

CANADA / JUDGMENT

Sood v. Galea

2020 BCSC 1236

COURT

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2020 BCSC 1236 Sood v. Galea

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sood v. Galea,

2020 BCSC 1236

Date: 20200821

Docket: M184653

Registry: New Westminster

Between:

Rashu Sood

Plaintiff

And

Andrew Galea

Defendant

Before: The Honourable Mr. Justice Macintosh

Reasons for Judgment

Counsel for the Plaintiff:

D. Gautam

R.S. Atwal

Counsel for the Defendant:

V.J. Anderson

A. Bajcetic

Place and Dates of Trial:

New Westminster, B.C.

July 27-31, 2020

Place and Date of Judgment:

New Westminster, B.C.

August 21, 2020

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Introduction

The Accident

- [1] The Plaintiff, Ms. Rashu Sood, who is now 35, claims damages from a motor vehicle accident on February 16, 2015, at the intersection of the Fraser Highway and 96 Avenue in Surrey. Liability for the accident is admitted.
- [2] Ms. Sood was the passenger in the front passenger seat of the Honda passenger van her husband was driving. No one else was in the car. The Sood vehicle was rear-ended by the Defendant in his Toyota hatchback.

- [3] The collision was minor. The photographs show almost no damage to either vehicle. The Plaintiff vehicle was not pushed into another vehicle in front. No ambulance or other emergency vehicle attended the scene. Ms. Sood got out of her car unaided after the impact. She and her husband were each wearing their seatbelts at the time of impact. Her husband experienced some back and shoulder injury, but that was not described further at trial. In the course of the collision, Ms. Sood struck nothing inside the car. She felt low back pain almost immediately.
- [4] Shortly after the accident, on the same day, Ms. Sood went to a walk-in clinic, where a Dr. Jassal looked after her. She complained to him of pain in her lower back and some other back pain. Dr. Jassal prescribed for her a painkiller and a muscle relaxant. She went to work the next day, but came home early because of pain in her lower back, upper back, and neck, and a headache. At trial, Ms. Sood testified and called only for other witnesses to the stand, her husband and a Mr. Talla, both of whom gave "before and after" testimony of her condition, Mr. Amrik Sangha, a former employer, and Dr. Amita Gandhi, who testified both as a treating psychiatrist and as an expert witness in psychiatry.
- [5] The only other testimony at trial came in the form of written expert reports, one from each of two physiatrists, Dr. David Flaschner, called by the Plaintiff, and Dr. Najam Mian, called by the Defendant. Neither doctor was called to testify orally.

The Claims

- [6] Ms. Sood claims nonpecuniary damages of \$150,000, or \$175,000 if loss of housekeeping capacity is not treated as a standalone claim. From *Kim vs. Lin*, 2018 BCCA 77, at paras. 27 and following, and particularly paras. 28 and 33, I appear to have considerable discretion in determining whether the \$25,000 claim for loss of housekeeping capacity is made part of a nonpecuniary damages claim or instead is treated as a claim standing alone. The Plaintiff presented no evidence of the cost of her alleged loss of housekeeping capacity. Her husband's evidence was that, since the accident, he has done the majority of the housework, none of which he did before, and that the Plaintiff does housework when she wants to. The Plaintiff was more understated on the question, and testified that since the accident, her husband has helped out at home. In summary, I find the evidence regarding a loss of housekeeping capacity to be somewhat vague or unclear, and I am treating that claim as part of the Plaintiff's claim for nonpecuniary damages. The Defendant submits that the Plaintiff is entitled to nonpecuniary damages in the range between \$50,000 and \$60,000.
- [7] For past wage loss, the parties are in agreement as to \$11,818.40, but the Plaintiff, in closing submissions, also sought \$39,060 in addition as past lost earning capacity.
- [8] Special damages are agreed at \$3,328.26.

