
CANADA / JUDGMENT

Thompson v. Helgeson

2017 BCSC 927

COURT

Supreme Court of British Columbia

DECIDED

5 June 2017

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

2017 BCSC 927 Thompson v. Helgeson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Thompson v. Helgeson,

2017 BCSC 927

Date: 20170605

Docket: M163375

Registry: New Westminster

Between:

Pia Leena Thompson

Plaintiff

And

Stuart Helgeson

Defendant

Before: The Honourable Mr. Justice Sewell

Reasons for Judgment

Counsel for the Plaintiff:

D.C. Richardson

C.E. Coakley

Counsel for the Defendant:

A.M. Mersey, Q.C.

E.J. Segal

T.A. Nemetz-Sinchein

Place and Date of Trial:

New Westminster, B.C.

February 21-24, 27-28,

March 1-3, 6 and 8-9, 2017

Place and Date of Judgment:

New Westminster, B.C.

June 5, 2017

Introduction

- [1] The plaintiff, Pia Leena Thompson, seeks damages against the defendant, Stuart Helgeson, for damages that she sustained in a motor vehicle accident which occurred on October 21, 2012 on Kingsway Avenue near its intersection with Westwood Street in Port Coquitlam, British Columbia (the "Accident").
- [2] Mr. Helgeson has admitted liability for the Accident.

Background

- [3] Ms. Thompson was born in Sweden on December 13, 1967 and was 44 years old at the time of the Accident. She immigrated to Canada with her family as an infant and grew up in the Lower Mainland. She has a high school education.
- [4] After graduating high school in Port Moody in 1985, Ms. Thompson worked in a secretarial position for Kask Brothers, and later for Canadian Tire. While at Canadian Tire, she obtained a Class 1 driver's licence and started a career as a truck driver.
- [5] In 1995, Ms. Thompson began working as a courier driver for United Parcel Service ("UPS"). This was a unionized position. Except for two periods of absence, Ms. Thompson continued to work full time as a courier up to the date of the Accident. Ms. Thompson's job required her to work eight to ten-hour shifts delivering parcels and packages by truck. It was demanding physical work.
- [6] At the time of the Accident, Ms. Thompson was married to David Thompson. They resided together in a two-bedroom condominium they owned in Port Coquitlam, B.C.

- [7] As a result of the Accident, Ms. Thompson suffered soft tissue whiplash-like injuries to her neck and back. Unfortunately, these injuries did not resolve themselves within the time that such injuries normally do. She may also have suffered a concussion.
- [8] Ms. Thompson's neck and back injuries have now significantly improved, but she continues to have some residual pain and discomfort. She also continues to suffer serious headaches that she says incapacitate her. The pain associated with the headaches has also affected her mood and her ability to work.

Position of the Parties

- [9] The principal issues in this case are the seriousness of Ms. Thompson's injuries, including whether she suffered a brain injury, and the extent to which her injuries and symptoms have affected her ability to work and engage in activities she enjoyed before the Accident.
- [10] The parties agree on the correct legal principles applicable to the resolution of these issues. They do not agree on the facts; and in particular, do not agree on the extent of Ms. Thompson's injuries.
- [11] It is common ground that Ms. Thompson suffered a moderate whiplash-type injury in the Accident.
- [12] The plaintiff's position is that Ms. Thompson also suffered a mild traumatic brain injury and psychological and psychiatric injuries as a result of the Accident, and that her physical injuries have caused severe headaches that have rendered her unemployable.
- [13] The defendant submits that Ms. Thompson did not suffer a concussion or brain injury as a result of the Accident and has substantially recovered from her soft tissue injury. He also denies that Ms. Thompson suffered any psychological injury as a result of the Accident and submits that she is capable of working in some capacity. The defendant's position is that Ms. Thompson is exaggerating the symptoms she is experiencing because the easier option for her is not to return to work and to continue to enjoy her post-Accident lifestyle.
- [14] For the reasons that follow, I find that Ms. Thompson does suffer from debilitating headaches that have rendered her competitively unemployable and have seriously impaired her personal and social functioning and is therefore entitled to substantial damages.

Credibility

- [15] Ms. Thompson's credibility is challenged by the defendant.

- [16] The defendant submits that Ms. Thompson is exaggerating her physical symptoms. Defendant's counsel argues that Ms. Thompson has developed a comfortable low-stress lifestyle and prefers that lifestyle to going back into the workforce. While he stopped short of submitting that Ms. Thompson was malingering, he did submit that she was not making a genuine effort to find employment and that there was no medical justification for her not finding some employment.
- [17] In his submissions, defendant's counsel relied on the principle that a court must scrutinize the evidence of subjective complaints from a plaintiff carefully and sometimes skeptically: *Chappell v. Loyie*, 2016 BCSC 1722 at para. 66.
- [18] The principles applicable to an assessment of credibility were summarized by Justice Silverman in *Dhaliwal v. Greyhound Canada Transportation Corp.*, 2015 BCSC 2147:
- [280] A number of principles emerge from the case law which address the question of assessing credibility in a case such as this, all of which I am guided by:
1. It is well accepted that courts should be careful in assessing compensation where there is little to no objective medical evidence supporting a plaintiff's self-reported symptoms, particularly where those symptoms persist beyond the usual course of recovery: *Price v. Kostyba*, (1982) 70 B.C.L.R. 397 (SC), at 399 [Price] *Tai v. De Busscher*, 2007 BCCA 371, at para 41 [Tai].
 2. To justify an award of damages in the absence of corroborating evidence, the plaintiff's own evidence must be examined with "a skeptical eye": *Sevinski v. Vance*, 2011 BCSC 892, at paras 42-46.
 3. Where the plaintiff's self-report is in doubt, the court should place the most reliance on objective medical evidence that does not depend on the credibility of the plaintiff: *Sharifi v. Chaklader*, 2012 BCSC 685, at paras 97-98.
 4. There must be compelling evidence that the plaintiff's complaints are a true reflection of a continuing injury: *Price*, at p. 398-399.
 5. While Mr. Dhaliwal's physicians are entitled to take Mr. Dhaliwal's complaints at face value, this court is required to take a more critical view: *Edmondson v. Payer*, 2011 BCSC 118 at para 77, *aff'd* 2012 BCCA 114.
 6. Credibility involves an assessment of the reliability of a witness' testimony based on their apparent sincerity and truthfulness and the accuracy of their evidence: *Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.) as cited in *Karim v. Li*, 2015 BCSC 498 [Karim] at para 88.
 7. As a starting point, a witness is presumed to be truthful; however, this presumption is displaced by evidence of deliberate falsehood: *Hardychuk v. Johnstone*, 2012 BCSC 1359, at para 9.

- [281] The plaintiff acknowledges that when dealing with chronic pain cases, there are few objective symptoms of injury and that, therefore, the Court must be extremely cautious in assessing the credibility of the claimant.
- [282] The Court must review the evidence in this case as a whole when looking at Mr. Dhaliwal's credibility, rather than looking at small inconsistencies here and there.
- [19] In this case, based on the whole of the evidence, I am satisfied that Ms. Thompson is an honest witness who is genuinely experiencing the pain she reports. Unlike some of the cases referred to by the defendant, in this case there is evidence that Ms. Thompson did suffer structural damage to the tissues of her spinal column. This is the opinion of Dr. Adrian. In addition, the defendant's expert, Dr. Cameron, is of the opinion that Ms. Thompson suffered a whiplash-type injury that has caused her pain and discomfort that had caused her to be unable to work up to the time of his report in October 2013.
- [20] In addition, there is medical evidence from the plaintiff's experts that Ms. Thompson has some psychiatric symptoms that are attributable to the Accident. With certain relatively rare exceptions, psychiatric illness can only be diagnosed based on the patient's behaviour and subjective complaints. Psychiatrists and psychologists are trained to detect malingering or behaviour motivated by secondary gain. In this case, there was no concern expressed by any of the experts who examined Ms. Thompson about the effort she put in during testing.
- [21] I consider that Ms. Thompson answered the questions put to her in a straightforward manner. Her evidence with respect both to her pre- and post-Accident condition was corroborated by a number of collateral witnesses.
- [22] I also find that Ms. Thompson's testimony in court was generally consistent with the information she provided to her treating physicians.
- [23] I have also considered the evidence with respect to Ms. Thompson's pre-Accident condition. Her own evidence, corroborated by collateral witnesses, is that she very much enjoyed her job and had a relatively happy and fulfilled social life. I can see no reason why she would have been motivated to exaggerate her symptoms to avoid continuing on with her employment.
- [24] I also note that Ms. Thompson continued to work after suffering a workplace injury in 2008 and in 2001 successfully returned to work after her stress leave with the benefit of treatment and medication.
- [25] On the whole of the record, I can find no evidence to support the defendant's theory that Ms. Thompson is exaggerating her symptoms. It may well be that another person may have been better able to cope with her symptoms. However, the defendant must take the plaintiff as he finds her.
- [26] I therefore accept her evidence as honest. I also find it to be reliable, unless I specifically indicate otherwise.

