

CANADA / JUDGMENT

Sidhu v. Baturin

2022 BCSC 102

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 102 Sidhu v. Baturin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sidhu v. Baturin,

2022 BCSC 102

Date: 20220121

Docket: M213621

Registry: New Westminster

Between:

Ravindeep Kaur Sidhu

Plaintiff

And

David Shawn Baturin

Defendant

Before: The Honourable Justice Brongers

Reasons for Judgment

Counsel for the Plaintiff:

T. Dennis

B.C. Jones

Counsel for the Defendant:

D. Kang

J. Lemoine, Articled Student

C. Winiarski, Articled Student

Place and Dates of Trial:

New Westminster, B.C.

September 7-10, 13-14, 2021

Place and Date of Judgment:

New Westminster, B.C.

January 21, 2022

INTRODUCTION

- [1] Ravindeep Kaur Sidhu (the "Plaintiff" or "Ms. Sidhu") seeks damages in connection with personal injuries sustained in a motor vehicle accident that took place in Langley on February 3, 2019 (the "Accident"). While liability is not formally admitted by the defendant, David Shawn Baturin (the "Defendant"), it was not contested at trial either. Accordingly, the disputed issue in this case is the amount of damages to which Ms. Sidhu is entitled in compensation for her injuries.

BACKGROUND

The Plaintiff's Circumstances Prior to the Accident

- [2] Ms. Sidhu was born in 1981 in Abbotsford. She completed high school and a two-year college nursing program, after which she qualified as a licensed practical nurse ("LPN"). She has held a variety of jobs, but her career focus is in the field of elder care. Indeed, for much of her adult life, Ms. Sidhu has worked for senior care facilities at various locations in the Fraser Valley.
- [3] Around the time the Accident took place in February 2019, Ms. Sidhu's primary employer was Tabor Home Society ("Tabor") in Abbotsford for whom she worked full-time as an LPN. She further supplemented her income by working casual LPN positions at other facilities, namely, Eden Care Centre ("Eden") in Chilliwack and Bevan Lodge ("Bevan") in Abbotsford. Previously, Ms. Sidhu had also provided some private nursing services to an individual patient. These jobs paid approximately \$25 to \$30 per hour. Ms. Sidhu was very industrious, and she generally tried to work around sixty hours per week.

- [4] Ms. Sidhu testified that her childhood was challenging as she was raised in a traditional Sikh home whose values she came to question, particularly in relation to gender-based roles and expectations. She was married at 17 years old, and had her daughter, Asia Gill, when she was 18. After experiencing domestic violence, Ms. Sidhu left the marriage and raised her child alone. Ms. Sidhu vowed to ensure that her daughter's upbringing would be different from the one that she went through.
- [5] At the time of the Accident, Ms. Sidhu was living in a townhouse in Aldergrove with Ms. Gill, who was by then an adult. Ms. Sidhu was in a romantic relationship with a boyfriend, Mandeep Johal, but they were not cohabiting together. While her busy work schedule did not allow for much free time, Ms. Sidhu enjoyed being with her daughter, socializing with friends, caring for her dogs, and participating in a number of recreational activities. These included hiking, standup paddleboarding, gardening, yoga, and exercising at the gym.

The Accident

- [6] On February 3, 2019, Ms. Sidhu was a passenger in the front seat of a Jeep Grand Cherokee that was being driven by Mr. Johal in Langley. She was wearing her seat belt. Their vehicle was struck in a T-intersection by a Pontiac Grand Am that the Defendant was driving. The Defendant had failed to stop at the stop sign on the slippery road he was travelling that winter day.

The Plaintiff's Injuries and Treatment

- [7] Ms. Sidhu was not hospitalized as a result of the Accident. However, she soon began to feel pain, anxiety, and soreness in her head, neck, and lower back. These symptoms notwithstanding, she went to work at Tabor the next morning. Once there, however, Ms. Sidhu found that she had become too stiff to perform her assigned tasks. Her employer allowed her to leave to consult a physician, and she proceeded to attend at a walk-in medical clinic. Ms. Sidhu was prescribed medication for her pain and told to take time off work, which she did.
- [8] With respect to treatment for her injuries, Ms. Sidhu has received physiotherapy, counselling, active rehabilitation with a kinesiologist, and painkillers such as gabapentin. Ms. Sidhu was also given a number of prolotherapy injections into her spine to alleviate her symptoms. In addition, Ms. Sidhu does exercises and stretching on her own.

The Plaintiff's Circumstances After the Accident

- [9] Ms. Sidhu did not work for a considerable period of time following the Accident, only returning to Tabor on a graduated basis in May 2020. To supplement this income, in the fall of 2020, she started working casually for pharmacies as an LPN providing home delivery of medicine to patients, approximately fifteen hours per week. She did not, however, resume the shift work she used to do at Eden or Bevan. At that time, there were public health orders

in place which prohibited nurses from working in multiple senior care facilities in order to help prevent the spread of COVID-19.

- [10] Ms. Sidhu had also applied for and received employment insurance sickness benefits in February 2019, but they came to an end in February 2020. Ms. Sidhu also attempted to obtain long-term disability benefits, but was denied by the private insurer. Indicative of Ms. Sidhu's difficult financial situation in the aftermath of the Accident was her increased credit card debt incurred to pay for necessities, and the fact that she was evicted from the townhouse she was renting in December 2019.
- [11] Once Ms. Sidhu did return to Tabor, she found the work physically difficult to do because of the pain and soreness she was experiencing. She initially needed some assistance from colleagues to do her job, particularly with pushing her heavy medicine cart. She also made mental errors which led to the overmedication of patients on several occasions. She believes that these mistakes happened because of the side effects of the drugs she was taking to manage her pain. Her actions did not cause any deaths or injuries, but they were traumatic for Ms. Sidhu who felt guilt and remorse for having put her patients' lives at risk. She was also concerned that she might lose her LPN licence, although that did not happen. As a result, Ms. Sidhu stopped taking prescription painkillers at work, and attempted to manage her discomfort by using a TENS (transcutaneous electrical nerve stimulation) machine instead.
- [12] Ms. Sidhu's home life following the Accident was also difficult. Initially, she would rarely leave her townhouse except for medical treatments, and made certain adjustments to avoid having to climb the stairs to access her bedroom and the bathroom. This included obtaining a mattress so that she could sleep on the first floor in the living room, and limiting her fluid intake to avoid using the toilet. While Ms. Sidhu was once fastidious in maintaining her appearance and that of her home, she came to neglect both and gained a considerable amount of weight.
- [13] Ms. Sidhu's personal interactions with those close to her changed as well. She was no longer interested in socializing with friends. Her relationship with Mr. Johal became strained and verbally abusive, and it came to an end within a year of the Accident. Her daughter, Asia, found living with Ms. Sidhu in her depressed state difficult, and left the home in late 2019 to pursue an out-of-province work opportunity. Ms. Sidhu also lost the companionship of a dog who passed away from cancer. Ms. Sidhu blames herself for not adequately caring for her dog during the final stage of its life given her post-Accident physical, mental, and financial limitations.
- [14] Just prior to trial, however, Ms. Sidhu decided to change her circumstances by moving to Kelowna after she had received and accepted an offer from Baptist Housing to work as an LPN at Smith Creek Village seniors centre. Ms. Sidhu disclosed to her new employer her limitations, including her inability to physically lift patients, and was told that this would not be a concern. She commenced work for Baptist Housing on August 31, 2021, and had only

