

CANADA / JUDGMENT

Shebat v. Zhang

2024 BCSC 1355

COURT

Supreme Court of British Columbia

DECIDED

29 July 2024

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2024 BCSC 1355 Shebat v. Zhang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shebat v. Zhang,

2024 BCSC 1355

Date: 20240729

Docket: M205781

Registry: Vancouver

Between:

Mamoun Fares Shebat

Plaintiff

And

Zhang Zhang

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraph 163, where changes were made on July 30, 2024

Before: The Honourable Mr. Justice Myers

Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.

April 8-12, 15-19, 22-26, 29-30, 2024

May 1-3, 6-10 and 30, 2024

Place and Date of Judgment:

Vancouver, B.C.

July 29, 2024

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- [1] Mr. Shebat, the plaintiff, and Ms. Zhang, the defendant, were involved in a collision at the intersection of Mary Avenue and Edmonds St. in Burnaby on June 13, 2018. Mr. Shebat, who is currently 52 years old, has not worked since the accident. He claims he suffered soft tissue injury, inner ear damage and consequential psychological harm, rendering him unable to do any remunerative work for the rest of his life.
- [2] Ms. Zhang denies liability for the accident. She argues that Mr. Shebat sustained only minor soft tissue whiplash-type injuries which resolved within 6 months of the accident.
- [3] As I explain, I find that Mr. Shebat is neither credible nor reliable. This affects the weight of the medical opinions he adduced at trial, and I fundamentally agree with Ms. Zhang's position. While I primarily address Mr. Shebat's credibility in the section dealing with his alleged injuries, I have made findings in the initial section on liability that also engage the issue of credibility.

I. Liability

A. Evidence regarding the accident

- [4] As will be seen, Mr. Shebat, Ms. Zhang, and an independent witness - Ms. Koeman - gave completely different versions of the accident and what took place immediately after it.
- [5] The accident occurred on June 13 at approximately 2:45 p.m. Ms. Zhang was driving a grey Camry heading southbound on Edmonds. (The relevance of the vehicle colours will become apparent later.) At the intersection with Edmonds, her direction of travel had a stop sign.
- [6] Mr. Shebat was driving a red Scion hatchback heading westbound. At the intersection with Edmonds, his direction of travel had a default flashing green light which would turn to red only when a pedestrian pushed the crossing button. Mr. Shebat had driven through the intersection many times in the past.
- [7] Mr. Shebat said that when he entered the intersection the light was flashing green and he was driving at approximately 30 kph, which he incorrectly said was the speed limit. The speed limit was, in fact, 50 kph. He said:

When I reached the traffic and it was green, I passed the first white line. I was between those two traffic lights in the middle. Of course on my right-hand side there was a stop and there were cars there, but there were no cars in that lane. There were some pedestrian [sic] trying to cross the road. Just suddenly a vehicle came, the car was driving -- the driver was driving fast. It hit me on my right side, passenger side. I felt like some kind of shock, like electric shock.

- [8] Mr. Shebat clarified that the passengers were waiting for the traffic light to change and that there were no cars waiting at the stop sign to his right (which is the direction Ms. Zhang came from). He said Ms. Zhang was going too fast and he did not see her car properly.
- [9] Mr. Shebat said that after the impact he could not see well: it was "like a black screen in front of me". He could not tell how long that lasted. When he opened his eyes, there were firefighters around him, and he was lying on the ground. He did not know how he got out of the vehicle. A woman came to offer him water, but the firefighters told her to go back. A firefighter cleaned blood from his nose. After that, the police arrived and brought him his phone which was ringing. At some point he began throwing up and had to sit at a bench at a nearby bus stop.
- [10] Mr. Shebat said that an ambulance had been called, but it was taking too long to arrive, so a neighbour came to bring him to the hospital. Elsewhere in his testimony he said his son came with a friend.
- [11] Turning to Ms. Zhang, she said she was intending to make a left turn from Mary on to Edmonds. She thought the intersection was a 4-way stop. As she approached the stop sign, she slowed down to make the turn. She clarified that she stopped at the stop line and then crawled into the intersection after having looked left and right. She did not see any moving or stopped vehicles.

- [12] Ms. Zhang said that while her car was still pointed straight ahead, she was hit by a red vehicle. She had not seen the vehicle so could not say how fast it was going, but the impact was very strong. She thinks the other vehicle spun around 180 degrees and was not facing her vehicle when they came to a rest. She said after about a minute the driver of the other vehicle came up to her and asked her if she was ok. She told him she was fine and asked him the same question and he said he was ok. She described the other driver as about 40 years old and middle eastern or Arabian. He spoke calmly.
- [13] Ms. Zhang said that when speaking to Mr. Shebat, a witness came over. It is common ground that this was Ms. Koeman. When the three of them spoke, they were all standing. Ms. Zhang testified that Ms. Koeman said she saw the whole process of the impact and that it was no one's fault. She offered her contact information. She saw Mr. Shebat get into another vehicle that had come to pick him up.
- [14] Ms. Zhang did not see any blood on Mr. Shebat's face. She did not at any time see him sitting down or throwing up. Nor did she see a fire truck or any other emergency assistance other than the police officers
- [15] I turn now to the evidence of Ms. Koeman. She said she was stopped in the inside lane on Edmonds St. at the intersection of Mary Ave., heading west, waiting for the red light to change. She did not see any pedestrians to her right. As soon as she stopped she saw a car coming off Mary trying to turn left on to Edmonds. The car was edging forward slowly to the extent that Ms. Koeman became concerned that another vehicle would come along and hit Ms. Zhang (she was not referring here to Mr. Shebat). She then looked in her rearview mirror and saw a car coming from behind her in the left lane (the lane next to her). She thought it would hit her or someone else. The car went by her in the left lane and "smoked" Ms. Zhang's car. The impact was right in front of her. She was 100% sure the light was red. Although she said the area is normally busy, she did not notice pedestrians to her right.
- [16] When asked in direct about the colour of the cars, Ms. Koeman said the one on Mary (Ms. Zhang's) was red and the other car (Mr. Shebat's) was grey. This was the opposite of the actual respective colours.
- [17] Ms. Koeman got out of her car and went to the defendant's vehicle. She testified that the driver of the other vehicle (supposedly the plaintiff) came over with his "posse" and started swearing at the defendant, who did not speak English or was in shock. She asked the person swearing to calm down. He told her to "fuck off" and walked back to his car. She did not see blood on his face or see him vomit.