- [9] For loss of future earning capacity, the Plaintiff claims \$300,000. The Defendant submits that the Plaintiff has no claim under this head, and in the alternative, that the Plaintiff should receive \$59,000, as the equivalent of one year's salary under the capital asset approach to determining loss of future earning capacity.
- [10] Finally, for the cost of future care, the Plaintiff asks the Court to make findings that certain items of future care are medically necessary and reasonable. However, the Plaintiff has not quantified the costs for any of the future care claims. The Defendant submits that no claims have been established under this head.

Further Facts

- [11] Ms. Sood testified for approximately 1 ½ days. Her demeanour as a witness was informative regarding her claims for both nonpecuniary damages and loss of future earning capacity. She presents herself as being intelligent, articulate, composed and vibrant. She preferred to stand throughout her testimony.
- [12] Ms. Sood testified that all her adult life, prior to the accident, she was career-oriented, a "brilliant" student, well educated, and ambitious to participate in the world of business at an executive level.
- [13] She moved to Vancouver with her husband, from India, in September 2011. In 2008, she had obtained an MA in Business Economics in India, and she enrolled to begin a second MA, in Vancouver, with studies beginning in September 2011. She said that the second MA was similar to an MBA. For this degree, Ms. Sood enrolled at an institution named Fairleigh Dickinson University ("FDU") at its Vancouver campus. She said that FDU is based in New Jersey. Ms. Sood's husband also has two MA degrees, both from India. (There was no evidence to indicate whether any of these four MA degrees are comparable to a traditional university master's degree in Canada. The degree from FDU, where Ms. Sood graduated in May, 2013, consisted of three courses a week, three hours per course. There was no mention, for example, of a master's thesis being required.) Ms. Sood obtained A's in all but one of her courses at FDU, and was nicknamed "the professor" by her classmates.
- [14] In India, Ms. Sood had worked as a quality analyst at the Royal Bank of Scotland. Her husband had worked in India for Deutsche Bank.
- [15] In Vancouver, while attending FDU, and at the same time being responsible for doing the housework at home, Ms. Sood also worked 20 hours a week for Coast Building Supply ("Coast"), a retail and wholesale building supplies business, with locations in Surrey and Vancouver, having about 90 employees in total. She continued part-time work at Coast throughout her time at FDU, and in the summer of 2012, when there were no classes, and after graduation, she worked full time at Coast, 5 ½ days a week, until March 2018, apart from some days off due to the accident, and maternity leave from late May 2016 to June 2017.

- [16] Ms. Sood always enjoyed working at Coast, and the company, in turn, was always very pleased with her as an employee.
- [17] At Coast, Ms. Sood was a customer service representative. When she began working there fulltime, she also worked on accounts receivable, recording sales orders, and following up with clients to see that their accounts were administered properly. Mr. Amrik Sangha, the founder and owner of Coast, testified in glowing terms about Ms. Sood, as a bright young woman whom he trusted, and about whom he never received a complaint. Ms. Sood's salary, throughout her time at Coast, was \$3,400 per month, or \$40,800 per year.
- [18] Ms. Sood left Coast only because the company would not meet her request for more pay. She began working at PricewaterhouseCoopers ("PWC") downtown in Vancouver, in March 2018, as a partners' assistant, managing the needs of six partners. Her work location with PWC was eventually divided between two days in Vancouver and three days in Surrey each week. Her employment with PWC was terminated, not for cause, effective July 23, 2020. She received the layoff notice on July 17. There is no suggestion that the termination of Ms. Sood's employment had anything to do with the motor vehicle accident. She was earning \$59,000 annually at PWC when her work there ended.
- [19] Mr. Sangha, the owner of Coast, testified that on July 8 of this year, he offered Ms. Sood the position of branch manager for the Vancouver location, at \$6,500 per month, plus a car. She said that she would think about it, but declined the position by email, on July 15, 2020, "due to my health conditions." As seen above, it was two days after that, that she received notice of termination from PWC.
- [20] The events from Ms. Sood's working life, described above, overlapped in time with the accident, on February 16, 2015, and with Ms. Sood's pregnancy with her first child, beginning in September, 2015, and the birth of that child, a boy, on May 20, 2016. Ms. Sood's pregnancy was very difficult because of nausea that was extreme in its frequency and duration. She said that the problem ran in her family. There was brief evidence as well of some difficulties in her baby's first months and years, but little was said about that. Ms. Sood and her husband testified that pain she suffers from the accident makes intercourse more painful, with the result that they have postponed seeking to have a second child, which they had attempted in 2018.
- [21] Ms. Sood was in excellent physical and mental health before the accident.
- [22] Earlier in these reasons, I spoke of her experiencing low back pain, and other pains, and headaches, shortly after the accident. Pain in Ms. Sood's back and neck, and headaches, continued. She has been prescribed painkillers, and her doctors have recommended that she try various treatments, including physiotherapy, massage, active rehabilitation and acupuncture. She has not pursued those courses of treatment rigorously.

