of the aggravations or injuries caused by the Accident were particularly significant or severe;
- g) all of the injuries and aggravations caused by the Accident were temporary in nature. The plaintiff improved over time and returned to her pre-Accident condition.

[115] It is on that basis that I proceed to assess damages.

Non-Pecuniary Damages

- [116] There is no dispute between the parties on the principles of assessing non-pecuniary damages. Both parties agree that *Stapley v. Hejslet*, 2006 BCCA 34, sets out the correct principles.
- [117] The plaintiff's assessment of non-pecuniary damages is based on the paradigm wherein the Accident caused soft-tissue injuries, a major depressive disorder, and somatic symptom disorder, and aggravated her headaches and sleep disorder. The plaintiff submits that the "thin skull" rules apply to her new injuries and the "crumbling skull" rules apply to the aggravations.
- [118] The plaintiff submitted that similar cases resulted in awards in the range of \$150,000: see *Johnstone v. Rogic*, 2018 BCSC 988; *Redmond v. Krider*, 2015 BCSC 178; *Lewis v. Worth*, 2020 BCSC 57. I note, however, that these were cases where the plaintiffs' lives were drastically impacted. Each suffered a significant loss of opportunity to earn income, meaning that they were functioning at an employable level before their injuries.
- [119] In response, the defence submits that the plaintiff's damages should be assessed in the \$35,000-\$50,000 range. The defence relies on cases where the plaintiff had significant pre-existing health concerns: *Wiseman v. Wang*, 2019 BCSC 1320; *Shehzeda v. Shahzeda*, 2021 BCSC 659; *Vintila v. Kirkwood*, 2016 BCSC 930.
- [120] I find that the defence cases accord with my determination of the plaintiff's injuries in the present case. I note that the *Vintila* decision (which awarded \$35,000) is somewhat dated, while the *Shehzeda* decision (\$40,000) is recent.
- [121] In my opinion, the damages suffered by Ms. Sawatzky are reasonably compensated by a non-pecuniary award of \$50,000.

Past and Future Housekeeping Costs/Capacity

- [122] The plaintiff claims for the diminishment in her housekeeping capacity. She relies on the decisions in *Kim v. Lin*, 2018 BCCA 77; *McTavish v. McGillivray*, 2000 BCCA 164.
- [123] In *Kim*, the Court of Appeal indicated that the award in this area could fall under either a separate head of damages, or under non-pecuniary damages. The issue is, viewed objectively, whether the plaintiff is unable to do the housekeeping. The Chief Justice wrote:
- [33] Therefore, where a plaintiff suffers an injury which would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work -- i.e., where the plaintiff has suffered a true loss of capacity -- that loss may be compensated by a pecuniary damages award. Where the plaintiff suffers a loss that is more in keeping with a loss of amenities, or increased pain and suffering, that loss may instead be compensated by a non-pecuniary damages award. However, I do not wish to create an inflexible rule for courts addressing these awards, and as this Court said in *Liu*, "it lies in the trial judge's

discretion whether to address such a claim as part of the non-pecuniary loss or as a segregated pecuniary head of damage": at para. 26.

- [124] The plaintiff seeks an award of \$24,808.56 for past housekeeping capacity and \$149,760 for the future. Included in the future figure is the amount of \$17,720 for future leaf raking plus \$1,480 for the trimming of the hedges on the family property.
- [125] There are three evidentiary problems with the plaintiff's claim under this head of damage.
- [126] First, as noted above, ICBC funded a housekeeping service for the plaintiff for the first two years after the Accident. Those expenses are claimed as special damages. The plaintiff's claim is for the period after the funded housekeeping ended. However, as described above, I am unable to determine whether the plaintiff continued to suffer a loss of capacity at the end of that period.
- [127] Second, Mr. Shew's FCE report, tendered by the plaintiff, indicates that she is capable of performing all of the household tasks for which she claims compensation. Hence, the evidence is that she is physically capable. The only remaining explanation for the plaintiff not resuming her pre-Accident level of housekeeping activities is her diagnosis of somatic symptom disorder. As noted above, I do not accept the plaintiff's position that that disorder was significantly aggravated by the Accident. Hence, I do not find that the plaintiff suffered an injury which would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work.
- [128] Third, Dr. Koo's recommendation is that the plaintiff be as active as possible. As discussed below, the cost of care claim includes an amount for a gym membership. To be frank, I am at a loss to understand how the defendant would be responsible to pay for the plaintiff to lift weights in a gym, and also responsible to pay for housekeeping services.
- [129] With respect to the outdoor and gardening activities, I accept that the plaintiff may struggle with the more physical elements of gardening, such as raking leaves and trimming hedges. However, I am not convinced that the Accident is the cause of her inability to perform those functions. Again, the 2011 Nursing Assessment indicates a level of function that would clearly not allow for those activities.
- [130] I dismiss the plaintiff's claim for housekeeping costs. It is not supported on the evidence.

