

CANADA / JUDGMENT

Singh v De Santis

2022 BCSC 35

COURT

Supreme Court of British Columbia

DECIDED

12 January 2022

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

2022 BCSC 35 Singh v. De Santis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Singh v. De Santis,

2022 BCSC 35

Date: 20220112

Docket: M143429

Registry: Vancouver

Between:

Parvir Kaur Singh

Plaintiff

And

Sarah Lynn De Santis

Defendant

Before: The Honourable Mr. Justice Majawa

Reasons for Judgment

Counsel for the Plaintiff:

M. Randhawa

K.S. Johal

Counsel for the Defendant:

D. Devine

S. Ali

Place and Date of Trial:

Vancouver, B.C.

September 27-29, 2021 and

October 1, 4-8, 12-15, 2021

Place and Date of Judgment:

Vancouver, B.C.

20220112

Table of Contents

INTRODUCTION. 3

CREDIBILITY OF THE PLAINTIFF AND LAY WITNESSES. 4

FACTS AND SUMMARY OF EVIDENCE. 10

Prior to the Accidents. 10

The Accidents. 12

After the Accidents. 13

Employment 14

Treatments. 17

Social, Recreational and Housekeeping Activities. 21

EXPERT MEDICAL AND CAPACITY EVIDENCE. 23

Oral Medicine and TMJ Disorder Experts. 23

Physical Medicine and Neurology Specialists. 26

Functional Capacity Evaluation. 30

CAUSATION. 32

DAMAGES. 33

Non-Pecuniary Damages. 33

Loss of Housekeeping Capacity. 37

Loss of Earning Capacity. 38

Past Loss of Income Earning Capacity. 39

Loss of Future Income Earning Capacity. 41

Special Damages. 49

Cost of Future Care. 55

CONCLUSION. 61

COSTS. 62

INTRODUCTION

- [1] The plaintiff, Parvir Singh, was involved in two motor vehicle accidents in 2012. The first accident occurred on June 23, 2012, when she was 22 years old and the second accident occurred on December 7, 2012, just after her 23rd birthday (the "First Accident" and the "Second Accident", respectively). The First Accident occurred at an intersection where Ms. Singh's vehicle was struck from the side and the Second Accident occurred when Ms. Singh's vehicle was rear-ended by another vehicle. Ms. Singh's vehicles were declared a total loss on both occasions and the defendants have admitted liability for both of the accidents.
- [2] Ms. Singh claims that she suffered various injuries to her neck, back, hip, and jaw as a result of the First Accident. The injuries are also claimed to have caused her headaches, anxiety, and sleep disturbances. She did not suffer any new injuries in the Second Accident; however, she claims that the injuries she suffered in the First Accident were aggravated by the Second Accident. At the time of trial, Ms. Singh claims that she continues to experience pain on a frequent basis. It has been nearly ten years since the accidents and Ms. Singh is of the view that she will not likely recover any further. Ms. Singh seeks damages for pain and suffering, loss of earning capacity (both past and future), special damages, loss of housekeeping capacity, and the cost of future care.
- [3] While the defendants concede that Ms. Singh suffered some injuries as a result of both accidents, they argue that the injuries were minor and have had a minimal effect on Ms. Singh's enjoyment of life since the accidents. They argue that Ms. Singh is not a reliable witness and that this Court should treat her description of her symptoms and their impact on her recreational and vocational activities with great caution. Thus, Ms. Singh's credibility is an issue in this case.
- [4] The parties are very far apart on the issue of quantum: the plaintiff's total claim is approximately \$850,000. The defendants suggest that Ms. Singh is only entitled to an award of non-pecuniary damages in the amount of \$50,000 plus a moderate amount of special damages. I have determined that Ms. Singh is entitled to a total award in the amount of \$273,217. The following reasons detail my determination of the quantum of damages in this personal injury action.

CREDIBILITY OF THE PLAINTIFF AND LAY WITNESSES

- [5] The Court heard evidence from the plaintiff and two members of her family: her husband, Satbir Gill, and her sister, Manvir Singh. The plaintiff also tendered lay evidence from her family physician, Dr. Smeeta Desai-Renchod, and Dr. Marcia Fleming, who administered Botox treatments to the plaintiff beginning in 2016. The plaintiff also called a number of other witnesses including various treating practitioners, the majority of whom testified as to observations made and treatments provided during the plaintiff's many therapeutic appointments. Harinder Bains, a lawyer for whom the plaintiff worked as a legal assistant and paralegal between 2016 and 2021, also testified as to his observations of the plaintiff in the workplace.
- [6] The defendants called two lay witnesses. Keely Castronuovo, the owner of a beauty business called "Lash Out Loud". The plaintiff was a client and a student of Ms. Castronuovo's. The defendants also called Alexandra Severyn. Ms. Severyn hired the plaintiff as a promotional model and as a member of the BC Lions professional football team's dance squad known as the "Felions Dance Team" (the "Felions").
- [7] While the defendants admit that the plaintiff suffered soft tissue injuries arising from the accidents, they take the position that the plaintiff is an unreliable witness in respect of the self-reported severity of her pain and the impact the injuries have had on her functionality. The defendants rely on social media posts made by the plaintiff and contrast these posts and the lifestyle they purportedly depict with the reports that the plaintiff made to her various medical treatment professionals as being illustrative of her lack of reliability as a witness.
- [8] In essence, the defendants submit that Ms. Singh has exaggerated her pain and say that her lifestyle in the nine years since the accidents are inconsistent with the plaintiff's reported "severe" and "moderate" pain. The defendants characterized her lifestyle since the accidents as being normal and that she was, as the saying goes, "living the life of Riley". In contrast, Ms. Singh argues that her life was not at all normal, that she lived with severe to moderate pain on a regular basis, and that although she has continued to live her life, it has been negatively affected by the injuries she suffered from both accidents.
- [9] I find that the plaintiff generally provided evidence in a candid and forthright manner and that she was not combative, argumentative, or nonresponsive in cross-examination. However, I do have some concerns with her ability to reliably describe the pain that she has suffered and the effect that the injuries have had on her life since the accidents.
- [10] I agree with the defendants that it is somewhat difficult to reconcile Ms. Singh's evidence that she was experiencing severe to moderate pain on a daily basis with the lifestyle she was leading at the time. As I expand upon later in these reasons, during this period, Ms. Singh worked full-time as a legal assistant/paralegal, attended school, and worked as a promotional model at various events. She also travelled to Toronto, Las Vegas, and New York for various events, enjoyed many evenings out with friends in Vancouver, and joined the Felions.

- [11] While I accept that pain is a subjective experience, in my view, Ms. Singh's lifestyle is more consistent with someone experiencing mild to moderate pain than someone who was experiencing severe pain at the frequency described by Ms. Singh. Ms. Singh's understanding of severe pain is pain that is almost debilitating and close to the worst kind of pain imaginable. She told the expert physiatrist that her pain got as bad as a nine out of ten.
- [12] At times, the severity of the symptoms Ms. Singh testified to suffering from was directly inconsistent with the lifestyle she was leading. For example, in April 2014, Ms. Singh reported to her psychologist, Dr. Tigurson Young, that in the week leading up to her appointment she was bothered by numbness and tingling, a wobbliness in her legs, and symptoms of anxiety "to the point that she could barely stand it". This statement is difficult to reconcile given that the week before that appointment, Ms. Singh worked as a promotional model, full-time, at an automobile show for the entire week which required her to stand for hours and engage with the public in a friendly and upbeat manner.
- [13] Manvir Singh, the plaintiff's sister, provided evidence of her observations of the plaintiff since the accidents. Manvir Singh was in an excellent position to provide such evidence as she lived with the plaintiff from before the accidents until the plaintiff relocated to California to live with Mr. Gill in February 2021. During this time, Manvir Singh saw the plaintiff on a daily basis except for eight or nine months during 2015 and 2016 and a few months in 2019 when Manvir Singh was out of the country.
- [14] I found Manvir Singh to be a reliable and credible witness. She described observing the plaintiff being in "discomfort" and rubbing her neck and shoulders. She did not use the word "severe" or any similar word to describe her observations of her sister and she did not describe any observations of the plaintiff suffering jaw pain. Manvir Singh did provide evidence that the plaintiff's temperament changed following the accidents which she attributed to the injuries. She also described her observations of the plaintiff's use of pain management tools and the plaintiff's reduction in her contribution to the household chores following the accidents. In my view, Manvir Singh's observations of the plaintiff are more consistent with the observations of an individual who has suffered more moderate injuries as opposed to severe.
- [15] Similarly, Mr. Gill's observations of the plaintiff are also more consistent with an individual who has suffered more moderate injuries. As previously mentioned, Mr. Gill is the plaintiff's husband. Before she moved to California to live with him in February 2021, the plaintiff visited Mr. Gill in California on an approximately monthly basis beginning in 2015. During these visits and the time since she moved to California, Mr. Gill observed the plaintiff to be in some pain and to have driving anxiety. He observed her sleep being disrupted and her taking over the counter pain medication on occasion. He also testified that Ms. Singh continues to do a considerable amount of work around the house but that she has to take breaks to do so. He did not reference any observations of the plaintiff's jaw pain. At no time did he use the word "severe" to describe the pain that he observed Ms. Singh to be in. His descriptions of Ms. Singh were not, in my view, consistent with someone who was suffering

the severe pain that she described.

- [16] I found Mr. Bains to be a reliable and credible witness. The plaintiff worked with Mr. Bains as a legal assistant/paralegal from 2016-2021. Mr. Bains had ample opportunity to observe Ms. Singh in the workplace. He testified that Ms. Singh would stretch her back, rub her shoulders, stand and walk around the office on a frequent basis throughout the work day. He also observed her using trigger point massage balls on her back on a frequent basis. He testified that he was content with Ms. Singh's work performance and that she completed her full duties. He confirmed that the plaintiff sometimes took long lunches, left early, or came in late which she told him was due to pain or injury related appointments she had to attend. Mr. Bains' testimony is more consistent with the observations of an individual who is suffering mild to moderate pain.
- [17] The defendants tendered an extensive amount of the plaintiff's social media posts in the period since the accidents from her Instagram and Twitter accounts. The defendants submit that Ms. Singh's social media posts are an accurate depiction of her life since the accidents and that they do not portray a person who is in the pain that the plaintiff reports having been in. Rather, in their submission, these social media posts depict a young woman who has had a normal life that was minimally, if at all, impacted by her injuries.
- [18] In my view, the plaintiff's social media posts are of limited utility when assessing Ms. Singh's credibility. While the Instagram posts do help to paint a visual picture of her life and, consequently, provide some insight into the manner in which she conducted herself since the accidents, the posts must be taken with a grain of salt. I accept that the plaintiff's social media posts are not necessarily an accurate reflection of her life, her mood, or her experience and that they were likely designed to highlight the more "upbeat" aspects of her life.
- [19] The defendants point to an Instagram post made in January 2015 where Ms. Singh stated that 2014 was the "best year of her life" despite the fact that this was the period that Ms. Singh reported being in moderate to severe pain on a daily basis. While this post does seem at odds with her testimony, as Ms. Singh stated in cross-examination, the contents of social media posts do not necessarily reflect reality and nor should they necessarily be taken literally. Ms. Singh explained that 2014 was a good year despite the injuries she suffered and this post was a way of trying to motivate herself at the beginning of the new year and to not focus on the negative aspects of the past year because doing so caused her anxiety. Ms. Singh candidly explained that the best years of her life would have been when she was younger before her father died when her family was still together.
- [20] Furthermore, it is not surprising that the plaintiff's Instagram posts show Ms. Singh smiling and having a good time at various events and on various trips. Many of the posts were of Ms. Singh when she was on various promotional modelling jobs. It was her job to be engaging, enthusiastic, and upbeat at these events. It's not surprising that she looked happy in these photographs. That is what was expected of her by the organizations that she was promoting.

In my view, her Instagram posts were an extension of her role as a promotional model, even when the posts were not directly related to that particular job. In essence, the plaintiff's Instagram posts were a form of self-promotion. It is not surprising that Ms. Singh does not appear to be struggling in these posts; but this does not mean that she was not struggling.