put in a few shifts at the time of her testimony before the Court. Ms. Sidhu nevertheless had already received positive feedback on her work from her new employer.

ANALYSIS

Overview and Issues

[15] The first question to be resolved is whether the Defendant caused and is therefore liable for the Accident. If the answer to this question is yes, consideration must then turn to the quantum of damages to be awarded. Ms. Sidhu is claiming such damages under the following six headings:

- 1) non-pecuniary (general) damages;
- 2) past loss of earning capacity;
- 3) future loss of earning capacity;
- 4) special damages;
- 5) cost of future care; and
- 6) loss of housekeeping capacity.

[16] Prior to conducting this analysis, however, a brief description of the relevant evidence that was presented at trial as well as a general commentary on its credibility and reliability is set out below.

Factual Evidence

[17] The factual evidence before the Court consisted of an agreed statement of facts, read-ins from the examination for discovery of the Defendant, documentary material entered into evidence in accordance with the parties' document agreement, and the testimony of five witnesses, all of whom were called by the Plaintiff. Their names and relationship to the Plaintiff are as follows (set out in order of appearance):

- 1) Ravindeep "Ramin" Sidhu: Plaintiff
- 2) Asia Gill: Plaintiff's daughter
- 3) Jennifer Getz: Plaintiff's friend
- 4) Gavin Toth: Plaintiff's former co-worker at Tabor
- 5) Myrna Earle: Plaintiff's former supervisor at Tabor

- [18] Ms. Sidhu was, of course, the primary and most significant of the Plaintiff's witnesses. She testified comprehensively about her background, education, work experience, the Accident, her injuries, the treatments she has received, as well as her post-accident circumstances. While on occasion Ms. Sidhu had difficulty controlling the understandable stress of testifying about her personal circumstances, I generally found her evidence to be clear, cogent, credible, and reliable.
- [19] Counsel for the Defendant expressly stated that he does not argue that Ms. Sidhu lacks credibility generally. However, he did note that Ms. Sidhu testified that she had no pre-existing issues with her back prior to the Accident, in apparent contradiction to some of the medical evidence presented. This specific matter is addressed below.
- [20] Counsel for the Defendant did not, however, raise any concerns with the testimony provided by any of the Plaintiff's other lay witnesses. I found their factual evidence to be credible and reliable as well.

Expert Evidence

- [21] Three expert witnesses were called to testify at trial by the Plaintiff: (1) Dr. Donald Cameron; (2) Dr. Zohar Waisman; and (3) Mr. Russell McNeil. The Defendant called one expert witness: Dr. Catherine Paramonoff. Their reports were entered without objection, and they were all qualified as experts in their respective fields. This expert evidence can be summarized as follows.

Dr. Donald Cameron

- [22] Dr. Cameron is a neurologist who was retained by the Plaintiff to prepare an expert report on the extent of Ms. Sidhu's injuries. Dr. Cameron was qualified as an expert in the diagnosis, prognosis and management of injuries following car accidents in the field of neurology. His examination of Ms. Sidhu was conducted on May 13 and 31, 2021.
- [23] Dr. Cameron's report states that Ms. Sidhu has soft tissue and musculoskeletal injuries involving her neck and back that were sustained at the time of the Accident. He opined that she was rendered completely disabled for a year-and-a-half following the Accident with respect to her work status due to the pain resulting from these injuries. Since her return to work, Ms. Sidhu remains partially disabled as her work activities aggravate her ongoing pain. This partial disability also extends to her recreational activities and household chores. Further, she has developed increased anxiety and symptoms of depression as a result of the physical limitations that she had been forced to accept as a result of her injuries.
- [24] With respect to treatment, Dr. Cameron feels that Ms. Sidhu will require pain medication and intermittent rehabilitation therapy permanently into the future. He was not, however, willing to provide specific recommendations with regard to rehabilitation therapy or psychological/psychiatric therapy, as he felt that they should instead be provided by a physiatrist and a specialist in psychiatry and/or psychology. Dr. Cameron concluded by

stating that it is probable that Ms. Sidhu's ongoing chronic pain and associated resultant physical limitations with respect to work, recreational activities, and household chore activities are permanent.

Dr. Zohar Waisman

- [25] Dr. Waisman is a psychiatrist who was retained by the Plaintiff to prepare an expert report regarding Ms. Sidhu's mental condition. He was qualified as an expert in psychiatry capable of providing opinions with respect to the diagnosis, prognosis and management of injuries following car accidents. His assessment of Ms. Sidhu was conducted on May 11, 2021.
- [26] Dr. Waisman concluded that the Accident had led Ms. Sidhu to collapse her defences and develop a somatic symptom disorder with predominant pain, persistent, and post traumatic stress disorder ("PTSD"). He also said that she meets criteria for a major depressive disorder, moderate, and non-psychotic. As for the future, Dr. Waisman feels that there is no sign of a probable recovery for Ms. Sidhu's impairment to her mental and psychological functions from the Accident. Further, as she ages, her ability to cope with chronic pain and depression will decrease, along with her resilience. In terms of treatment, he recommends psychotherapy once per week for one year, and a referral to a multidisciplinary pain management program.

