

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Prasad v. Moriyama*,
2025 BCSC 752

Date: 20250423
Docket: M213798
Registry: New Westminster

Between:

Ernestine Prasad

Plaintiff

And

**Jose Garcia-Valle, Kenichi Lee Moriyama, Masako Moriyama, and Stanley
Toshiki Lee Moriyama**

Defendants

Before: The Honourable Justice Whately

Reasons for Judgment

Counsel for the Plaintiff:

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Place and Date of Trial:

New Westminster, B.C.
August 12-16, 2024
August 19-23, 2024

Place and Date of Judgment:

New Westminster, B.C.
April 23, 2025

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Introduction

[1] The plaintiff, Ms. Ernestine Prasad was 46 years old at the time of trial. She seeks damages for injuries arising from two motor vehicle accidents (collectively, the “Accidents”).

[2] Prior to the Accidents, Ms. Prasad worked in a civilian capacity for the Royal Canadian Mounted Police (RCMP). Ms. Prasad was a high academic achiever, and had dreams of becoming a police officer, but various circumstances related to both family and finance prevented her from doing so. She earned a degree in criminology, and began her career with the RCMP in 2005. She was very proud to work for the RCMP and despite significant challenges, continued working there in various capacities until 2017.

[3] The first accident occurred on June 3, 2017. Ms. Prasad was stopped at a red light when her vehicle was struck from behind by a vehicle driven by Mr. Jose Garcia-Valle (the “First Accident”). The second accident occurred on October 23, 2018. Ms. Prasad was stopped at a red light when her vehicle was struck from behind by a vehicle driven by Stanley Toshiki Lee Moriyama (the “Second Accident”). The vehicle involved in the Second Accident was owned by Kenichi Lee Moriyama and Masako Moriyama.

[4] Ms. Prasad claims that as a result of these two Accidents, she sustained injuries which resulted in physical disability, impacted her quality of life, and limited her ability to work. Ms. Prasad has not returned to work since the First Accident and does not anticipate being able to return. She therefore seeks an award of damages between \$1,057,326 and \$1,092,326 to account for non-pecuniary loss, loss of past and future earning capacity, and loss of past and future domestic capacity. She does not make a claim in this action for cost of future care.

[5] Liability is admitted by the defendants with respect to both Accidents. The defendants acknowledge that the Accidents caused Ms. Prasad to suffer soft tissue injuries that could justify an award of between \$100,000 and \$120,000, primarily for non-pecuniary damages. However, the defendants assert that the losses associated

with the other heads of damages claimed by Ms. Prasad are unrelated to the Accidents, and should either not form part of a damages award at all, or be heavily discounted to reflect the impacts of pre-existing conditions and circumstances.

[6] The defendants make two primary assertions. First, that prior to the Accidents, Ms. Prasad suffered from pre-existing and unrelated medical conditions which were degenerative in nature. They argue that Ms. Prasad’s “physical and psychological well-being is essentially the same before the Accidents and after the two Accidents.” Second, they argue that Ms. Prasad’s capacity for employment was reduced prior to the Accidents, and that her ongoing unemployment is therefore unrelated to the Accidents.

[7] It is not disputed that prior to the Accidents, Ms. Prasad had a number of medical conditions which impacted her quality of life, as well as physical injuries stemming from an unrelated car accident and a fall on ice. What is disputed is the degree to which these pre-existing conditions contribute to Ms. Prasad’s current circumstances.

[8] Ms. Prasad also has a complex work history. As a result of a labour dispute, Ms. Prasad was not working between 2013 and 2015. Ms. Prasad asserts that this period of unemployment is unrelated to her medical history, and that, but for the Accidents, she would have continued working full time with the RCMP, with the various accommodations she had already had in place. The defendants assert that Ms. Prasad’s history of persistent labour relations issues, combined with her significant need for accommodations indicate her employability was significantly undermined before either Accident.

The Facts

Prior to the Accident

[9] As stated above, Ms. Prasad experienced a number of physical conditions that predate the First Accident. The parties dispute whether, or to what extent these

pre-existing conditions impacted Ms. Prasad's ability to work prior to the First Accident.