- [18] Immediately after that exchange she called 911. The call record shows this was at 14:43. The police arrived at 14:46 when she was still on the call with 911. She told the dispatcher that the parties said they were fine. Speaking (audibly on the recording) to the one of the parties to get the information, Ms. Koeman relayed to the 911 dispatcher that one of the cars was a silver Toyota. She was able to see on her own that the other was a red Scion. She told the dispatcher, when asked, that the silver car was a sedan, and the red Scion was a hatchback.
- [19] Ms. Koeman said she did not speak to the police at the scene of the accident. She wanted to get home because she had 3 kids in the car. The police came by her house later.
- [20] In a statement to an ICBC adjuster given some 2 years after the accident and in her testimony in court, Ms. Koeman mixed up the colour and types of the cars. She also said that she could not tell whether the defendant driver was male or female. (Ms. Zhang testified she looked the same in terms of hair length etc. at the time of the accident as at the time of trial. There should have been no mistaking her for being a male.) Ms. Koeman initially said that the defendant had a green light, but she quickly corrected that to recognise that the intersection - with which she was familiar - had a stop sign for that direction of travel.
- [21] As I said earlier, the police arrived while Ms. Koeman was still on the phone with the 911 dispatcher. One of the two attending officers was Cst. Ledgerwood, who testified at the trial. She said she had no independent recollection of the accident, but confirmed she made no note of the fire department or ambulance being present, something which she would have recorded. She also examined the dispatch records and call logs and the only indication of another service being dispatched was a tow company. She said she would expect to see a reference in those documents if the fire department or ambulance had been requested to attend.
- [22] Cst. Ledgerwood testified that her notebook showed she had spoken to Mr. Shebat and he told her he was not injured. She said if Mr. Shebat had told her he was injured, she would have called an ambulance. If he had said he had been throwing up, she also would have called an ambulance, because it could be a telltale sign of a concussion. The same applies to an accident victim appearing "out of it". The MV6020 form which Cst. Ledgerwood's partner completed recorded no injuries.
- [23] The deputy chief of the Burnaby fire department testified that he found no record of the fire department having attended the accident, something he would have expected to have been in the logs he examined for the purposes of his testimony.
- [24] Turning to the damage to the vehicles, Mr. Shebat's red Scion shows a dent on the right rear passenger side door and the adjoining area of the wheel well. Ms. Zhang's Camry's passenger side bumper assembly was on the pavement. Her car had to be towed; Mr. Shebat's did not.

B. Analysis & conclusion re: liability

- [25] It will be seen from the above that for a simple motor vehicle accident, the evidence is surprisingly in conflict, including what happened immediately after it.
- [26] I conclude that the fire department did not attend, nor did any other emergency services attend which could have been confused with firefighters. Apart from Mr. Shebat, his wife was the only witness who said those services attended. However, the other independent evidence contradicts that, and as much as a negative can be proven, the defendant has done that.
- [27] I also do not accept that Mr Shebat was bleeding. Ms. Zhang did not notice that and neither did Cst. Ledgerwood.
- [28] These conclusions in themselves point to the problematic nature of Mr. Shebat's evidence, which I detail more fully in the following section concerning injury and damages.
- [29] Ms. Koeman attempted to give her best recollection, but that recollection was flawed, at least in part. For example, I do not accept that Mr. Shebat was cursing at her; that would have been observed by Ms. Zhang. Moreover Cst. Ledgerwood arrived within minutes after the accident and did not observe that, nor did she record anyone else being with Mr. Shebat in his vehicle.
- [30] I do not think I can draw any meaningful conclusions as to Mr. Shebat 's speed. He said he was travelling at 30 kph but that was based on his incorrect evidence that that was the speed limit, when it was, in fact, 50. Given his issues of credibility, it was a likely that he was tailoring his evidence to say he was travelling at the speed limit as opposed to his actual speed. Ms. Koeman said he was speeding and Ms. Zhang thought he was going fast because of the impact. Both those subjective observations cannot be considered reliable.
- [31] The state of the pedestrian-controlled traffic light is a key fact. Mr. Shebat says it was flashing green, and he was consistent about that in his accounts after the accident. But as I have said there are serious issues with his credibility and reliability. Ms. Koeman was adamant that the light was red, but there are issues with her recollection. Ms. Koeman's initial report of the accident to the 911 dispatcher would have been her best recollection, but she did not mention the state of the light.
- [32] The person with the clearest recollection of the accident was Ms. Zhang. However, she said she had assumed the intersection was a 4-way stop and had no evidence as to the state of the light.
- [33] In spite of the difficulties with Ms. Koeman's evidence about what transpired after the accident, I accept her evidence that the light was red. She said she was stopped at the intersection and saw the accident take place in front of her. She was not challenged on those points and there is no reason to doubt that: she could not have witnessed the accident unless she were stopped at the intersection, or she was driving beside Mr. Shebat into the

intersection. The latter would be highly unlikely given Ms. Zhang crossed the inside lane (Ms. Koeman's lane) when she hit Mr. Shebat. If that had happened Ms. Koeman likely would have been involved in the accident or recalled a very close call.

- [34] Moreover, there is no reason for me to prefer Mr. Shebat's evidence to that of Ms. Koeman. In fact, there is less because of credibility issues with respect to his other evidence.
- [35] However, a finding that the light was red for Mr. Shebat does not inexorably lead to a conclusion that Ms. Zhang bears no responsibility. Ms. Zhang thought it was a four-way stop intersection. She stopped at her stop sign, and looked left and right and did not see any vehicles stopped where she thought the stop signs were. She also said she did not see any moving vehicles. She then eased into the intersection, which Ms. Koeman verified.
- [36] Ms. Zhang did not see Mr. Shebat but he was there to be seen. I find that if she had had not treated the intersection as a four-way stop, she likely would have seen him. (She of course did not rely on the red light.) She did not, therefore, exercise sufficient caution.
- [37] In summary, I conclude that both parties failed to exercise due care, and that failure contributed to the cause of the accident.

C. Apportionment of Liability

- [38] Apportionment of liability depends on the parties' respective blameworthiness, and not on assessing relative contributions to causation. I find Mr. Shabat's running the red light at a pedestrian intersection to be more blameworthy than Ms. Zhang's having edged into the intersection, assuming it was a four-way stop, and therefore not keeping a proper lookout. I therefore apportion 75% liability to Mr. Shebat and 25% to Ms. Zhang.

II. Injuries

A. Mr. Shebat before the accident

- [39] Mr. Shebat and their 2 sons came to Canada as sponsored refugees from Syria in 2016. Their daughter followed later. Mr. Shabat gave his evidence in Arabic through an interpreter.
- [40] Mr. Shebat's life in Syria was a contentious issue which was canvassed in detail in cross-examination. The subject was relevant to Ms. Zhang's argument that his hearing issues and PTSD could have originated in Syria. It was also relevant to credibility.
- [41] Mr. Shebat said that in Syria he worked as a labourer and helped run his father's olive farm.
- [42] Mr Shebat testified that he been trained in the Syrian military and after training was assigned to a unit guarding a military airport. However, he said he never once fired a gun, even though he carried one on duty, and had received firearms training before that.