Russell McNeil

- [27] Mr. McNeil is an occupational therapist who was retained by the Plaintiff to prepare a functional capacity evaluation. He was qualified as an expert in occupational therapy capable of providing opinion evidence on functional capacity evaluation, and the cost of future care. His assessment of Ms. Sidhu was conducted on May 19, 2021.
- [28] In his report, Mr. McNeil set out the results of his testing of Ms. Sidhu's physical functionality, noting limitations in relation to her back, shoulder, and hip mobility, as well as her physical strength. For example, Mr. McNeil observed that Ms. Sidhu is incapable of safely carrying a 20-pound load with two hands. Mr. McNeil opined that Ms. Sidhu is nevertheless capable of working in occupations that fall within the sedentary physical demand characteristics. In particular, he said that while she will struggle with sitting combined with prolonged static spinal positioning, she would be able to manage by pacing herself and by using ergonomic accommodations. However, Ms. Sidhu does not have the capacity to handle the demands of physical work that is light, medium, or heavy. Mr. McNeil's report also concluded that Ms. Sidhu is capable of working part-time as an LPN with restrictions and accommodations, but not as a full-time LPN.

Dr. Catherine Paramonoff

- [29] Dr. Paramonoff is a physiatrist who was retained by the Defendant to conduct an independent medical examination and to prepare an expert report on the extent of Ms. Sidhu's injuries. She was qualified as an expert in the diagnosis, treatment and prognosis of motor vehicle accident injuries in the field of physical medicine (physiatry). Her examination of Ms. Sidhu was conducted on May 4, 2021.
- [30] In her report, Dr. Paramonoff opined that Ms. Sidhu has musculoligamentous injuries at the neck and myofascial injuries at the upper to mid back, which were caused by the Accident. As for Ms. Sidhu's lower back, however, Dr. Paramonoff noted that there were some degenerative changes that are likely long-standing which pre-existed the Accident. She also found that Ms. Sidhu's lower extremity symptoms that she described likely do not represent injuries from the Accident either.
- [31] With respect to prognosis, Dr. Paramonoff indicated that Ms. Sidhu will likely have a prolonged course of recovery, given the cumulative effect of superimposed soft tissue injuries, contribution from unmaking of pre-existing degenerative changes, post-Accident muscle imbalance/deconditioning, and confounding factors. However, she also felt that Ms. Sidhu can still have mild to moderate symptom improvement, although her symptoms will never be completely eliminated.
- [32] Dr. Paramonoff's recommendations for future treatment include exercise, a further 18 sessions with a kinesiologist or physiotherapist over the next two years, up to six adjunctive treatments such as massage or physiotherapy per year over the next two years, and over the counter analgesic or anti-inflammatory medication for pain flare ups. Dr. Paramonoff also feels that it would be reasonable for Ms. Sidhu to have some assistance with homemaking activities and heavier seasonal cleaning, but did not provide any specific recommendations for this in her report.

Issue 1: Liability

- [33] As noted in the introduction section of these reasons, liability is not admitted by the Defendant. At trial, however, counsel for the Defendant did not attempt to lead evidence disputing his client's liability in any way. Furthermore, in his closing argument, counsel stated that "the Defendant does not make any submissions on liability".
- [34] As a result of the Defendant's unexplained unwillingness to concede liability, counsel for the Plaintiff were compelled to tender evidence with respect to this issue. This included read-ins from the examination for discovery of the Defendant which indicate that the Defendant did not stop his car at the stop sign he was required to before entering a T-intersection where he collided with the vehicle in which Ms. Sidhu was a passenger. Documentary evidence and Ms. Sidhu's testimony regarding the circumstances surrounding the Accident were provided as well.

[35] This evidence satisfies me that the Plaintiff has established on a balance of probabilities that the Defendant is solely responsible and liable for the collision that caused Ms. Sidhu's injuries.

Issue 2: General (Non-Pecuniary) Damages

Legal Principles

[36] The legal principles applicable to assessing the non-pecuniary damages designed to compensate a plaintiff for the pain and suffering and loss of enjoyment of life caused by a defendant tortfeasor are well established and not in dispute. The plaintiff bears the burden to show that there is a substantial connection between the accident caused by the defendant and the plaintiff's injuries: *Thompson v. Helgeson*, 2017 BCSC 927 at paras. 28-30. If causation is established, the court will then consider a number of factors when determining an appropriate quantum for non-pecuniary damages. In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, a non-exhaustive list of these factors was set out. It includes:

- (a) age of plaintiff;
- (b) nature of the injury;
- (c) severity and duration of the pain;
- (d) disability;
- (e) emotional suffering;
- (f) loss or impairment of life;
- (g) impairment of family, marital, and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not penalize the plaintiff).

Plaintiff's Position on Non-Pecuniary Damages

[37] Counsel for the Plaintiff submit that Ms. Sidhu's enjoyment of her life has been diminished considerably by the Accident, both personally and professionally. They highlight in particular the hardships she experienced in terms of her lost interpersonal relationships, the indignities she suffered at home, the mistakes she made at work, and the financial strain she experienced. In addition, they note that Ms. Sidhu will likely experience pain for the rest of her life, depression, PTSD, somatic symptoms disorder with predominant pain, and sleep disruption.

[38] With respect to quantum, the Plaintiff's position is that an appropriate monetary amount of compensation for Ms. Sidhu is \$160,000. In support of this position, counsel for the Plaintiff brought four cases to my attention:

- Khosa v. Kalamatimaleki, 2014 BCSC 2060: \$140,000 award;
- Martin v. Frederickson, 2021 BCSC 1424: \$120,000 award;
- St. Jules v. Cawley, 2021 BCSC 1775: \$200,000 award; and
- Ferguson v. Watt, 2018 BCSC 1587: award \$140,000.

Defendant's Position on Non-Pecuniary Damages

[39] The Defendant does not dispute that Ms. Sidhu was injured by the Accident he caused and is entitled to non-pecuniary damages. However, counsel for the Defendant submits that the amount claimed by Ms. Sidhu is excessive, for three reasons.