- [23] Mentally, after the accident, Ms. Sood became less energetic and vivacious, and more withdrawn. However, the evidence is unclear as to the extent those declines may have been caused solely by the accident, compared, for example, with Ms. Sood's difficult pregnancy. (Below, when discussing the expert evidence of the psychiatrist, it will be seen that the psychiatrist, Dr. Gandhi attributes Ms. Sood's diminished emotional state to the accident.) Her classmate from FDU, Mr. Talla, from his occasional contacts with Ms. Sood in 2015 and after, gave some evidence of decline on her part, including that she stayed for only a half-hour at a going away party for him in early 2016, when before the accident, she would have been more the life of the party. However, in their dealings in 2015, Ms. Sood never mentioned the accident to Mr. Talla. He did not know of the accident until 2016.
- [24] Ms. Sood's husband testified about the change in her behaviour after the accident. She becomes agitated more easily, is more fragile, and has some difficulty controlling her anger. She is more indifferent to household activities such as decorating. Her interest in the movie on television will flag before the movie is over. She exhibits less confidence and more anxiety, and is less eager to be with people.
- [25] Ms. Sood did not consult a psychiatrist until July 16, 2018, about 3 ½ years after the accident. Even when her husband testified at trial, he did not know that she had seen or was seeing a psychiatrist. When I take all of the lay evidence into account, including the way Ms. Sood appears today, I accept that she suffered some emotional decline as a result of the accident. However, as will be seen below, I am unable to conclude that her decline was as severe as Dr. Gandhi stated it to be.
- [26] The reports of the three experts, the two physiatrists and Dr. Gandhi, the psychiatrist, provide useful summaries for assessing Ms. Sood's conditions, subject to my qualifications, below, concerning the psychiatric evidence.
- [27] The report of Dr. Flaschner, the physiatrist called by the Plaintiff, is dated March 25, 2020. Dr. Flaschner saw Ms. Sood for assessment on February 21, 2020, about five years after the accident. Following are excerpts from his report:

6. HISTORY OF INCIDENT

Ms. Sood presents today with a report of the following ongoing injuries:

1. Low back pain reported to be constant. Symptoms increase with lumbar flexion or while carrying her son, standing from a low seat or lifting groceries. Pain will improve with use of an SI belt and with medications. Ms. Sood does not describe radicular symptoms. She reports some urinary urgency and frequency but otherwise does not report sphincter disturbance. Ms. Sood does not experience sensory symptoms into the legs. She reports that she does not experience pain-free days.

Ms. Sood was pregnant between September 2015 and May 2016 and reported that her low back was more bothersome during the latter part of her pregnancy.

2. Neck and upper back pain reported to be constant. Symptoms increase with computer work or with a neck flexed position. Pain is bilateral and will improve with massage, therapy, heat and use of soft foam pillow. Ms. Sood does not report radicular symptoms.
3. Headache also reported to constantly be present radiating from the neck to the occipital or bitemporal region. Headaches will improve with Tylenol. Ms. Sood does not report migrainous symptoms. The headache will worsen when the neck pain is more bothersome.

13. FUNCTIONAL/SOCIAL HISTORY

Ms. Sood can awaken frequently at night with pain.