[43] Mr. Shebat also testified that he and his family lived in a small village about a half-hour drive from Daraa, which was a major centre for the Syrian civil war. As such, except for one incident, he did not experience any of the bombings or other violence. However, he told the newspaper Burnaby Now in 2017 that he did live in Daraa, ground zero for the war, and that every night bombs went off between 7 p.m. and 4 a.m. and they could be heard from his house. (The reporter testified as to the accuracy of the quotes.)

[44] In his direct examination, Mr. Shebat described an incident:

Obviously in 2011 the wars escalated. The military came inside the city like a marshal law and they started bomb and killing civilian, at that time when the military came me and my wife and my kids, we were hiding in the basement. The air planes were attacking us. I was really worried, concerned about my kids, we stayed inside the basement, was taken cover to for about three days. After that the bomb has stopped. We came out of these basements or hide out to see what happened to our homes. We saw the destruction and bodies on the street.

[45] He also relayed to Burnaby Now and in his testimony an incident when he saw a woman shot in her head and stomach by a sniper, when he was on the way to buy bread. He went to the woman's side and was hit in his elbow by a sniper.

[46] In cross-examination, he said he was not traumatized by these or other incidents in the civil war, nor by fleeing to Jordan and living in a refugee camp there. Contrary to what he had told Burnaby Now, he said his hearing could not have been affected by the bombings because he and his family would go to a bomb shelter when the bombing started, and the bombs could not be heard there.

[47] Shortly after Mr. Shebat arrived here, he obtained a job as a labourer at Apex Aluminium Extractions. He was doing this job at the time of the 2018 accident which is the subject of this action. His job involved moving aluminum bars on and off an anodizing line, some forklift work, and occasional computer entry. Apart from the computer entry work, his job required him to stand.

[48] There were other Arabic-speaking workers at Apex - some of whom Mr. Shebat helped recruit - and he did some translation for them at the workplace.

[49] Mr. Shebat said he enjoyed his work and there is no reason to doubt that. Prior to the accident, apart from his supervisor no longer wanting him to refer prospective employees, there were no issues with his employment.

1. Feb 14, 2017 MVA

- [50] In February 2017, Mr. Shebat was involved in a motor vehicle accident, the circumstances of which, as described by him, were remarkably similar to what he described in the 2018 accident. Mr. Shebat said he was T-boned in an intersection, his vehicle being hit on the passenger side. He said he struck his head against the door. The police and fire department attended, and he was taken to Surrey Memorial Hospital in an ambulance. His vehicle was a total loss.
- [51] Mr. Shebat testified that he suffered only minor pain and "trauma and fear after you have an accident." After the weekend and an extra day required to find a replacement vehicle, he was able to return to work.
- [52] The emergency department records disclose that on admission he described - again, remarkably - similar injuries and symptoms to those he says he sustained in present case: impact with his head, headache, dizziness, left clavicle pain, and pain in the shoulder and left knee.
- [53] Although he told the Emergency Department that he did not lose consciousness, 2 weeks later he told his family doctor - Dr. Darwash - that had lost consciousness for 10 to 15 minutes. He also told Dr. Darwash that he had a shoulder dislocation. The hospital records do not, in fact, show a left shoulder dislocation, which Dr. Darwash noted as an addendum to his note.
- [54] In March 2017, Mr. Shebat signed an ICBC accident benefit form in which he again said he had hit his head on the door and injured his right shoulder blade.
- [55] Mr. Shebat's insurance records show that he had, in fact, missed at least 6 days of work, as opposed to the one day he testified to.
- [56] I will note here that in October 2023, he told one of the experts who prepared a report on his behalf - Dr. Wong - that he did not lose consciousness in the 2017 accident. I deal with Dr. Wong's evidence later.

B. After the 2018 accident

- [57] Immediately after the accident, Ms. Shebat said he had pain in his neck and shoulder and was experiencing headache and confusion. The day after the accident, his total body hurt, and he saw his family physician who told him to take 2 weeks off work. He spoke to someone at work and relayed that, but added that did not know what was going to happen because he had severe pain in his shoulder, neck and back and was throwing up. He testified that he was experiencing clumsiness and confusion. Something in his ear was unusual. He returned to his doctor who told him not to return to work and to book therapy.

- [58] Over the next 6 months, Mr. Shebat said his headaches and ringing in his ear got worse and he was throwing up and was clumsy. He said he wanted to go back to work but his doctor told him he could not, which had a big psychological impact on him. He did not want to talk to any one and sat in his room alone. He was nervous about his financial future.
- [59] On October 19, 2019, against what he said was his doctor's orders, Mr. Shebat returned to work at Apex. He had to have his son drive him, because Mr. Shebat was experiencing too much pain in his neck and shoulder and was experiencing headaches and dizziness. He tried to drive the forklift but got dizzy and had to stop and lie down. He could not stand the factory noise, which worsened the condition in his left ear.
- [60] In the year after the accident, through to June 2021 Mr. Shebat testified that his confusion, lack of concentration and bad balance got worse. He was vomiting, depressed, fearful, and his memory was deteriorating. ICBC sent an occupational therapist to Mr. Shebat's home to assist with his functioning.
- [61] Mr. Shebat said he and his wife began to experience marital difficulties. He began to drink, which he said numbed him and helped prevent him from committing suicide.

C. January 2019 accident

- [62] In January 2019, Mr. Shebat was involved in a collision which caused approximately \$7,000 damage to his vehicle. When this was put to him in cross-examination, he said he did not remember it. When documents were shown to him, including a photo of him beside the vehicle in the auto repair shop, he said he then recalled it. He denied having any injuries from the accident. He did not mention this accident to any of the experts who assessed him. Given the extensiveness of the cross examinations of Mr. Shebat and the experts, I can only assume that there were no clinical records relating to this accident, since none were put to them. Nevertheless, his initial denial of the accident does go to his reliability or credibility.

D. June 16, 2021 crash - the alleged suicide attempt

- [63] On June 16, 2021, Mr. Shebat was involved in another T-bone collision.
- [64] Mr. Shebat says this was an attempt to commit suicide. He was depressed at the time and arguing with his wife about finances. His granddaughter wanted a snack, so he and his wife took her to the nearby 7-Eleven store. She was not put in a car seat. His debit card was declined. He became distressed. They had no money and did not know where the upcoming rent money would come from. On the way home, he pulled into an intersection and stopped the car in the middle where it was hit.
- [65] Although the records show Mr. Shebat told his doctors that he could not drive at night after the 2018 accident (something he denied telling them), this incident occurred at about 10:45 p.m., when it would have been dark. Also, the hospital records show he had \$20 in cash plus money to pay the upcoming rent.