[40] First, the Defendant submits that Ms. Sidhu had certain conditions that pre-existed the Accident. In particular, she injured her right knee in another motor vehicle accident in 2006 or 2007. Ms. Sidhu also injured her right shoulder in 2018 while trying to assist a heavy patient who had fallen. In addition, Dr. Paramonoff opined that there is degenerative disc disease in Ms. Sidhu's spine that likely pre-dated the Accident. Accordingly, the Defendant submits that the Court should deduct 10% from any award of non-pecuniary damages to reflect the risk that Ms. Sidhu's pre-existing conditions would have caused her symptoms even if the Accident had not occurred. The Defendant also says that such a 10% deduction should be applied to the Plaintiff's awards for future loss of earning capacity and cost of future care as well.

[41] Second, the Defendant submits that Ms. Sidhu has had significant improvement of her symptoms caused by the Accident, as demonstrated most clearly by the Plaintiff's return to work. Counsel for the Defendant also urges the Court to prefer Dr. Paramonoff's expert opinion on Ms. Sidhu's prognosis to that of Dr. Cameron as only the former is a physiatrist.

[42] Third, the Defendant submits that notwithstanding the Accident, Ms. Sidhu continued to get along well with her daughter Ms. Gill and her friend Ms. Getz. The Defendant also disputes that the Accident caused the breakdown of Ms. Sidhu's relationship with Mr. Johal. Therefore, the magnitude of Ms. Sidhu's pain and suffering linked to changes in her personal relationships caused by the Accident is much less than claimed.

[43] As for quantum, the Defendant relies on four decisions in support of his position on non-pecuniary damages:

- Eaton v. Riddell, 2020 BCSC 734: \$75,000 award;
- Abraha v. Suri, 2019 BCSC 1855: \$70,000 award;

- *Naiodro v. Gill*, 2019 BCSC 1857: \$70,000 award; and
- *Wolford v. Shlakoff*, 2017 BCSC 2043: \$65,000 award.

While he does not propose a specific amount in respect of Ms. Sidhu's award, counsel for the Defendant suggests that a range of \$70,000 to \$80,000 would be appropriate.

Analysis of Non-Pecuniary Damages

- [44] I am satisfied that Ms. Sidhu's injuries were caused by the Accident and that they have significantly impacted her enjoyment of life. I note, in particular, the lengthy fifteen-month period following the Accident during which Ms. Sidhu was off work, largely confined to her home, suffering debilitating pain, depression, financial worries, and personal indignities. While she was able to return to work in May 2020, she was no longer able to perform her functions as easily and competently as she did prior to the Accident. Ample factual evidence with respect to Ms. Sidhu's personal circumstances prior to and following the Accident was provided to the Court by Ms. Sidhu herself, Ms. Gill, Ms. Getz, Mr. Toth, and Ms. Earle, and it was not undermined in cross-examination.
- [45] I disagree with counsel for the Defendant that there were pre-existing injuries that warrant a 10% reduction in respect of any of Ms. Sidhu's awards. It is true that Ms. Sidhu experienced a car accident in or around 2006 or 2007. However, it caused an injury to her knee which is not a part of the body which Ms. Sidhu now claims to have been injured further to the Accident. As for her 2018 right shoulder injury, I accept Ms. Sidhu's evidence that she had recovered from it after taking four weeks off work and attending physiotherapy. In any event, it is clear that neither of these injuries were impeding Ms. Sidhu from working or being socially and physically active prior to February 2019.
- [46] With respect to quantum, I have reviewed the cases that counsel for the parties referred to me for assistance in determining an appropriate amount for non-pecuniary damages. While such cases certainly provide helpful guidance, it is well established that the Court must ensure that its assessment of a plaintiff's injuries is done by reference to that individual's own circumstances, which obviously will never be identical to those of another litigant: *Schubert v. Knorr*, 2008 BCSC 939 at para. 97. That said, I found that two of the cases cited by counsel for the Plaintiff involve factual backgrounds that are remarkably comparable to that in the case at bar: *Khosa and Martin*. Both of these actions were brought by LPNs who were similar in age to Ms. Sidhu at the time of their respective accidents, suffered similar injuries, and were off work for relatively long periods of time. These plaintiffs were awarded \$140,000 and \$120,000 in non-pecuniary damages, respectively. In my view, a similar award is appropriate for Ms. Sidhu to compensate her for the pain and suffering caused by the Accident.

- [47] That said, in both *Khosa* and *Martin*, the non-pecuniary damage awards did not account for these plaintiffs' diminished ability to perform housekeeping. Instead, they were each awarded a separate amount for loss of housekeeping capacity. While counsel for Ms. Sidhu are also advancing a stand-alone claim for diminished housekeeping capacity in this case, in my view, this is more properly considered a non-pecuniary loss in accordance with the Court of Appeal's guidance set out in *Kim v. Lin*, 2018 BCCA 77 at paras. 33 and 34:
- [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 [v. Bains]*, 2016 BCCA 374, "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.
- [34] Whichever option a court chooses, when valuing these different types of awards, courts should pay heed to the differing rationales behind them. In particular, when valuing the pecuniary damages for the loss of capacity suffered by a plaintiff, courts may look to the cost of hiring replacement services, but they should ensure that any award for that loss, and any deduction to that award, is tied to the actual loss of capacity which justifies the award in the first place.
- [48] In particular, I have considered Ms. Sidhu's evidence in relation to her ability to do housework that she provided herself, along with that of Ms. Gill and Ms. Getz. I find that it shows that Ms. Sidhu has been generally taking care of her household tasks with some difficulty, as opposed to relying on family members, friends, or professional cleaning services. There was also no evidence that Ms. Sidhu's approach to housekeeping is likely to change now that she has moved to Kelowna. As such, I find that Ms. Sidhu's loss is more in keeping with increased pain and suffering as opposed to a true loss of capacity.
- [49] Accordingly, I find that a fair amount that would compensate Ms. Sidhu for all of her pain, suffering, and loss of enjoyment of life caused by the Accident, including that which relates to housework, is \$150,000.

Issue 3: Past Loss of Earning Capacity

Legal Principles

- [50] As with non-pecuniary damages, there is no dispute regarding the legal principles that apply to the calculation of damages in relation to an injured plaintiff's past loss of earning capacity from the time of the accident to the time of trial. Such calculations are challenging because they necessarily involve a consideration of hypothetical events in order to answer a speculative question, namely, what income would the plaintiff have earned but for the

injuries that resulted from the accident? The burden of proof to demonstrate these hypothetical events lies on the plaintiff, but the standard of proof is the "real and substantial possibility" threshold rather than the more onerous "balance of probabilities" standard: Grewal v. Naumann, 2017 BCCA 158 at paras. 48 and 49; Dunbar v. Mendez, 2016 BCCA 211 at para. 21; Perren v. Lalari, 2010 BCCA 140 at para. 30; and Rousta v. MacKay, 2018 BCCA 29 at para. 17.