She lives in a townhouse with her husband and three year old. Ms. Sood reports that mopping, yard work and household cleaning can exacerbate pain. She has been postponing her second pregnancy due to her ongoing pain.

20. PROGNOSIS

The presence of ongoing symptoms for the seven months prior to the beginning of Ms. Sood's pregnancy in the context of a high level of disability reported on the Neck Disability Index and Oswestry Low Back questionnaire of August 21, 2015, was already prognostically poor. The prognostic literature from the Neck Disability Index suggests that individuals with a high level of initial reported disability that do not have a resolution of symptoms by approximately six months post injury will more likely than not develop chronic symptoms that require long-term management, which is consistent with Ms. Sood's presentation.

Ms. Sood reported that she was also involved in another motor vehicle collision in June 2017 but did not experience any further aggravation of her preexisting pain.

I agree with Dr. Jaworski's comment that the emotional symptoms are relevant to Ms. Sood's pain perception. Depression and anxiety are known to negatively influence pain and result in a higher level of pain perception and associated disability.

Ms. Sood is now presenting five years post injury. She will have reached maximal medical improvement. Ongoing symptoms at this point in time will be expected to require long-term management.

22. RECOMMENDATIONS

For the ongoing pain, treatment should be directed at an active rehabilitation program for postural exercises, core stability and hip flexibility as well as regular cardiovascular fitness. A program can typically be learned over the course of six to eight weeks with two to three sessions per week. Manual therapies would not be expected to be curative but can be used for temporary symptomatic relief to allow Ms. Sood to tolerate her vocational and avocational needs and participate in her exercise program.

Needle-based therapies including IMS, local anesthetic trigger point injections or botulinum toxin injections would be expected to offer temporary relief. Facet directed procedures may be helpful as well.

Ms. Sood has been using Escitalopram for mood. The SSRI medication can be beneficial for mood but is not likely to have a direct effect on pain. For the chronic pain, an SNRI such as Duloxetine or Venlafaxine would likely be helpful given its indication for spinal and myofascial pain and can be combined with Pregabalin or Gabapentin as needed. A low dose of Nortriptyline at night would likely improve restorative rest as well as potentially mood and pain.

A topical analgesic such as a mixture of Diclofenac, Capsaicin, Cyclobenzaprine and Lidocaine would be expected to offer temporary symptomatic relief. The use of an analgesic medication such as Acetaminophen or Ibuprofen prior to engaging in physical activity may allow Ms. Sood to progress with her active rehabilitation program with less discomfort.

[28] Dr. Mian, the physiatrist called by the Defendant, saw Ms. Sood for assessment on May 27, 2020, and dated his report June 11, 2020. The extracts I take from his report are as follows:

OPINION

I. Formulation of Medical Diagnoses

- a) In my opinion, Mrs. Sood presents with the following MVA-related diagnoses:
 - 1) Whiplash with development of chronic mechanical cervical, thoracic, and lumbar pain.
 - 2) Chronic post-traumatic headaches, likely mixed with tension and cervicogenic components.
 - 3) Left shoulder rotator cuff syndrome.
 - 4) Mood Disturbance with features of PTSD, anxiety

As noted in the clinical records, following a rear-end mechanism collision, Mrs. Sood presented with neck and back pain to a family physician in the days to weeks after the index motor vehicle accident. She went on to receive ongoing treatment in these regions that was recalcitrant to medical treatments. In my opinion she likely sustained an acute whiplash-induced trauma to the cervical, thoracic and lumbar regions, which subsequently resulted in development of chronic pain in these regions. My examination showed features of pain with active cervical and thoracolumbar range of motion, and a completely unremarkable neurologic examination. I do not think she has feature of spinal cord compression (myelopathy) or nerve root compression (radiculopathy) based on her clinical presentation.

With respect to her mood symptoms, an ongoing characterization within the DSM-V framework is outside my scope of practice and is deferred to psychiatry and psychology. In the records, she is noted to have "Major Depression" and "Post-Traumatic Stress Disorder" in the consultation note by Dr. Gandhi.