Pre-Accident Medical Conditions

[10] Ms. Prasad's testimony, as well as the medical reports submitted to the court, indicate that Ms. Prasad experienced the following medical conditions prior to the First Accident:

- Diabetes, which was diagnosed in 1999 when Ms. Prasad was 20 years old. For many years her diabetes was uncontrolled and caused secondary complications.
- Retinopathy, which impacts her vision. This issue arose in the mid-2000s and was likely caused by uncontrolled diabetes.
- Obesity, which began around 2007.
- Chronic edema, which began in 2006 or 2007.
- Pulmonary embolism, which occurred around 2010, but has not re-occurred.
- Dupuytren contracture, which began around 2011. The symptoms were managed via steroid injections, but continue to result in ongoing hand pain.
- Hearing loss in her right ear, which began around 2011. Ms. Prasad is totally deaf in her right ear and experiences hearing loss in her left ear.
- A number of injuries which occurred as a result of a 2012 car accident, including: injuries to her neck, shoulders, mid-back, and hip. She also experienced headaches. Ms. Prasad says that prior to the First Accident these injuries were mostly healed.
- Depression and anxiety, which was diagnosed in 2012, but likely began earlier. Ms. Prasad stated that she experienced depression as a result of being bullied and harassed at work.
- Chronic pain, which commenced sometime in the early 2012, and was formally diagnosed in 2014 as "chronic soft tissue pain syndrome".
- Left hip, buttock, and lower back pain caused by a fall on ice at work in 2016. Ms. Prasad indicates that these injuries resolved with chiropractic care.

- Hypertension, which was diagnosed in 2016.
- Hidradenitis suppurativa, and other chronic health conditions.

Going forward this decision, I will not go into detail with respect to any conditions that are not directly relevant to the injuries or damages at issue, but I acknowledge that they contribute to the state of Ms. Prasad's overall physical and mental health.

[11] In addition to the above, in 2022, Ms. Prasad was diagnosed with stage 3 chronic kidney disease. Ms. Prasad's liver failure occurred as a result of either her diabetes or due to medications she was taking; notwithstanding, it is unrelated to the Accidents.

[12] Ms. Prasad was diagnosed with diabetes at the age of 20. During her testimony Ms. Prasad stated that diabetes did not stop her from pursuing her education or from working full-time. Conversely, the defendants assert that for years, her diabetes was poorly controlled, and that this underlies many of her past and current medical symptoms, and will gravely impact her future health.

[13] The defendants assert that Ms. Prasad's congenital health problems, especially her uncontrolled diabetes, were degenerative in nature and would have continued to progress. The defendant argues that Ms. Prasad's uncontrolled diabetes resulted in damage to her eyes and kidneys, and that the eye damage made it difficult for her to read, write, look at computer screens, and drive, thereby seriously limiting her employment opportunities long before the First Accident.

Pre-Accident Work History

[14] Ms. Prasad testified that, prior to the First Accident, none of her medical conditions impacted her ability to work full-time and that she had never taken any extended time off work for health-related reasons. Ms. Prasad also asserted that since she was working full time at the time of the accident, the court can infer that, absent the Accidents, she would have continued to work on a full-time basis.

[15] While Ms. Prasad was working full-time at the time of the First Accident, she does have a somewhat inconsistent working history, due largely to a protracted

labour dispute between herself and her employer, the Royal Canadian Mounted Police (“RCMP”). I will summarize Ms. Prasad’s working history with the RCMP.

[16] Ms. Prasad was hired by the RCMP in 2005 and worked full-time in several different roles. Between 2005 and 2012 there were no substantial breaks in Ms. Prasad’s full-time employment.

[17] In 2009, Ms. Prasad transferred from the Chilliwack RCMP Detachment to the CPIC Field Operations Headquarters, where she worked as an officer administrator. At this new posting, Ms. Prasad testified that her manager and co-worker harassed and bullied her. She alleged that between 2009 and 2011 upper management failed to address the harassment, and that instead, they unilaterally changed the terms and conditions of her employment in an attempt to constructively dismiss her.

[18] In 2012, Ms. Prasad had her first motor vehicle accident. This accident is referred to throughout this decision, but is not one of the Accidents that are the subject of this action. This motor vehicle accident resulted in injuries to Ms. Prasad’s neck, shoulders, back, and hip. She also suffered from headaches after the accident. She was seen by her family doctor, Dr. Minovi and received physiotherapy, massage therapy, and chiropractic care. Ms. Prasad took a couple of weeks off after this accident and then returned to work.