- [51] Furthermore, it should also be noted that s. 98 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231 provides that a plaintiff is entitled to recover damages for income loss suffered after the accident and prior to the date of trial, not more than the net income loss they suffered in that period as a result of the accident.

Plaintiff's Position on Past Loss of Earning Capacity

- [52] Counsel for the Plaintiff hypothesize that if Ms. Sidhu had not been injured in the Accident, she would essentially have continued to work much as she had been prior to the Accident, right up until the September 2021 trial. In particular, they say that she would generally have continued to work full-time at Tabor, while also taking on supplemental casual shifts with other employers such as Eden and Bevan when permitted to do so. However, during the periods she would have been prohibited from working in multiple facilities as a result of COVID-19 restrictions, Ms. Sidhu would have made up these casual shift hours by working overtime at Tabor.
- [53] Counsel for the Plaintiff submit that the difference between Ms. Sidhu's actual gross earnings (including employment insurance benefits) between the dates of the Accident and trial, and what Ms. Sidhu would hypothetically have earned had she not been injured is \$78,658. They calculate this amount as follows:

Period

Hypothetical Income

But For the Accident

Actual Income

Lost Earnings

Feb. 3, 2019 to Dec. 31, 2019

\$74,840

\$24,069

\$50,711

Jan. 1, 2020 to Dec. 31, 2020

\$77,086

\$52,726

\$24,360

Jan. 1, 2021 to Aug. 31, 2021

\$52,933

\$49,346

\$3,587

TOTAL

\$204,859

\$126,141

\$78,658

[54] However, counsel for the Plaintiff acknowledge that this amount of lost earnings must be reduced to reflect the fact that it would be subject to income tax at an average rate of 18.5%. Accordingly, Ms. Sidhu claims that she is entitled to a total award of \$64,033 to compensate her for her net past loss of earning capacity.

Defendant's Position on Past Loss of Earning Capacity

[55] Counsel for the Defendant accepts in principle that the Plaintiff experienced a loss of income between the dates of the Accident and trial, but submits that the only portion the Plaintiff has proven is in relation to her missed work at Tabor. The Defendant says that there was insufficient evidence regarding overtime hours available after the Accident or overtime opportunities taken by Ms. Sidhu prior to the Accident. Furthermore, the Defendant submits that from 2020 onwards, the Plaintiff cannot prove a real or substantial possibility that she would earned income from care homes other than Tabor because of the COVID-19 restrictions on work at multiple care facilities.

[56] With respect to quantum, the Defendant submits that the Plaintiff's past loss of earning capacity from the date of the Accident to the date of trial in 2019, 2020, and 2021 was \$40,000.00, \$2,831.13, and \$0.00 respectively. The precise basis for these calculations was not clearly explained, however. That said, it appears that the Defendant broadly proposes that Ms. Sidhu's 2018 employment income from Tabor of \$53,557.13 should be used as a proxy for her hypothetical annual earnings but for the Accident from 2019 to 2021, and that Ms. Sidhu's actual earnings from Tabor in 2019 to 2021 are to then be deducted from this amount in order to derive the total compensable loss.

Analysis of Past Loss of Earning Capacity

- [57] On the basis of the evidence presented, I am of the view that Ms. Sidhu has shown that there is a real and substantial possibility that, but for her injuries caused by the Accident, she would have continued to work at a similar pace performing similar functions as she did prior to the Accident, until the date of trial. Specifically, I accept that so long as it was permissible for LPNs to work in more than one care facility, Ms. Sidhu would have earned full-time income from Tabor and part-time casual income from Eden and Bevan. Furthermore, I also accept that once COVID-19 restrictions precluded work at multiple care facilities in 2020, Ms. Sidhu would have compensated by seeking and obtaining overtime work from Tabor. Evidence regarding the availability of such overtime was provided by Ms. Earle. She testified that overtime is always available at Tabor because of staff illnesses and shortages, and that sometimes Tabor nurses will work up to 16-hour days.
- [58] In addition, I accept counsel for the Plaintiff's proposed calculation of the quantum of the lost income, as set out in the table at paragraph 53 above. Ms. Sidhu's hypothetical "but for the Accident" income is based on her 2018 total income of \$72,661 increased by 3% each year to reflect general increases in income that LPNs received pursuant to the BC Nurses' Union wage grid, which, in my view, is a cogent supposition. I also accept the amounts set out for Ms. Sidhu's actual income for the period, as well as the proposed adjustment for income tax, as being substantiated by the evidence tendered.
- [59] Accordingly, I find that the total appropriate award of damages for Ms. Sidhu's past loss of earning capacity is \$64,033.

Issue 4: Future Loss of Earning Capacity

Legal Principles

- [60] The principles applicable to the assessment of future loss of earning capacity damages are similar to those in relation to past loss of income, although the exercise involves the added complication of requiring an examination of two hypothetical futures: one in which a plaintiff is assumed to be living with the aftermath of the injuries caused by a defendant, and another in which a plaintiff is assumed to be living as if these injuries had never been sustained. As stated by the Court of Appeal in *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32:
- [32] An award for future loss of earning capacity thus represents compensation for a pecuniary loss. It is true that the award is an assessment, not a mathematical calculation. Nevertheless, the award involves a comparison between the likely future of the plaintiff if the accident had not happened and the plaintiff's likely future after the accident has happened: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 11; *Ryder v. Paquette*, [1995] B.C.J. No. 644 (C.A.) at para. 8.

[61] The Court of Appeal also recently had occasion to prescribe a three-step test for assessing future loss of earning capacity in *Rab v. Prescott*, 2021 BCCA 345, at para. 47. The questions to be asked at these three steps are:

- 1) is there a potential future event that could lead to a loss of earning capacity?
- 2) is there a real and substantial possibility that the future event in question will cause a pecuniary loss? and
- 3) if there is a such a possibility, what is its value?