- [21] The Instagram posts do not directly contradict Ms. Singh. She did not try to hide the fact that she worked as a promotional model during this period, nor did she hide or downplay the physical demands of these jobs. Ms. Singh was candid about her various trips and described how on some occasions, she left social events where she was photographed early due to the pain she was experiencing. I find the words of Justice Murray in *Senger v. Graham*, 2018 BCSC 257, to be instructive:
- [18] While defendant's counsel tried to discredit her evidence by introducing photos that have been posted on the internet of Ms. Senger engaging in physical activities, I do not find that the fact that she has tried doing physical activities or travelled detracts from her evidence in the least. In fact, it makes her evidence more compelling.
- [19] Prior to the accident the plaintiff was an active young woman. She has always participated in sports. She is trying to keep active and in shape. As the majority of the activities she enjoyed prior to the accident now cause her pain she is trying others. She is to be commended for that.
- [20] Plaintiffs cannot be expected to cease living once they commence a lawsuit.
- [22] I do not find Ms. Singh's Instagram posts to discredit her testimony. I do, however, find that the Instagram posts, particularly those in the period when that she testified that her pain was severe, are more consistent with the lifestyle of someone who has experienced injuries on a more moderate scale which causes me to question her reliability in this respect. For example, there is a photograph of the plaintiff at the end of 2015 in which she is depicted on the bottom tier of a human pyramid with other members of the Felions. While Ms. Singh agreed that it was not a wise thing to do and testified that she left the social gathering shortly after the picture was taken because of her symptoms, it is not objectively reasonable that an individual suffering from pain rated at nine out of ten on a regular basis would put themselves in that position. Such behaviour is more consistent with someone in less severe pain.
- [23] Although I found the plaintiff's description of the severity of her pain to be somewhat unreliable, I did not find her to lack credibility or reliability in her description of the objective impact that her injuries have had on her life. In this aspect, her evidence was not successfully challenged. The plaintiff has not suggested that she is completely disabled from the accidents. Rather, she candidly described the minimal modifications she made to her work in the legal profession as well as her former work as a promotional model and the development of her beauty business which, in my view, are not inconsistent with her social media posts. Moreover, as referenced above, Ms. Singh's evidence about the impact of her injuries is consistent with the observations of the lay witnesses such as Manvir Singh, Mr.

Gill and Mr. Bains. Thus, while I do not accept the subjective severity of her reported pain as being reliable when compared with the objective evidence of her lifestyle, I do find the plaintiff's description of the effect of her injuries on her life to be "consistent with the probabilities affecting the case, both as a whole and in existence at the time" and I accept her testimony in this respect having regard to the factors set out in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296. Having regard to these same factors, I also find the remaining defence and plaintiff witnesses to be credible and reliable.

FACTS AND SUMMARY OF EVIDENCE

Prior to the Accidents

- [24] Ms. Singh was 22 years old at the time of the First Accident and 31 years old at the date of trial. She was born in Richmond, BC, graduated from high school in Surrey, BC, and subsequently obtained a legal assistant diploma from a local college in 2008. After obtaining her legal assistant diploma, Ms. Singh worked in several positions before obtaining a position at Hammerberg Lawyers as a Legal Assistant in 2009 where she was working full-time at the time of the First Accident.
- [25] Ms. Singh is undoubtedly a hard worker and has often held more than one job at a time. For example, in 2009 and 2010, while working full-time at Hammerberg Lawyers, Ms. Singh also worked part-time at a clothing store and at an electronics store. In addition to her full-time employment at the law firm, Ms. Singh attended Vancouver Community College to obtain her paralegal certificate beginning in January 2012.
- [26] Prior to the accidents at issue, Ms. Singh was involved in a motor vehicle accident in July 2009. In that accident, she sustained injuries to her neck, shoulder, and low back. She also reported left facial pain. However, she testified, and I find that, the injuries sustained in the July 2009 accident were completely resolved by early 2010.
- [27] In the two-year period leading up to the First Accident, Ms. Singh was in good health. She was not experiencing headaches, neck pain, upper back pain, right shoulder pain, mid back pain, or low back/hip pain. Nor was she experiencing any psychological symptoms.
- [28] Ms. Singh's evidence was that she experienced one to two episodes of jaw pain in 2011 related to exam stress but she says that they did not persist and had resolved before the First Accident. In May 2012, one month prior to the First Accident, Ms. Singh discussed concerns she had regarding some locking of her jaw with her dentist. Ms. Singh testified that she reported this to her dentist during a routine dental appointment in response to a question posed by the dentist as to whether or not she had any pain. In response, she explained that she had, at one point during a stressful period when taking exams, had a locking issue with her jaw and the dentist advised her not to chew gum. Ms. Singh's evidence on this is uncontradicted and was not shaken on cross-examination. I find that she did not have persistent jaw pain or issues with her jaw prior to the First Accident.

- [29] Ms. Singh was physically fit and engaged in various activities prior to the First Accident. For example, she attended the gym on an almost daily basis where she would engage in two-hour long workouts that included cardiovascular exercises and weight training. She was not physically limited in the exercises she would engage in at the gym and felt confident in her ability to try all exercises. She also participated in yoga and would swim at the local recreation centre three to five times per month in the early spring to late fall.
- [30] Ms. Singh enjoyed going to the movies two to three times per month and going to amusement parks once or twice a year. She also enjoyed interior redecorating and would redecorate or re-paint every two years or so.
- [31] The plaintiff had significant housekeeping responsibilities in the two years leading up to the First Accident. Ms. Singh lived with her mother and her sister in a single-family home in Surrey at the time of the First Accident and she was responsible for a large portion of the housework. The plaintiff vacuumed at least once per week, mopped the floors three to four times per week, and swept the floors almost daily. She also mowed the lawn regularly and cooked dinners for her mother and sister almost every day.
- [32] In summary, I find that before the First Accident, Ms. Singh was in excellent health, fully functional and able to perform all her vocational, recreational, and household activities without experiencing any pain and without any limitation. She was physically fit without any functional limitations.

The Accidents

- [33] The First Accident occurred in the early evening hours on June 23, 2012. Ms. Singh was driving her 2004 Audi A4 on 88th Avenue in Surrey. The plaintiff was in the process of crossing the intersection of 88th Avenue and 126th Street, when the defendant, Sarah De Santis, entered the intersection and failed to yield to Ms. Singh, striking her vehicle on the rear passenger side. The impact was hard enough to spin the plaintiff's vehicle 180 degrees. No emergency vehicles attended at the scene of the collision.
- [34] The First Accident occurred approximately one block from the plaintiff's residence and she was able to drive the vehicle home. However, the damage to Ms. Singh's vehicle was significant and it was rendered a total loss.
- [35] The Second Accident occurred on December 7, 2012, just under six months after the First Accident. Ms. Singh was operating her 2005 BMW on Lougheed Highway in Vancouver when the defendant, Manuel Goncalves, rear-ended the plaintiff's vehicle. As with the First Accident, the damage to Ms. Singh's vehicle was significant and it was rendered a total loss. This time, the plaintiff's vehicle was not able to be driven afterwards.

[36] Emergency service vehicles attended at the scene of the Second Accident; they were called by the plaintiff after the defendant told her he was experiencing chest pain. Ms. Singh was evaluated by a paramedic at the scene but she declined an offer to be further evaluated at the hospital and instead called her then boyfriend to come and pick her up.

[37] As stated at the outset, the defendants have admitted liability for both accidents.

After the Accidents

[38] In the evening and days immediately following the First Accident, Ms. Singh experienced headaches, jaw pain, neck pain, upper lower and mid back pain, pain in her hip that radiated into her leg, and knee pain. She also reported shoulder pain which radiated into her right hand and wrist. She had trouble sleeping and experienced anxiety when driving following the First Accident. She reported experiencing some blurred vision when she returned to work a day or two after the First Accident.

[39] In the period between the First and Second Accidents (approximately six months), Ms. Singh reports that the pain in most injured areas was moderate to severe and would occur on a daily basis or at least two to four times per week, depending on the area. The pain in her knees was more moderate and less frequent.

[40] The Second Accident in December 2012 did not result in any new injuries. Rather, Ms. Singh's injuries from the First Accident were aggravated. In general, Ms. Singh continued to experience symptoms, which she described as moderate to severe on an almost daily basis up to mid 2016. In the years since then, Ms. Singh has described her pain as being mild to moderate and occurring three to four times per week. She testified that longer work days aggravate her symptoms.

[41] At the time of trial, Ms. Singh testified that her headaches, neck pain, shoulder pain, and upper back pain continue to persist on an ongoing basis two to four times per week and that the pain is mild to severe. Ms. Singh's jaw, mid-back, low-back, and hip pain persists on an ongoing basis two to four times per week and ranges from mild to moderate in intensity. The plaintiff continues to experience pain in her right arm, radiating to her wrist one to two times per week with the intensity ranging from mild to moderate. The pain that radiates from her back to her right leg also persists one to two times per week and is mild to moderate intensity. The pain in her knees has resolved.

[42] Ms. Singh testified that the frequency and severity of her pain is related to her activity level. She testified that her pain was considerably better during the approximately six-month period that she was unemployed after she moved to California in February 2021 but that the pain returned after she started employment there.

Employment

- [43] Ms. Singh took one or two days off work from her job as a legal assistant in the days immediately following the First Accident. In the months leading up to the Second Accident, she would sometimes arrive at work later or leave early due to pain or to attend therapeutic appointments. She would stretch and stand or walk around the office for five to ten minutes every hour to help alleviate the pain. Sometimes, she would rest in her car during lunch. Ms. Singh was uncertain if she missed any other full days from work but believes she took all six of the sick days allocated to her as a result of the injuries she suffered in the First Accident. However, she did not lose any pay from work missed in this period.
- [44] In July or August 2012, Ms. Singh obtained a part-time job working at a local gym. The job was administrative in nature and mainly required her to greet customers as they entered the facility. She worked this job for eight hours on Saturdays and five hours on Sundays at a rate of \$10.50 per hour. She was also provided with a free gym membership. She quit her employment at the gym in or around October 2012 because her job duties changed and required her to do some heavier cleaning and maintenance type work which she was unable to do because of her accident related injuries.
- [45] Ms. Singh took one or two days off of work at the law firm in the days immediately following the Second Accident. As she did after the First Accident, Ms. Singh would sometimes arrive later or leave early due to pain or to attend therapeutic appointments and she would stretch and stand or walk around the office for five to ten minutes every hour to help alleviate the pain. In the period after the Second Accident leading up to June 2013, Ms. Singh was attending school to obtain her paralegal qualifications. However, she reduced the number of classes that she was enrolled in because of her symptoms.
- [46] In June 2013, Ms. Singh obtained a full-time job at a different law firm as a paralegal. She believes that she took sick days from this job related to her injuries but does not know how many and acknowledges that she did not lose any pay as a result. In the period from June 2013 until early 2014, Ms. Singh's only employment was at the law firm. She would continue to manage her pain by stretching, walking, and taking short breaks every hour.
- [47] In early 2014, Ms. Singh began working as a promotional model in addition to her full-time employment as a paralegal. While she signed on with a number of modelling agencies, it appears that she was primarily offered work by a company called "Voltage Entertainment" which was owned by Ms. Severyn. Ms. Singh's work as a promotional model generally involved working at bars, restaurants, and events in the evenings and weekends where she would promote various brands. These shifts would usually be three to four hours and would often involve standing for long periods of time. However, Ms. Singh testified that there was flexibility such that she could sit and move around on occasion to help alleviate her symptoms.

- [48] On one occasion in 2014, Ms. Singh worked at the Vancouver Auto Show as a promotional model over the course of a week for approximately eight hours per day. She testified that she was able to manage her symptoms during this engagement by walking and moving as necessary but that she found it more uncomfortable than the usual promotional work she would perform at bars and restaurants. Ms. Singh did not turn down any promotional modelling jobs in 2014 due to her injuries.
- [49] In December 2014, Ms. Singh quit her employment at the law firm and began to work as a server in a restaurant / bar. She did not miss work as a server due to her injuries and found that the position was flexible enough to permit her to trade shifts with other employees if her symptoms were particularly bad on a given day.
- [50] In 2015, the plaintiff continued to work as a server and a promotional model. She also worked as a movie extra on a few occasions. In 2015, Ms. Singh testified that she was again offered a full week of promotional modelling at the Vancouver Auto Show. However, she turned down this opportunity because she found that her attendance at the previous year's show had aggravated her symptoms too much.
- [51] In 2015, Ms. Singh was selected to be a member of the Felions. The Felions are brand ambassadors for the BC Lions professional football team. The Felions attend home games where they perform dance routines on the sidelines and also engage in promotional activities throughout the stadium. In addition to being the owner of Voltage Entertainment, Ms. Severyn manages the dance team and recommended that Ms. Singh try out for it based upon her excellent performance as a promotional model.
- [52] As a member of the Felions, Ms. Singh attended home games as well as weekly three-hour long practices. During the approximately ten home games, over the course of approximately three and a half hours at each game, Ms. Singh would engage with fans and walk around the stadium selling calendars in the concourse, stands, and suites. Ms. Severyn confirmed that Ms. Singh would have had the flexibility to move and stand as she wished during her promotional work in the stadium.
- [53] In April 2016, Ms. Singh returned to the legal profession and began full-time employment as a legal assistant at the law firm of Dhami Narang. She worked directly for Mr. Bains from then until she moved to California in February 2021. Ms. Singh experienced similar aggravation of her symptoms while working at Dhami Narang as she had experienced at the other law firms. She managed her symptoms in a similar manner, by stretching and walking and using trigger point massage balls. She believes she took some time off work due to her injuries but acknowledges that she did not lose any pay. Mr. Bains was quite flexible in permitting Ms. Singh to come in late, leave early, and attend appointments if necessary due to her symptoms. As referenced earlier, Mr. Bains made observations of Ms. Singh's pain management methods that were consistent with her testimony. Mr. Bains was generally happy with Ms. Singh's performance.