[19] Over the course of her career with the RCMP, Ms. Prasad filed 19 grievances against her supervisors and the RCMP, most of which relate to allegations of harassment, bullying and failure to accommodate. She also pursued a harassment claim through the Worker’s Compensation processes, but was denied. While Ms. Prasad’s grievances are numerous, the evidence was that they were vetted by the union prior to being filed, which suggests that they were not frivolous.

[20] As a result of certain of these grievances and the process surrounding accommodation, Ms. Prasad was off work between 2013 and 2015. The defendants assert that during this time Ms. Prasad was offered other positions within the RCMP, but that she unreasonably rejected these offers as she believed that accepting these

offers would require her to withdraw her grievances. Ms. Prasad testified that during this time she was fit and willing to return to work and made several attempts to do so. She said that one of the reasons she was unable to return to work during this period was that she required workplace accommodations that the RCMP either could not or would not meet. As a result, she remained a paid employee at home, waiting for an appropriate placement, and for the investigation of her grievances to proceed.

[21] In May 2015, Health Canada wrote to the RCMP and indicated that “Ms. Prasad has multiple medical conditions affecting her in the workplace as well as ongoing grievances medically affecting her return [to the] workplace ... Ms. Prasad is fit for full time work [...] if she is accommodated as per recommendations below...”

[22] Health Canada indicated that:

- Ms. Prasad was able to work at a computer and perform the duties associated with her work description, if she was given a sit/stand desk, an adjustable chair, and permitted to take regularly scheduled breaks.
- Ms. Prasad was not able to lift boxes or to lift anything overhead, but that she was able to lift up to eight pounds and was able to push a file cart.
- Due to Ms. Prasad’s hearing impairment, she would need to work in a quiet environment such that communication could occur on a one-to-one basis without loud background noise. She was unable to work behind a plexiglass barrier as the barrier limited her ability to hear people clearly. Ms. Prasad’s hearing impairments also limited her capacity to have phone conversations.
- Ms. Prasad would require a flexible or compressed working schedule to accommodate medical appointments
- Ms. Prasad was to have no contact with the manager who she alleged to have harassed her.

- Ms. Prasad was limited in the distance she could drive, and that her commute should, ideally, be less than 30 minutes each way.

[23] This last recommendation appears to be in response to Ms. Prasad’s fear that her 2010 pulmonary embolism may return. The defendants assert that this concern was medically unfounded. They also assert that, in discovery, Ms. Prasad stated that she wanted to avoid driving long distances due to the cost of gas. The defendants therefore argue that the court should interpret the driving distance recommendation as an unjustified impediment to returning to work.

[24] Ms. Michelle Cho testified on behalf of the defence. At the time in question Ms. Cho worked in the RCMP Human Resources department, and had charge of Ms. Prasad’s RCMP labour relations files. She testified that the Health Canada accommodation recommendations made Ms. Prasad a very difficult employee to place. Specifically, she explained that there were limited RCMP detachments which could even accommodate Ms. Prasad’s needs and that few of those detachments were within the 30-minute commuting radius. Ms. Cho also testified that the RCMP offered Ms. Prasad several positions which they believed would accommodate Ms. Prasad’s needs; however, Ms. Prasad refused these positions.

[25] The defendants assert that the letter from Health Canada is proof that Ms. Prasad’s pre-existing conditions, including her pre-existing back pain, were “disabling” and prevented her from maintaining employment even prior to the Accident.

[26] In addition, the defendants argue that Ms. Prasad’s history of grievances are evidence of a “confrontational work philosophy.” They argue that this, coupled with her historical need for significant and varied accommodations, shows that Ms. Prasad’s ability to maintain employment was compromised for reasons unrelated to the Accidents.

[27] Ms. Prasad maintains that she was able to work, and did work, with appropriate accommodations. After her period away, on January 1, 2016, Ms.

Prasad returned to full-time work with the RCMP, with some, but not all of the recommended accommodations in place. Ms. Prasad testified that some accommodations were in the process of being revoked.

[28] Later that month, Ms. Prasad fell on the ice in the RCMP's parking lot. This fall resulted in lower back, hip, and left arm pain. Ms. Prasad testified that while the fall caused her pain, she did not take any time off work, and that the injuries improved with chiropractic care. She indicated that this fall did not impact her activities of daily living and that she was able to work full time and with full duties.