[66] Mr. Shebat told the ambulance attendant that he wanted to kill himself. During the psychiatric assessment process at the Royal Columbian Hospital, he and his family asserted he was not suicidal and was fine to go home. For example, a mental health progress note on June 30, 2021, notes that:

Mamoun contends that he has been misunderstood - the stress of not being heard by his ICBC lawyer, feeling not hear or responded to has led him to 'upping the ante' at times and in his limited English talk about killing himself to elicit response. He would like to clear this up. Does not endorse s/I's [suicidal ideations] or intent and feels ++frustrated with his current circumstance, but his future focus .

[67] The records show multiple other denials by Mr. Shebat that the accident was a suicide attempt.

[68] However, Mr. Shebat testified that he never denied the suicide attempt. When these records were put to him, he denied having made the recorded statements.

[69] Mr. Shebat testified that his left shoulder was worse after this collision, but only for a week. However, the records show he suffered an AC joint separation and back pain. From June 2021 to July 2021, he saw a Chinese Medicine practitioner for shoulder pain and difficulties lifting. He also reported increased headaches after the collision.

E. Expert medical and work capacity evidence

[70] Shortly before the trial, Mr. Shebat applied for leave to adduce more than the 3 expert reports permitted by s. 12.1 of the Evidence Act. Because of the complexity of the injuries alleged by Mr. Shebat, with one exception - a second otolaryngologist's opinion - I allowed him to call the experts whose reports he tendered because they were different medical specialties and addressed different aspects of his injuries and his claim.

[71] The only medical expert evidence adduced by Ms. Zhang was a report by a neurologist.

[72] In this section, I summarise the opinion of medical experts and an occupational therapist, and point out some of the difficulties with the evidence, primarily the reliance on Mr. Shebat's unreliable reporting.

1. Dr. Hawkeswood - Physiatrist

[73] At Mr. Shebat's counsel's request, Dr. Hawkeswood did an independent medical examination (IME) of Mr. Shebat.

[74] He diagnosed Mr. Shebat with:

- grade 2 whiplash affecting the cervical, thoracic, and lumbar spine.
- longstanding left elbow injury.
- left shoulder discomfort

- leg pains which probably represent a referral pattern from the low back
- complex headaches

[75] He also opined that Mr. Shebat likely suffered mild concussions in the 2018 and 2021 accidents. Both side's neurologists came to opposite conclusions with respect to the 2018 accident.

[76] He noted that migraines were first documented on November 7, 2019, suggesting an evolution or worsening of post-traumatic headaches. This, of course, is subsequent to the January 2019 crash.

[77] While he deferred to psychiatric opinion, one of his ultimate conclusions was:

This gentleman has a complex pain condition involving severe and constant pains with equally severe and complex mental health issues. The prognosis in this case is relatively poor, based on persistently high pain scores, pain symptoms refractory to treatment, complicating mental health issues, older age, and a degree of complicating comorbidities in view of his left upper extremity dysfunction.

[78] Of the 2017 accident, Dr. Hawkeswood said:

Overall, my conclusion is Mr. Shebat recovered reasonably well after the 2017 MVA, although I am not clear whether or not it was a partial or full recovery. I accept that this gentleman felt significantly better leading up to the June 2018 subject accident.

[79] Dr. Hawkeswood noted the 2021 accident:

Mr. Shebat was involved in a subsequent accident (June 16, 2021), which probably caused a considerable flare-up in his collective pain issues, based on the clinical records. This appears to have included a mild left shoulder acromioclavicular joint separation. I recognize the circumstances around this event pertain to a mental health crisis. It is difficult to quantify or clarify in clear terms how much worse he got after the 2021 accident. On one hand, he was in such bad shape beforehand that he wanted to end his life. On the other hand, the collision in the 2021 accident sounded considerable and it seems likely some worsening of symptoms took place. I am unfortunately unable to qualify any further.

[80] Nevertheless, Dr. Hawkeswood said that the 2018 subject accident "continues to bear substantial material relevance to Mr. Shebat's ongoing pain complaints". It is clear from the preceding quoted paragraph and other portions of his report that this is primarily on Mr. Shebat's self-reporting.

[81] In cross examination, Dr. Hawkeswood conceded the assessment of Mr. Shebat had many challenges. He noted that Mr. Shebat "had a hard time answering questions and [that he presented as] overtly depressed or stressed", which "unsettled" the doctor. Another concern was the failure of the plaintiff to provide him with meaningful additional historical information. Dr. Hawkeswood acknowledged that the plaintiff's inability to answer simple questions and to stay on topic affected the assessment.

2. Dr. Wong - Otolaryngology

[82] Dr. Wong, an otolaryngologist, examined Mr. Shebat in October 2023 and prepared a report on his behalf.

[83] Dr. Wong opined that Mr. Shebat had:

- Right asymmetrical hearing loss, which can be caused by loud and explosive sounds, such as airbag deployment.
- Dizziness, imbalance, tinnitus, noise sensitivity which can be caused by concussive and whiplash injuries.
- Hyperacusis (noise sensitivity) which can be caused by, amongst other things, head injury, depression and anxiety.
- Vestibular damage, which can be caused by whiplash injuries and concussions. The symptoms are sensations of nausea, unsteadiness, imbalance and queasiness.

She noted that chronic headaches and migraines can cause dizziness.

[84] Dr. Wong attributed these conditions to the 2018 accident because Mr. Shebat had been fully functioning before the accident.

[85] With specific reference to the right ear injury, she accepted Mr. Shebat's statement that he first starting have right ear problems three to four months after the 2018 accident. However, in cross-examination it was pointed out to her that the first record of Mr. Shebat complaining of this was 16 months after the accident. She then said that this would make it less likely that it was caused by the accident.

[86] Dr. Wong noted that the clinical record of Mr. Shebat's visit to his primary care provider immediately after the accident contained a note diagnosing Mr. Shebat with factitious disorder. This did not appear to give her any concerns about what Mr. Shebat had told her or his other treaters.

[87] Dr Wong said that Mr. Shebat's dizziness made it impossible for him to drive at night and that "his son drives him now". Mr. Shebat denies having told her that and said he can drive for 10-15 minute at night. (I noted above that the 2021 "suicide" crash occurred after dark.)