II. Causality

There were no identifiable pre-MVA traumatic or degenerative injuries resulting in pain in the regions above. As noted, there was temporal relation between the onset of symptoms immediately after the index MVA. Thus, in my opinion, the MVA more likely than not directly resulted in the development of Mrs. Sood's chronic mechanical cervical, thoracic, lumbar pain, and post-traumatic headaches. A discussion of the causality of her mood symptoms is deferred to a psychiatrist or psychologist.

III. Prognosis of Injuries

Mrs. Sood has experienced chronic pain for over 5 years since her index MVA. Her pain has been recalcitrant to a number of physical treatments including physical therapy, massage therapy, active rehab, and simple analgesics such as naproxen. She has also attempted a trial of duloxetine, which is routinely used for her constellation of symptoms. Due to the chronicity of her pain, recalcitrant nature despite treatments noted above, and co-existing psychiatric illness, I would expect Mrs. Sood to continue to experience chronic pain for the remainder of her life. I would expect partial improvements in pain and function with treatment recommendations noted below. I do not think that Mrs. Sood will develop early degeneration of her tendons or joints due to the injuries sustained.

IV. Impact of Injuries on Work

Limitations at her workplace due to her spinal pain could include prolonged sitting, standing, bending, twisting, and lifting. She can likely tolerate changes in her role that have similar physical capacities as her current role.

V. Impact of Injuries on Household and Recreational Activities

Due to her chronic pain and headaches, in my opinion, heavier household tasks such as snow shoveling, gardening, and washing walls/floors will be difficult. Lighter housekeeping tasks, food preparation, driving, and grocery shopping can likely be performed without limitations. She has not been able to return back to any desired sports due to a combination of her pain and mood swings. I would recommend a gradual return to sport (GRTS) after she has undergone some of the recommended treatments below, along with optimization of her mood.

[29] Finally, I quote portions of the report by Dr. Gandhi, the psychiatrist called by Ms. Sood, dated June 29, 2020. Dr. Gandhi, as I noted earlier, first saw Ms. Sood in July 2018. Her most recent session with Ms. Sood was on June 17, 2020. Dr. Gandhi is both a treating psychiatrist and an expert witness for Ms. Sood. I quote as follows from her report:

Emotionally, Ms. Sood developed Major Depression and Posttraumatic Stress Disorder. She developed depressed mood, sleep disturbances, and decrease in her energy and motivation, easy fatigability, decreased interest. She had periods of feeling demoralized as she was not able to function and take her responsibilities as before. She also developed marked anxiety and fear

related to the motor vehicle accident. She had flashbacks and intrusive thoughts of the motor vehicle accident intermittently, triggered by the situations that reminded her of the accident. She also had anticipatory anxiety and fear of another accident. Ms. Sood continued to work at her job but due to pain she had to take frequent breaks. She was feeling exhausted after she came home. She was not able to function and take care of her family responsibilities as before. She had feelings of guilt that her husband had to take more responsibilities. She was not able to do activities with her son due to the impact of the injuries. She wanted to have another child but was apprehensive that her condition may deteriorate, and she may not be able to take additional responsibilities.

Ms. Sood has relative reduction in the symptoms of Major Depression and Posttraumatic Stress Disorder with treatment, but she had continued ongoing physical pain affecting the response to the treatment and recovery. The symptoms of Major depression and posttraumatic Stress Disorder are in partial remission.

Prognosis from a Psychiatric point of view is guarded as long as she continues to suffer from physical pain and associated limitations in her ability to function due to the impact of the physical injuries in the motor vehicle accident.

In my opinion, Ms. Sood would not have developed the present constellation of emotional and physical difficulties if she had not been in the motor vehicle accident on February 16, 2015. Ms. Sood did not have any previous history of depression or anxiety. She was able to work successfully and take care of her family responsibilities prior to this motor vehicle accident.

Ms. Sood is suffering from a definite decline in her overall quality of life. Ms. Sood will likely continue to experience depressive and anxiety symptoms and likely will remain emotionally fragile and at risk for further deterioration in her condition in the future if there is worsening of the pain or if she is exposed to any further psychological stressors or traumatic experiences. She will likely need treatment with antidepressants along with individual counseling on a long-term basis.