[29] After returning to work in 2016, Ms. Prasad remained employed on a full-time basis until the First Accident in 2017.

[30] Ms. Prasad testified that she did not have any retirement savings, and that absent the Accidents, she would have worked until she reached the age of 65. However, following the First Accident, she never returned to work.

Pre-Accident Activities of Everyday Living and Interpersonal Relationships

[31] The defendants assert that Ms. Prasad's testimony proves that her ability to manage the activities of daily life and participate in social activities were impacted prior to the Accidents. In particular, the defendants point to a 2014 medical legal report by a Dr. Salhoojee regarding the impacts of injuries from Ms. Prasad's 2012 accident:

I'm advised by the patient that these injuries have affected and continue to affect every aspect of her personal life ... She now avoids the multiple visits to her sister's house per week that she used to make before, as she cannot sit comfortably. She has cut down her visits to others' homes and does not travel with her family on outings because of her pain. All of this has affected her relationship with her family.

She stopped attending regular social gatherings as well. Meetings with coworkers or friends after work was difficult due to her pain.

[32] Ms. Prasad agreed that this account was accurate at the time it was written, and confirmed that certain activities of her everyday living were compromised. She said that the injuries she sustained in the 2012 accident impacted her ability to clean

her home, which made her embarrassed to have family and friends over. Specifically, she indicated that she wasn't able to stand for extended periods of time and therefore struggled with washing dishes and completing other cleaning tasks. Ms. Prasad also testified that she did not participate in many physical activities due to ongoing back and hip pain from the 2012 accident. However, Ms. Prasad stated that she only took two weeks off of work following the 2012 accident.

[33] By 2017, Ms. Prasad said the pain caused by her 2012 car accident had largely resolved, save for lingering lower back pain. She was beginning to socialize with her family and friends on a more regular basis, and she was doing most home-based tasks on her own. Ms. Prasad admitted her physical activity was not substantial but she walked to the grocery store, and that because the RCMP campus was so large, often she would walk 15-20 minutes to get to a course. She also walked out two-to-three times a week to go for coffee.

[34] The slip and fall in 2016 aggravated some pain from the 2012 accident, particularly with respect to her lower back, hip and left arm. However, Ms. Prasad attended some chiropractic treatment over the course of four to five months but did not take time off work.

[35] Ms. Prasad testified that in general, in the year prior to the First Accident, she felt "pretty good". She described herself as "maybe not in tip top shape" but she had been working full time for about a year, she was not on her depression medication, and she was doing mostly everything for herself.

The First Accident

[36] On June 3, 2017, Ms. Prasad was stopped at a traffic light, at the intersection of South Fraser Way and Bourquin Crescent West, when her vehicle was rear ended by a vehicle driven by Mr. Garcia-Valle. Ms. Prasad was wearing her seat belt and was alone in the vehicle. She had been sitting at the red light for 20-30 seconds before the collision.

[37] While Ms. Prasad described the collision as “hard,” the airbags did not go off and there was minimal damage to the vehicle. Ms. Prasad testified that, upon impact, her car was pushed forward and she hit her head on the headrest behind her. At time of the collision she felt sharp, electric pain in the left side of her body; specifically, in her left arm, hand, shoulder, hip, and leg.

[38] Immediately following the accident, Ms. Prasad noted that the range of movement and mobility in her left arm, hand, and shoulder was limited. Later in the day on June 3, 2017, the pain in Ms. Prasad’s left arm and hand was so severe that she was unable to retain her grip on a coffee cup.

[39] Ms. Prasad testified that in the months after the accident she was unable to lift her arm. This limited her ability to do everyday tasks such as getting dressed, pulling up the covers when in bed, blow-drying her hair, doing her dishes, and taking out the garbage.

[40] She testified that she experienced head pain from where she hit her head, as well as generalized neck pain and shoulder tightness. This pain resulted in what Ms. Prasad characterized as “tension headaches.” These headaches limited her ability to watch TV and read. She also became sensitive to light and indicated that bright light would sometimes trigger her headaches.