- [54] Ms. Singh did not continue as a member of the Felions after the 2015 season. She did continue to work as a promotional model in addition to her full-time employment at the law firm through 2017.
- [55] In 2017, Ms. Singh started her own aesthetician business called "Girl Gang Glamour". She testified that she had become tired of the promotional modelling work and that she was "getting too old for it". Ms. Singh said that she had always wanted a second source of income and felt that the beauty business was a good fit. Ms. Singh took a number of courses in 2017 and 2018 to develop the skills necessary for her business.
- [56] Girl Gang Glamour provided services such as eyelash extensions, eyebrow blading, and hair and makeup, primarily for weddings. Ms. Singh provided these services from a space in her home. She found that the physical positions that she was required to be in, sometimes for one to two hours at a time, to provide these services aggravated her neck and back injuries such that she required breaks between clients and could not schedule clients back to back. Nonetheless, she grew the business in the period between 2017 and 2021, while working full-time at Dhami Narang. She would provide the aesthetician services in the evenings and on the weekends, sometimes taking three to four clients on Saturday and Sunday.

Treatments

- [57] Ms. Singh saw her family doctor, Dr. Desai-Renchod, on June 27, 2012, approximately four days after the First Accident which was the earliest she could get an appointment with her doctor. Ms. Singh saw her family doctor on a number of occasions between the First and Second Accidents. During these visits, Dr. Desai-Renchod recommended that Ms. Singh attend massage therapy and physiotherapy. Ms. Singh attended massage therapy shortly after the First Accident but did not find the treatments to be helpful.
- [58] On the doctor's recommendation, Ms. Singh attended approximately weekly physiotherapy appointments beginning at the end of August or early September 2012. The physiotherapy treatments included physical manipulation of her arms, legs, and neck. Ms. Singh testified that these treatments provided her with some temporary relief. She was also provided with stretching and exercise techniques to do at home. Ms. Singh followed these recommendations and completed her exercises in the morning, while at work at her desk, and in the evening.
- [59] In November 2012, Ms. Singh attended a specialist in oral medicine in respect of her jaw pain. This visit to Dr. Bruce Blasberg was arranged by her legal counsel for the purposes of the litigation and will be discussed later in these reasons.
- [60] Ms. Singh saw Dr. Desai-Renchod on December 10, 2012, two days after the Second Accident. She continued to see Dr. Desai-Renchod on a regular basis in respect of her accident related injuries until 2017 and received a number of referrals and recommendations during those visits. Since 2018, the plaintiff only attended at her family doctor approximately once per year for accident related issues. The plaintiff explained, and I accept, that this reduction in

her attendance was because her doctor told her to only check in if her symptoms changed. Since they had not changed, Ms. Singh only began attending to inquire if there were other treatment recommendations.

- [61] Ms. Singh continued to receive physiotherapy treatments on an approximately weekly basis following the Second Accident up to April 2014. She has continued with the home stretching and exercise techniques on a daily basis up to the time of trial. Ms. Singh did see a different physiotherapist in 2019 in an effort to get a second opinion and to determine if there were any new recommendations. Unfortunately, the treatment she received from that physiotherapist resulted in a severe headache which lasted for a number of days and so the plaintiff did not attend again.
- [62] Dr. Blasberg recommended that Ms. Singh see a physiotherapist specializing in jaw pain. Her visit to this physiotherapist was in January 2013 and she attended for approximately six appointments; her last appointment being in March 2013. The jaw specialist would massage both sides of her face near the jawbone, and her temples and sometimes her neck and provided her with home exercises to massage her face and perform trigger point massages on her neck as well as some breathing exercises.
- [63] Ms. Singh attended active rehabilitation following the First Accident. In February 2013, after the Second Accident, she commenced two eight-week long active rehabilitation programs which she completed in July 2013. These programs focused on exercising, strengthening, and stretching under the supervision and guidance of a Kinesiologist. She was also provided with exercises and stretching that she could do on her own.
- [64] Ms. Singh discussed the anxiety she was experiencing after the accidents with her family doctor as well as the impact her continued pain was having on her emotional well being. Dr. Desai-Renchod discussed the potential benefits of cognitive behavioural therapy with Ms. Singh and recommended that she obtain such therapy. In February 2014, Ms. Singh began a course of assessment and treatment with a psychologist, Dr. Young. Ms. Singh attended approximately five sessions with Dr. Young over the course of four months in 2014. Dr. Young administered a number of psychological assessments which indicated that Ms. Singh was experiencing symptoms of anxiety and depression. Her anxiety was particularly elevated in certain driving situations, which resulted in some avoidance behaviour.
- [65] Dr. Young developed a treatment plan focused on anxiety, mood, and pain management. He provided her with techniques to assist with reducing her anxiety including recommendations with respect to good sleep hygiene. Ms. Singh implemented these techniques and found that her symptoms improved to some degree.
- [66] In March 2016, Ms. Singh attended at a clinic, Delta Laser Skin Care Centre, in Delta, BC ("Delta Laser") to receive Botox injections. It is not clear whether Ms. Singh was referred by a medical professional to obtain Botox treatment or if she self-referred. In any event, in the period between March 2016 and February 2020, Ms. Singh received Botox injections three to four times per year. During these visits, the plaintiff received Botox injections in her jaw,

brow, eyes, neck, and head. The Botox injections were administered by medical doctors practicing at the clinic. The majority of Ms. Singh's treatments were administered by Dr. Marcia Fleming, a medical doctor who has practiced at the clinic since 2012.

- [67] The nature of the Botox treatments will be discussed in further detail later in these reasons in my consideration of the special damages and the cost of future care. For present purposes, it is sufficient to say that Ms. Singh found that these treatments significantly helped her headaches and jaw pain for approximately eight to twelve weeks, after which time the pain would return. Ms. Singh acknowledged that a very small portion of the Botox treatments were cosmetic in nature. Ms. Singh and Dr. Fleming both testified that the vast majority of the treatments were therapeutic. The defendants are of the view that the treatments were not medically necessary and/or were primarily cosmetic in nature.
- [68] In or around February 2018, Ms. Singh began seeing Dr. Tichner, chiropractor, on the recommendation of her family physician. She attended approximately 20 sessions up until his passing in September 2020. Ms. Singh reported receiving some relief from these treatments.
- [69] Ms. Singh has also received trigger point injections as an attempt to treat her symptoms. In January 2017, her family physician began a course of such injections to treat the jaw pain that she was reporting. Dr. Desai-Renchod administered injections sporadically in January and February 2017 and then again in August and October of that same year. In 2020, Dr. Desai-Renchod recommended that Ms. Singh once again attempt trigger point injections. This time, Ms. Singh attended at a clinic that specializes in such treatments. Dr. Jeff Wang administered a course of trigger point injection treatments in Ms. Singh's jaw, head, and shoulders over a number of occasions beginning in September 2020 and ending in December 2020. Ms. Singh found these treatments to be painful and to provide only a couple days of pain relief.
- [70] Ms. Singh does not take prescription medications to treat her symptoms and none were prescribed nor recommended by any of the medical professionals that have treated her. Since the accidents, Ms. Singh takes Tylenol and Advil and self-administers pain relieving gels on a regular basis.

Social, Recreational and Housekeeping Activities

- [71] As evidenced by her Instagram posts, Ms. Singh has maintained a fairly active social life since the accidents. In the time since the accidents, she regularly goes out to bars, restaurants, and concerts with her friends and has travelled to Toronto, Las Vegas, and New York for weddings and bachelorette parties. Ms. Singh testified that she would sometimes leave social events early due to her injuries.

- [72] Ms. Singh met Mr. Gill online in 2015. At that time, and currently, Mr. Gill lived in California. Ms. Singh and Mr. Gill were married in June 2017 in a small civil wedding ceremony in San Francisco. The couple had a larger wedding reception in the Lower Mainland later that year.
- [73] In 2015, Ms. Singh visited Mr. Gill approximately once per month for periods of four to seven days. In 2016-2018, Ms. Singh visited Mr. Gill in California approximately six to eight times per year, usually for two to three days at a time. In 2019 and 2020, Ms. Singh only visited California once. Ms. Singh would take an airplane to visit Mr. Gill. In February 2021, Ms. Singh permanently relocated to live with Mr. Gill in California. As discussed earlier, Mr. Gill provided evidence of his observations of Ms. Singh during her visits from 2015 and since she moved there in February 2021.
- [74] Ms. Singh does significantly fewer housekeeping duties since the accidents than before. After the accidents, Ms. Singh found that activities such as vacuuming, mopping, sweeping, and scrubbing would aggravate her neck, back, and shoulder pain. Consequently, her mother and sister would do these chores during the time that she lived with them since the accidents. Since moving to California, Ms. Singh is responsible for most of the household chores, and while she is able to do most of them, she breaks up the tasks and requires longer to complete them.
- [75] Ms. Singh attempted to return to swimming on one or two occasions between the First and Second Accidents but she found that it increased her pain and so she ceased trying.
- [76] Ms. Singh continued to exercise after the accidents but her exercise routine was significantly affected; she no longer worked out for two hours per day up to seven days per week. Instead, she focused on exercises given to her by the various treatment professionals in her home exercise routine. She stated that she would engage in her home exercise routine approximately four times per week for 30-45 minutes at a time. Sometimes she would attend a yoga class instead of doing her home workout routine. Ms. Singh regularly uses massage balls and a TENS machine to alleviate her symptoms.
- [77] Ms. Singh no longer attends the movies as frequently as before the accidents. While recently this is due in part to the Covid-19 pandemic, Ms. Singh found that going to a movie theatre required sitting for a longer period than was comfortable and she reduced her attendance to one or two times per year from three times per month.
- [78] Ms. Singh has only been to an amusement park once since the First Accident and on that occasion, she did not go on any rides because she did not want to aggravate her injuries. She has not been to an amusement park since.
- [79] Ms. Singh has engaged in limited home redecoration since the accidents.

EXPERT MEDICAL AND CAPACITY EVIDENCE

- [80] The parties tendered medical expert evidence from oral/jaw pain specialists as well as physical medicine and neurological specialists.

Oral Medicine and TMJ Disorder Experts

- [81] The parties called three experts to address the injuries to Ms. Singh's jaw. Dr. Blasberg and Dr. Eli Whitney were tendered as expert witnesses by the plaintiff. I found them both to be experts in oral medicine and pathology and qualified to provide opinion evidence on the causation, prognosis, diagnosis, and treatment of temporomandibular jaw (TMJ) syndromes, and jaw and facial pain relating to the plaintiff. Dr. Blasberg conducted a physical examination of Ms. Singh on November 15, 2012, (between the First and Second Accidents) and authored a report dated November 27, 2012. Dr. Blasburg retired from practice and Dr. Whitney examined Ms. Singh on July 21, 2016, and authored a report dated October 22, 2016.
- [82] Dr. David Tobias was tendered as an expert witness by the defendants. Dr. Tobias is a general dental practitioner who has focused much of his practice on TMJ issues. He was qualified to provide an opinion on the treatment and diagnosis of TMJ disorders. Dr. Tobias examined Ms. Singh on January 18, 2017, and authored his report on January 23, 2017.
- [83] Dr. Blasberg and Dr. Whitney both found that the plaintiff was restricted in the amount that she could open her jaw without pain. Ms. Singh's range of motion in her jaw was greater when Dr. Whitney examined her in 2016 than when Dr. Blasberg conducted his examination in 2012. In my view, this is likely due to the positive effect of the Botox treatments that Ms. Singh was receiving at the time.
- [84] Upon physical examination, both Dr. Blasberg and Dr. Whitney noted some irregularities in the plaintiff's jaw alignment and some pain on palpation of one or both sides of the TMJ. They both diagnosed Ms. Singh with masticatory muscle myalgia which is pain in her jaw likely of muscle origin which effects jaw movement and function. They also diagnosed her as having right side TMJ arthralgia which is pain in the jaw of a joint origin that is affected by jaw movement or function.
- [85] Both Dr. Blasberg and Dr. Whitney provided relatively positive prognoses in respect of Ms. Singh's jaw pain. Both opined that patients with masticatory muscle myalgia and TMJ arthralgia are expected to recover or improve over time. Dr. Blasberg opined that such issues usually resolve within 12 to 24 months. However, both doctors also opined that Ms. Singh's future could not be predicted with certainty and that she may continue to experience occasional episodes of jaw pain and dysfunction requiring self-management or professional advice and treatment.
- [86] Dr. Blasberg, who authored his report before the Second Accident, opined that the First Accident was the cause of Ms. Singh's jaw issues and related pain. Similarly, Dr. Whitney opined that the injuries to Ms. Singh's jaw was a result of the First Accident and was aggravated by the Second Accident.