[88] Dr. Wong did not see much scope for improvement. She said:

Based on my experience, if dizziness and imbalance secondary to an inner ear injury persist after 2 years, despite intensive vestibular and balance rehabilitation, these symptoms will likely be permanent. Mr. Shebat had tried vestibular physiotherapy and seen a kinesiology (sic). Mr. Shebat has not continued with vestibular and balance rehabilitation therapy. Mr. Shebat may achieve further improvement of his vestibular and balance dysfunction with ongoing vestibular and balance physiotherapy. However, it is my opinion that Mr. Shebat's inner ear vestibular dysfunction will most likely be permanent and cause him long-term disability.

The last sentence is hard to reconcile with the prior portions of the paragraph, given Dr. Wong did not comment on the intensity of his vestibular therapy, and that Mr. Shebat did not continue with it.

[89] Dr. Wong's frequent references to the sound of airbag deployment being capable of causing many of Mr. Shebat's ear issues is of note. There is no evidence that Mr. Shebat's airbag deployed in the 2018 accident, and it is apparent both from the fact that Mr. Shebat's vehicle was driveable and from the photos of it that the airbag did not deploy. On the other hand, Mr. Shebat did say that the airbag deployed in the 2019 alleged suicide attempt accident, which pre-dated Dr. Wong's examination.

[90] Dr. Wong's assessment was also based in part on Mr. Shebat having told her that he had not been subject to loud concussive noises before the accident. As I conclude below, Mr. Shebat had likely used firearms in Syria, and was likely experienced the noise of bombs.

3. Dr. Reddy - Psychiatrist

[91] Dr. Reddy performed an independent psychiatric assessment of Mr. Shebat at his counsel's request.

[92] She concluded that Mr. Shebat suffered from the following:

- post traumatic stress disorder
- major depressive disorder
- generalized anxiety disorder
- panic disorder
- chronic pain

[93] As with most psychiatric assessments for the purpose of motor vehicle accident litigation, Dr. Reddy's report was based largely on Mr. Shebat's self-reporting and a review of the records.

[94] Dr. Reddy did not go as far as to opine that these conditions were caused by the 2018 accident. Rather, she said in her report that:

Mr. Shebat's general nature and extent of the psychiatric symptoms have likely worsened since the subject accident. Typically, when psychiatric symptoms or conditions are not treated, there are neuroanatomical and neurophysiological changes in the brain which led to greater dysfunction. The dysfunction in the brain is translated to various psychiatric and physical symptoms.

Mr. Shebat is affected in every area of his life by his symptoms caused by the subject accident. Please see my answer to question #2 for all the psychiatric diagnoses.

Her response to the question about Mr. Shebat's future prognosis was to refer back to this paragraph.

[95] Dr. Reddy did not elicit information about Mr. Shebat's time in Syria during the civil war, and whether his PTSD could have been caused by that. Nor did she examine the question of why the 2018 accident would have caused PTSD or other psychological symptoms, when the 2017 accident supposedly did not.

[96] Dr. Reddy did not probe in any detail with Mr. Shebat his 2019 supposed suicide attempt. She merely noted:

Mr. Shebat initially told emergency services he wanted to die, and the accident was "purposeful" However, he denied stating the latter to the physician, stating it was a "misinterpreted" by emergency services.

As I noted elsewhere, Mr. Shebat in his evidence denies that he told anyone at Royal Columbian that he did not want to commit suicide and maintains the accident was an attempted suicide.

[97] Unlike Dr. Wong, Dr. Reddy did not mention in her report that the clinical records of Mr. Shebat's primary care provider, Prime Care Medical, contained a note diagnosing Mr. Shebat immediately after the 2018 accident with factitious disorder. Given her reliance on Mr. Shebat's recitation of his symptoms and history, I would think that is something that would have been relevant for her to probe for her opinion. (To be clear, I do not say that Mr. Shebat had factitious disorder, because opinions in clinical records cannot be accepted as evidence. I am only going so far as to say that that the prior diagnosis should have caused some inquiry by Dr. Reddy.)

[98] In essence Dr. Reddy took everything Mr. Shebat said at face value.

4. Dr. McDowell - neurology

[99] Dr. McDowell assessed Mr. Shebat in October 2023 at the request of the defendant.

[100] Dr. McDowell noted the discrepancy between what he was told by Mr. Shebat about the 2018 accident and what was documented in the records; namely the latter showing no loss of consciousness and delayed onset of dizziness, He could not diagnose a concussion under those circumstances.

[101] Dr. McDowell acknowledged the consistent reporting of headaches which could be attributable to either whiplash or concussion. He said Mr. Shebat's cognitive symptoms are likely attributable to a "significant concomitant psychological/psychiatric conditions, poor sleep and chronic pain at this stage and probably by early of 2019."

[102] Significantly, of the 2021 accident, Dr. McDowell said:

As he did not disclose the 2021 accident to me and it doesn't seem to be well documented in his family doctor's records at the time, it is difficult for me to say if this led to a significant exacerbation or is contributing to his ongoing headaches.

5. Dr. Robinson - Neurology

[103] Dr. Robinson assessed Mr. Shebat in April 2023.

[104] He concluded that Mr. Shebat did not sustain a concussion in the 2018 accident. With respect to Mr. Shebat's headaches, he said:

In my opinion his history, examination and investigations are consistent with a diagnosis of persistent headache related to soft tissue injury to the head and neck sustained in the June 13, 2018 motor vehicle accident.

This was based on his conclusion that Mr. Shebat was not suffering headaches before the accident, which was in turn based on Mr. Shebat's self-reporting and Dr. Robinson's review of the clinical records.

[105] In cross-examination, Dr. Robinson acknowledged that the headaches Mr. Shebat is experiencing could be equally consistent with being the result of the 2017 accident. Therefore, for me to conclude that the 2018 accident caused Mr. Shebat's current headaches, I would have to accept that his headaches from the 2017 had resolved by the 2018 accident and that is based solely on Mr. Shebat's evidence.

[106] As with Dr. McDowell, Mr. Shebat was unwilling to discuss the 2019 "suicide" accident with Dr. Robinson. Based on Mr. Shebat having told him he was in unbearable pain before the 2019 accident, he concluded that, although he could not be certain, it appeared that the 2019 accident did not worsen his physical condition.

[107] Because it has been more than 5 years since the 2018 accident, he did not think Mr. Shebat was likely to improve and would remain unemployable. This begs the issue raised in the prior paragraph, namely the effect of the 2019 accident.

6. Domenic Shew - Occupational Therapy

[108] Mr. Shew performed evaluations of Mr. Shebat on March 13, 2019 and November 13, 2023.