[62] Valuation of the loss can be done using either the "earnings approach" or the "capital asset approach": *Brown v. Golaiv* (1985), 26 B.C.L.R. (3d) 353 (S.C.) at para. 7; *Perren* at paras. 11-12. The earnings approach involves a calculation of the present value of a plaintiff's annual loss of income over the remaining years of employment, and is more appropriate when the loss is more easily measurable: *Westbroek v. Brizuela*, 2014 BCCA 48. The capital asset approach involves consideration of a person's lost ability to work in a certain position in their field of work as the loss of an income earning asset, and is more appropriate where the loss is less easily measurable: *Park v. Targonski*, 2017 BCCA 134 at para. 123. Under either approach, the plaintiff must prove that there is a "real and substantial possibility" of various future events leading to an income loss: *Perren*, at para. 33, and damages are assessed, not calculated: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18.

Plaintiff's Position on Future Loss of Earning Capacity

[63] Counsel for the Plaintiff propose that the capital asset approach be used to calculate Ms. Sidhu's future loss of earning capacity. Furthermore, they provide two alternative hypotheses regarding what Ms. Sidhu's future work life would have looked like had the Accident never taken place.

[64] The first is that, in or around the time of the trial in September 2021, Ms. Sidhu would have become a Registered Nurse ("RN"), earning \$57.38 per hour. The second is that Ms. Sidhu would have continued working as an LPN and provided some private nursing care, earning \$32.98 per hour. For both scenarios, counsel for the Plaintiff posit that Ms. Sidhu would have worked an average of 52 hours per week, 48 weeks per year, until her retirement twenty-five years later when she turns 65.

[65] Counsel for the Plaintiff argue that the probability of the first scenario (Ms. Sidhu becomes an RN) coming to pass is 25%, while that of the second scenario (Ms. Sidhu remains an LPN) is 75%. Accordingly, they propose that a weighted average hourly wage of \$39.08 $[(\$57.38 \times 0.25) + (\$32.98 \times 0.75)]$ be used for the assessment of her hypothetical future earnings had there been no accident. On the assumption that Ms. Sidhu would be working 2,496 hours per year (52 hours per week x 48 weeks), her annual gross earnings would be \$97,543.68.

- [66] Counsel for the Plaintiff then submit that pursuant to s. 56 of the Law and Equity Act, R.S.B.C. 1996, c. 253, and the Law and Equity Regulation, B.C. Reg. 352/81, as amended by B.C. Reg. 74/2014, the discount rate that should be used to calculate the present value of future earnings is 1.5%. Furthermore, they note that the Civil Jury Instructions multiplier for a 25-year period at 1.5% is 20.7196. Applying this multiplier to the proposed \$97,543.68 estimate for Ms. Sidhu's hypothetical gross annual future income, they argue that the total value of Ms. Sidhu's capital asset but for the Accident is \$2,019,201.
- [67] Turning to the assessment of the extent to which this capital asset has been diminished by the Accident, counsel for the Plaintiff submit that this should be done by reference to a likely reduction of Ms. Sidhu's vocational hours to 25 to 30 per week, representing a loss of 42.3% to 51.9% of capacity. Counsel for the Plaintiff also submit that a number of contingencies could further alter this calculation, including the possibility that her condition may improve or worsen; that the availability of treatment options could affect her tolerance for working, either positively or negatively; and that her retirement may occur sooner or later than age 65. Counsel for the Plaintiff ultimately conclude by asserting that it would be fair to find that the \$2,019,201 value of Ms. Sidhu's future earning capacity has been diminished by approximately 40%. Accordingly, the Plaintiff seeks an award of \$800,000 for this loss.

Defendant's Position on Future Loss of Earning Capacity

- [68] While counsel for the Defendant agrees that the capital asset approach is appropriate in this case, he submits that counsel for the Plaintiff's hypothesis regarding Ms. Sidhu's future earnings had there been no accident is overly optimistic, while their hypothesis regarding Ms. Sidhu's actual future earnings is overly pessimistic.
- [69] In particular, the Defendant says that it is highly unlikely that Ms. Sidhu would have become an RN given that she never pursued registered nursing studies beyond looking into the availability of online courses. Further, the Defendant notes the evidence of Ms. Earle suggesting that LPNs who work at care homes often retire earlier than age 65 because of the physical nature of the job. Most significantly, the Defendant says that Ms. Sidhu's claim to have a diminished ability to work as an LPN is undermined by the fact that she was recently able to obtain a new LPN job in Kelowna for the same rate of pay she earned at Tabor after discussing with her employer her limitations.
- [70] The Defendant, nevertheless, concedes that Ms. Sidhu is entitled to an award for future loss of earning capacity of \$60,000, representing the equivalent of Ms. Sidhu's one year's salary. The Defendant says that this will adequately compensate Ms. Sidhu for missed work due to flare ups until she retires between the ages of 55 and 65.

Analysis of Future Loss of Earning Capacity

- [71] Beginning with the first step of the three-step analysis prescribed by the Court of Appeal in Rab, it is clear from evidence tendered and the opinions expressed by all four experts that there is no dispute that Ms. Sidhu's chronic injuries suffered as a result of the Accident have caused a future loss of earning capacity. What is in dispute are the two remaining steps, namely, whether there is a real and substantial possibility that Ms. Sidhu's chronic injuries will cause a pecuniary loss, and what its value is. Resolution of that dispute requires a consideration of the Plaintiff's hypothetical future work trajectories.
- [72] In my view, Ms. Sidhu has not established that there is a real and substantial possibility that, but for the Accident, she would have become an RN. Ms. Sidhu did testify that she planned to wait for her daughter to graduate, after which she would attend nursing school. However, she provided no evidence of having taken any actual steps to enroll in a registered nursing program, other than to find out that Athabasca University offers an online two-year RN bridge program for LPNs. No explanation was provided for this inaction, which is surprising given Ms. Gill's testimony that she was three years out of high school when the Accident happened. Therefore, I do not accept counsel for the Plaintiff's argument that a damage award for lost earning capacity must factor in the chance that Ms. Sidhu might potentially have become an RN but for the Accident. In other words, there can be no award for future loss of RN earnings in Ms. Sidhu's case.
- [73] On the other hand, I find that Ms. Sidhu has established a real and substantial possibility that, but for the Accident, Ms. she would have continued to seek out and maintain employment as a full-time LPN at a senior care facility, while supplementing this income either through casual shifts at other facilities, or with overtime at her primary employer. This finding is justified on the same basis as my earlier one in relation to past loss of earning capacity. Accordingly, I accept that there is a real and substantial possibility that Ms. Sidhu's chronic injury may cause her a pecuniary loss in the future by preventing her from pursuing above full-time LPN employment as she did prior to the accident.
- [74] Turning to the valuation of this possible future loss, I accept counsel for the Plaintiff's hypothesis that Ms. Sidhu would have worked an average of 52 hours per week with four weeks worth of vacation per year. At such a pace, she would have been working 2,496 hours per year. While this is a high number, I find it to be reasonable given Ms. Sidhu's testimony regarding how hard working she has been throughout her life prior to the Accident. Further, I also accept the Plaintiff's submission regarding the valuation of her capital asset but for the Accident, although it must be based solely on the expected earnings of an LPN, not a weighted average that factors in the possibility of earning RN wages. Accordingly, an hourly wage of \$32.98 will be used along with the multiplier proposed by the Plaintiff. That amounts to a capital asset valuation of \$1,705,597.69 (\$32.98 per hour x 2,496 hours per year x 20.7196 multiplier).