- [87] Dr. Blasberg was not aware that Ms. Singh had discussed jaw locking issues with her dentist shortly before the First Accident. However, he was aware that Ms. Singh had experienced some jaw and face pain in fall 2011. Dr. Blasberg would not concede that the dentist's records of the discussion were relevant to his opinion on causation. While this may seem odd on first blush, Ms. Singh's discussion with her dentist as described earlier was not extensively reported on in the dentist's clinical records. Ms. Singh's uncontroverted evidence is that it was a brief discussion about an issue she experienced once or twice in the past related to exam stress. In my view, it is not unreasonable to conclude that this would not have affected Dr. Blasberg's opinion.
- [88] To the contrary, Dr. Whitney was aware of the dentist's records and Ms. Singh's report of past jaw pain. He explicitly denied that the few incidents of jaw pain experienced before the accidents would have been the cause of the pain that he observed and the diagnosis that he made in his report. This is because the earlier incidents resolved rather quickly and there was no reference to ongoing jaw pain before the accidents as there was after the accidents. There was a significant difference in the order of magnitude in respect of the pain before and after the accidents which led him to decline to accept the defendants' suggestion that the jaw pain was caused by something other than the accidents.
- [89] Dr. Tobias did not make the same diagnosis as Dr. Whitney and Dr. Blasberg. After his physical examination, conducted on January 18, 2017, he opined that he was unable to find any signs of temporomandibular, biomechanical, or physiological dysfunction with Ms. Singh's jaw. In his opinion, Ms. Singh's reported pain was "part of a bigger complex chronic pain state" that was "influenced by emotional stress more so than by physiological demands... on the [jaw] muscles or the temporomandibular joints." On cross-examination, Dr. Tobias agreed that chronic pain is not his area of expertise. I have given his opinion in respect of chronic pain no weight considering that he was only qualified to provide an opinion on the treatment and diagnosis of TMJ disorders.
- [90] In any event, Dr. Tobias did not deny that Ms. Singh was suffering pain in her jaw as she reported. However, his impression was that her jaw pain was referred pain from her neck and shoulders. During his cross-examination, he opined that the pain in her jaw was primarily from her neck injury with a possibility that it came from a pre-existing teeth grinding habit. However, he conceded that this opinion was not recorded anywhere in his report. I also note that Dr. Blasberg and Dr. Whitney both considered and rejected teeth grinding as a cause of Ms. Singh's jaw pain and noted that the wear on her teeth was not consistent with such a causal relationship.
- [91] Neither Dr. Blasberg nor Dr. Whitney recommended that Ms. Singh undergo Botox treatment for her jaw pain. However, Dr. Whitney has used Botox to treat pain in his patients' jaw muscles in the past with positive effects. In light of the fact that Ms. Singh reported to Dr. Whitney that the Botox treatments were providing her with some relief, he recommended that she continue with those treatments.

- [92] Dr. Tobias referenced Ms. Singh's Botox treatments in his report. While he acknowledged that Botox treatments could provide temporary pain relief for jaw pain based upon the paralytic effect that the injection has on the surrounding muscles, he, somewhat confusingly in my view, opined that such treatment is a placebo. Dr. Tobias was unable to satisfactorily explain to the Court how an effective pain treatment that is accepted to have a neurological function in relieving pain is a placebo. Dr. Tobias also opined that the Botox treatments were cosmetic. However, he admitted that he did not review the clinical records of the numerous Botox injections in coming to this conclusion.
- [93] Dr. Tobias opined that Ms. Singh's prognosis is dependent upon her psychological well-being and that her orofacial symptoms will resolve as her overall symptoms resolve. Once again, Dr. Tobias seems to have strayed from his area of expertise in opining on Ms. Singh's psychological state. In any event, if Dr. Tobias is correct that the pain in Ms. Singh's jaw is related to the injuries suffered in her neck and shoulder and if those injuries were caused by the accidents, the pain in her jaw is also caused by the accidents.
- [94] Having said that, I am inclined to accept the expert evidence of Dr. Blasberg and Dr. Whitney in respect of the diagnosis and prognosis of Ms. Singh's jaw pain over that of Dr. Tobias. In my view, Dr. Blasberg and Dr. Whitney are the better qualified experts to diagnose and prognosticate with respect to TMJ and other orofacial injuries. Unlike Drs. Blasberg and Whitney, Dr. Tobias is not a registered specialist in the area of oral medicine and pathology. Furthermore, while Dr. Tobias admittedly possesses extensive teaching experience in the area, he does not have near the same amount of clinical experience with TMJ issues as the experts tendered by the plaintiff.

Physical Medicine and Neurology Specialists

- [95] The parties called three experts in the areas of physical medicine and rehabilitation and neurology. Dr. Cecil Hershler was tendered as an expert witness by the plaintiff. I accepted him as a medical specialist in the area of physical medicine and rehabilitation and qualified to give expert opinion evidence to the Court with respect to the causation, management, treatment, diagnosis, and prognosis of musculoligamentous injuries, musculoskeletal injuries, chronic pain, and the functional impact of such injuries. Dr. Hershler assessed the plaintiff on three occasions: November 19, 2015, October 17, 2016, and February 14, 2020. He authored reports in respect of these examinations on November 22, 2015, October 31, 2016, and February 21, 2020.
- [96] Dr. John le Nobel was tendered as an expert witness by the defendants. Dr. le Nobel is an expert in physical medicine and rehabilitation and was qualified to give expert opinion evidence with respect to the causation, diagnosis, prognosis, treatment, and recommendations in respect of musculoskeletal injuries and chronic pain. Dr. le Nobel examined Ms. Singh on June 16, 2021, and authored his report on the same day.

[97] Dr. Ramesh Sahjpaul was tendered as an expert witness by the plaintiff. He was accepted as a medical specialist in the area of neurosurgery qualified to give expert opinion evidence to the Court with respect to the causation, diagnosis, prognosis, treatment recommendations, and vocational impact relating to musculoskeletal injuries, chronic spinal, and myofascial pain. He examined Ms. Singh on June 19, 2021, and authored a report dated June 25, 2021.

[98] In his November 22, 2015, report, Dr. Hershler provided the following diagnosis which he confirmed on his follow up assessments in 2016 and 2020:

The history and physical findings are consistent with the following injuries:

Soft tissue injuries, primarily to the right-sided cervical paraspinals, upper trapezius muscle and right-sided masseter muscles - there is evidence of trigger points on palpation, which is consistent with myofascial pain.

Injury to the right temporomandibular joint - this appears to be muscular in origin, but there is some deviation in alignment with mouth opening.

Injury to the low back and hips - This appears to be primarily myofascial with a discogenic component.

[99] Dr. Hershler opined that Ms. Singh's injuries were caused by the First Accident and aggravated by the Second Accident.

[100] Given the amount of time that had passed since the accidents and his examinations, Dr. Hershler opined that Ms. Singh's prognosis was poor. In his February 2020 report he said this:

It is now over seven years since both the accidents and Parvir Singh continues to be symptomatic. She has persistent ongoing intermittent headaches, job pain, neck pain (with pain radiating into her right upper extremity), upper back pain, mid back pain and low back pain (with referred pain into her right lower extremity). The sleep interruption and mood changes are secondary effects of chronic pain.

It is more likely than not that Ms. Singh will remain permanently symptomatic. She will continue to be limited in her vocational and avocational activities as a result of her ongoing symptomology.

[101] Dr. le Nobel, the physical medicine expert tendered by the defence, also diagnosed Ms. Singh with persistent post traumatic headaches and diffuse myofascial pain. He diagnosed Ms. Singh as having chronic pain. His opinion on causation is consistent with Dr. Hershler's in that it is the accidents that have caused her chronic myofascial pain.

[102] In cross-examination, Dr. le Nobel conceded that it is unlikely that those who suffer from chronic pain for more than 12 months will ever fully recover and most will likely be permanently symptomatic. However, in his view, there have been deficiencies in Ms. Singh's rehabilitation since the accidents and more could be done to assist her recovery. I

do not find that this opinion is based on a solid factual foundation. Dr. le Nobel concluded that Ms. Singh was "deconditioned" at the time of his examination in summer 2021.

However, he seems to have based this conclusion entirely on the fact that Ms. Singh is less physically active now than she was before the accidents. This does not take into account that Ms. Singh has continued to be physically active since the accidents and that her relative decrease in activity, from seven days a week at two hours per workout to four times per week at 30-45 minutes per workout, does not necessarily mean that she is now deconditioned.

[103] His opinion that Ms. Singh could work out more does not seem to have taken into account the home exercises that she does on a very regular and frequent basis. While he testified that there were deficiencies in her active rehabilitation program, he was unable to identify any specific deficiencies in the programs that Ms. Singh completed. I am left uncertain as to what Dr. le Nobel's prognosis is for Ms. Singh based on the facts that I have found.

[104] Contrary to Dr. Hershler, Dr. le Nobel concluded that Ms. Singh has no limitations in respect of her employment, education, and activities of daily living. His conclusion in this respect appears to be based upon an understanding of Ms. Singh's capacity for work that is fundamentally different than that of Dr. Hershler's. In his report, Dr. le Nobel states that Ms. Singh has maintained a high level of productivity despite her pain symptoms and that he does not feel that she is disabled compared to her pre-accident functionality. However, Dr. le Nobel did not inquire as to whether Ms. Singh was working at her full capacity since the accidents; he simply concluded that because she was working more after the accidents than before the accidents, then she is currently working at a high or full capacity. In my view, this conclusion ignores the modifications that she has made over the years as described above (i.e. her reports of coming in late, leaving early because of pain, taking breaks, turning down clients, the effect on housekeeping etc). I agree with the plaintiff that Dr. le Nobel's opinion with respect to the functional impact of Ms. Singh's ongoing symptomology on her ability to work is based on mistaken, incorrect, and incomplete facts and I give it little weight.

[105] Dr. Sahjpaul provided the following diagnosis which are consistent with Drs. Hershler and le Nobel:

- (a) Headache - cervicogenic and traumatic, due to MVA #1, aggravated by MVA #2.
- (b) Neck pain - myofascial, due to MVA #1, aggravated by MVA #2.
- (c) Shoulder pain - due to MVA #1, aggravated by MVA #2. Further comments are left to individuals that are more qualified.
- (d) Mid and upper back pain - myofascial, due to MVA #1, aggravated by MVA #2.
- (e) Low back pain - myofascial, with a discogenic component, due to MVA #1, aggravated by MVA #2.

- [106] Dr. Sahjpaul opined that Ms. Singh is not a candidate for surgery for her spine and that she has developed a chronic pain syndrome. In his opinion, her prognosis is poor given the amount of time that has passed and he does not expect any meaningful improvement.
- [107] Dr. Sahjpaul opined that Ms. Singh would be challenged to return to full duties of office work given the nature of her symptoms. In cross-examination by the defendants, he acknowledged that he was unaware that, in addition to Ms. Singh's full-time work as a legal assistant/paralegal, she also operated the Girl Gang Glamour beauty business for approximately 10-15 hours per week. However, Dr. Sahjpaul would not agree that Ms. Singh's full-time work in the nine years since the accidents plus, holding a part-time job for parts of that period, is inconsistent with his conclusion that she would be challenged to return to work full-time. This is because in his view, some patients do continue to work full time with symptoms of pain and Ms. Singh reported having to make some modifications to address the aggravation that would occur from working. Given his misapprehension of the facts, I give Dr. Sahjpaul's opinion on Ms. Singh's functional capacity little weight. In any event, Dr. Sahjpaul ultimately conceded that he would defer to a better qualified expert regarding Ms. Singh's ability to perform her job duties on a day to day basis.

Functional Capacity Evaluation

- [108] The plaintiff tendered a Functional Capacity Evaluation and Cost of Future Care Assessment Report dated July 2, 2021, both authored by Paul Pakulak. Mr. Pakulak was qualified as an expert in conducting functional capacity evaluations and cost of future care assessments to give opinion evidence on Ms. Singh's work capacity, her functional limitations, and the cost of future care.
- [109] Mr. Pakulak performed various tests related to Ms. Singh's functional abilities during his assessment of her on June 21, 2021. He found that the plaintiff provided full effort during the testing and that her test results were reliable. Mr. Pakulak identified a number of functional limitations during his testing.
- [110] Mr. Pakulak's opinion is summarized in his report as follows:

In my opinion, Ms. Singh is best suited for activity requiring up to modified medium level strength. She did demonstrate the strength sufficient for some load handling at the top of the medium range but did not demonstrate the capacity to sustain that level of load handling. She demonstrated functional limitations specific to overhead work, prolonged and repetitive positioning of the neck and shoulders for work in front of the body, prolonged and repetitive below waist level work, work intensive sitting and work intensive standing. Given her response to testing (significant increases in pain levels during and following the testing and a reduction in work pace and capacity over the course of the assessment) it is anticipated that prolonged activity above a light to modified medium level and / or without provisions for the above limitations will adversely impact her productivity.