- [109] Dealing with the 2019 evaluation, Mr. Shew opined that Mr. Shebat provided near full levels of physical effort on many of the tests, and low or inconsistent efforts on a minority of them. His overall opinion was that the tests represented an accurate representation of Mr. Shebat's physical residual capacities and functional limitations, except for his left shoulder.
- [110] Regarding the reliability of Mr. Shebat's self-reporting on pain and disability, Mr. Shew noted Mr. Shebat underestimated his capacity for standing, vertical reaching with his left arm and squatting and crouching. He said there were aspects of unreliability to his self-reporting and the functional testing. In effect he said any evaluation had to be based on objective findings, although he was not implying an intent to mislead.
- [111] Mr. Shew said that Mr. Shebat could handle loads with two hands up to 40 lbs. occasionally through full body range, and up to 50 lbs occasionally to his waist. This placed his functional strength capacity in the sedentary/limited, light, and medium categories, He did not meet the strength to safely handle loads in the heavy and very heavy categories. I note here that the 40 to 50 pounds was within the range of what Mr Shebat's supervisor said he had to lift at Apex. Mr. Shew noted balance difficulties.
- [112] Mr. Shew concluded that Mr. Shebat was only capable of limited part-time employment and is effectively unemployable. He said:

In other words, he will require a supportive employer and substantial alternations to work tasks and hours in order to be engaged in some accommodated fashion, but from a practical standpoint, he is competitively unemployable.

- [113] Turning to the 2023 report, as with the 2019 evaluation, Mr. Shew noted that Mr. Shebat gave full effort on the majority, but not all, the tests. Yet, he noted that Mr. Shebat prematurely terminated the testing. He said he could therefore not comment on Mr. Shebat's "full durability for activity over a full work day". He was also unable to comment on Mr. Shebat's capacity for tasks requiring prolonged crouching, prolonged kneeling, repetitive bending, as well as full upper body muscle strength and full lower body muscle strength, as he reported that he did not feel safe to attempt or proceed with the tests.

F. Analysis - Injuries and consequences

- [114] Mr. Shebat argues that he has been unable to work since the accident and will remain unemployable for the duration of his life. As I said earlier, he argues the 2021 accident was a suicide attempt brought on by his depression caused by the 2018 accident.
- [115] Ms. Zhang has put Mr. Shebat's credibility and reliability front and centre. Mr. Shebat was cross-examined for 13 days (some of them partial days) focusing on what he told his care providers as disclosed in the clinical records, his social media postings, and video surveillance. Ms. Zhang denies that Mr. Shebat attempted to commit suicide in 2021. She argues that most of the medical opinions are based on what Mr. Shebat told his experts, and because of his lack of credibility, these opinions cannot be relied on. In short, Ms. Zhang

argues that Mr. Shebat suffered soft-tissue whiplash-type injury, and those injuries resolved by December 2018.

[116] As I outline below, I largely agree with Ms. Zhang.

1. Mr. Shabat's evidence was both self-contradictory and contradicted by the medical records

[117] I begin this section by noting that cross-examination on clinical records must be assessed with some caution. This is because of the possibility of inaccurate recording by the medical provider, language difficulties and the fact that medical appointments often only have enough time to deal with one issue. Nevertheless, here the scale of discrepancies between Mr. Shebat's evidence and the clinical records is so massive that it cannot be attributed the vagaries of record keeping. Beyond that, he told his medical providers inconsistent things.

[118] With respect to the accident itself, I note some (and only some) of the difficulties with Mr. Shebat's evidence:

- In his trial evidence, Mr. Shebat first said that he could not recall if his vehicle "swung". He later said it started spinning. He told the experts who assessed him that his vehicle spun multiple times and hit a bus pole; his car spun 4 times before striking a bus stop; his vehicle spun around 2.5 times. None of the other witnesses mentioned hitting a bus stop and if there was any "spinning" it was a partial spin.

- As I set out above, Mr. Shebat said the fire department and ambulance came and he woke up to one of them wiping blood from his nose when he was lying on the ground. None of that is true.

- Mr. Shebat said that he was taken directly to the the hospital by a friend or neighbor. The records show he went first to his family doctor who told him to go to the hospital. Mr. Shebat denied that in cross-examination.

[119] To the extent that Mr. Shebat's wife - Ms. Ahmed - corroborated Mr. Shebat's evidence with respect to what she observed when she arrived at the scene, I do not accept that evidence. It is not in accord with the balance of the evidence and must have been consciously or unconsciously tailored to fit one of Mr. Shebat's versions.

[120] Mr. Shebat told Drs. Reddy and Wong that he dislocated his shoulder in the 2018 accident. However, the Royal Columbia records show that no fractures or dislocations were identified. He told Dr. Wong that was asked to stay in the hospital for 10 hours for observation and was discharged after 18 hours. He told Dr. Hawkeswood he stayed in hospital for 2 days. He told another provider he was discharged after 8 hours.

[121] Mr. Shebat was equally contradictory in his evidence regarding the injuries suffered in his 2017 accident. I set some of that out above. He told Dr. Wong that he did not hit his head. However, he said the contrary when admitted to the ER. He told Dr. Wong and the ER that he did not lose consciousness. Yet, he told his family doctor on February 18, 2018, that he lost consciousness for 10-15 minutes. His statements to Dr. Wong regarding this were important for her opinion given she was dealing with alleged inner ear damage.

[122] Mr. Shebat's evidence regarding his attempt to return to work is another example of contradictions and denials of what the documentary evidence shows. He said he attempted return to work on October 19, 2018. As I described above, he said he did this contrary to his doctor's directions. However, On October 11, 2018, he saw his doctor, who recorded that Mr Shebat said he felt he could return to work. His doctor provided him with a note saying:

He has improved compared to the last several weeks and I think he is fit to start working full duties but part time, 8 hours daily for 2 weeks. I will see him before the end of these 2 weeks to reassess him.

[123] Mr Shebat said that after this attempt, he kept in touch with the company about the possibility of returning. However, his supervisor said the opposite. Not having heard from him they wondered whether he had quit.

[124] I described Mr. Shebat's 2021 collision which he says was an attempt to commit suicide. The hospital records - including psychiatric evaluations - record numerous instances of him denying it was a suicide attempt and his family telling the hospital that Mr. Shebat was psychologically fit to go home. Mr. Shebat denied saying this to the hospital. There are too many notations of this denial for it to be attributable to mistaken record keeping by the hospital, and it dovetails with the notes of the physicians' conversations with Mr. Shebat's family.

[125] There are multiple other examples of conflicts between Mr. Shebat's evidence at trial and what he was noted as having told his health care providers.

[126] There are also instances of things he did not recall, perhaps most significantly the 2019 accident.