[30] I respectfully disagree with Dr. Gandhi in her findings of Major Depression, which she accepted is synonymous with a Major Depressive Disorder in the language of DSM-5 (see below), and in her finding of Posttraumatic Stress Disorder ("PTSD").

[31] Marked as an exhibit at trial was an extract from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, DSM-5. PTSD is discussed in part at pp. 271-6 of that publication. The point of my disagreement is to do with the required seriousness of the "directly experienced traumatic event" as the precipitating event for a finding of PTSD. Quoting from p. 274 of DSM-5:

The directly experienced traumatic events in Criterion A include, but are not limited to, exposure to war as a combatant or civilian, threatened or actual physical assault (e.g., physical attack, robbery, mugging, childhood physical abuse), threatened or actual sexual violence (e.g., forced sexual penetration, alcohol/drug-facilitated sexual penetration, abusive sexual conduct,

noncontact sexual abuse, sexual trafficking), being kidnapped, being taken hostage, terrorist attack, torture, incarceration as a prisoner of war, natural or human-made disasters, and severe motor vehicle accidents.

[Emphasis added.]

[32] What is meant in that extract by "severe motor vehicle accidents" I believe must be informed by the seriousness of the other events referred to there, war, torture, being kidnapped, and so on. By contrast, Ms. Sood's motor vehicle accident was minor by any reasonable assessment. I asked Dr. Gandhi about this, and her reply was, in essence, that for Ms. Sood, her accident was serious and therefore a severe motor vehicle accident. In my view, that reasoning is circular. For there to be PTSD, there first has to have been a traumatic event, whether it be war, a severe motor vehicle accident, or something else like that. Calling a minor motor vehicle accident a severe motor vehicle accident because of the way the patient reacted to it confuses the event itself from the reaction to the event. I accept that a patient can have a serious reaction to a minor event, but that does not result in a finding of PTSD. Where the experienced event is not severe, but instead is minor in comparison with the events in the portion quoted above from DSM-5, the patient's resultant problems might be serious, but they cannot properly be termed PTSD.

[33] Similarly, DSM-5, at pp. 160-1, says this about Major Depressive Disorder:

Diagnostic Criteria

Five (or more) of the following symptoms have been present during the same 2-week period and represent a change from previous functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure.

Note: Do not include symptoms that are clearly attributable to another medical condition.

1. Depressed mood most of the day, nearly every day, as indicated by either subjective report (e.g., feels sad, empty, hopeless) or observation made by others (e.g., appears tearful). (Note: In children and adolescents, can be irritable mood.)
2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective account or observation).
3. Significant weight loss when not dieting or weight gain (e.g., a change of more than 5% of body weight in a month), or decrease or increase in appetite nearly every day. (Note: In children, consider failure to make expected weight gain.)
4. Insomnia or hypersomnia nearly every day.
5. Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down).
6. Fatigue or loss of energy nearly every day.

7. Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick).
 8. Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others).
 9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideation without a specific plan, or a suicide attempt or a specific plan for committing suicide.
- [34] None of the lay evidence, that is the testimony of Ms. Sood, her husband, or Mr. Talla, supports a conclusion that Ms. Sood's emotional problems can be termed a Major Depressive Disorder. They simply were not that serious. Clearly, she had some depressive symptoms, and still has them, but not to the degree and intensity described in the quotation above from DSM-5.
- [35] However, none of what I have said above regarding PTSD or Major Depressive Disorder leads to a conclusion that Ms. Sood has not suffered emotionally from the accident. The portions of Dr. Gandhi's report quoted above show numerous other diagnoses, including depressed mood, sleep disturbances, decrease in energy and motivation, easy fatigability, and decreased interest, etc. Those findings are supported by the evidence.