- [111] Mr. Pakulak concluded that Ms. Singh has the physical capacity to perform the demands of her work as a legal assistant at a sustainable level on a full-time basis provided that she has the flexibility to take breaks and change positions to manage anticipated increases in symptoms.
- [112] He comes to a similar conclusion with respect to Ms. Singh's aesthetician business: in his opinion, she has the physical capacity to complete the physical demands of that work at a sustainable level on a part-time basis provided that she can take breaks and change positions.
- [113] However, Mr. Pakulak opines that if she is working full-time as a legal assistant, her increased symptomology will likely lead to difficulties with her work as an aesthetician and he concludes that Ms. Singh does not have the capacity to "sustain full-time legal work as a legal assistant and part-time work as a Esthetician concurrently". To an extent, I agree with the defendants that Mr. Pakulak's conclusion in this regard is inconsistent with the fact that Ms. Singh was working in both these positions since 2017. However, as I understand it, Mr. Pakulak's opinion it is not that Ms. Singh cannot do both jobs, rather it is his opinion that Ms. Singh does not have the capacity to sustain both jobs in the long term.
- [114] Mr. Pakulak opines that Ms. Singh is capable of completing lighter household cleaning chores without modification. As I understand his opinion, he is of the view that Ms. Singh is physically capable of completing more physically demanding chores if she is able to pace herself.

CAUSATION

- [115] The plaintiff must establish on a balance of probabilities that the defendants' negligence caused or materially contributed to an injury before damages are assessed. The defendants' negligence need not be the sole cause of the injury so long as it is part of the cause beyond the range of de minimus. Causation need not be determined by scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-17, 140 D.L.R. (4th) 235; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.
- [116] There are no real issues of causation in this case in respect of Ms. Singh's soft tissue injuries. Although the defendants take issue with the severity and extent of Ms. Singh's injuries, they do not argue that her soft tissue injuries and anxiety symptoms are the result of anything other than the accidents. While the defendants made no specific submissions on causation in their written submissions, the tenor of their oral submissions and cross-examinations was that Ms. Singh's jaw pain was caused by something other than the accidents.

- [117] The evidence before me establishes that Ms. Singh was generally healthy and pain-free prior to the First Accident. The evidence falls short of establishing that Ms. Singh suffered from jaw pain before the accidents that was chronic or of the same magnitude that she has experienced since the accidents. In my view, any issues that Ms. Singh experienced with her jaw before the accidents were stress related and temporary.
- [118] I find that, on a balance of probabilities, the First Accident caused Ms. Singh's jaw pain, soft tissue injuries, the resulting neck, back, hip and leg symptoms, the related headaches, and the psychological symptoms. These symptoms were aggravated by the Second Accident. Nonetheless, as mentioned earlier and as will be discussed further later, I find that Ms. Singh's injuries are not as severe as reported.

DAMAGES

Non-Pecuniary Damages

- [119] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, are only a rough guide as each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188-189.
- [120] The factors that should be considered in making an award of non-pecuniary damages are well established and were set out by our Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46. They include the plaintiff's age, nature of the injury, severity and duration of the pain, disability, emotional suffering, loss or impairment of life, impairment of family, marital and social relationships, impairment of mental and physical abilities, loss of lifestyle, and the plaintiff's stoicism.
- [121] The defendants submit that there is a significant discrepancy between Ms. Singh's reports of pain and the impact that it has on her on a day to day life. I have already discussed why I agree with this submission to a certain extent in my analysis of the plaintiff's reliability.
- [122] The defendants also submit that some of Ms. Singh's pain in her back and neck can be partly or mostly attributable to the hours she puts into her part-time aesthetician job after her job as a legal assistant. However, there is, in my view, little evidence to support this submission. Ms. Castronuovo's evidence that she experiences back pain which she attributes to the work she does as an aesthetician is of very limited use when assessing the plaintiff's situation. In my view, the pain in Ms. Singh's neck and back were caused by the accidents and while they may be aggravated by her part-time work, this does not necessarily lead to the conclusion that she would have suffered the same pain absent the accidents.

- [123] The defendants submit that there is little evidence of impairment to her family, marital, and social relationships and that her lifestyle, as evidenced by her social media posts, has continued unabated. I have already discussed why I do not necessarily think it is wise to rely upon social media posts as an accurate depiction of one's life, particularly in the plaintiff's circumstances. I do not accept the defendants' view that Ms. Singh has generally lived a normal life over the past nine years since the accidents. As Ms. Singh described, it is not typical that a person in their 20's attends the amount of therapeutic appointments that she has. Nor is it typical for such a young person to be in pain on a frequent basis. Nonetheless, I do find that the impact of her injuries on her lifestyle has not been as dramatic as was submitted by the plaintiff.
- [124] I have already thoroughly described the impact that the injuries have had on Ms. Singh's life in my summary of the facts. In my view, the evidence supports that Ms. Singh continues to experience jaw pain, headaches, neck pain, shoulder pain, upper back pain, mid- and low-back pain, hip pain, pain in her right arm radiating to her wrist, and pain that radiates from her back to her right leg. She also experiences anxiety when driving and intermittent sleep disruption. The evidence supports that she will likely experience these symptoms for the rest of her life to a certain extent.
- [125] These symptoms impact her in both her personal and work life, to a moderate extent. There are a number of recreational activities that Ms. Singh no longer participates in or that she no longer participates in as frequently. In particular, her attendance at the gym has significantly decreased. She and her family find her to be more impatient and temperamental than she was before the accidents.
- [126] Ms. Singh had a demonstrably high work ethic before the accidents. The fact that she improved her skills, tried different employment opportunities, and started a business after the accidents does not mean that she is less entitled to an award of non-pecuniary damages. As I stated in *Tolea v. Huang*, 2021 BCSC 260, at para. 133:
- [133] The relevant question is not whether [the plaintiff] is in a better financial or family-life position than [s]he was; the question is what position [s]he would have been in but for the accident. The fact that [s]he has managed to improve certain aspects of [her] life while pushing through the pain [s]he experiences does not disentitle [her] to compensation
- [Emphasis in original.]
- [127] Ms. Singh cites a large number of cases in support of an award of non-pecuniary damages in the amount of \$140,000:
- a) *Benson v. Day*, 2014 BCSC 2224, where the court assessed non-pecuniary damages at \$110,000.
 - b) *Sekihara v. Gill*, 2013 BCSC 1387, where the court assessed non-pecuniary damages at \$130,000.

- c) *White v. Wiens*, 2015 BCSC 188, where the court assessed non-pecuniary damages at \$100,000.
- d) *Chawla v. Lambright*, 2017 BCSC 1884, where the court assessed non-pecuniary damages at \$125,000.
- e) *Domijan v. Jeon*, 2018 BCSC 1988, where the court assessed non-pecuniary damages at \$100,000.
- f) *Murphy v. Jagerhofer*, 2009 BCSC 335, where the court assessed non-pecuniary damages at \$100,000 which I am told amounts to approximately \$130,000 when adjusted for inflation.
- g) *Ferguson v. Watt*, 2018 BCSC 1587, where the court assessed non-pecuniary damages at \$140,000.
- h) *Verjee v. Dunbrak*, 2019 BCSC 1696, where the court assessed non-pecuniary damages at \$150,000.
- i) *Cole v. Sandhu*, 2020 BCSC 709, where the court assessed non-pecuniary damages at \$175,000.

[128] The defendants submit that an award in the amount of \$50,000 is appropriate in this case and rely on the following cases:

- a) *Johal v. Bhullar*, 2021 BCSC 427, where the court assessed non-pecuniary damages at \$25,000.
- b) *O'Rourke v. Kenworthy*, 2009 BCSC 1277, where the court assessed non-pecuniary damages at \$55,000.

[129] In my view, the decisions cited by the plaintiff that award a higher amount of damages involve plaintiffs with more significant injuries than Ms. Singh's, including more severe psychological symptoms, and with more significant effects on their lives than in Ms. Singh's case. In my view, the Johal decision is not of assistance as it involved a situation where the Court determined that the plaintiff was wholly unreliable and not credible. If nothing else, the authorities provided by the parties and the range of damage awards contained therein illustrate the truth of the statement in *Trites* that such cases are only a rough guide and each case depends on its specific facts.

[130] I have considered the principles and factors set out in *Stapley* and have taken guidance from the authorities referenced by the parties. I have also considered Ms. Singh's circumstances and prognosis. In particular, I note that Ms. Singh was very young at the time of both accidents and has suffered injuries that have resulted in chronic pain that has persisted for some nine years since the accidents, albeit at a severity less than that submitted by the plaintiff. I also note that the myofascial pain is expected to persist at some level for the rest of her life. The prognosis with respect to Ms. Singh's jaw pain is less clear; however, I accept that it will likely persist for a significant period. The plaintiff has suffered some moderate functional limitations in her ability to function in the workplace and her

enjoyment of life has been impaired. In the circumstances, I conclude that an award of \$115,000 is appropriate.

Loss of Housekeeping Capacity

- [131] Damages for loss of housekeeping capacity can be assessed as either non-pecuniary or pecuniary damages. In *Kim v. Lin*, 2018 BCCA 77 at para. 33, the court held that:
- [133] [W]here 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
- [132] Affirming the court's conclusion in *Liu v. Bains*, 2016 BCCA 374, the court in *Kim* stated that the above is not an inflexible rule and held that it is within the trial judge's discretion to determine whether the claim should be assessed as part of the non-pecuniary damages or as a segregated pecuniary head of damages. In *Quigley v. Cymbalisty*, 2021 BCCA 33 at paras. 71-72, the court recently reaffirmed the principles in *Kim* and *Liu* cited above.
- [133] Ms. Singh seeks \$22,500 CAD for past loss of housekeeping capacity and \$160,000 USD for loss of future housekeeping capacity. The future award is sought in US dollars because the plaintiff has permanently relocated to the United States. The defendants claim that no award is appropriate, or if an award is made, submit that it should be included in the award of non-pecuniary damages.
- [134] In my view, Ms. Singh has experienced a loss of housekeeping capacity. However, it is not a loss that is appropriate for an award under a separate pecuniary head of damages. Although the Court heard evidence from Ms. Singh that her mother, sister, and husband have taken over the responsibility for the heavy household chores since the accidents including lawn mowing, pressure washing, and gardening, the expert evidence is that Ms. Singh can undertake the heavier household cleaning tasks as long as she can pace herself. Ms. Singh's evidence was consistent with this conclusion. I acknowledge that she is likely to experience an increase in pain from doing the heavier household tasks. However, the fact remains that Ms. Singh is capable of performing them with some modification. This, in my view, is distinct from a true loss of capacity. Although Mr. Pakulak opines that Ms. Singh would benefit from assistance with the more physically demanding chores in the future, I am not persuaded that she lacks the capacity to do so, with modification.
- [135] In these circumstances, I have decided to exercise my discretion to compensate Ms. Singh for her past and future loss of housekeeping capacity as part of the amount awarded to her for non-pecuniary damages, and as such, it is included in the non-pecuniary award made above.

Loss of Earning Capacity

- [136] An assessment of loss of both past and future earning capacity involves consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. The future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation: *Atthey* at para. 27.
- [137] The proper analysis for past and future diminished earning capacity was summarized in *Grewal v. Naumann*, 2017 BCCA 158. Justice Goepel was writing in dissent, however, the majority agreed with the following analysis:
- [48] In summary, an assessment of loss of both past and future earning capacity involves a consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation. If the plaintiff establishes a real and substantial possibility, the Court must then determine the measure of damages by assessing the likelihood of the event. Depending on the facts of the case, a loss may be quantified either on an earnings approach or on a capital asset approach: *Perren v. Lalari*, 2010 BCCA 140 at para. 32.
- [49] The assessment of past or future loss requires the court to estimate a pecuniary loss by weighing possibilities and probabilities of hypothetical events. The use of economic and statistical evidence does not turn the assessment into a calculation but can be a helpful tool in determining what is fair and reasonable in the circumstances: *Dunbar v. Mendez*, 2016 BCCA 211 at para. 21.

[Emphasis added.]

Past Loss of Income Earning Capacity

- [138] Compensation for past loss of earning capacity is to be based on what the plaintiff would have, not could have, earned but for the injury that was sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30:
- [30] Thus, in my view, a claim for what is often described as "past loss of income" is actually a claim for loss of earning capacity; that is, a claim for the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury.