[41] Three days after the accident Ms. Prasad visited Dr. Minovi, who was her family doctor at the time of the accident. Dr. Minovi’s notes between June 2017 and July 2018 corroborate Ms. Prasad’s testimony. They indicate that Ms. Prasad experienced pain her jaw, neck, hand, left arm, bilateral shoulder, bilateral hip, and back. They also indicate that Ms. Prasad was experiencing headaches. Dr. Minovi’s notes also indicate that the First Accident flared up Ms. Prasad’s pre-existing conditions from her 2012 accident. Dr. Minovi provided Ms. Prasad with a prescription for muscle relaxant, massage therapy, and physiotherapy.

[42] In the following months Ms. Prasad attended all the physiotherapy sessions that the Insurance Corporation of British Columbia (“ICBC”) would pay for. She

attended three massage therapy sessions, but was unable to complete anymore as she could not afford to pay upfront for additional sessions.

[43] Notwithstanding these medical interventions, Ms. Prasad testified that the injuries caused by the First Accident took a toll on her everyday life. She testified that she was unable to complete cleaning tasks, especially taking the garbage out, and required assistance from others. She also reported having difficulties sleeping due to the pain. She also had a reoccurrence of her depression symptoms and experienced serious anxiety related to driving, as she had now been rear ended on several occasions. She resumed taking antidepressants.

[44] Ms. Prasad reported that it took her around a year to recover to the point that she was able to cook, clean, and shop for herself. Nevertheless, she testified that a year after the First Accident she was still unable to perform activities such as taking out the garbage, which required her to lift and throw the garbage bag into a dumpster. She also reported regularly experiencing sharp pain in her left arm and hand that caused her to drop things like cutlery, mugs, and her phone.

[45] [50] Ms. Prasad testified that while she had some residual back and hip pain from the 2012 accident, for the most part, prior to the First Accident her pre-existing injuries had resolved, and she had been able to function normally. After the 2017 Accident, she testified that by the fall of 2018 she had been hopeful that she would be able to return to work by December. She indicated that she had a mortgage and other bills to pay and that she wanted to return to work.

[46] The defendant say that Ms. Prasad's claimed injuries are primarily attributable to the 2012 car accident.

The Second Accident

[47] On October 23, 2018, Ms. Prasad was stopped at a red light, at the intersection of Ware Street and George Ferguson Way, when she was rear ended by a vehicle driven by Mr. Stanley. Ms. Prasad was wearing her seat belt and was alone in the vehicle. Ms. Prasad testified that, upon impact, she may have again hit

her head on the headrest and that her purse fell off the seat. She stated that she did not experience any new injuries, but that the Second Accident caused her injuries from the First Accident to flare up.

[48] One day after the accident, Ms. Prasad visited Dr. Minovi. Dr. Minovi's medical records indicate that Ms. Prasad experienced "whole body" pain, which was pre-existing, but had been aggravated by the Second Accident.

Post-Accidents Medical Conditions

[49] Ms. Prasad testified that, at the time of the trial, she experienced serious lower back, neck, shoulder, arm, hip, and leg pain. She also testified that she experienced headaches due to neck and shoulder tension.

[50] The medical records indicate that Ms. Prasad has been consistently describing this pain to medical practitioners since the Accidents. For example, in August 19, 2020, Ms. Prasad visited Dr. Chu, who is a physiatrist. In his notes, he reported the following:

pain of low back, hip girdles, legs with numbness; neck, shoulder girdle, upper back, shoulder, arms and hands with sensory symptoms; headaches; jaw pain; history of six MVAs; had recovered for the most part following the 2012 accident with occasional low back pain; had been attending chiropractor semi regularly since falling on ice in 2016; chronic pain syndrome; this is not a simple whiplash injury; central pain system ...

[51] Ms. Prasad's testimony related to her neck, shoulder, and back pain is also supported by a medical assessment, performed by Dr. Wasseem on March 4, 2024. Dr. Wasseem assessed Ms. Prasad for the purposes of providing evidence in this proceeding. Dr. Wasseem's report indicates:

On examination of the cervical spine, pain was noted to palpitations of this suboccipital, cervical paraspinal, upper fibers of the trapezius, levator scapula and splenius capitus/cervical muscle bilaterally. In these areas, muscle stiffness, increased muscle tone, spasms, taut bands and trigger points were noticeable.

...