Applicable Legal Principles on Causation

- [27] Before reviewing the facts, I will address the legal issues relevant to causation.
- [28] The legal test for causation of loss is well settled. The onus is on Ms. Thompson to prove on a balance of probabilities that there was a substantial connection between the defendant's negligence and any loss she claims. The test is summarized in *Farrant v. Laktin*, 2011 BCCA 336, as follows:
- [9] The general test for causation, established in *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13-17, is the "but for" test: "but for" the accident, would the plaintiff have suffered the disabling pain? In *Athey*, the Court also stated that a plaintiff need not establish that the defendant's negligence was the sole cause of the injury. If there are other potential non-tortious causes, such as the plaintiff's spinal degeneration in this case, the defendant will still be found liable if the plaintiff can prove the accident caused or materially contributed to the disabling pain, beyond the de minimus range.
- [10] In *Resurfice Corp. v. Hanke*, 2007 SCC 7, 1 S.C.R. 333, the Supreme Court affirmed the "but for" test remains the basic test for determining causation, but developed the concept of "material contribution" in a different manner than that used in *Athey*, formulating a "material contribution" test as an exception to the "but for" test, a matter that is not relevant to this appeal. The Court replaced the *Athey* definition of "material contribution" to the plaintiff's injury with the concept of "a substantial connection" between the injury and the defendant's conduct. These developments were usefully summarized by Mr. Justice Smith, writing for the majority, in *Sam v. Wilson*, 2007 BCCA 622 at para. 109:

"Material contribution", as that phrase was used in *Athey v. Leonati*, is synonymous with "substantial connection", as that phrase was used by McLachlin C.J.C. above in *Resurfice Corp. v. Hanke*. This causal yardstick should not be confused with the "material contribution test". As McLachlin C.J.C. explained in *Resurfice Corp. v. Hanke*, at paras. 24 - 29, the "material contribution test" applies as an exception to the "but for" test of causation when it is impossible for the plaintiff to prove that the defendant's negligent conduct caused the plaintiff's injury using the "but for" test, where it is clear that the defendant breached a duty of care owed the plaintiff thereby exposing the plaintiff to an unreasonable risk of injury, and where the plaintiff's injury falls within the ambit of the risk.

- [11] Thus, in applying the "but for" test, the trial judge was required to consider not just whether the defendant's conduct was the sole cause of the plaintiff's disabling pain, but also whether the plaintiff had established a substantial connection between the accident and that pain, beyond the de minimus level.
- [29] In *Yoshikawa v. Yu* (1996), 21 B.C.L.R. (3d) 318 (C.A.), the Court of Appeal held that a tortfeasor has the same responsibility to a person who suffers psychological harm from the tortfeasor's wrongful act that he or she would have had to a person who suffers physical harm. The court reviewed a number of principles relating to proximate cause, including the

guiding "thin skull" principle. That rule states that with respect to assessment of damages, "a tortfeasor must take the person injured by the tort in the actual condition of that person at that time" (at para. 19). The court then reviewed its application in cases of psychological injury, where it is known as the "egg shell personality" principle:

19 In my opinion there is no basis for giving a more restrictive application to this principle in cases where psychological injuries are suffered than would be given in cases where only physical injuries are suffered. A predisposition to suffer psychological injury in circumstances such as those brought about in a particular case by a defendant's wrongful act does not relieve the defendant of the liability to compensate the plaintiff for the injuries represented by those psychological symptoms. Such relief could only occur, as I have said, if the psychological symptoms would have occurred in any event, even without the defendant's wrongful act, through an application of the cause-in-fact test. Examples of the application of the "thin skull" principle to the award of damages for psychological symptoms in circumstances where there was an existing predisposition include *Enge v. Trerise* (1960), 26 D.L.R. (2d) 529 (B.C.C.A.), *Cotic v. Gray* (1981), 17 C.C.L.T. 138 (Ont. C.A.), *Elloway v. Boomars* (1968), 69 D.L.R. (2d) 605 (B.C.S.C.), and *Marconato v. Franklin*, [1974] 6 W.W.R. 676 (B.C.S.C.).

32 It seems to me that there are two different types of psychological symptoms that may be covered by the principles that are here being discussed. There are those where the psychological symptoms have their origin entirely in the defendant's wrongful act. Clearly they are compensable. And there are those psychological symptoms where the defendant's wrongful act triggers a pre-existing psychological condition so that both the defendant's wrongful act and the pre-existing condition are causes-in-fact of the psychological injury. In the latter cases the psychological injury will be compensable on the basis of a pre-existing thin skull, except only in cases where the psychological problem is so dominant as a pre-existing condition and the injuries sustained in the accident are so trivial that the accident can no longer be said to be a sufficient cause in law to support an award of damages on the basis of proximate cause.

[30] In *Hussack v. Chilliwack School District No. 33*, 2011 BCCA 258, Justice Bennett confirmed that a defendant will be liable for psychiatric injuries consequent on physical injury:

[74] The principle of reasonable foreseeability in relation to psychiatric injury is subject to a qualification: where the psychiatric injury is consequential to the physical injury for which the defendant is responsible, the defendant is also responsible for the psychiatric injury even if this injury was unforeseeable. See *White v. Chief Constable of South Yorkshire Police*, [1999] 2 A.C. 455 at 470, *Varga v. John Labbatt*, [1956] O.R. 1007, 6 D.L.R. (2d) 336 (H.C.); *Yoshikawa v. Yu* (1996) 21 B.C.L.R. (3d) 318, 73 B.C.A.C. (C.A.); *Edwards v. Marsden*, 2004 BCSC 590; *Samuel v. Levi*, 2008 BCSC 1447.

[31] In *Rabiee v. Rendleman*, 2015 BCSC 595, the defendants took issue with the lack of objective evidence supporting the plaintiff's injuries. The court thus considered the standard of proof with respect to subjective and objective evidence of injury and confirmed that the standard of proof remains unchanged:

- [64] [The defendants] rely on *Price v. Kostyba* (1982), 70 B.C.L.R. 397 at 399 (S.C.) where McEachern C.J. quoted his own words in *Butler v. Blaylock*, [1981] B.C.J. No. 31 (B.C.S.C.) that "the court should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery" and that no one can expect citizens to be responsible for compensating a plaintiff "in the absence of convincing evidence."
- [65] I do not take these quotes to mean that a stricter standard of proof applies where the main evidence about injury comes from a plaintiff's subjective reports to doctors and testimony in court. The standard of proof does not change and it does not matter if the evidence is "objective" or "subjective". In fact, after considering the above quotation, the Court of Appeal in *Butler v. Blaylock*, [1983] B.C.J. No. 1490 (B.C.C.A.) clarified: "It is not the law that if a plaintiff cannot show objective evidence of continuing injury that he cannot recover. If the pain suffered by the plaintiff is real and continuing and resulted from the injuries suffered in the accident, the plaintiff is entitled to recover damages."
- [66] The key consideration is whether the evidence, as a whole, establishes that the plaintiff's injuries were caused by the defendant's negligence on a balance of probabilities.
- [32] The court was satisfied that the plaintiff in *Rabiee* had met the burden on her and the subjective nature of the reports substantiating her injuries did not detract from the list of factors to consider in awarding non-pecuniary damages.
- [33] Accordingly, the defendant will be liable for the full extent of Ms. Thompson's injuries if Ms. Thompson can establish a substantial connection between the defendant's negligence and her present condition. However, because Ms. Thompson's claims are based on her own subjective reports of pain, I must carefully scrutinize the evidence with a critical eye before finding the defendant liable for claims based on those reports.

The Accident

- [34] As liability is admitted, I need not review the circumstances of the Accident in detail. However, it is necessary to review Ms. Thompson's evidence as to her recollection of what occurred during and shortly after the Accident to address the issue of whether she suffered a brain injury.

- [35] Ms. Thompson's direct evidence at trial as to what happened in the Accident is as follows:

Q I'd like you to describe the accident in as much detail as possible, please.

A We were driving along Kingsway at the time. There was a vehicle in front -- it's a two-lane roadway, the same direction, and there was this vehicle that had stopped. There's a railroad track up above farther ahead, but it didn't seem -- why was this person stopped as far back behind these railroad tracks as they were. So I come to a complete stop. And being the professional driver that I was I made sure I left a huge car length space in front of my vehicle because that's just what I do. I had my foot on the brake. We were at a complete stop, and I was looking towards

my husband and then all of a sudden I felt this kaboom, and the sound that -- this whoomp sound went concussioning [sic] into the car. And then all of a sudden, my head went -- I grabbed my neck and my head. It was -- I got hit from behind and then we hit something. It must have been the car in front, and then I was in shock. I was, like, what just happened? I didn't know where -- I didn't know what was happening. I asked my husband, what the hell just happened? And then the next thing I know there was this fireman in my face. He was trying to disconnect the battery, which is underneath the passenger's side floor. And then the next thing I remember I'm laying on the stretcher, and then I'm in the hospital wondering what this big thing on my neck ... and that's about it.

Q Did you have any warning that the accident was going to happen?

A No.

Q And you described stopping short of the vehicle in front of you and leaving a gap. How long was that -- how big was that gap?

A About the size of a pickup truck, like a Ford 150 full-sized pickup truck.

Q How many impacts were there?

A Two.

Q Do you remember both of them?

A I remember being hit from behind; I don't remember hitting the car in front of us. I remember the first hit.

Q Do you know how your body moved on impact?

A How my body moved on impact? My head jerked back, and it jerked forward. I was wearing my seatbelt, and it was holding me in.

Q How would you describe the severity of the accident?