[Emphasis added.]

- [139] Ms. Singh reported past income loss in the gross amount of \$17,101. Ms. Singh's argument is premised on a finding that she would have maintained a second job in addition to her job at the various law firms if she had not been injured in the accidents. She submits that had she not been injured in the accidents, she would not have quit the job at MMA gym in summer 2012 when more physically demanding responsibilities were added to her job

duties. She submits that she lost income equivalent to what she would have earned at that job from November 2012-March 2014. She values this as being \$8,281 with reference to the hourly rate and number of hours she worked per week.

[140] Ms. Singh acknowledges that she obtained and held a second job in 2014 as a promotional model and then transitioned into her aesthetician business when she established Girl Gang Glamour.

[141] Ms. Singh submits that she declined the opportunity to work at the Vancouver Auto Show in 2015 because of her injuries. She argues that had she taken that position, she would have earned approximately \$1,120.

[142] The plaintiff also submits that she lost the opportunity to earn income from her aesthetician business due to her injuries. Ms. Singh testified that she turned down approximately three to four clients per month in 2019, 2020, and in January 2021 due to her inability to provide services to clients back to back. As mentioned earlier, Ms. Singh testified that she scheduled breaks in between clients in order to rest because her injuries were aggravated by the services she provided. Based upon an average charge of \$100 per session, Ms. Singh claims past lost income in the amount of approximately \$7,700.

[143] The defendants submit that Ms. Singh is not entitled to any amount for past loss of income earning capacity. They say the evidence in support of her claim is deficient. They argue that Ms. Singh's claims that she turned down some clients from her aesthetician business are unsubstantiated and that the Court should not accept her bald assertions in this respect.

[144] Given Ms. Singh's demonstrated work ethic, there is, in my view, a real and substantial possibility that Ms. Singh's injuries led to a loss of a moderate amount of past income earning capacity. I accept Ms. Singh's testimony that she would have continued to work at the gym but for the change in duties which were incompatible with her injuries. However, any award under this head must take into consideration the possibility that she would have been required to leave that employment in any event.

[145] I am not persuaded that Ms. Singh would have accepted the opportunity to work at the Vancouver Auto Show in 2015 had it not been for her injuries. In or around this time, Ms. Singh was selected to be a member of the Felions. Her duties in that job, and in her job as a server, placed similar physical demands on her as the Vancouver Auto Show opportunity.

[146] In my view, there is a real and substantial possibility that Ms. Singh would have earned more income from her aesthetician business if it had not been for her injuries. However, I agree with the defendants that Ms. Singh's household responsibilities, recreational activities, and physical fitness commitments significantly limited the time available to Ms. Singh to take on additional clients. I also note that Ms. Singh did not tender any evidence in support of her assertion that she turned down business opportunities. Nonetheless, given her strong work ethic, I am inclined to accept that there is a hypothetical possibility that she did decline some work. However, I do not believe it is to the extent submitted by the

plaintiff.

- [147] The assessment of Ms. Singh's loss under this head is not a mathematical calculation; rather, it is an assessment that requires judgment: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18. In coming to my conclusion on the amount of the award, I have considered the contingencies identified above and the relative rates of pay. Having regard to these factors, I assess Ms. Singh's gross income loss under this head as being \$12,000, subject to applicable deductions.

Loss of Future Income Earning Capacity

- [148] The Court must answer two questions to determine a plaintiff's claim for loss of future earning capacity: 1) has the plaintiff's earning capacity been impaired by her injuries; and, if so, 2) what compensation should be awarded for the resulting financial harm that will accrue over time? As with past income loss, while it is somewhat attractive to apply a mathematical calculation, the assessment of the loss is a matter of judgment and must be based on the evidence as a whole: *Rosvold* at para. 18. The way in which the assessment is carried out will vary from case to case: *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.); *Pallos v. Insurance Corp. of British Columbia*, 100 B.C.L.R. (2d) 260, [1995] 3 W.W.R. 728 (C.A.); *Pett v. Pett*, 2009 BCCA 232.
- [149] There are two possible approaches to assessment of loss of future earning capacity: the "earnings approach" from *Pallos*, and the "capital asset approach" in *Brown*. Both approaches are correct. The earnings approach will generally be more useful when the loss is easily measurable: *Perren v. Lalari*, 2010 BCCA 140 at para. 32. Where the loss "is not measurable in a pecuniary way", the capital asset approach is more appropriate: *Perren* at para. 12.
- [150] Even where the capital asset approach is appropriate, the court should "ground itself as much as possible in factual and mathematical anchors": *Knapp v. O'Neill*, 2017 YKCA 10 at paras. 17-21.
- [151] A plaintiff is not excluded from an award for loss of future earning capacity simply because he is still able to work after the accident and even where his records of employment show that his income has been steady or increased since the accident. In *Willett v. Rose*, 2017 BCSC 627, Justice Smith held:
- [69] Even in circumstances where employment data appear to show no reduction or even an increase in income following an injury, where a plaintiff continues to suffer to some degree from the effects of an accident which have an impact on his work, there is an impairment of earning capacity. For example, in *Cheung v. MacDonald et al*, 2004 BCSC 222, it was argued that the plaintiff's income following the accident was higher than it had ever been. Mr. Justice Ehrcke said at paras. 84 and 85:

- [84] As logically rigorous as that approach seems to be, it ignores the reality that Dr. Cheung continues to suffer to some degree from the effects of the accident, and that these effects have an impact on his work. While he may have demonstrated that he can, if he wills himself to, carry on and produce billings as high as before, one must ask whether it is reasonable to expect him to do so in the face of the pain he must endure.
- [85] The proper question under this head of damages is not simply whether a plaintiff will suffer an actual wage loss, but rather whether there has been an impairment of his income-earning capacity. This latter approach treats the ability to earn income as a capital asset, and the proper question is then whether that asset has in any way been diminished by reason of the defendant's negligence.
- [152] In the recent decision of *Rab v. Prescott*, 2021 BCCA 345, the Court of Appeal provided guidance in respect of the analysis of damages for loss of future income earning capacity. Grauer JA. held that once it is proven that there is a real and substantial possibility of a future loss of income, the court must then assess the likelihood of that loss materializing using the test for assessing whether a future hypothetical event will occur. The three-step process is described in *Rab* at para. 47:
- [47] From these cases, a three-step process emerges for considering claims for loss of future earning capacity, particularly where the evidence indicates no loss of income at the time of trial. The first is evidentiary: whether the evidence discloses a potential future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in *Brown*). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring--see the discussion in *Dornan* at paras 93-95.
- [Emphasis added.]
- [153] The approach in *Rab* was very recently re-affirmed in *Lo v. Vos*, 2021 BCCA 421.
- [154] Using the capital asset approach, the plaintiff argues that Ms. Singh is entitled to an award for future loss of income earning capacity in the amount of \$225,000. This amount is based upon three years of Ms. Singh's annualized earnings at \$75,000 per annum, which accounts for her combined income as a legal assistant plus her gross income from the aesthetician business less some one-time expenses for professional development and capital cost allowance. The defendants argue that Ms. Singh is not entitled to any award under this head of damages.
- [155] As set out in *Rab*, the first step is to determine whether the evidence discloses that there is a potential future event that could lead to a loss of capacity. The defendants argue that Ms. Singh fails at this step of the analysis. I disagree.

[156] In my view, the plaintiff has established that she suffers from a chronic injury that may impair her ability to earn income in the future. The considerations discussed in Brown, at para. 8, are relevant to determining whether there has been an impairment in Ms. Singh's capital asset of her income earning capacity. Those considerations include whether:

1. The plaintiff has been rendered less capable overall from earning income from all types of employment;
2. The plaintiff is less marketable or attractive as an employee to potential employers;
3. The plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to [her], had [s]he not been injured; and
4. The plaintiff is less valuable to [herself] as a person capable of earning income in a competitive labour market.

[157] As discussed earlier, I accept that Ms. Singh suffered a variety of soft tissue injuries and a jaw injury as a result of the accidents and that she suffers from chronic pain arising from those injuries.

[158] As discussed earlier, Dr. Hershler opined that it is more likely than not that Ms. Singh will continue to remain symptomatic indefinitely. Importantly for this step of the analysis, Dr. Hershler also opined that:

She will continue to be limited in her vocational and avocational activities as a result of her ongoing symptomology. Ms. Singh will probably be able to work all at her current reduced capacity compared to her pre-accident capacity but she will likely miss time from work and find it difficult to sustain work or do other extra work due to the toll that the pain symptoms take on her endurance. She has a permanent partial disability.

Given the severity, chronicity and permanence of her symptoms, Ms. Singh will likely not be able to sustain her employment to the age of 65 or beyond as one's ability to tolerate pain decreases with age. It is therefore unlikely that she will be able to work at her current capacity to an assumed retirement age of 65.

[Emphasis added.]

[159] I do not rely on Dr. Sahjpaul's opinion with respect to Ms. Singh's vocational abilities for the reasons discussed earlier. However, I accept his opinion that Ms. Singh is unlikely to experience meaningful improvement of her symptoms.

[160] Mr. Pakulak opined that Ms. Singh demonstrated the physical capacity to complete the physical demands of her job as a legal assistant at a sustainable level on a full-time basis provided that she is provided with some very minor accommodations such as the ability to take breaks and change positions to manage her symptoms. Mr. Pakulak came to the same conclusion with respect to Ms. Singh's ability to perform her work as an aesthetician in a part-time basis. However, he determined that she does not have the capacity to sustain full-

time work as a legal assistant and part-time work as an aesthetician concurrently.

- [161] In my view, Mr. Pakulak's opinion has been borne out in the almost nine years since the accident. Ms. Singh has demonstrated an ability to meet the demands of full-time employment as a legal assistant provided she is provided with the ability to make some very minor modifications. I have accepted that Ms. Singh has turned down some aesthetician clients due to her symptoms and the related inability to schedule clients back to back without a break in between. While the limitations arising from her injuries may be moderate, they are, in my view, sufficient to establish a potential future event leading to a loss of capacity. The fact that she does not need surgery and is at no increased risk for arthritis, as the defendants emphasize, does not preclude such a finding.
- [162] Moreover, Ms. Singh has demonstrated that she has a very strong work ethic and I have found that it is likely that she would have engaged in part-time employment in addition to her full-time employment. The past nine years has borne this out. The defendants submit that Mr. Pakulak's conclusion that Ms. Singh does not have the capacity to sustain full-time work as a legal assistant and part-time work as an aesthetician concurrently is "bizarre" because she has the capacity to do either on their own and she has done so for the past four years since the accident.
- [163] However, in my view, Mr. Pakulak's conclusion accords both with common sense and with the expert opinion of Dr. Hershler. The ability to complete two separate tasks independently is fundamentally different than the ability to complete two separate tasks concurrently. Given that Ms. Singh experiences aggravation of her symptoms in direct correlation with her level of activity, it makes sense that her ability to sustain both vocations concurrently would be in jeopardy as her activity level must necessarily increase in order to do so.
- [164] The fact that Ms. Singh has worked full-time as a legal assistant and part-time as an aesthetician in the past does not mean she will be able to sustain this in the future. I accept Ms. Singh's evidence with respect to the effect the longer days has on her physical well-being. Furthermore, Dr. Hershler opines that one's ability to tolerate pain decreases with age. This opinion was not challenged and it supports a conclusion that her ability to earn income from both vocations will be impaired in the future.
- [165] Considering the circumstances described above and the evidence disclosed, I find that Ms. Singh's chronic pain has impaired her capital income earning asset. She is less marketable as an employee to potential employers given the accommodations that she requires. However, these accommodations are minor, and therefore, I find that she is only marginally less marketable as a legal assistant/paralegal. Ms. Singh has lost some ability to take advantage of the business opportunities available to her, in particular, her injuries have impaired her ability to take on a full load of aesthetician clients in addition to her full-time office work.