2. Mr. Shebat's evidence, and the medical opinions regarding his current state, are contradicted by video surveillance and Mr. Shebat's activities disclosed in his social media

[127] Similar to what I noted regarding clinical records, surveillance and social media must be looked at with caution because they represent a brief snapshot in time and are not always probative of what the defence wants to make of them. For example, the fact that someone is complaining of whiplash symptoms does not mean they cannot walk a few blocks, perhaps while enduring pain. Someone performing in a rodeo would be another matter. Here, the social media postings and video surveillance are numerous, over multiple periods of time, and contradict what Mr. Shebat said he can do.

How Mr. Shebat described his condition

[128] The starting point here is what Mr. Shebat told his experts he was able to do. As will be seen, he painted a very bleak picture of his life and abilities. Here are examples:

Dr. Wong:

- "He always restricts his travel because of dizziness. Walking down the aisle of a supermarket always increases his dizziness."
- "His dizziness significantly restricts his participation in social activities Sometimes he is afraid to leave his home without having someone accompany him because of his dizziness."
- "Sometimes it is difficult for him to go for a walk by himself due to his dizziness."
- "He has not been able to cook, clean, bank or drive since his post-MVA symptoms in 2018"
- " His dizziness has made it impossible for him to drive at night. His son drives him now."

Dr. Robinson:

- "Mr. Shebat leads a sedentary existence describing himself as mainly sitting all day in the family home. He may go out for a short walk and occasionally will drive a short distance in his car. He does go to the mosque every Friday and often has a conversation with the Imam who knows "I am suffering with mental health". He stated that he is not able to do any household tasks and relies completely on his family. He has not been able to return to any recreational pursuits"

Dr. Hawkeswood:

- " he feels very isolated, and he stays indoors to sleep because of his pain issues."
- "Mr. Shebat used to enjoy socializing. He does Friday prayers at the mosque, but is otherwise "very lonely" and doing "nothing," on account of his headaches, body pains, and mood."
- "Mr. Shebat's current exercise involves walking around his house for about five minutes daily, limited by nausea and vomiting. He also does the home exercises provided by his therapists."
- "Mr. Shebat tells me his wife helped him with bathing due to his poor balance and dizziness. Currently, his son still helps him to bathe for the same reasons."

Mr. Shew in the 2023 assessment:

- "in terms of transportation, he chooses to drive locally, which he stated is about five to ten minutes away from his home, as driving results in dizziness. He also reported that he does not drive at night due to his poor vision. He reported that he obtains rides from his sons or daughter. When asked if they are unavailable, he related that he does not go to appointments"

[129] The surveillance and social media postings must also be viewed against Mr. Shebat's testimony. In his examination for discovery, he said that he spends most of the time in his house; he does not leave the house; he takes his medications and when he is depressed he spends from 4 to 6 hours in a darkened room by himself. He said this happens "every day:"

What the evidence discloses

- [130] In spite of the picture Mr. Shebat portrayed in his evidence and to his experts, he was able to go on two overseas trips. In 2022 he travelled to Saudi Arabi on his own. Amongst other things he visited family, went to the mosque, and had lunches and dinners with people. He also said he went on a pilgrimage.
- [131] In March 2023 he travelled to Jordan with his wife for about 28 days. He attempted to visit the refugee camp in Jordan where he had been immediately before coming to Canada but could not because he did not have a visa. On his way back he had an overnight stop in Switzerland where he stayed overnight with a relative of his brother-in-law.
- [132] In July 2021 he did a family trip to Victoria, taking the ferry. He enjoyed a party in the park. Photos show him outside the legislature building and on the deck of the ferry. This was one month after what he said was his suicide attempt.
- [133] Video surveillance shows Mr Shebat driving in the night and the snow, sometimes smoking. He was able to drive for significant periods of time compared to how he described his abilities. The surveillance shows him driving to pick up his grandchildren at school or an activity, double parking, and walking inside to collect them. He was able to back into small spots in parkades.
- [134] Mr. Shebat was able to stand in a bank line without difficulty for 9 minutes, He was able to walk in the snow. He was able to jaywalk at a semi-jog to get across a busy street.
- [135] On March 6, 2020, he went to physiotherapy and reported he was dizzy. However, the same day he posted a video taken by himself showing him on an exercise break.
- [136] As noted above, Mr. Shebat told Dr. Wong that he had given up the use of screens, because they trigger dizziness and double vision. However, he had accounts on Facebook (with several profiles), YouTube, Twitter, Instagram, TikTok and Google Drive. Although he said his son operated some of these accounts some of the time for him, I do not think that can explain the volume of postings in the multiple accounts. Moreover, the plaintiff testified he used a selfie stick and some of the postings were done when he was on the overseas trips without his son.
- [137] Multiple social media posts show Mr. Shebat near waterfalls, and in rural parks, all of which would have had to have been accessed by walks or at least short hikes.

3. Some of Mr. Shebat's evidence was not believable

- [138] In terms of his evidence that was not believable, one example I set out above is that he said he been trained in the Syrian military and after training was assigned to a unit to guard an airport. However, he said he never once fired a gun, even though he carried one on duty. (This was a major issue for the defendant who argued that Mr. Shabat's ear damage could have been due to his military experience and his having lived in an area where there were frequent bombings.) It is unclear whether Mr. Shebat was alleging that the rifle he carried had blanks or no bullets, but it is scarcely believable that military training for active service would not involve firing a weapon, in spite of a friend having given similar evidence.
- [139] Mr. Shebat's evidence underplaying his experience of the civil war in Syria because of living in a village outside Daara was not believable and directly contradicted by what he told the Burnaby Now paper.
4. Mr. Shebat destroyed evidence and improperly received COVID benefits
- [140] Finally, two more points dealing with credibility. First, in the lunch break during Mr. Shebat's examination for discovery where he was being cross-examined on his social media, he deleted several postings showing selfies of him which contradict his evidence of disability. When challenged on this, he said his account must have been hacked. Given the time frame, that is not believable. The deletions can be taken as nothing less than the attempted destruction of evidence.
- [141] Second, Mr. Shebat applied for and received Canada Emergency Response Benefits during the COVID crisis when he had no right them. He acknowledged these will have to be repaid.