On examination of the lumbar spine, pain noted to palpation of the lumbar paraspinal, quadratus lumborum and the upper fibers of the gluteus maximus muscles bilaterally. In these areas, muscle stiffness, increased muscle tone, spasms, taut bands and trigger points were noticeable.¹

[52] While muscle stiffness, increased muscle tone, spasms, taut bands and trigger points were not noted, Dr. Waseem also indicated that Ms. Prasad experienced pain during palpitations of the joint lines, muscles, ligaments, and tendons in both her upper and lower extremities.²

[53] In her testimony, Ms. Prasad also indicated that she experienced numbness in her leg that cause her to trip regularly and occasionally to fall. The defendants dispute Ms. Prasad's testimony that she experiences difficulty walking and drew the court's attention to the report of Dr. Waseem which stated, "Ms. Prasad walked with a normal biomechanical gait pattern."³

[54] Ms. Prasad also testified that her mental health has been seriously impacted by the Accidents. She expressed that losing her independence and her ability to work has made her feel useless and old. On several occasions she alluded to the fact that much older family members experience better mobility and quality of life than she does.

[55] She also expressed that withstanding seven years of constant physical pain has negatively impacted her psychological wellbeing. While she takes antidepressants, she still feels hopeless and believes she will likely spend the rest of her life sitting at home in pain.

[56] The defendants assert that Ms. Prasad's psychological disruptions pre-date the Accidents. To support this position, the defendants drew the court's attention to a 2012 consultation report from Dr. Moussa. This report indicates that Ms. Prasad was feeling depressed, anxious and overwhelmed with anxiety with the idea that she has

¹ Plaintiff's Book of Documents, Tab 7, page 27-28.

² Plaintiff's Book of Documents, Tab 7, page 28.

³ Plaintiff's Book of Documents, Tab 7, page 27.

to go back to her job with the RCMP. Dr. Moussa also testified that Ms. Prasad reported hopelessness, self-doubts about her relations with her family, a lack of enjoyment, worry about her physical conditions, and a decreased sex drive.

Post-Accident Work History

[57] After the First Accident, Ms. Prasad never returned to work.

[58] In 2021, Ms. Prasad and the RCMP reached a settlement with respect to her grievances and other issues regarding the cessation of her employment with the RCMP. Health Canada approved Ms. Prasad's medical retirement request in September 2022.

[59] Ms. Prasad testified that, due to her physical conditions, she is unable to return to work at the RCMP or at any other employer as she struggles to leave the house due to pain. She also indicated that she is unable to look at screens or concentrate for an extended period of time due to her neck pain.

[60] Ms. Prasad's counsel argues that in order for Ms. Prasad to secure any form of employment, her employer would need "limitless empathy and understanding for her condition" and would need to provide accommodations that extend beyond what is reasonable or possible for most positions, regardless of the skill level or expectations.

[61] The defendants argue that Ms. Prasad never tried to return to work after the First Accident, nor has she undergone a functional capacity report on which to ground the conclusion that she is unfit for any type of employment. The defendants also assert that Ms. Prasad's refusal to accept other internal positions at the RCMP between 2013 and 2015 could be interpreted as a premeditated attempt to retire early and receive a disability pension.

[62] The defendants also assert that Ms. Prasad's pre-existing medical conditions, coupled with the injuries incurred in the 2012 accident, are the true cause of Ms. Prasad's unemployability. They state that according to Ms. Prasad's own evidence,

her diabetes impacted her ability to see, thus limiting her capacity to read, write, look at computer screens, and drive. They also argue that her underlying health conditions would have impacted her employability. In advancing this position the defendants tendered an expert report from Dr. Elliott which states that, notwithstanding the Accidents, Ms. Prasad's uncontrolled diabetes will render her severely incapacitated within 5-10 years. It is not entirely clear from what point this time range anticipated to start, but I will assume it means from the date of Dr. Elliott's report.

Post-Accident Activities of Everyday Living

[63] At the time of the trial, Ms. Prasad testified that her pain was so severe that she remained unable to complete the tasks of daily living such as cooking, cleaning, laundry, and taking out the garbage. She indicated that she was unable to do these tasks as they cause her extreme pain. A witness called by Ms. Prasad corroborated that Ms. Prasad's home is currently in a state of serious disarray, which she says was not the case prior to the Accidents.