- [166] The second step set out in Rab is to determine whether, on the evidence, there is a real and substantial possibility that Ms. Singh's ongoing chronic pain and functional limitations will cause a pecuniary loss. In my view, there is such a possibility. However, that possibility is limited to Ms. Singh's ability to earn income from both a full-time position as a legal assistant concurrently with part-time work as an aesthetician.
- [167] In my view, there is no real and substantial possibility that Ms. Singh will suffer a pecuniary loss in relation to her employment as a legal assistant on its own. Ms. Singh has spent a significant amount of time training to become a legal assistant/paralegal and she has many years of experience in this field. There is no indication in the evidence that Ms. Singh intends to pursue a career in a different field. There is certainly no indication that she intends to pursue a career requiring more than modified medium level strength, which Mr. Pakulak found that she is suited for. Mr. Pakulak classified work as a legal assistant as requiring sedentary to light level strength. In fact, Ms. Singh has indicated a desire to return to her role as a legal assistant now that she has relocated to California.
- [168] In my view, there is no real and substantial possibility that the minor modifications that Ms. Singh requires as a legal assistant would not be accommodated by an employer. In cross-examination, Mr. Pakulak admitted that sedentary type office jobs like that of a legal assistant generally permit employees the ability to change positions and take small breaks as Ms. Singh does to manage the aggravation of her symptoms.
- [169] However, I am persuaded that there is a real and substantial possibility that the impact on Ms. Singh's symptoms from pursuing both jobs concurrently will lead to a pecuniary loss. I accept Ms. Singh's evidence that she intends to re-establish her aesthetician business in California. The evidence demonstrates that Ms. Singh is dedicated to this business through the training she has undertaken and the time she has committed to it over the past few years. There is no reason to doubt her intention to continue. I also accept that there is a real and substantial possibility that Ms. Singh will be required to forego income from her work as an aesthetician if she is also working full-time as a legal assistant for the reasons previously discussed.
- [170] The third step is to assess the value of Ms. Singh's possible future loss. As stated in Rab, this step must include an assessment of the relative likelihood of the possibility occurring. In my view, this analysis will always entail an element of crystal ball gazing. However, the analysis in this case is particularly difficult given Ms. Singh's circumstances.
- [171] Ms. Singh relocated to California in February 2021. While she intends to obtain employment as a legal assistant, she had not done so by the time of trial in September 2021. I am unaware of the extent of the job search that Ms. Singh has undertaken in California but there is no indication that she has not found employment as a legal assistant because of her injuries. I am also not aware of whether or not Ms. Singh will be required to retrain or upgrade her skills in order to be marketable in California. Further, I am not aware of the job opportunities available for Canadian trained legal assistants in California.

- [172] However, Ms. Singh was successful in finding employment in a call centre in California. While this job was not in the legal profession, it had similar physical demands to that of a legal assistant. Unfortunately, she lost that employment due to her lengthy attendance in Vancouver for this trial. Nonetheless, she has demonstrated an ability to obtain such employment and I find that the likelihood that she will find some sort of office employment to be a near certainty. However, it is not clear that Ms. Singh will find an employer who is as accommodating as Mr. Bains was with respect to her arriving late or leaving early and this may lead to a further income loss.
- [173] It is more difficult to predict if Ms. Singh will have the same success with her aesthetician business in California as she did in BC. I have no evidence of her attempts to start the business in California. My understanding of her evidence is that the success of her business in BC was due in part to word of mouth referrals from the South Asian community. In fact, a large part of her business, perhaps almost all of the hair and makeup aspect, was for individuals involved or attending traditional South Asian weddings in the Lower Mainland. I do not know whether Ms. Singh will be able to leverage a similar client base in California or the extent to which the success of her business depends on that.
- [174] As stated above, the real and substantial possibility of an income loss in this case is premised upon Ms. Singh being employed full-time as a legal assistant (or in another similarly physically demanding job) and having the additional part-time employment as an aesthetician in such a quantity that she would be required to decline clients because of her symptoms. Given the factors identified above, it is admittedly difficult to determine the relative likelihood of this happening.
- [175] Given Ms. Singh's skills and her demonstrated drive and ability to commence a business as she did in BC, I assess the likelihood of this happening to be slightly more likely than it not happening. However, it will likely take some years for her to build the business to the point that she will have to turn down two to three clients per week. Considering that it took her approximately two years to build the business here to a point where she was declining clients, I find that it will likely take approximately four to six years to get to a similar point in California.
- [176] Taking into account the above factors, including the uncertainty around how long it will take for Ms. Singh to establish her business, the absence of evidence of the profitability of her venture in California, and the fact that it could fail as easily as it could succeed, the likelihood that Ms. Singh will find office employment, her persistent chronic pain, and the impact it has on her life, I assess the likelihood that Ms. Singh will eventually lose the capacity to earn income from concurrent full-time office work and part-time work as an aesthetician as being approximately 45%.

- [177] The plaintiff submits that an award representing three years of combined annualized earnings as a legal assistant and part-time aesthetician would be fair and reasonable. However, in my view, that overstates the extent of the loss and fails to consider the relative likelihood of the loss occurring.
- [178] Having regard to the factors in Pallos, I assess the value of the potential loss as being \$187,500. This equates to two and one-half years of Ms. Singh's annualized income in 2018 to 2020 of \$75,000. I would then reduce this by 55% to take into account the relative possibility of the loss occurring, resulting in an award of \$84,375 for loss of future income earning capacity.

Special Damages

- [179] Ms. Singh claims special damages in the amount of \$22,937.47. The parties agree that the following expenses are properly claimed as special damages:
- a) Physiotherapy in the amount of \$485.
 - b) Massage therapy in the amount of \$217.
 - c) Chiropractor expenses with Dr. Tichner in the amount of \$648.
 - d) Expenses incurred for Dr. Young's psychological evaluations and therapy in the amount of \$1,768.
- [180] The defendants take issue with a significant number of the expenses claimed on the grounds that the amounts expended were unrelated to the accidents or were medically unnecessary.
- [181] I find that the following disputed expenses are properly allowable as special damages.
- [182] The remaining rental car charges of \$169.51 should be allowed. Ms. Singh rented a car after the First Accident because the vehicle involved in that accident was determined to be a total loss. She needed a vehicle to drive to and from her place of employment while she waited for the insurer to provide her with the amount owing to her for the loss of her vehicle from the accident, and therefore, it was necessary. She did not rent the vehicle for an extraordinary amount of time; rather, the time needed was dictated by the length of time it took the insurer to provide her with the money she was owed.
- [183] I am not persuaded that the mouth guard claimed is an appropriate expense. While she obtained this between the First and Second Accidents due to her jaw pain, a number of the oral experts that testified in this case were of the view that the mouth guard was not a proper device for her reported problems.
- [184] I am also not satisfied that the eye examination expense Ms. Singh incurred in October 2012 is a proper special expense. There is little evidence of Ms. Singh's reported blurred vision following the First Accident and I am not persuaded that it was a result of the First

Accident.

- [185] I am not persuaded that the \$430 expense for orthotics and the \$125 expense for a podiatrist visit are reimbursable expenses. While Dr. Desai-Renchod may have recommended the orthotics, there is little evidence that Ms. Singh wore them on a regular basis or benefited from them. In fact, the evidence shows that Ms. Singh regularly wore high-heeled shoes in the years following both accidents.
- [186] I am satisfied that the \$80.40 claimed for parking at various medical appointments in 2020 and 2021 is reasonable.
- [187] Ms. Singh has claimed expenses incurred for yoga and gym memberships in the total amount of \$3,412.04 in 2016, 2018, and 2020. Although she had gym memberships in other years since the accidents, Ms. Singh did not have the supporting documentation of the amount incurred and is not seeking reimbursement of those amounts. While I agree that yoga was recommended by Dr. Desai-Renchod, it is clear to me that Ms. Singh would have incurred expenses for gym memberships if she had not been involved in the accidents given her daily attendance at the gym prior to both accidents. However, there is no evidence that Ms. Singh would have incurred expenses for yoga memberships but for the accidents as she did not attend before. Unfortunately, there is no obvious way to allocate the amount of the claimed expense between the yoga and gym portions of the membership fees. However, in my view, half the amount claimed is reasonable for the yoga portion of the expenses, and consequently, \$1,706 is allowed for this expense.
- [188] Although the defendants do not take issue with Ms. Singh's claimed chiropractor expenses incurred in respect of her visits to Dr. Tichner before his passing, they do take issue with the expenses incurred for chiropractic treatment from another practitioner in September 2021. Ms. Singh testified that she wanted to continue with chiropractic treatments because it had helped her in the previous year. She only stopped going because her practitioner passed away. Dr. Hershler recommended that she visit a chiropractor. In my view the \$101.32 expended for chiropractic treatment in 2021 is related to the accidents and is a permissible expense.
- [189] Ms. Singh has claimed \$5,000 for non-prescription medication and transportation to and from her treating physicians. The defendants say that there is no evidence of these expenses other than Ms. Singh's claims of having to drive to various appointments and her evidence that she took Tylenol or Advil occasionally.
- [190] While I agree with Ms. Singh that a mileage log is not necessary in order to make out a claim for transportation costs, I have not been provided with any explanation as to how she arrived at the figure she did. I accept that Ms. Singh drove to and from her appointments; that evidence was uncontroverted. However, the only evidence that I have as to the distance travelled is that many of her appointments were a short distance from her place of employment. It would have been helpful to have been provided with at least a representative sample of the distances travelled to the various providers.

- [191] I am also satisfied that Ms. Singh incurred expenses for over the counter medications that she has taken in respect of her injuries since the accidents. However, I once again have no evidence of the amount expended other than her evidence that she takes these two to four times per week.
- [192] The fact that the plaintiff submitted that an amount that she neglected to claim for part of her Botox treatments would be covered by this \$5,000 miscellaneous claim supports a finding that the amount claimed for travel and over the counter medication is overstated. Nonetheless, I am of the view that she should be compensated in some amount for transportation and medication expenses that she no doubt incurred. In light of the deficient evidence of the amount spent, I find that \$2,000 is a reasonable amount.
- [193] The largest single category of special expenses claimed by the plaintiff that is disputed by the defendants is the amounts incurred for Botox treatments. Ms. Singh has claimed a total of \$7,915 in respect of Botox treatments she has received. As discussed earlier, Ms. Singh has claimed that she commenced Botox treatments in March 2016 and that it provided her with significant relief of her jaw pain and headaches for approximately eight to twelve weeks. She would repeat the treatments every three to four months as her finances allowed.
- [194] As I understand their argument, the principal reason that the defendants take issue with the Botox treatments is because they say Ms. Singh referred herself for the treatments and that it was not medically necessary. Although not overtly stated in their written submissions, the underlying premise of their argument is that Ms. Singh undertook the Botox treatments for cosmetic reasons and is now trying to claim them as a therapeutic expense.
- [195] I agree with the defendants that Ms. Singh likely referred herself for the Botox treatments. Dr. Fleming did not recall Ms. Singh being referred to her by a physician for the Botox treatment; however, her clinical notes indicate that Ms. Singh's first visit to Delta Laser was in respect of pain arising from the accidents. There is no indication in Dr. Desai-Renchod's clinical records that she made such a recommendation and she denied doing so in her testimony before the Court. It is difficult to accept Ms. Singh's evidence that she recalls Dr. Desai-Renchod making such a recommendation as Ms. Singh was walking out the door from an appointment.
- [196] While I do not accept Ms. Singh's evidence in this respect, that is not the end of the analysis. In my view, it is not necessarily required that Ms. Singh have been recommended to attend for Botox treatments for her jaw pain and headaches before she attended. What is, in my view, required is that there be a relation to the accidents and that the expense be medically justified. As discussed earlier, Dr. Whitney recommended that Ms. Singh continue with Botox treatments given the success she found with pain relief. Moreover, Dr. Whitney explained that he does use Botox to treat jaw pain in a manner similar to the way in which Ms. Singh received her treatments.

- [197] There is no doubt that Botox may provide some individuals with relief from certain types of pain. I heard significant evidence from Dr. Fleming, the medical doctor who administered most of Ms. Singh's Botox injections, as to the biological mechanics of how Botox relieves pain. Dr. Tobias, an expert tendered by the defendants, agreed that Botox can operate as a pain reliever in certain circumstances. The fact that the effect of Botox is temporary and does not necessarily treat the underlying issue causing the pain does not disqualify Botox as a recoverable expense anymore than a typical pain killer administered orally would be disqualified and I reject the defendants' suggestion to this effect.
- [198] Ms. Singh acknowledges that some portions of the Botox treatments she received in 2016 were for cosmetic purposes but argues that the vast majority, in fact almost all of the treatments, were therapeutic in nature.
- [199] Dr. Fleming testified that Ms. Singh's Botox treatments began with injections to her jaw area and her forehead. Ms. Singh's first few visits included some treatments that were cosmetic including Botox injections to the eye area and some non-Botox cosmetic treatments. Over the course of three-and-a-half years, the Botox treatments progressed to include injections in her temporal area, the back and side of the neck, trapezius muscles, and back of the head.
- [200] In cross-examination, Dr. Fleming acknowledged that Botox is often used for cosmetic purposes in the forehead, brow, eyes, nose, chin, neck, and jaw. She acknowledged that Botox treatment in the eye area is almost always for cosmetic purposes. Dr. Fleming testified that the method of Botox treatments to the frown area and the side of the neck are very similar for both cosmetic and therapeutic purposes.
- [201] However, Dr. Fleming testified that there is no cosmetic purpose for Botox injections in the temporal area, the back of the head, back of the neck, and trapezius area. She also testified that although Botox can be used cosmetically in the jaw area, the dose she would use for cosmetic purposes would be approximately 50 units for each side whereas a much lower dose is used for therapeutic purposes. In Ms. Singh's case, Dr. Fleming administered 15 units in Ms. Singh's jaw muscles.
- [202] While there may be a cosmetic use for some of the Botox treatments that Ms. Singh received, I am satisfied that the plaintiff received significant relief from the pain in her jaw and her headaches as a result of the Botox injections. I am also satisfied that the evidence provided by the expert and non-expert medical witnesses supports the use of Botox injections as a treatment for Ms. Singh's pain despite the fact that she may have referred herself there for the first visit.
- [203] Ms. Singh has claimed \$6,370 for Botox treatments received at Delta Laser from 2017 to 2020 and an additional \$1,545 for treatments received in 2021 at Delta Laser. The claim for special damages does not include a claim for Botox treatment administered in 2016; perhaps because there were no receipts entered into evidence in support. Based upon the records of payments made and the cost of each unit of Botox for the treatments

administered in 2017, it would be reasonable, in my view, to permit \$1,000 for Botox injections received in 2016. This takes into consideration the fact that some treatments received in that year were for cosmetic purposes and that her treatments were not as extensive at that time. I accept that the remaining claimed expenses for Botox injections are appropriate and therefore a total of \$8,915 is awarded in respect of Botox treatments since March 2016 to the date of trial.