- [75] What remains is the determination of the loss to that earning capacity which has been suffered by the Plaintiff by reason of the Accident. In my view, a fair and reasonable amount is one that approximates a 20% reduction of this capacity.
- [76] Specifically, a 20% reduction reflects my assessment that over the course of her working career, Ms. Sidhu will indeed eventually have to reduce her work hours to a less than full-time basis to reflect her gradual inability to maintain the busy work schedule that she followed prior to the Accident, although not immediately and not to the significant extent posited by counsel for the Plaintiff. Indeed, their hypothesis that Ms. Sidhu will only be working 25 to 30 hours per week from now until she retires is belied by the evidence of Ms. Sidhu's actual working experience since her post-Accident return to Tabor in 2020. Further, the use of a 20% figure also appropriately accounts for the applicable contingencies, particularly the possibility that there will be mild to moderate symptom management improvement as posited by Dr. Paramonoff in her expert report.
- [77] For these reasons, the amount to be awarded to compensate Ms. Sidhu for her future loss of earning capacity is \$350,000.

Issue 5: Special Damages

Legal Principles

- [78] The notion of "special damages" refers to compensation that an injured person is entitled to recover for the reasonable out-of-pocket expenses incurred as a result of the accident: *X. v. Y.*, 2011 BCSC 944 at para. 281 and *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.) at para. 78.
- [79] A convenient summary of the principles applicable to the assessment of special damages was provided by Mr. Justice Basran in *Manhas v. Jaswal*, 2020 BCSC 586 at para. 86, and is reproduced here:

[86]

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

Plaintiff's Position on Special Damages

- [80] The Plaintiff claims \$8,933.41 in special damages that are supported by Ms. Sidhu's testimony, receipts and other documents. This claim relates to physiotherapy, prolotherapy, prescriptions, mileage, parking, and moving expenses that she incurred. With respect to mileage, counsel for the Plaintiff argue that the per kilometer rate should be set at 60 cents rather than the standard 50 cents to account for inflation.
- [81] Ms. Sidhu also claims a further \$520 worth of special damages for expenses that she testified to having incurred, but which were unsupported by documentary evidence. The expenses in question were a mattress (\$295), TENS Machine pads (\$200), and over-the-counter medications (\$25).
- [82] The Plaintiff's total special damages claim therefore amounts to \$9,453.41.

Defendants' Position on Special Damages

- [83] Counsel for the Defendant accepts that a portion of the Plaintiff's claim for special damages is well-founded. However, he expressly objected to several aspects of the claim.
- [84] First, he noted that one of the supporting prolotherapy invoices that was tendered related to another individual whose last name is also Sidhu. Counsel for the Plaintiff conceded that this was done in error. The \$9,453.41 total claim figure mentioned above reflects the removal of this item.
- [85] Second, counsel for the Defendant noted that Ms. Getz testified that she drove Ms. Sidhu to five prolotherapy appointments, and submitted that mileage cannot be claimed for those trips.
- [86] Third, he drew my attention to the Court's recent decision in *Choy v. Stimpson*, 2021 BCSC 1020 which expressly rejected counsel for the Plaintiff's argument that the per kilometer mileage compensation amount should be increased, and argued that it ought to be followed in the case at bar.

Analysis of the Plaintiff's Claim for Special Damages

- [87] I am generally satisfied that the Plaintiff's claim for special damages founded upon both the testimony of Ms. Sidhu and her supporting documentary evidence has been established on a balance of probabilities, in terms of causation, reasonableness, and quantum. However, there are two exceptions to this.

[88] The first is in relation to Ms. Sidhu's claim for compensation for her moving expenses. I do not accept that her choice to uproot and move to Kelowna two-and-a-half years after the Accident has a sufficient causal link to the Defendant's negligence. I also do not accept that, but for Ms. Sidhu's injuries, she would have chosen not to have recourse to professional movers, given her age at the time of her relocation. Therefore, Ms. Sidhu's moving expenses claim of \$1,367.65 will not be allowed.

[89] The second is in relation to the mileage claim. I agree with counsel for the Defendant that Ms. Sidhu cannot claim compensation for mileage expenses that were incurred by friends, as opposed to by Ms. Sidhu herself. Accordingly, the claim in relation to the five medical appointments to which Ms. Getz testified she drove Ms. Sidhu is not accepted. Furthermore, I share Mr. Justice Edelmann's view expressed in Choy at para. 39 that where the actual costs of travel are not established, 50 cents per kilometer remains a reasonable approximation of this cost. As a result, only \$2,932.60 of Ms. Sidhu's \$3,849.12 mileage claim is accepted (i.e., a reduction of \$916.52).

[90] In sum, the Plaintiff is awarded \$7,169.24 in special damages.