G. Conclusion on injuries and consequences

- [142] The difficulties with Mr. Shebat's evidence that I set out in this section and throughout the judgment are not an exhaustive list. There are numerous other examples, that I did not set out.
- [143] This case is similar to the recent decision of the Court of Appeal in *McGlue v. Girvan*, 2024 BCCA 208. In that case the trial judge found that the plaintiff was not a reliable or credible witness at trial and in providing information to the medical experts, which undercut their opinions attributing causation to the accident. Yet, relying on the "evidence as a whole" the judge found the accident aggravated the plaintiff's pre-existing conditions and caused an additional soft tissue injury.
- [144] The Court of Appeal overturned the trial judge. The court, at para 48, referred to the body of case law which emphasized that where claimed injuries were not objectively verifiable, a court must be cautious in making findings of injury and causation. The court stated:
- [52] In my view, and as the judge acknowledged, given Mr. Girvan's lack of credibility and reliability, a finding on causation required the judge to identify the "corroborative objective evidence or findings" she concluded was necessary to ground such a finding. Any reliance on the experts' opinions on causation also required justification. This was especially so given

the order of testimony at trial, with Mr. Girvan testifying last, which prevented the experts from being able to comment fully, or not at all, on the inconsistencies later revealed in Mr. Girvan's evidence.

The court held that the judge did not identify any such corroborative evidence, nor could it discern "any kernel of evidence" which could weigh in favour of a finding on causation to merit sending the matter back for a new trial (para. 53).

- [145] As set out above, I have found Mr. Shebat to be an unreliable and non-credible witness, both in court and as to what he told his medical experts. The defendant acknowledges that the plaintiff suffered soft tissue whiplash injuries from the accident. Beyond that, causation is a contested issue for the remaining injuries, such as ear damage and depression, and even if causation is to be found, how long they lasted. (Again, Mr. Shebat claims they are permanent, and he will never be able to work.)
- [146] Can I find objective evidence to corroborate those injuries, what caused them and their impact on his functional abilities? I do not think I can. Some of the tests Dr. Wong conducted or relied on were objective. But that does not answer causation, with respect to which she relied essentially on timing of the symptoms in relation to the accident and Mr. Shebat having told her he hit his head. She also relied on the noise from deployment of the airbag, which did not occur.
- [147] Mr. Shebat's wife's evidence cannot be relied on, given what she incorrectly said she saw at the scene of the accident. Not can she be said to be objective. Her evidence that Mr. Shebat was a changed person after the accident was belied by the surveillance and social media postings.
- [148] At para. 79 of McGlue, the court recognized that in some cases, causation may be inferred from a temporal sequence of events, but that could not be done in that case because of the issue of pre-existing injuries. In the case at bar, the difficulty of relying only on a temporal analysis of causation is that it depends on Mr. Shebat's unreliable evidence, especially with respect to his post-accident condition. His self-described condition before the accident cannot also not be relied on. There are multiple factors that the defence has pointed to which could have caused Mr. Shebat's stated injuries, assuming that he did suffer from them.
- [149] The surveillance and social media postings contradict Mr. Shebat's evidence, what he relayed to his experts and their conclusions as to the level and duration of his disability.
- [150] As I have said, the defendant conceded that Mr. Shebat sustained whiplash-type soft tissue injury. In terms of the duration of the injuries, as noted, Mr. Shebat claims they are life-long. It almost goes without saying given what I set out above that I do not accept this.

[151] The defendant says that Mr. Shebat's injuries lasted at most six months. In response to Mr. Shebat's argument that this is arbitrary, the defendant points to medical records showing his condition had improved in this time frame. Some of these are, as noted above:

- Physiotherapy records from June 25 to August 17, 2018 show Mr. Shebat "improving".
- In August 2018, his family physician noted that Mr. Shebat told him his left neck pain was better.
- On October 11, 2018, Mr. Shebat saw his family doctor. While the clinical note shows some residual pain, the doctor gave Mr. Shebat a note to return to work on a trial basis.

[152] The defendant also relies on some social media postings in this time period, and shortly after, showing a higher level of activity than Mr. Shebat claimed to be able to endure.

[153] Finally, the defendant relies on the evidence of Dr. Hawkeswood, who said that more than 50% of soft tissue injury sufferers heal within a range of weeks to months. That of course begs the question as to which group Mr. Shebat falls into.

[154] Determining the duration of soft tissue injuries is not a precise exercise. That is particularly so where the main evidence is from an unreliable plaintiff. Here the determination is made even more difficult because of Mr Shebat's failure to complete the most recent occupational therapy assessment by Mr. Shew.

[155] Taking all the evidence into account, I accept the submissions of the defendant.

III. Non-pecuniary damages

[156] Mr Shebat submitted he should be awarded \$180,000 for general damages. I have rejected his claim that he suffered lifetime injuries, and that figure is clearly inappropriate. Similarly, the cases he relied on are not of assistance.

[157] The defendant submits that general damages should be assessed at \$25,000. I find that to be too low. The most recent case - and one similar to the case at bar - cited by them was Kulla v. Chiu 2024 BCSC 687 in which Funt J. found that the plaintiff suffered soft tissue injury lasting for 6 months to a year. He awarded \$60,000. Taking that and the other cases[1] cited by the defendant into account, I award \$60,000.

IV. Past income loss

[158] Extrapolating from Mr. Shebat's actual earnings for 2018 before the accident, his annual gross earnings would have been \$50,991. One half of that (for 6 months) amounts to \$25,495 gross.

[159] The defendant argues that Mr. Shebat should have mitigated his damages by returning to work on a graduated basis during the 6 months after the accident. Given the minimal award, especially when it is apportioned for shared responsibility, this becomes somewhat of a de minimus argument. In any event, the onus of proving failure to mitigate is on the defendant and I am not convinced that the defendant has shown that Mr. Shebat could have made any meaningful income in the 6 post-accident months.

[160] I leave it to the parties to agree on the required deductions for income tax etc., as suggested by them during argument.

V. Future income loss

[161] Given the 6-month period for Mr. Shebat's injuries and the date of the trial, there is no future earning loss, nor a loss of earning capacity.

VI. Special damages

[162] For the 6-month period following the accident, Mr. Shebat claimed \$4,163 for special damages. The defendant takes no issue with that and that shall be the award.

VII. Costs

[163] Costs are to be assessed on the basis set out in s. 3(1) of the Negligence Act, unless the parties wish to argue for a different allocation or bring offers to settle to the attention of the court. In any event, I conclude that this was matter of ordinary difficulty, and costs should be assessed at Scale B.

[164] Should submissions be required with respect to costs, or with respect to deductions (which the parties indicated they could agree to) they will have to be heard by another judge, given my impending retirement at the end of this month. I had been hoping to be able to finish all issues myself, but events intervened.

"E.M. Myers J."

[1] Sun v Sukhan, 2012 BCSC 365;

Winter v Ma, 2023, BCSC 1148;

Palmer v Pozniak, 2021 BCSC 1703;

Cegielka v Grace, 2020 BCSC 115; and

Sharma v Bhullar, 2020 BCSC 379.

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