Nonpecuniary Damages

- [36] Both parties began their submissions under this head by citing the well-known list of factors to consider as found in *Stapley v. Hejslet*, 2006 BCCA 34, at para. 46:

The inexhaustive list of common factors cited in *Boyd* that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and

- (j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163(QL), 2005 BCCA 54).
- [37] Ms. Sood then cited seven decisions of this Court in which, she submitted, the facts and findings support her request for \$175,000 in nonpecuniary damages. The decisions were *Soligo v. Turner*, 2001 BCSC 205, (upheld on appeal at 2002 BCCA 73); *Hutchings v. Dow*, 2006 BCSC 629; *Morena v. Dhillon*, 2014 BCSC 141; *Marois v. Pelech*, 2007 BCSC 1969; *Morlan v. Barrett*, 2010 BCSC 1767; *Broomfield v. Lof*, 2019 BCSC 1155; and *Ferguson v. Watt*, 2018 BCSC 1587. For my review of those authorities, I find that the plaintiffs' physical pain and suffering was, in almost all of the fact patterns, markedly more severe than what Ms. Sood has suffered.
- [38] The Defendant, in submitting that a range of \$50,000-\$60,000 is the appropriate award under this head, cited three recent decisions of this Court, in which the nonpecuniary damages awards were, respectively, \$60,000, \$50,000 and \$60,000. There was similarity to the facts before me in the three plaintiffs' physical impairments in the decisions the Defendant relies upon, *Carleton v. Warner*, 2020 BCSC 436; *Dennison v. Jensen*, 2019 BCSC 725; and *Manhas v. Jaswal*, 2020 BCSC 586.
- [39] However, in none of those cases was there a psychiatric component such as is present in Ms. Sood's condition. While I do not accept Dr. Gandhi's findings of Major Depressive Disorder and PTSD, I do largely accept her other findings of the Plaintiff's impairments and sufferings from the accident. I cannot fully accept those other findings because, even eliminating from consideration the Major Depressive Disorder and PTSD findings, I am not satisfied that Ms. Sood has suffered or continues to suffer to the full extent Dr. Gandhi expresses in her opinion. But when the psychiatric component from the evidence before me is added to the assessment of Ms. Sood's pain and suffering, I find that the award for nonpecuniary damages should be increased from the \$50,000-\$60,000 range, as advocated by the Defendant, to an award, which I make, of \$115,000.

Loss of Future Earning Capacity

- [40] The parties are in agreement that I must determine whether there is a real and substantial possibility that Ms. Sood will suffer a loss of income in the future as a result of the accident. If so, I must then determine the measure of damages.
- [41] Ms. Sood claims \$300,000 under this head. The Defendant submits that Ms. Sood is entitled to nothing here, because the claim is nothing more than speculation. Alternatively, the Defendant submits that one year of Ms. Sood's most recent annual earnings, or \$59,000, is the appropriate measure, employing what is called the capital asset approach.
- [42] Although Ms. Sood, in her counsel's closing submissions, presented a claim under this head using the earnings approach, in my view, the capital asset approach is the appropriate one to employ here. The earnings approach would be more appropriate if the loss was easily measurable. In this case, it is anything but. Ms. Sood advanced the claim on the earnings

approach under three different scenarios. However, there was no evidentiary base for most of the numbers in any of them. The intricate calculations under each of the scenarios had an appearance of precision, but the numerous assumptions, and many of the numbers, that were employed, did not have any evidentiary base.

- [43] Because of what I find to be the insurmountable difficulties in employing the earnings approach, if Ms. Sood can obtain compensation under this head, it will be through the capital asset approach, which is best suited to cases where the loss, though proven, is not readily calculated. See *Moody v. Hejdanek*, 2018 BCSC 380.
- [44] The reality is that Ms. Sood demonstrated herself to be an excellent employee for some years after the accident while working at Coast, where, as the owner of the company testified, she always made an excellent impression and was never the subject of any complaint. Coast wanted her back, as the manager of the Vancouver branch, as evidenced by its offer to her in July of this year. When Ms. Sood was laid off at PWC, later in July, it had nothing to do with the accident. She remains marketable as an employee. Nonetheless, Ms. Sood was not seriously challenged on her evidence that she declined, in July, the offer at Coast, where she was offered \$6,500 per month, plus a car, because of her health condition. The Coast offer was equivalent to \$78,000 a year, plus a car, or approximately \$20,000 per year more than Ms. Sood had earned at PWC. I am prepared to accept that Ms. Sood, although still a presentable candidate in the job market, because of her intelligence, work ethic and demeanour, does have some diminishment in her capacity for pursuing and fulfilling her career ambitions. Employing the capital asset approach, I am awarding her damages under this head equivalent to slightly over 1 ½ years income at her last place of employment, for an award of \$100,000 under this head.