A It was severe. It was very difficult to deal with. It was hard. It was scary.

Q Did any of your -- any part of your body hit any part of the inside of your vehicle?

A I did not hit the dash. I didn't have any blood on my forehead or anything. I don't know. I had to have hit the backrest because there is a full backrest thing on my car -- in the car.

Q And how did you feel immediately after?

A I felt pain in my head and my neck, excruciating. I was dazed and confused. I was in shock.

Q Do you remember what happened to Dave on impact?

A I don't remember what happened to Dave.

Q You've mentioned that you remember asking Dave what happened?

A Right.

Q When was that?

A Sometime when we were in the car.

Q Do you recall if he responded to you?

A I don't know.

Q Do you know how much time passed between the first impact and that memory of the fireman that you described reaching into your car?

A I have no idea.

Q How did you get out of your car?

A I have no idea.

Q And what happened after that fireman was reaching into your vehicle?

A I remember being on the stretcher.

Q Do you know how long you were on that stretcher for?

A I don't.

Q I take it you said you got to the hospital; is that correct?

A Yes.

Q Do you know how you got there?

A By ambulance.

Q Do you remember the ambulance ride?

A I don't remember the ambulance ride. I got a bill for the ambulance ride.

Q Did you talk -- apart from asking Dave how -- what happened, did you talk to anyone else at the scene of the accident?

A I don't actually remember.

[36] In cross-examination, Ms. Thompson gave substantially the same evidence. However, she did confirm that she did not recall losing consciousness and did not report any loss of consciousness to her family doctor, Dr. Nadia Majid, whom she saw a few days after the Accident. In addition, the ambulance attendants who took Ms. Thompson to hospital recorded a reading of 15/15 on the Glasgow Coma Scale and the hospital staff who attended on her at Maple Ridge Hospital described her as alert and fully responsive.

Ms. Thompson's Pre-Accident Condition

- [37] As indicated above, at the time of the Accident, Ms. Thompson was employed as a full-time delivery truck driver for UPS. She earned \$56,939 in income, net of taxable benefits in that year. She had earned a substantially similar income in the years prior to the Accident.
- [38] While Ms. Thompson was employed by UPS, she did have two lengthy periods when she was unable to work. She was off work on stress leave from December 14, 2000 to April 2, 2001. In 2008, she injured her shoulder moving a piano at work and was off work from September 6, 2008 to May 3, 2010. In the latter period of time she had shoulder surgery and was awarded a partial disability pension by the Workers' Compensation Board.
- [39] With the possible exception of a brief period in January 2012, Ms. Thompson was employed full time following her return to work from her shoulder injury to the date of the Accident.
- [40] Prior to the Accident, Ms. Thompson had a long history of depression and anxiety problems, dating back at least to the stress leave she took in 2000. However, Dr. Majid confirmed that she was doing well on the SSRI medication Celexa. Ms. Thompson did experience anxiety in January 2012, after her husband had been injured in an altercation with another resident in their strata development. She was advised to take two weeks off work but it is unclear whether she did so. In any event, in her November 16, 2016 medical report, Dr. Majid confirmed that prior to the Accident, Ms. Thompson was functioning well on a single anti-depressant medication and was not under the care of any psychiatrist or counsellor.
- [41] Similarly, although Ms. Thompson was taking significant amounts of Tylenol 3 for residual pain in her shoulder, she was not taking any other treatment related to that injury and continued to manage the demands of her job up to the time of the Accident.
- [42] Several witnesses confirmed that Ms. Thompson was a productive, well-liked employee.
- [43] Mark Bethel, Craig Taylor and Sean Evans gave unchallenged evidence that Ms. Thompson was well liked by her coworkers and performed her duties efficiently prior to the Accident. In his examination for discovery, Mr. Helgeson confirmed that Ms. Thompson had delivered packages to his business and that she had performed her duties in both a cheerful and efficient manner.
- [44] Ms. Thompson's friends, Brenda Spani and Ralph Grundy, described her as outgoing, friendly and fun to be with. Mr. Grundy described her as very jovial and full of energy.
- [45] Ms. Thompson testified that before the Accident, she and her husband enjoyed fishing and other outdoor activities. They frequently drove to Williams Lake to take part in those activities.
- [46] I am satisfied that Ms. Thompson's pre-Accident ailments were well managed by her medications and did not have a material adverse effect on her employment or her social and personal life.

Post-Accident Condition

- [47] After the Accident, Ms. Thompson was taken to Maple Ridge Hospital where she was assessed and discharged the same day.
- [48] On October 25, 2012, Ms. Thompson was examined by her family doctor, Dr. Majid for her Accident-related injuries. Ms. Thompson reported neck pain and stiffness, upper back pain and headaches. On examination, Dr. Majid noted that Ms. Thompson appeared to be very stiff and moved with difficulty. She was tender on palpation and had a very restricted range of motion in her neck. Dr. Majid's diagnosis at that time was a soft tissue/whiplash injury to Ms. Thompson's neck and back. She was prescribed pain medication.
- [49] After the initial visit, Ms. Thompson saw Dr. Majid on a regular basis. Her condition improved somewhat in some respects. Her main symptoms were headaches, neck pain and stiffness, irritability, sleep disturbance and forgetfulness. As time went on, her chief complaint became constant daily headaches that seemed to worsen.
- [50] Ms. Thompson has made a significant recovery in her neck and back pain and mobility since the Accident. However, she continues to report persistent headaches. Some days she reports ice pick-like pounding headaches that prevent her from going about her normal daily activities. On other days she reports migraine-like headaches or tension headaches, which are also debilitating.
- [51] Despite numerous attempts to medicate and treat these headaches, Ms. Thompson continues to complain about them. Her evidence is that they occur on a daily basis and persist for long periods of time. She says that they are very painful and affect her ability to work, her social life and her ability to perform household tasks.
- [52] Ms. Thompson also testified that she has periods of confusion and has become more forgetful since the Accident. In addition, she testified that she has anxiety when driving and sometimes has to use anxiety avoidance techniques to calm herself in traffic. She says she tries to avoid driving on the freeway. When she visits her father in Abbotsford she uses secondary roads.
- [53] Ms. Thompson also testified that she is irritable and avoids social contact with friends. Ms. Spani, who socialized with Ms. Thompson before the Accident, testified to the changes in Ms. Thompson after the Accident. She said Ms. Thompson just was not the same. Ms. Thompson became agitated easily, and was unpredictable and moody. As a result, Ms. Spani has distanced herself from Ms. Thompson. Contact between Ms. Thompson and Ms. Spani is now limited to exchanging texts on their respective birthdays.

- [54] In June 2016, Ms. Thompson and her husband separated. Ms. Thompson testified that her relationship with Mr. Thompson changed after the Accident and that Mr. Thompson could not understand her pain and would get frustrated with her and she felt that she could not take care of him as she did prior to the Accident. She also testified that the intimate relations of the couple were significantly impaired by her symptoms.
- [55] After her separation, Ms. Thompson stayed with friends and family, residing at times with her friend Ralph Mark Grundy and her father, Pentti Vanttinen, until she entered into a rental agreement for a basement suite in Maple Ridge shortly before the date of trial.
- [56] Mr. Thompson died on February 27, 2017.
- [57] Ms. Thompson plans to return and live in the condominium she formerly shared with Mr. Thompson.

Medical Evidence about Ms. Thompson

- [58] There is a good deal of conflict in the medical opinions as to the state of Ms. Thompson's post-Accident health.
- [59] There is no dispute that Ms. Thompson did suffer some physical injuries in the Accident. The consensus of all of the medical evidence is that Ms. Thompson suffered a moderate whiplash-type soft tissue injury as a result of the Accident. Ms. Thompson's own reports of her physical symptoms are consistent with this conclusion.
- [60] I accept Dr. Majid's evidence that Ms. Thompson has suffered from whiplash-type symptoms from the time of the Accident. I am also satisfied that the fundamental problem that Ms. Thompson faces is her ongoing headaches. The critical issue in this case is the severity of those headaches and the extent to which they have affected her life.
- [61] I am satisfied that Ms. Thompson did suffer some structural damage to the tissues of her spinal column and that this has caused her neck pain and related headaches. This is the opinion of Dr. Mark Adrian, a physiatrist. Dr. Adrian's opinion in this regard was not challenged on cross-examination. I am also satisfied that there is a substantial connection between her headaches and the Accident.

Brain Injury

- [62] Because Ms. Thompson's most serious ongoing complaints are persistent headaches, it is important to make a finding as to whether she is suffering from post-concussion syndrome. The first step in considering this issue is to determine whether Ms. Thompson suffered a concussion in the Accident. If she did not, she cannot, of course, be suffering from post-concussion syndrome. However, even if she did, she may have fully recovered from that concussion.