- [204] Based on the foregoing findings and agreement of the parties, the amount awarded for special damages is \$16,090.23. As I understand the evidence and submissions made by plaintiff's counsel, \$1,220 is to be deducted in respect of reimbursements that Ms. Singh received from her extended health care provider. Thus, the total amount awarded to Ms. Singh for special damages is \$14,870.23.

Cost of Future Care

- [205] The plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her to her pre-accident condition, in so far as that is possible. When full restoration cannot be achieved, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch*, 49 B.C.L.R. (2d) 33, 1985 CanLII 179 (S.C.); *Williams v. Low*, 2000 BCSC 345; *Spehar v. Beazley*, 2002 BCSC 1104; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29-30.
- [206] It is not necessary that a physician testify to the medical necessity of each item claimed; however, there must be some basis in the evidence whereupon the trier of fact can draw a link between the professional's assessment of pain and disability with the recommended treatment: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at paras. 38-39.
- [207] I also note that an assessment of damages for cost of future care is not a precise accounting exercise: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.
- [208] A plaintiff must also be likely to incur the particular expense in order for it to be awarded. Thus, the likelihood that the plaintiff will use the care items is a factor that may be considered in making an award under this head: *Prempeh v. Boisvert*, 2012 BCSC 304 at para. 107. If the plaintiff does not establish that they will actually incur a particular cost in the future, then an award should not be made under this head of damage: *O'Connell v. Yung*, 2012 BCCA 57 at para. 68.
- [209] Ms. Singh seeks an award for future cost of care in the amount of \$227,529 USD plus an additional \$13,600 CAD. The defendants submit that Ms. Singh is not entitled to any award under this head.

[210] Ms. Singh seeks her award in US dollars because she permanently relocated to the United States in February 2021. The Foreign Money Claims Act, R.S.B.C. 1996, c. 155, provides for damages to be made payable in the amount of Canadian currency that is necessary to purchase the equivalent amount of another currency, if that is necessary to provide full compensation. Given that Ms. Singh now resides in the United States and the costs she will incur for future care will be in US dollars, it is my view that she will be most truly and exactly compensated if the award for the future cost of care is made in US dollars, where there is evidence of that cost.

[211] For expenses that recur annually, the plaintiff seeks an award that applies the cost of future care multipliers provided by the expert economist, Hassan Lakhani. The award sought consists of:

- a) Kinesiologist - \$1,350 USD (\$45 USD x 30 sessions).
- b) Gym membership until age 70 - Annual cost of \$510 USD which is equivalent to the present value of \$13,724.10 USD to age 70.
- c) Chiropractic Sessions until age 70 - Annual cost of \$1,440 USD for 36 sessions per year at \$40 USD per session. The present value of this is submitted to be \$38,750.40 USD.
- d) One-time participation in a chronic pain management program - \$1,360 CAD.
- e) Over the counter medication to age 70 - Annual cost of \$116. The present value of this is submitted to be \$3,121.56 USD
- f) Psychological counselling - A non-recurring expense of six sessions at \$175 per session for a total of \$1,050 USD.
- g) Botox injections until age 70 - An annual cost of \$6,300 (three sessions per year at \$2,100 per session). The present value of this is submitted to be \$169,533 USD.

[212] Many of the medical professionals have recommended that Ms. Singh remain physically active as a means of minimizing her symptomology and managing her pain. Dr. Hershler recommended that Ms. Singh attend 24-36 sessions with a kinesiologist to obtain an active rehabilitation program. Dr. le Nobel testified that a new active rehabilitation program may assist the plaintiff in some measure of recovery. Drs. Hershler and le Nobel also recommended that she have access to a fitness facility.

[213] Although Ms. Singh has already participated in an active rehabilitation program in the past, that was more than eight years ago in 2013. As far as I understand the evidence, Ms. Singh found these sessions to be useful and she testified that she incorporated what she learned into her home exercise routine. In my view, it would be reasonable for her to attend for a "refresher" of sorts and I award her \$1,350 USD (\$45 USD X 30 sessions).

- [214] However, I decline to make an award for a gym membership. As discussed earlier, Ms. Singh would likely have incurred the expense for a gym membership if the accidents had not occurred. I made an award for her past membership on the basis that it was for yoga which I was not persuaded that she would have participated in but-for the accidents. The amount claimed as a future care cost for a gym membership does not identify whether it includes the cost of a yoga membership and I am not aware of recommendations that she obtain yoga treatments for the rest of her life. In any event, Ms. Singh has established a track record of engaging in home exercises for 30-45 minutes per day, multiple days per week. In these circumstances, it would be unreasonable to provide a gym membership in addition to the kinesiologist expense which will permit her to continue to effectively engage in home-based exercises.
- [215] Dr. Hershler recommended access to a chiropractor for two to four sessions per month for pain management. Ms. Singh's family doctor also recommended that she attend a chiropractor. According to Mr. Pakulak's cost of future care report, such sessions cost \$40 USD each at a facility in California. Ms. Singh's claim for chiropractic care is for three sessions per month until age 70. Ms. Singh regularly attended chiropractic sessions until her practitioner passed away in 2020. She recently resumed attending at a clinic in California and would like to continue doing so. She testified that those sessions provided her with some pain relief. I am satisfied that there is a medical justification for chiropractic treatment and that she will incur this expense. However, no practitioner has recommended that she receive this care for the rest of her life. In my view, a more reasonable award would be in the amount of \$12,500 USD, which is equivalent to approximately two sessions per month for 15 years.
- [216] While Dr. Sahjpaul opined that Ms. Singh would be a candidate for assessment and possibly treatment at a pain management program, he stopped short of recommending this outright. In any event, I heard no evidence in respect of the likelihood that Ms. Singh would attend such a program. Given the somewhat qualified recommendation and the lack of evidence that the expense would likely be incurred, I decline to make an award for such a program.
- [217] I accept that it is medically necessary and reasonable that Ms. Singh be provided an award for the future cost of over the counter medications. I accept that Ms. Singh's demonstrated use of these medications in the past correlates to an annual cost of \$116 USD as calculated by Mr. Pakulak. In my view, it is reasonable to assume that she will need these medications until age 70 and the cost of such an expense is reasonable. Thus, Ms. Singh is entitled to the present value of this expense to age 70 which is \$3,121.56 USD.
- [218] Dr. Hershler recommended that Ms. Singh may benefit from psychological counselling if her mood was to deteriorate. Ms. Singh benefited from psychological counselling in the past and has successfully applied the skills she learned to manage her anxiety. However, I am not persuaded that Dr. Hershler's provisional recommendation meets the standard of medically justified. I have no evidence of how likely it is that Ms. Singh's mood will

deteriorate. She has not indicated a desire to return to counselling; rather she has indicated her satisfaction with the skills she learned from Dr. Young. Therefore, I decline to make an award for counseling.

- [219] The final and most significant claim for cost of future care is Ms. Singh's claim for \$169,533 USD for Botox injections to manage her headaches and jaw pain. As discussed earlier when considering the cost of Botox as a special damage, I am satisfied that the Botox treatments that Ms. Singh receives in her temporal area, her brow, jaw muscles, back of the neck, and trapezius muscles are therapeutic and are medically justified. Indeed, both Drs. Whitney and Hershler recommended that she continue with these treatments as a form of pain management. I am also satisfied that these treatments are actually providing Ms. Singh with significant, albeit temporary, relief from her headaches and jaw pain; the relief is a meaningful contributor to mitigating the discomfort she experiences.
- [220] The tenor of the defendants' submissions is that Ms. Singh would have undertaken Botox treatments for cosmetic purposes in any event, and therefore, an award for future cost of such treatment should not be made. I do not accept this argument. Importantly, there is no evidence that Ms. Singh received Botox treatments prior to the accidents. While the source of the referral is not clear, the clinical notes of her first visit indicate that she attended because of her accident related pain symptoms. Although she had undergone some cosmetic procedures prior to attending for Botox for the first time in 2016, those procedures did not involve Botox.
- [221] While the defendants did not go so far as to submit that the fact that Ms. Singh has enjoyed a career as a promotional model leads to the conclusion that she was or is concerned about her physical appearance such that she would likely have undergone Botox treatment despite the accidents, concluding that Ms. Singh would have undergone such treatment on the scant evidence before me would be to accede to a gendered stereotypes about women and their focus on physical appearance. I decline to do so.
- [222] However, there are deficiencies in Ms. Singh's significant claim for the future cost of Botox treatments. Those deficiencies are the lack of evidence in respect to the recommended duration, frequency, and cost of these treatments. No medical professional has stated that it would be reasonable to receive these treatments for decades and there is nothing in the evidence that would support the need for three sessions per year for the remainder of Ms. Singh's life.
- [223] The claimed treatments are very costly, particularly in that the plaintiff says they must be repeated every three to four months. However, there is little support in the evidence of the claimed \$2,100 USD per session. Mr. Pakulak simply telephoned a clinic in the United States that provides Botox injections and states that they told him that the costs would be approximately \$1,200 to \$3,000 USD per treatment. It is not clear to me what type and in what quantity of Botox injections Mr. Pakulak was inquiring about. The best evidence before this Court in respect of the cost of the Botox treatments received by the plaintiff is

the past costs that she has incurred and those costs are in Canadian dollars. That evidence indicates that the cost of the sessions ranged between \$550 and \$1,000 CAD per session. The mid-point of \$750 per session for three sessions per year equates to \$2,250 per year. I note that this is roughly equivalent to the amount that was awarded as special damages for Botox treatments received in the years since 2016.

[224] Taking into consideration contingencies such as that treatments may change over time, the lack of medical justification for incurring this expense for the rest of her life, the uncertain prognosis with respect to her jaw pain, and the possibility that Ms. Singh may cease Botox treatment, I find that it would be reasonable for Ms. Singh to continue with her Botox treatments for 15 years at \$2,250 CAD per year. Applying Mr. Lahkani's cost of future care multipliers, I assess the present value of to be \$30,000 CAD and I order that Ms. Singh is entitled to an award in that amount.

[225] Based upon the foregoing, Ms. Singh is entitled to a future cost of care award in the amount of \$16,972 USD and \$30,000 CAD. The amount payable under the order will be the amount of \$30,000 CAD plus the amount of Canadian currency that is necessary to purchase the equivalent of \$16,972 USD pursuant to s.1 of the Foreign Money Claims Act.

CONCLUSION

[226] The defendants are jointly and severally liable for the plaintiff's injuries. Ms. Singh's claim for damages is allowed. In summary, I award the following:

Non-Pecuniary Damages

\$115,000 CAD

Past Loss of Income

\$12,000 CAD

Future Loss of Earning Capacity

\$84,375 CAD

Cost of Future Care - Botox

\$30,000 CAD

Cost of Future Care - Other

\$16,972 USD

Loss of Housekeeping Capacity

Included in Non-Pecuniary Damages Award

Special Damages

\$14,870 CAD

Total

\$273,217[1]

COSTS

[227] Subject to circumstances of which I am unaware, the plaintiff is entitled to her costs of the action at Scale B. Should the parties wish to make submissions on costs, they may arrange to do so with Supreme Court Scheduling. Any such arrangements to speak to the matter of costs must be made within 45 days of the date of these Reasons for Judgement.

"The Honourable Mr. Justice Majawa"

[1] The total amount is approximate as it does not take into account the amount awarded in USD which will be converted to the equivalent Canadian currency pursuant to s. 1 of the Foreign Money Claims Act.

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/00/2022BCSC0035.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/singh-v-de-santis-2022>

Prepared on 29 October 2026 · Esheria