Issue 6: Cost of Future Care

Legal Principles

[91] A clear summary of the principles applicable to the assessment of cost of future care claims can be found in Madam Justice Adair's judgment in *Golkar-Karimabadi v. Bush*, 2021 BCSC 990 at para. 107:

An award for cost of future care is based on what is reasonably necessary, on medical evidence, to promote the mental and physical health of the claimant. The award must (1) have medical justification, and (2) be reasonable. The medical necessity of future care costs may be established by a health care professional other than a physician, such as an occupational therapist, if there is a link between a physician's assessment of pain, disability and recommended treatment, and the health care professional's recommended care item. See *Gao v. Dietrich*, 2018 BCCA 372, at paras. 69-70. No award is appropriate for costs that a plaintiff would have incurred in any event: *Shapiro v. Dailey*, 2012 BCCA 128, at paras. 51-55. Moreover, future care costs must be likely to be incurred by the plaintiff. The onus is on the plaintiff to show that there is a reasonable likelihood that she will use the suggested services: see *Lo v. Matsumoto*, 2015 BCCA 84, at para. 20.

Plaintiff's Position on Cost of Future Care

[92] The Plaintiff seeks \$115,000 for the cost of her future care over the next 35 years, when she will turn 75. Ms. Sidhu's specific claims are for six items, annualized as follows:

- Registered massage therapy (12 sessions per year):

\$1,080

- Physiotherapy/chiropractic therapy (12 sessions per year):

\$1,080

- Prolotherapy (per year):

\$700

- Pain medications (per year):

\$100

- Counselling (12 sessions per year):

\$1,440

- Mileage:

\$200

[93] The annual cost of these six items is \$4,600. Counsel for the Plaintiff submit that pursuant to s. 56(2)(b) of the Law and Equity Act, and the Law and Equity Regulation, the discount rate that should be used to calculate the present value of the cost of this future care is 2.0%. Furthermore, the Civil Jury Instructions multiplier for a 35-year period at 2% is 24.9986. Applying this multiplier to the \$4,600 annual cost amounts to a rounded total of \$115,000.

Defendant's Position on Cost of Future Care

[94] Counsel for the Defendant submits that the Plaintiff has only proven an entitlement to a total award for cost of future care of \$4,340, in respect of the following amounts:

- Registered massage therapy (12 sessions total):

\$1,080

- Physiotherapy/chiropractic therapy (18 sessions total):

\$1,620

- Prolotherapy:

\$0

- Pain medications (over the next two years only):

\$200

- Counselling (over the next year only):

\$1,440

- Mileage:

\$0

Analysis of the Plaintiff's Claim for Costs of Future Care

- [95] On my review of the trial record, I tend to agree with the Defendant that only a fraction of the Plaintiff's cost of future care claim is medically justified and reasonable. My particularized assessment of each specific item claimed is as follows.
- [96] First, the clearest medical evidence presented with respect to the necessity of massage therapy for Ms. Sidhu's future care was provided by Dr. Paramonoff. In her opinion, it is reasonable for Ms. Sidhu to have access to massage therapy for symptom relief on a time-limited basis to help manage pain flares. In Dr. Paramonoff's view, however, such flares related to the accident will decrease over time. Accordingly, she concluded that up to six massage treatments per year for the next two years would be reasonable. While counsel for the Plaintiff attempted to challenge her assessment in cross-examination, Dr. Paramonoff stood by her recommendation and I find it to be reasonable. As the agreed cost of twelve massage therapy sessions is \$1,080, an award in this amount shall be granted.
- [97] Second, Dr. Paramonoff was the only expert who specifically opined on the extent of Ms. Sidhu's need for a physiotherapist or kinesiologist to provide her care in the future. Dr. Paramonoff recommended that Ms. Sidhu have access to a further 18 sessions with such a professional over the next one or two years, to be resorted to on a decreasing frequency basis. The parties agree that to do so would cost \$1,620, and therefore that amount will be awarded as well.
- [98] Third, none of the experts who testified expressly recommended that Ms. Sidhu should have recourse to prolotherapy in the future. In the absence of evidence of its continued medical justification, I decline to make an award in respect of such treatments.
- [99] Fourth, Dr. Paramonoff opined that it is reasonable for Ms. Sidhu to continue to use pain medication into the future, and it is Dr. Cameron's view that her need for such medicine will be lifelong. Accordingly, I accept counsel for the Plaintiff's submission that present value compensation reflecting an anticipated cost of \$100 per year using the 35-year multiplier would be appropriate. This equates to an award of \$2,500.
- [100] Fifth, Dr. Waisman recommended that it would be beneficial for Ms. Sidhu to receive psychotherapy for one year. Accepting counsel for the Plaintiff's unchallenged assertion that the cost of such annual treatment is \$1,440, an award in that amount will be issued.
- [101] Sixth, I accept that Ms. Sidhu will have to incur mileage expenses in order to attend the massage therapy, physiotherapy, and psychotherapy treatments that I have found to be medically justified over the next two years. I also accept counsel for the Plaintiff's estimate that the approximate cost of such travel is \$200 per year. Accordingly, \$400 will be awarded for mileage.

[102] In sum, the Plaintiff is awarded a total of \$7,040 for cost of future care.

Issue 7: Loss of Housekeeping Capacity

[103] As noted earlier, counsel for the Plaintiff presented a stand-alone claim for Ms. Sidhu's diminished housekeeping capacity. The amount claimed is \$45,000. However, counsel did not provide submissions as to why this particular amount would be appropriate. Furthermore, they led no evidence that could reasonably be used to calculate the present value of this loss.

[104] Ultimately, however, this is of no import given my previous conclusion that it is more appropriate to consider this claim as part of Ms. Sidhu's non-pecuniary loss. Accordingly, there will be no separate award of damages under this heading.

CONCLUSION

[105] For the reasons set out above, I award a total of \$578,242.24 in damages to the Plaintiff, under the following headings:

· Non-pecuniary damages:

\$150,000.00

· Past loss of earning capacity:

\$64,033.00

· Future loss of earning capacity:

\$350,000.00

· Special damages:

\$7,169.24

· Cost of future care:

\$7,040.00

Total:

\$578,242.24

COSTS

[106] If the parties are unable to agree to costs, they are at liberty to make submissions in writing through Supreme Court Scheduling. If necessary, the schedule for the exchange of such submissions shall be as follows: the Plaintiff's submissions are to be filed within two weeks of the date of these reasons for judgment; the Defendant's response thereto is to be filed no later than two weeks after receipt of the Plaintiff's submissions, and the Plaintiff's reply, if any, shall be filed no later than one week after receipt of the Defendant's submissions.

"Brongers J."

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