- [63] The plaintiff filed reports from Dr. Majid, Dr. Raymond Ancill, Dr. Richard Grosch and Dr. Mel Kaushansky. As already indicated, Dr. Majid is Ms. Thompson's family doctor, who treated her for her injuries. Dr. Ancill is a psychiatrist. Dr. Grosch is a neurologist. Dr. Kaushansky is a neuropsychologist.
- [64] All of these doctors were of the opinion that Ms. Thompson suffered a concussion in the Accident. With the exception of Dr. Kaushansky, they suspect or diagnose Ms. Thompson as suffering from post-concussion syndrome. Dr. Kaushansky was of the opinion that Ms. Thompson did suffer a mild concussion in the Accident, but that the concussion resolved itself within a short period thereafter. He did not attribute any of Ms. Thompson's cognitive difficulties or mood disorders to any brain injury or concussion.
- [65] The defendant filed reports of two doctors, Dr. Donald Cameron and Dr. Alexander Levin, both of whom were of the opinion that Ms. Thompson did not suffer a concussion in the Accident. Dr. Cameron is a neurologist and Dr. Levin is a psychiatrist.
- [66] The difference of opinion over whether Ms. Thompson suffered a concussion is based largely on the history of the Accident that the doctors say Ms. Thompson gave them. Dr. Cameron stated that Ms. Thompson appeared to have a clear recollection of all aspects of the Accident. Dr. Levin was of the same view.
- [67] I note that although Dr. Cameron testified that he had asked Ms. Thompson a series of detailed questions about what happened in the course of the Accident and that she appeared to have a clear recall of all details of the Accident, his notes do not list any such questions. I have some difficulty in reconciling what Dr. Cameron testified that Ms. Thompson told him about the details of the Accident with her evidence in court and the evidence of the plaintiff's doctors as to what she told them.
- [68] Based on Ms. Thompson's description of the Accident, which I accept, I conclude that she did suffer a concussion in the Accident. However, I agree with Dr. Kaushansky that the concussion was mild and that she has no lasting effects from it. I find that Ms. Thompson is not suffering from post-concussion syndrome and does not have a brain injury.
- [69] My opinion in this regard is reinforced by the high scores Ms. Thompson achieved on the cognitive testing carried out by Dr. Kaushansky's office and her score of 30/30 on the MoCA test administered by Dr. Grosch in October 2016.
- [70] With respect to Ms. Thompson's cognitive functioning, Dr. Kaushansky stated as follows at page 9 of his report dated October 5, 2016:

The results of the neuropsychological assessment indicated a woman of "average" intellectual functioning. It is my view that there has not been a diminishment in Mrs. [Thompson's] overall level of intelligence subsequent to the accident in question. Her performance in core cognitive domains (memory, attention, speed of information, visual/perceptual, verbal/language and executive skills) was generally consistent with her level of intelligence. Of note, in the areas of attention, speed of information processing, and memory, domains typically impacted by the

effects of a neural insult, Mrs. Thompson's skills on some tasks were in the "high average-superior" range. In summary the overall neuropsychological profile was not suggestive of any problems with cognition.

- [71] However, Dr. Kaushansky also pointed out that Ms. Thompson reported to him that she had problems with attention and concentration, learning and memory and tasks of executive functioning. Dr. Kaushansky summarized his opinion in this regard in his report as follows:
1. Based on the indices around the October/2012 accident that included a period of mental haziness and posttraumatic amnesia, it is likely that Mrs. Thompson sustained a concussion. As is typical for individuals who have sustained this degree of injury, any sequelae of an organic etiology have likely resolved. The neuropsychological results within the clinic setting indicated a normal profile. Mrs. Thompson and her husband's report of cognitive inefficiencies and issues of emotional l[i]ability within the community are probably attributable to a confluence of factors of pain (now considered "chronic") and low mood (whether depression and/or an adjustment disorder). To the extent that her pain persists, Mrs. Thompson will likely continue to experience cognitive inefficiencies and variable mood.
 2. A prominent issue is Mrs. Thompson's headaches which have been opined to be secondary to the soft tissue and musculoskeletal injuries involving her neck and back that she sustained and which appear refractory to treatment in many modalities. A physiatrist's opinion in 2014 also suggested that Mrs. Thompson presented with features of a chronic generalized pain disorder with a poor prognosis; at the time Ms. Thompson was viewed to be permanently partially disabled.
 3. The results of measures of mood and personality administered during this assessment suggested a "moderate" degree of depressive mood and a likely "adjustment disorder". It is my view that the trauma in question resulted in the development of these psychological conditions which have been persistent and have required both psychological support and the use of adjunct psychotropic medications. I believe that Mrs. Thompson's psychological condition will likely continue to wax and wane, and will probably remain a persistent component of her daily functioning wherever she presents on the spectrum of psychological illness.

Psychiatric Illness

- [72] There is a disagreement between Dr. Ancill and Dr. Levin over whether Ms. Thompson suffers from any recognized psychiatric illness related to the Accident.
- [73] Dr. Ancill and Dr. Levin agree that Ms. Thompson does not suffer from post-traumatic stress disorder. However, they disagree on whether she suffers from any recognized psychiatric disorders.
- [74] Dr. Ancill diagnosed Ms. Thompson with the following conditions:

1. Post-Concussion Syndrome with Mild Traumatic Brain Injury;
 2. Mild Neurocognitive Disorder arising from a Traumatic Brian Injury;
 3. Adjustment Disorder with anxiety-chronic type;
 4. Major Depressive Disorder-moderate-severe, chronic; and
 5. Somatic Symptom Disorder.
- [75] Dr. Levin's opinion is that Ms. Thompson does not meet the criteria for any recognized psychiatric disorder.
- [76] I have reservations about the evidence of both Dr. Ancill and Dr. Levin. I found both of them to be somewhat partisan in their opinions.
- [77] I do not accept that Ms. Thompson is suffering from five psychiatric disorders as opined by Dr. Ancill. I have already concluded that she does not have post-concussion syndrome or a brain injury. Having reviewed Dr. Ancill's report, I am unable to conclude that he took a balanced and unpartisan approach to assessing Ms. Thompson's mental state.
- [78] On the other hand, Dr. Levin rejected the notion that Ms. Thompson suffered from any psychiatric conditions arising from the Accident and attributed any complaints she had to her pre-existing depression.
- [79] As with Dr. Ancill, I considered the tone and content of Dr. Levin's report to be very adversarial. In his report, he repeatedly referred to what he described as inconsistencies in Ms. Thompson's statements to him during her interview. However, on cross-examination, he was forced to agree that these inconsistencies were clarified by Ms. Thompson later in her interview. In addition, he provided no explanation as to why Ms. Thompson has developed the headaches that are her chief complaint and in fact, paid scant attention to their existence.
- [80] I also found Dr. Levin to be argumentative and at times non-responsive in the answers he gave on cross-examination. One example of this was his answers with respect to whether Ms. Thompson met the criteria for Somatic Symptom Disorder with Pain. In his report he said the following:
48. I defer an opinion about Ms. Thompson's physical injuries sustained in the subject MVA to specialists in internal medicine and orthopaedic surgery. However, from a psychiatric perspective, Ms. Thompson did not present with a catastrophic perception of her injuries, pervasive preoccupation with pain or excessive time consuming activities trying to manage her pain to the extent that she would be diagnosed with chronic pain disorder as a psychiatric condition currently described in DSM 5 under the rubric of somatic symptom and related disorders.

- [81] When counsel pointed out that the DSM 5 criteria for Somatic Symptom Disorder stated that a catastrophic perception of injuries was only possibly present, Dr. Levin gave unresponsive answers and failed to acknowledge the obvious meaning of the passage in the DSM 5 that he was being asked about.
- [82] Finally, Dr. Levin was the only witness of the many expert and lay witnesses who opined that "Ms. Thompson appeared as an optimistic, future-oriented, and at times cheerful woman who reported her unimpaired ability to enjoy herself and make other people laugh." Based on Ms. Thompson's evidence at trial, my own observations of her and the evidence of every other witness who commented on her post-Accident condition, I simply cannot accept that she presented herself to Dr. Levin in that manner.
- [83] I therefore conclude that Dr. Levin lacked the required impartiality and objectivity to provide reliable evidence about Ms. Thompson's post-Accident condition.
- [84] With regard to the reports of both Dr. Ancill and Dr. Levin, I also do not find it particularly helpful to know whether Ms. Thompson meets the criteria for specific psychiatric disorders set out in the DSM 5. In assessing damages, the question is whether Ms. Thompson's symptoms are genuine, whether there is a substantial connection between those symptoms and the defendant's negligence, and the effect that those symptoms have had on the plaintiff.
- [85] After reviewing both opinions, I give no weight to either. It seemed to me that Dr. Ancill was going out of his way to identify every possible mental illness suggested by Ms. Thompson's reported symptoms, while Dr. Levin seemed anxious to convey the impression that Ms. Thompson was in no distress whatsoever.
- [86] In contrast, I found the evidence of Dr. Kaushansky to be balanced and convincing. I accept his opinion that the headaches and other pain that Ms. Thompson is suffering are having a marked effect on her ability to function and to pursue meaningful employment. While Dr. Kaushansky does not refer to the DSM criteria, I agree with the conclusion set out at page 10 of his report:

The 2012 accident initiated a cascade of physical, emotional/psychological, and cognitive problems which continue to impact Mrs. Thompson's community functioning. A "chronic loop" has likely established itself whereby cognitive, emotional, and physical factors have become intertwined in a synergistic fashion and are exacerbating each other. Now four years post injury, it is not possible to delineate the degree of contribution of each of the factors, but the primary issue appears to be Mrs. [Thompson's] chronic pain which has resulted in cognitive inefficiencies and diminished mood. Mrs. Thompson has been volunteering at the SPCA, and I believe that similar opportunities will hopefully offer her a "place and purpose".