Past Wage Loss

- [45] As seen toward the beginning of these reasons, the parties are agreed that Ms. Sood is entitled to \$11,818.40 for past wage loss. Ms. Sood also claims \$39,060 as further damages characterized as past lost earning capacity. Ms. Sood submitted that she was less competitive in the workforce after the accident because she only looked for jobs that would give her the necessary flexibility to work around her injuries. She then asked me to take the difference between her annual earnings at Coast and at PWC, \$18,600, as a measure of her annual loss. She multiplied that "annual loss" by three years, taking her to \$55,800, and she then applied a discount of 30% to arrive at \$39,060. I do not find that claim to be realistic. Ms. Sood was very happy, and successful, working at Coast from 2011 through to 2018, when she went to PWC. She only went to PWC, in 2018, because Coast would not meet her rather modest demand for a pay increase. When she moved to PWC in March 2018, Ms. Sood increased her annual earnings to \$59,000. There is no evidence from which to conclude that she could have earned more than that up to the time she was laid off by PWC, in late July of this year. As I noted earlier, that layoff had nothing to do with the car accident. In summary, there is no evidentiary basis that I can see for the additional past lost earnings capacity claim, and

Ms. Sood's damages for past wage loss are only those which have been agreed to, \$11,818.40.

Special Damages

[46] The special damages are agreed at \$3,328.26.

Cost of Future Care

[47] Ms. Sood presented no evidence of the cost of future care. The Defendant referred me to the legal principles associated with damages for cost of future care, as set out at para. 79 in *Manhas v. Jaswal*, 2020 BCSC 586. Among the principles were that the focus should be on the plaintiff, with fairness to the other party being achieved by ensuring that the expenses are legitimate and justifiable, and that the plaintiff needs to show: (a) a medical justification for the items claimed; and (b) that the amount claimed is reasonable.

[48] Based on those principles, I am unable to make an award under this head in the absence of any evidence as to the costs.

[49] Ms. Sood asked me to take the unusual, perhaps unprecedented, step of making a direction, as seen at para. 74 of her closing submissions:

The Plaintiff acknowledges that there is no evidence of the cost associated with the above-noted treatment. If your Lordship determines that the above-noted treatments are reasonably necessary on the basis of the medical evidence, then a finding in this regard should be made with a direction to ascertain if the cost of the above-noted treatment will be covered pursuant to s. 83 of the Insurance Vehicle Act. In *Sangha v. Inverter Technologies Ltd.*, 2019 BCSC 1174, Mr. Justice Riley of this court found that treatments that are covered under s. 83 of the Insurance Vehicle Act must be deducted from a cost of future care award.

[50] The most I believe I can do, as a matter of law, is simply to state that that the Recommendations in s. 22 of Dr. Flaschner's report, and the Recommendations for Investigations and Treatment, in part VI of Dr. Mian's report, were not challenged, and constitute evidence of medical justification for the recommended treatments. However, I am unaware of a basis on which I can go further, and make an award of damages under this head.

Summary

[51]

Nonpecuniary damages:

\$115,000

Loss of future earning capacity:

\$100,000

Past wage loss:

\$11,818.40

Special damages:

\$3,328.26

Total:

\$230,146.66

[52] Costs were not spoken to. The parties can make arrangements to speak to costs if they wish.

"Macintosh J."

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Prepared on 26 October 2026 · Esheria