Cost of Future Care

- [131] The plaintiff seeks an award of \$59,685 for future care costs.
- [132] The plaintiff relies on the reasoning in *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351, which provided that an award should be based upon what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff.

- [133] The defence position is that the plaintiff is entitled to an award of \$1,898 in respect of the cost of an active exercise program, but no other future care items.
- [134] In my opinion, the concept of providing replacement services flies in the face of the recommendations of Dr. Koo that the plaintiff be reactivated and be as active as possible. As noted, I find it incongruous that this plaintiff would claim that she requires a gym membership for exercise (presumably, to lift weights) but is unable to perform housekeeping or yard work. At the very least, the gym membership must be a means to an end. That end is being more physically able and active.
- [135] The amount claimed by the plaintiff (\$59,685) is comprised primarily of the following amounts:
- a) Gym membership (for life) \$14,106
 - b) Massage/Chiropractic therapy (for life) \$16,477
 - c) Pain Clinic \$13,461
- [136] It should be evident from my discussion above that I do not find that the Accident caused any significant ongoing symptoms that require ongoing therapy. On that front, I note again that the plaintiff's condition at trial was better than her condition as reported in the 2011 Nursing Assessment. Hence, I cannot find that the treatments listed above were made necessary by the Accident.
- [137] I further note that Dr. Koo did not recommend ongoing passive therapy. The plaintiff's expert evidence does not support a claim for further passive treatments.
- [138] The plaintiff also seeks other specific amounts for:
- a) Advil (for life) \$2,086
 - b) Adaptive aids \$3,077
- [139] Given my findings regarding the plaintiff's pre-Accident condition, I am unable to find that the Accident has a causative relationship to any need for these items.
- [140] The plaintiff also seeks damages to pay for the following future treatments:
- a) Kinesiology \$1,174
 - b) Dietician \$592
 - c) Physiotherapy (intermittent) \$633
 - d) Psychological Intervention \$4,343
 - e) Couple Counselling \$3,340

[141] Again, I have found that none of the plaintiff's ongoing conditions are attributable to the Accident. Hence, I decline to award any of these forms of therapy. I expect that psychological counselling for her somatic symptom disorder would be helpful. However, I am unable to find a sufficient causative tie to the Accident.

[142] As noted, the defendant conceded that the plaintiff requires some amount of personal training for an active rehabilitation program. I award the amount of \$1,898 for that item.

Special Damages

[143] The plaintiff seeks \$31,411 in special damages. In response, the defence submits that an award of \$16,000 would be appropriate. Both of these figures are calculated on a gross basis, before factoring-in any benefits received by the plaintiff through no-fault accident benefits.

[144] I will discuss the claim in segments: adaptive aids, house cleaning, therapies and treatments, and mileage.

Adaptive Aids

[145] The plaintiff claims for several items including pillows, a gym mat, and shoulder pulley. I award \$444.59 for those items.

[146] I decline to award any amount for the plaintiff's Nordic Track Machine or new vacuum.

House Cleaning

[147] As noted above, I find that the amounts incurred for house cleaning from September 25, 2015, through October 28, 2016 are properly claimed (\$9,209).

Therapies and Treatments

[148] The plaintiff sought three types of treatment: physiotherapy, massage, and chiropractic.

[149] I award the claimed amount of \$409.60 for the eight physiotherapy treatments.

[150] The plaintiff claims approximately \$12,550 for massage therapy expenses. That claim represents 50% of the total massage therapy costs that she has incurred since the Accident. The plaintiff acknowledges that she would have continued to attend massage therapy if the Accident had not occurred. The plaintiff has spent approximately \$25,100 on massage therapy since the Accident.

[151] I decline to accept the plaintiff's method of calculation for this special damage. I noted above that the frequency of the plaintiff's massage appointments actually decreased after the Accident. Further, as noted, Dr. Koo does not recommend passive treatments after the acute injury has resolved. My best calculation of the reasonable cost of massage necessitated by the Accident is based on a six-month period of treatment. I assess that figure at \$1,500. I arrive at that number on the basis of weekly visits for six months at \$58 per visit.

[152] In addition, the plaintiff claims for 75% of the chiropractic costs she has incurred since the Accident. The total chiropractic expense is \$16,720, representing 363 appointments. I allow the amount of \$240 representing monthly visits for the first six months.

Mileage

[153] The plaintiff claims \$7,489.60 in mileage, representing a total distance of 14,879 kilometres charged at \$0.50 each.

[154] I award \$50 for mileage, which is based on six months of therapy.

[155] In total, I award \$11,853.19 in special damages.

Summary

[156] In summary, I award the following amounts in damages:

- a) Non-Pecuniary \$50,000.00
- b) Housekeeping Capacity \$0.00
- c) Future Care \$1,898.00
- d) Special Damages \$11,853.19
- e) Total \$63,751.19

[157] I did not hear submissions on Costs. I have awarded damages to the plaintiff. Absent any offers to settle, she is entitled to her Costs. If there were offers of which I am not aware, I will hear submissions within the next 90 days.

"A. Ross J."

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