In summary, Mrs. Thompson's overall quality of life (QOL) has been diminished. The accident sequelae have negatively impacted her ability to work as well as her social/interpersonal relationships. The likelihood of an improvement in her status to allow her to return to her premorbid functioning is in my view poor.

[87] I am satisfied that the condition described by Dr. Kaushansky was caused or contributed to by the defendant's negligence. The defendant is therefore liable to the full extent of any loss that Ms. Thompson has suffered as a result of that condition.

[88] I therefore turn to the assessment of damages.

Non-Pecuniary Damages

[89] The purpose of non-pecuniary damages is to compensate the plaintiff for pain, suffering and loss of enjoyment and amenities of life. The damages awarded must be fair to both parties. One measure of fairness is the amount awarded for similar injuries in other cases decided in this Court. However, each case is unique and must be decided on the facts of that case: *Chong v. Lee*, 2014 BCSC 2258 at para. 163.

[90] A non-exhaustive list of the factors to be considered in awarding non-pecuniary damages is set out in *Stapley v. Hejslet*, 2006 BCCA 34, leave to appeal ref'd [2006] S.C.C.A. No. 100:

[45] Before embarking on that task, I think it is instructive to reiterate the underlying purpose of non-pecuniary damages. Much, of course, has been said about this topic. However, given the not-infrequent inclination by lawyers and judges to compare only injuries, the following passage from *Lindal v. Lindal*, *supra*, at 637 is a helpful reminder:

Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury" (*Cooper-Stephenson and Saunders, Personal Injury Damages in Canada* (1981), at p. 373). In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (*Thornton* at p. 284 of S.C.R.).

[Emphasis of Kirkpatrick J.A.]

[46] The inexhaustive list of common factors cited in *Boyd* [2004 BCCA 146] 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).

- [91] The uncontradicted evidence is that Ms. Thompson was functioning at a high level in her job as a UPS driver. She appeared to have a good relationship with her husband and a number of close friends with whom she enjoyed socializing. She particularly enjoyed fishing and camping. She and her husband would often drive to Williams Lake to partake in those activities.
- [92] After the Accident, Ms. Thompson initially had significant back and neck pain. These problems have significantly improved in the almost five years since the Accident. However, she continues to suffer from persistent and debilitating headaches. These in turn have affected her mood and her personal relationships. Her life is now much circumscribed. She has alienated some of her friends and lost contact with others.
- [93] She is able to drive but does experience some anxiety when she does. Ms. Thompson volunteers at the SPCA and at a dog shelter in Port Coquitlam. She also attends yoga classes.
- [94] Since the Accident, Ms. Thompson has been unable to return to work at UPS. I will elaborate on this question when I address the loss of income-earning capacity claim. However, I find that Ms. Thompson did genuinely enjoy her work and being in the workplace at UPS. She enjoyed interacting with customers. Much of her sense of self-worth was based on her perceived competence at her job.
- [95] I am also satisfied that there is a substantial connection between the Accident and the breakdown of her marriage. Ms. Thompson's evidence with respect to the effect of her injuries on her intimate life was not challenged.
- [96] I am not satisfied that Ms. Thompson's cognitive abilities were affected by the Accident. As I have already stated, she scored highly on the cognitive testing carried out by Dr. Kaushansky's office and on the MoCA test. I find that her complaints about forgetfulness and disorganization are attributable to difficulties in concentration caused by her headaches.

- [97] I accept that after five years it is unlikely that there will be any significant improvement in Ms. Thompson's condition.
- [98] Counsel for Ms. Thompson referred me to a number of cases, including *Tan v. Mintzler and Miller*, 2016 BCSC 1183; *Adamson v. Charity*, 2007 BCSC 671; *Burdett v. Eidse*, 2010 BCSC 219, rev'd on other grounds 2011 BCCA 191; *Sebaa v. Ricci*, 2015 BCSC 1492; and *Kean v. Porter*, 2008 BCSC 1594. These cases suggest an award of about \$200,000 in non-pecuniary damages would be appropriate for a case involving chronic pain and some degree of cognitive impairment. In many of these cases, the plaintiffs were found to have suffered a traumatic brain injury.
- [99] Counsel for the defendant relies on *Dhanji v. Holland*, 2015 BCSC 1351; *Bulatovic v. Siebert*, 2013 BCSC 240; *Guthrie v. Narayan*, 2012 BCSC 734; *McConvey v. Hart*, 2013 BCSC 1058; and *Paller v. Regan*, 2013 BCSC 1672. In these cases, the court awarded damages of between \$65,000 and \$85,000 to plaintiffs who suffered from chronic pain from soft tissue injuries. In most of the cases relied upon by the defendant, the plaintiff was able to return to work.
- [100] Ms. Thompson was 45 years old at the time of the Accident. Her physical injuries were not severe but the emotional consequences of them have been very distressing for her. As I have already indicated, much of Ms. Thompson's sense of self-worth was linked to the satisfaction that she found in her employment. She has suffered from debilitating painful headaches for almost five years. I accept that her prognosis for improvement is poor.
- [101] I am also satisfied that her condition resulted in a deterioration of her relationship with her husband that ultimately led to the breakdown of her marriage. Sadly, her husband died during the course of the trial so she would have been deprived of the benefit of that relationship in any event. Finally, she has at a minimum suffered from depressive symptoms beginning after the Accident. I accept that these symptoms are caused by the pain she is experiencing and by the loss of her position at UPS.
- [102] In all of the circumstances, and taking into account the authorities I have been referred to, I assess non-pecuniary damages at \$125,000.

Loss of Past Earning Capacity

- [103] Damages for loss of past and future income capacity are intended to compensate an injured party for the loss of capacity to earn income. In appropriate circumstances, the amount of the award may be calculated by reference to a known or likely occupation that the injured person has lost as a result of the wrongful conduct of the defendant: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141.
- [104] In this case, I am satisfied that Ms. Thompson has suffered a significant loss of income-earning capacity as a result of the Accident. However, the defendant submits that Ms. Thompson is capable of doing some types of work and that any award for loss of earning capacity must take this into account. The defendant also submits that Ms. Thompson has

not made any reasonable efforts to find other employment. His counsel submits that Ms. Thompson's vocational testing demonstrated that she is able to pursue some types of employment, including seeking an accommodation from UPS to address her disability.

- [105] I do not accept the defendant's submission on this issue. The evidence relied upon by the defendant does not satisfy me that there was any substantial possibility of Ms. Thompson finding anything more than menial part-time employment at any time up to the trial of this action.
- [106] The defendant relies on portions of the medical evidence in which various practitioners have emphasized that it is in Ms. Thompson's interest to find some activity to give her life purpose and meaning. They couple this submission with reliance upon the evidence of Dr. Cooke, a qualified vocational assessment evaluator, and Mr. Banks, a vocational consultant. Both of these witnesses were qualified to give opinion evidence on vocational opportunities that were open to Ms. Thompson, given her physical abilities. Both Dr. Cooke and Mr. Banks conducted an extensive series of tests to determine Ms. Thompson's physical tolerance for various tasks and correlated the results of those tests into occupations that Ms. Thompson had the capacity to manage.
- [107] I did not find Dr. Cooke's evidence to be of any real assistance to me in this case. Dr. Cooke was very frank in agreeing that he took into account pain associated with the activities for which he was testing Ms. Thompson only to the extent it prevented her from completing an activity. However, the limiting factor with respect to Ms. Thompson's earning capacity is her ability to be competitively employable given her headaches and her reaction to them. Dr. Cooke's opinion does not address that issue.
- [108] Mr. Banks confirmed that Ms. Thompson is no longer employable as a UPS driver. However, he did find that Ms. Thompson had the physical strength and dexterity to perform tasks requiring medium strength. Mr. Banks acknowledged in cross-examination that he was able to give only limited consideration to Ms. Thompson's durability because he was unable to follow up with her to determine the impact of the day of testing. In her evidence, Ms. Thompson said that she was exhausted the next day and that the testing had caused a flare-up of her headaches. As with Dr. Cooke's report, I found Mr. Banks' report to be of very limited assistance in determining the extent to which the headaches and associated mental distress have diminished Ms. Thompson's earning capacity in the sense of being competitively employable.
- [109] In my view, the best evidence on this point is from Dr. Adrian and Dr. Kaushansky.
- [110] Dr. Adrian's opinion on Ms. Thompson's income-earning capacity is summarized as follows:
- Functional Capacity:

Ms. Thompson will probably continue to experience difficulty performing activities that place physical forces onto the painful and injured structures involving her neck, due her mechanical neck pain. Specifically, she will probably continue to experience difficulty performing employment, recreational and household activities that involve prolonged static or awkward positioning involving her neck; prolonged stooping; heavy or repetitive lifting; and forceful pushing or pulling. The above physical limitations are unlikely to resolve with time.

In my opinion, Ms. Thompson is permanently partially disabled as a result of the injuries suffered in the accident.

[111] Dr. Kaushansky's conclusion on this question is similar:

4. Now four years since the trauma, I am very guarded that there would be a significant improvement in Mrs. Thompson's constellation of problems to allow a return to competitive employment. Beyond her self reported cognitive inefficiencies, barriers to a return to work have been opined to include reduced physical capacities and postural tolerances and reduced driving tolerance. She will require the support of a job coach to locate appropriate avocational work and/or part-time paid work under the tutelage of a benevolent employer.
5. In the absence of this trauma it is likely that Mrs. Thompson would have been able to continue to work in her career choice while remaining emotionally vulnerable.

[112] In his oral evidence, Dr. Kaushansky confirmed that Ms. Thompson's condition made it questionable whether she could meet the reliability requirements of many employers. In his view, this presents a substantial obstacle to her employment prospects.

[113] On the whole of the evidence, I conclude that Ms. Thompson's income-earning capacity has been greatly diminished by the injuries she sustained in the Accident. At best, the evidence shows that Ms. Thompson could be capable of tolerating part-time employment of about ten hours per week, if she could find an employer who would be able to accommodate her needs.

[114] In assessing loss of income-earning capacity, I must, of course, take substantial possibilities into account. I have concluded therefore that at some point after the Accident there was a substantial possibility that Ms. Thompson may have found low paying part-time work. I consider it reasonable and fair to the defendant therefore to make a 10% reduction in the amount of damages for past loss of income-earning capacity, but otherwise base the damages for this loss on what her earnings from UPS would have been had she not been injured.

[115] I am also of the view that given Ms. Thompson's history of depression and ongoing shoulder pain, there is a substantial possibility that she would have lost some income. I find it fair to make a further reduction of 10%, for a total of 20%.

[116] I understand that the parties are agreed that the amount that Ms. Thompson would have earned had she been continuously employed at UPS to the date of trial, net of the deduction required by s. 98 of the Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231, is \$196,600. Accordingly, I award damages under this category at 80% of this amount, or \$157,280.

[117] This award is subject to adjustment pursuant to s. 83 of the Insurance (Vehicle) Act. I understand that the parties are agreed that this deduction is \$21,400. The loss of past income-earning capacity is therefore \$135,880, which I round up to \$136,000.

Loss of Future Income-Earning Capacity

[118] Much of what I have said with respect to past income loss applies to Ms. Thompson's claim for loss of future income-earning capacity.

[119] I respectfully adopt the analysis of the legal principles applicable to claims for loss of income-earning capacity set out by Justice Voith in *Pololos v. Cinnamon-Lopez*, 2016 BCSC 81 at para. 133:

[133] The relevant legal principles are well-established:

- a) To the extent possible, a plaintiff should be put in the position he/she would have been in, but for the injuries caused by the defendant's negligence; *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 185, leave to appeal ref'd [2009] S.C.C.A. No. 197;
- b) The central task of the Court is to compare the likely future of the plaintiff's working life if the Accident had not occurred with the plaintiff's likely future working life after the Accident; *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32;
- c) The assessment of loss must be based on the evidence, but requires an exercise of judgment and is not a mathematical calculation; *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18;
- d) The two possible approaches to assessment of loss of future earning capacity are the "earnings approach" and the "capital asset approach"; *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 at para. 7 (S.C.); and *Perren v. Lalari*, 2010 BCCA 140 at paras. 11-12;
- e) Under either approach, the plaintiff must prove that there is a "real and substantial possibility" of various future events leading to an income loss; *Perren* at para. 33;
- f) The earnings approach will be more appropriate when the loss is more easily measurable; *Westbroek v. Brizuela*, 2014 BCCA 48 at para. 64. Furthermore, while assessing an award for future loss of income is not a purely mathematical exercise, the Court should endeavour to use factual mathematical anchors as a starting foundation to quantify such loss; *Jurczak v. Mauro*, 2013 BCCA 507 at paras. 36-37.
- g) When relying on an "earnings approach", the Court must nevertheless always consider the overall fairness and reasonableness of the award, taking into account all of the evidence; *Rosvold* at para. 11.

- [120] Based on the medical evidence, Ms. Thompson's own evidence as to her injuries and my own observations of her, I conclude that there is little prospect of her recovering the ability to be meaningfully employed for the rest of her working life.
- [121] I find that even if she had not been injured, Ms. Thompson would not have worked beyond age 60. Ms. Thompson's pre-existing depression and shoulder injury would, in my view, have made it increasingly more difficult for her to meet the demands of her UPS job as she aged. I also take into account that age 60 is the expected age of retirement for UPS drivers.
- [122] On the other hand, I am satisfied that Ms. Thompson would have been able to meet the demands of her job up to age 60. I also find that she would have chosen to remain employed by UPS. I therefore consider it appropriate to base Ms. Thompson's claim for loss of future income-earning capacity on the amount that she would have earned had she been able to continue to work at UPS to age 60.
- [123] The present value of Ms. Thompson's potential earnings at UPS to age 60 is \$589,550.
- [124] This figure is subject to the same negative contingencies as the loss of past income. However, I have already taken Ms. Thompson's pre-Accident medical condition into account in determining that she would retire at age 60. I must give some weight to the evidence that Ms. Thompson does have some modest capacity to earn income. This requires that I make an adjustment to the present value calculation to avoid overcompensating her.
- [125] However, I must also take into account the substantial possibility that Ms. Thompson could have worked beyond age 60. This is a contingency that would justify an upward adjustment to this award.
- [126] Subject to adjustment for the additional issue I am about to address, I award damages in the amount of \$525,000 for loss of future income-earning capacity.

Loss of Pension Benefits

- [127] Ms. Thompson is a beneficiary under a joint employer union pension plan. Pursuant to the current plan, had she continued to be employed at UPS, she would have been entitled to increase the amount of her monthly pension payments by \$86 per month for each year of full-time employment between January 1, 2016 and the date of her retirement. Despite being off work since October 2012, Ms. Thompson was not terminated by UPS and therefore has continued to accrue such credits up to the time of trial. However, a representative of UPS has testified that Ms. Thompson will be terminated in the near future and will therefore cease to accrue any future increases in the amount of her pension.

- [128] I have found that it is likely that Ms. Thompson would have retired at age 60 had she not been injured. She has therefore suffered a loss of the opportunity to increase her pension in an amount equal to the present value of the increased pension credits beginning at age 60. Mr. Lakhani has calculated that loss at \$122,721. In my view, the negative and positive contingencies with respect to that assessment cancel each other out.
- [129] Accordingly, I find that Ms. Thompson is entitled to damages in the amount of \$122,721 to compensate her for her loss of the opportunity to increase the amount of her pension between the trial and age 60.

Disability Pension Benefits

- [130] Ms. Thompson is probably entitled to receive a disability pension pursuant to the pension plan in place at UPS ("Disability Pension"). To qualify for a Disability Pension, a UPS employee must be certified by a doctor to be totally and permanently disabled. As Ms. Thompson has been in receipt of long-term disability payments for some time, and given her present condition, it is likely that she qualifies for that pension.
- [131] Ms. Thompson's right to a Disability Pension gives her the right to begin drawing a pension equal to the amount of what her pension entitlement would have been had she retired on the date of her disability, whether or not she would otherwise have been entitled to retire on that date.
- [132] Although no evidence was led on this point, the parties agree that Ms. Thompson is not entitled to exercise this option as long as she is in receipt of long-term disability ("LTD") benefits. Because the LTD provider is entitled to be subrogated for any LTD payments it makes to Ms. Thompson out of her damages for lost earning capacity, it is reasonable to conclude that she will elect to begin receiving a Disability Pension as soon as this litigation concludes.
- [133] The parties wish me to decide the legal question of the effect of Ms. Thompson's Disability Pension on her claim for loss of future income-earning capacity.
- [134] The defendant has quite properly conceded that any award for loss of future income-earning capacity should not be reduced by reason of Ms. Thompson's receipt of LTD payments because the insurer has subrogation rights with respect to such payments.
- [135] However, the defendant also submits that any Disability Pension payments that Ms. Thompson receives between trial and age 60 ought to be taken into account in reduction of the amount of her future income loss. The defendant says that if Ms. Thompson is unable to work as a result of the Accident, she is entitled to begin drawing her pension as soon as she receives her damages for loss of future income. This is a benefit that would not have been available to her had she not been injured.

[136] The defendant argues that these benefits do not fall within the private insurance exception to the principle that a plaintiff is only entitled to be compensated for his or her actual loss. He submits that, on the basis of *IBM Canada Limited v. Waterman*, 2013 SCC 70 [IBM Canada], the Court must enter into an examination of the circumstances of any benefit that a plaintiff has received to determine whether it is appropriate to deduct the benefit from the award for loss of income-earning capacity. The defendant's position is that such an analysis would lead to the conclusion that the exception does not apply to this Disability Pension.

[137] I do not agree with the defendant's submission. In *IBM Canada*, the majority decision referred with approval to the Court's earlier decision in *Cunningham v. Wheeler*, [1994] 1 S.C.R. 359. In *Cunningham*, the majority expressly decided that benefits payable pursuant to the provisions of a collective agreement in which the parties agreed to the benefits as part of the compensation package of an employee are not to be deducted from the award. The majority took the position that benefits which are the result of a collective bargaining agreement are "paid for by the plaintiff", in the same way as is a privately purchased disability insurance policy and so are subject to the insurance exception. At 403-04, the majority explains this as follows:

The scheme in this case can qualify as an insurance exception on the basis of the reasons of the majority in *Ratych v. Bloomer*, [[1990] 1 S.C.R. 940]. In that case, McLachlin J. writing for the majority specifically limited her comments to benefits which were not in the nature of insurance or gratuitous payments in these words (at p. 983):

These comments should not be taken as extending to types of collateral benefits other than lost earnings, such as insurance paid for by the plaintiff and gratuitous payments made by third parties.

To say that the exception applies only to private insurance, where actual premiums are paid to the insurance company, would create barriers that are unfair and artificial. It would mean that top management and professionals who could well afford to purchase their own insurance would have the benefit of the insurance exception, while those who made the same provision and made relatively greater financial sacrifices to provide for the disability payments through their collective bargaining agreement would be denied the benefits of the insurance exception. This would be manifestly unfair. There is no basis for such a socially regressive distinction.

Union representation and collective bargaining are recognized as a means for working people to protect their interests. The benefits for which employees have bargained in good faith should not be sacrificed simply because the mode of payment for the disability benefit is different from that in private insurance contracts. Where evidence is adduced that an employee-plaintiff has paid in some manner for his or her benefits under a collective agreement or contract of employment, the insurance exception should apply. It would be unjust to deprive employees of the benefits which, through prudence and thrift, they have provided for themselves.

[138] The majority judgment in IBM Canada also addresses this issue:

[44] In *Guy v. Trizec Equities Ltd.*, [1979] 2 S.C.R. 756, Mr. Guy's injury led to his retirement and receipt of pension benefits. They were not deducted from damages for loss of earnings. Ritchie J., for the Court, viewed pensions, whether contributory or non-contributory, as flowing from the employee's work and part of what the employer was prepared to pay for the employee's services. He agreed with Lord Reid's conclusion, in *Parry*, as quoted by Spence J., in *Gill*, that "[t]he fact that they flow from past work equates them to rights which flow from an insurance privately effected by [the employee]": *Guy*, at p. 763. Similarly, in *Jack Cewe*, the Court did not deduct a dismissed employee's unemployment insurance benefits from his wrongful dismissal damages. The benefits, wrote Pigeon J., for the Court, were a consequence of the contract of employment making them similar to contributory pension benefits: p. 818. (The collateral benefit issue that arose in *Jack Cewe* is now addressed by s. 45 of the *Employment Insurance Act*, S.C. 1996, c. 23, which states that a claimant who receives benefits and is subsequently awarded damages for the same period, "shall pay to the Receiver General as repayment of an overpayment of benefits an amount equal to the benefits that would not have been paid if the earnings had been paid or payable at the time the benefits were paid".)

[139] In this case, Ms. Thompson called Mr. Bethel, a representative of her union, who testified that he was a member of the union bargaining committee that negotiated the collective agreement. Mr. Bethel confirmed the common sense inference that in collective bargaining the object of the employer is to negotiate the best agreement possible from its perspective and that the final compensation package involves trade-offs between wages and other benefits. His evidence on this point was as follows:

Q Were you involved in the collective bargaining negotiations?

A Yes. Twice I've participated in national bargaining, in 2010 and in 2015.

Q And were employees' salary and benefits part of those negotiations?

A Yes, they are.

Q Can you describe how the collective bargaining negotiations are done?

A It involves probably -- the last time around was about six to seven weeks. Our compensation package is our wages, our pension and our benefits. The employer bargaining committee are fond of saying - they'd say, you know, this is the size of the pie and however you guys on the union side decide you want to divvy it up is up to you. Of course on union side we're charged with making sure that that pie is bigger, but ...

Q So would a union member's salary be impacted if the employer's benefit contributions changed?

A Yes, yes. Generally it's always sort of a trade off. If you negotiate higher wages, then you're going to get less in your pension, less in your benefits, days off, that type of thing. If you negotiate better benefits, more on the pension, generally you're going to get less wages also wage progression and all of the rest of that, new starting salaries, all that factors all -- into it.

[140] In addition, the Pension Plan Members' Booklet expressly states that the Pension Plan expresses the benefits negotiated in the collective agreement between UPS and the Teamsters Union.

[141] Accordingly, I find that this case is governed by the decision in Cunningham, and that there should be no deduction of any Disability Pension amounts received by Ms. Thompson from the damages awarded for loss of earning capacity.

Failure to Mitigate

[142] The defendant submits that Ms. Thompson has failed to mitigate her damages. He submits that Ms. Thompson is capable of working at least part time, relying primarily on the evidence of Mr. Banks and Dr. Cooke.

[143] A defendant who alleges a failure to mitigate must prove on a balance of probabilities that the injured plaintiff failed to take reasonable steps to reduce her loss and that if she had taken such steps the loss would have been reduced.

[144] The defendant argues that as a unionized employee, Ms. Thompson had the right to seek reasonable accommodation from her employer but has failed to do so. However, there was no evidence before me that there were any suitable positions at UPS for Ms. Thompson. In addition, the fact that Ms. Thompson has been accepted for long-term disability benefits at UPS suggests strongly that there were no such positions.

[145] The defendant also argues that the vocational testing shows that Ms. Thompson has the capacity for part-time employment and that she has not pursued any such employment. There are two answers to this argument. The first is the same as the answer to the claim that Ms. Thompson failed to seek accommodation from UPS. The defendant has not established that had Ms. Thompson sought such employment, she would have been able to find and keep it, given her disabilities. The second is that I have already made a reduction in the amounts awarded for loss of income-earning capacity to take into account the substantial possibility that Ms. Thompson could have obtained such employment.

[146] I have already indicated that I am satisfied that Ms. Thompson is functionally unemployable at the present time and that it is more likely than not that that condition is permanent.

[147] I therefore conclude that the defendant has failed to show that Ms. Thompson has failed to mitigate her damages for loss of income-earning capacity.

Cost of Future Care

[148] Ms. Thompson makes a claim for the cost of future care resulting from her injuries.

[149] The principles applicable to claims for cost of future care were addressed by Justice McLachlin, as she then was, in *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.), *aff'd* (1987), 49 B.C.L.R. (2d) 99 (C.A.). They were recently helpfully summarized by Justice Kent in *Dzumhur v. Davoody*, 2015 BCSC 2316:

[244] The principles applicable to the assessment of claims and awards for the cost of future care might be summarized as follows:

- the purpose of any award is to provide physical arrangement for assistance, equipment and facilities directly related to the injuries;
- the focus is on the injuries of the innocent party... Fairness to the other party is achieved by ensuring that the items claimed are legitimate and justifiable;
- the test for determining the appropriate award is an objective one based on medical evidence;
- there must be: (1) a medical justification for the items claimed; and (2) the claim must be reasonable;
- the concept of "medical justification" is not the same or as narrow as "medically necessary";
- admissible evidence from medical professionals (doctors, nurses, occupational therapists, et cetera) can be taken into account to determine future care needs;
- however, specific items of future care need not be expressly approved by medical experts..... It is sufficient that the whole of the evidence supports the award for specific items;
- still, particularly in non-catastrophic cases, a little common sense should inform the analysis despite however much particular items might be recommended by experts in the field; and
- no award is appropriate for expenses that the plaintiff would have incurred in any event.

[150] Ms. Thompson claims the following items of future care which she submits have been recommended by her health care professionals:

1. counselling;
2. kinesiology;
3. occupational therapy;
4. pain management program;
5. vocational counselling;
6. rehabilitation management services;
7. housecleaning;
8. moving assistance;

9. equipment; and
10. medications.

[151] These claims are based on a report from Cynthia Morin, an occupational therapist, who assessed Ms. Thompson and reviewed her medical records and experts' reports. In her report, Ms. Morin provides the rationale for each recommendation. Some of the recommendations were not commented on by the defendant's counsel in his closing submissions. However, the defendant submits that some of the claims have not been made out and should not be allowed.

[152] I will address these claims in the order set out in Ms. Morin's report.

Counselling

[153] Ms. Thompson seeks compensation for the cost of ongoing counselling to help her cope with her physical and psychiatric symptoms. The preponderance of the evidence in this case supports the conclusion that Ms. Thompson will continue to suffer from these symptoms permanently. Dr. Kaushansky is of the opinion that Ms. Thompson will benefit from ongoing counselling. She currently attends counselling for one hour once every three weeks. The cost is \$115 per hour. Based on her assessment of Ms. Thompson and her interview with Ms. Thompson's present counsellor, Ms. Morin recommends that Ms. Thompson be provided with an additional year of counselling at her current frequency. Therefore, Ms. Morin suggests an average of six counselling sessions per year. However, Ms. Morin defers to a medical professional to determine the duration of the ongoing counselling.

[154] I was not directed to any evidence dealing specifically with the question of how long Ms. Thompson should continue to receive counseling. It is also less than clear that all of the counselling Ms. Thompson will require in the future relates to her injuries as opposed to her underlying depression.

[155] This claim also raises the issue of the relationship between damages for the cost of future care and non-pecuniary damages. I must be careful not to compensate Ms. Thompson twice for the same injury. The objective of non-pecuniary damages is to put the plaintiff in the same position that she was in before the Accident to the extent it is possible for money to do so. The objective of counselling is to improve the mood and mental health of the person being counselled.

[156] There is clearly a potential for these claims to duplicate one another. However, in this case, I am satisfied that there would be no double recovery from an award for counselling because I have taken the improvements in Ms. Thompson's condition, resulting in part from such counselling, into account in assessing her non-pecuniary damages.

[157] Counsel for the defendant did not raise any specific objection to this claim, but of course the onus of establishing that it is valid remains on Ms. Thompson. Taking all of the evidence into consideration, I find it reasonable to award damages for one year of counselling at the current rate and another five years of six counselling sessions after that year.

[158] Based on the calculations provided by PETA Consultants Ltd., I award damages of \$1,342 for the first year of counselling and \$3,200 for five additional years, making a total award of \$4,542.

Kinesiology

[159] Ms. Morin has recommended that Ms. Thompson attend a number of kinesiology sessions over the next year to ensure that she is properly performing the exercise program in which she is engaged. This recommendation is in turn based on the advice of a kinesiologist who has been supervising the exercise program. The amount of this claim is \$1,250. I find that this is a reasonable claim for future care. It has been recommended by a kinesiologist and clearly will assist Ms. Thompson to properly carry out the exercise program from which she benefits. This claim is allowed at \$1,250.

Occupational Therapy

[160] Ms. Morin recommends ongoing occupational therapy for Ms. Thompson, which includes education and training in energy conservation, pain management strategies and avocational activities. This therapy is designed to maximize Ms. Thompson's level of activities and to address her social isolation. The recommendation is for six sessions a year at a cost, including transportation, of \$1,000 per year. Ms. Morin suggests that these services should continue to be provided to the normal retirement age of 65.

[161] I agree that some allowance for occupational therapy is appropriate. However, in my view, this award should be limited to the cost of providing these services to age 60, the age at which I find it is likely that Ms. Thompson would have retired in any event.

[162] The present value of the cost of obtaining these services to age 60 is \$9,618 and I award that amount to Ms. Thompson.

Pain Management Program

[163] Ms. Morin points out that numerous medical professionals, including the defendant's expert Mr. Banks, have said that Ms. Thompson would benefit from a concentrated pain management program to help her manage her ongoing symptoms.

[164] The evidence is that such programs are available through both private clinics and the public health system. The defendant submits that because such programs are available through the public health system, it is unreasonable for him to be required to pay for a private program. On the other hand, if the services are provided through the public system, it is the public that will bear the expense of this care.

[165] In addition, Ms. Morin's evidence is that there is some uncertainty as to whether Ms. Thompson would qualify for the public program because of her claim against ICBC. I also agree with the plaintiff's submission that the public program does not appear to take an integrated approach to pain management, but seems to offer more of a continuation of the type of care Ms. Thompson has already been receiving.

[166] I allow this claim in the amount of \$14,500.

Vocational Counselling

[167] Ms. Morin has recommended that Ms. Thompson seek vocational counselling if she decides to pursue part-time employment in the future. However, I find that it is unlikely that Ms. Thompson will pursue such employment. I therefore would not make any award for such counselling.

Rehabilitation Services for Symptom Management

[168] Ms. Morin recommends that an award be made to permit Ms. Thompson to receive chiropractic assistance and massage therapy to the end of her life expectancy. I have two difficulties with this claim. The first is that there is no medical justification for either of these therapies. As pointed out by Ms. Morin, many medical practitioners are of the view that injured persons do not benefit from long-term passive therapies. There was no evidence before me that any medical practitioners recommended such ongoing treatments for Ms. Thompson. I therefore cannot find a medical justification for such treatments.

[169] In addition, in my view, such treatments at best may provide some temporary symptomatic relief for Ms. Thompson. I find therefore, it is reasonable for Ms. Thompson to use the funds provided to her in the award for non-pecuniary damages to access such services.

[170] I therefore make no award for such treatments.

Housecleaning

[171] Ms. Morin points out that Ms. Thompson has limitations with bending, crouching, kneeling and carrying, as well as decreased activity tolerance for these activities. She recommends that Ms. Thompson receive two hours of housekeeping services every two weeks to age 80 to assist with heavier housekeeping tasks that she has difficulty in performing. The present value of the cost of such services is \$35,369.

[172] I have some difficulty in characterizing this claim as one for future care. I think that it is more appropriately described as a claim for loss of housekeeping capacity. However, on the evidence as a whole, I am satisfied that Ms. Thompson has suffered some loss of capacity to perform household tasks as a result of the Accident. I therefore consider that some award is appropriate.

[173] The Court should approach awards for loss of housekeeping capacity cautiously. In this case, the loss of capacity relates primarily to Ms. Thompson's lack of tolerance for sustained physical activities rather than a physical inability to perform household tasks. Taking all factors, including the evidence of the cost of obtaining housecleaning assistance, into account I award Ms. Thompson \$15,000 for loss of housekeeping capacity.

Moving Assistance

[174] Ms. Morin recommends that Ms. Thompson be compensated for the costs of packing for moving once every ten years to life expectancy. She acknowledges that Ms. Thompson would likely have had assistance in moving even without the Accident, but says that she would likely have been able to do much of the packing and unpacking of a move had she not been injured.

[175] I have the same opinion about this claim as I had with respect to housekeeping assistance. It seems to me that this claim seeks compensation for a loss of capacity rather than for future care. I have taken this claim into account in fixing an amount for loss of housekeeping capacity and would not make any further award in respect of it.

Equipment

[176] After assessing Ms. Thompson in her home, Ms. Morin has recommended a number of aids to help her cope with her injuries:

1. Back Buddy;
2. shopping cart;
3. yoga equipment;
4. inversion table;
5. foam roller;
6. memory foam pillow and replacements;
7. TENS machine;
8. replacement electrodes; and
9. long-handled aids.

- [177] I agree with defendant's counsel that the evidence does not provide an adequate medical justification for these claims. For example, Ms. Morin states that Ms. Thompson should try a contoured memory foam pillow to determine if it reduces discomfort in her neck when she is in bed. However, no medical professional has made such a recommendation. Similarly, Ms. Thompson has not used, nor has any treating physiotherapist recommended, a TENS Machine.
- [178] I am also of the view that if Ms. Thompson wishes to purchase these items to make herself more comfortable, they should be financed from her award for non-pecuniary damages.
- [179] Accordingly, I would not make any award for these claims.

Medications

- [180] Ms. Thompson makes a substantial claim for prescription medications that she submits she is taking to treat the symptoms arising from the Accident. The claim advanced is for the following medications:
1. Almotriptan;
 2. Sertraline;
 3. Naproxen; and
 4. Oxycocet.
- [181] The record with respect to Ms. Thompson's ongoing need for prescription medication is far from satisfactory. While it is clear that Ms. Thompson is being prescribed the above medications, Ms. Morin expressly states that she is not qualified to predict Ms. Thompson's future needs for them and recommends that a doctor be consulted on that subject.
- [182] I have reviewed Dr. Majid's report and cross-examination. Based on her evidence and the College of Pharmacists Patient Profile Listings for Ms. Thompson, I am satisfied that Ms. Thompson will continue to require some prescription medication to treat the injuries she suffered in the Accident.
- [183] I find that the Almotriptan is intended for headache pain relief and that the Sertraline is a new anti-depressant medication prescribed after the Accident. I am also satisfied, based on Dr. Majid's evidence, that the Oxycocet was prescribed by her because Ms. Thompson was no longer getting adequate pain relief from the Tylenol 3s she was taking before the Accident.
- [184] However, I am not satisfied that Naproxen was prescribed for the Accident-related injuries. Ms. Thompson was taking that medication before the Accident, and there is no evidence that it was prescribed for her Accident-related injuries.

[185] I am also concerned that the evidence of usage comes only from Ms. Thompson and is somewhat vague. I gather from her evidence that she takes much of her medication only when she is experiencing symptoms, or, in other words, based on her own perceived needs.

[186] Based on Ms. Thompson's self-reported use of the three medications and the prices researched by Ms. Morin, the annual cost of the three medications is \$2,393. The present value of that annual amount to life expectancy is \$60,650. However, given the unsatisfactory state of the evidence with respect to these medications, I reduce that amount to \$50,000.

Supplements

[187] Ms. Thompson makes a claim for health supplements she has been using since the Accident.

[188] I agree with the defendant that Ms. Thompson has not provided an adequate medical justification for recovering the costs of these supplements as a cost of future care. There is no evidence that Ms. Thompson was ever advised to take any of these supplements, nor was there any evidence as to why she is taking them. I therefore would not make any award for their cost.

Summary of Cost of Future Care Award

[189] In summary I make the following award for damages for cost of future care:

1.

Counselling

\$4,542

2.

Kinesiology

\$1,250

3.

Occupational therapy

\$9,618

4.

Pain Management Program

\$14,500

5.

Loss of Housekeeping Capacity

\$15,000

6.

Prescription Medications

\$50,000

Total

\$94,910

(rounded to \$95,000)

Summary

[190] In summary, I award the following damages:

Non-pecuniary Damages

\$125,000

Loss of Past Income-Earning Capacity

\$136,000

Loss of Future Income-Earning Capacity

\$525,000

Loss of Pension Benefits

\$122,721

Cost of Future Care, including loss of housekeeping capacity

\$95,000

Total

\$1,003,721

(rounded to \$1,004,000)

[191] I am satisfied that this award is fair to both parties and adequately compensates Ms. Thompson for the injuries she suffered in the Accident.

[192] Subject to any matter of which I am not aware, Ms. Thompson is entitled to costs on Scale B.

"Sewell J."

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/17/09/2017BCSC0927.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/thompson-v-helgeson-2017>

Prepared on 28 October 2026 · Esheria