[64] Ms. Prasad further testified that her social life has dwindled to nothing. She is prone to falls, cannot walk any distances, and cannot keep up even with her sister who has an injured knee. She declines most invitations, and does not have people over to her home, or her current boyfriend's home, where she was staying at the time of trial.

[65] The defendants assert that while household tasks may cause Ms. Prasad pain, she is able to perform them. In arguing this point, they referenced the report of Dr. Waseem, which stated that Ms. Prasad "has not received assistance for regular housekeeping chores but family members help with heavier household chores" such as taking out the garbage. The report goes on to indicate that Ms. Prasad does experience pain while completing these tasks and therefore completes them less frequently.

Post-Accident Romantic and Interpersonal Relationships

[66] Ms. Prasad testified that, following the Accidents, her physical limitations have negatively impacted her romantic and interpersonal relationships. Ms. Prasad met her fiancé, Mr. Wilson, in 2018, prior to the Second Accident. The parties were engaged in 2019.

[67] Ms. Prasad testified that her lack of mobility has been a source of conflict in their relationship as it limits her ability to attend social functions and do activities. For example, Mr. Wilson has a cabin on Little Big Bear Lake and enjoys the outdoors. Ms. Prasad is unable to spend time with him at this cottage as she is unable to walk on the uneven terrain that leads to the outhouse. She is also unable to engage in outdoor activities like kayaking as it is painful for her to sit on a hard surface for an extended period of time.

[68] Due to Ms. Prasad's limited ability to cook, clean, or work, she often feels like she is a burden on Mr. Wilson and not a good partner because she is unable to contribute equally to the household. Due to physical pain, her ability to engage in physical intimacy is also limited.

[69] Ms. Prasad testified that the parties frequently argue about Ms. Prasad's limitations, and that, on occasion, the arguments have escalated into physical altercations. In Spring 2000 the parties periodically lived separately due to the severity of their ongoing disputes, but Ms. Prasad discovered that she was not able to live alone due to her physical limitations.

[70] The parties therefore moved back in together around 2023 and, as of the time of trial, Mr. Wilson acted as a caretaker for Ms. Prasad. The state of their romantic relationship was fraught. Ms. Prasad indicated that her limited disability benefits and disability pension pay for the couples' mortgage, but that she is fully reliant on Mr. Wilson for everything else.

[71] Ms. Prasad characterised her physical limitations as being the cause of her tumultuous relationship with Mr. Wilson. Mr. Wilson grew frustrated with her inability

to contribute financially or to the upkeep of the house. Their physical relationship was hindered by her pain, and after 2019 physical intimacy largely came to a stop, which added to the tension. She characterized herself as a “bad partner” to Mr. Wilson. She blames herself and her injuries for the state of the relationship.

[72] The defence disputes this characterization. They assert that Mr. Wilson is abusive, and that this is unrelated to the Accidents or to Ms. Prasad’s physical limitations.

[73] On the morning of the first day of trial, Mr. Wilson was admitted to hospital following a motor vehicle accident of his own, which meant that he could no longer testify. Ms. Prasad was understandably concerned, both for Mr. Wilson in the short term, and in the long term for herself, as she considers herself to be entirely reliant on him.

[74] Ms. Prasad also testified that the Accidents have taken a toll on her social life. She indicated that her physical pain makes it difficult to leave the house and that she struggles to find a comfortable sitting position when in public. She therefore has limited social interactions with either her family or her friends.

[75] The defendants dispute this and argue that, by Ms. Prasad’s own admissions, “she did not really have a social life” before the Accidents as she had already been isolated from family and friends following the 2012 accident.

[76] At the same time, the defendants posit that Ms. Prasad is not being truthful about her social life. The defendants produced three photographs which depict Ms. Prasad at her 40th birthday party, at her brother-in-law’s celebrations of life, and at her niece’s university graduation celebration, respectively. In all of these pictures Ms. Prasad is either sitting or standing. Generally speaking, I find that photographic evidence of specific and possibly rare social interactions do not contradict Ms. Prasad’s evidence. Ultimately, I cannot derive anything from this other than Ms. Prasad is in the photos. Ms. Prasad did not deny attending those events.

Witnesses

[77] I do not go into detail into all witnesses' testimony unless their evidence relates to an issue I need to decide.

Co-Workers and Family

[78] Ms. Prasad called her sister Christine Hintz, and her nephew Alexander Hintz. For the most part, Ms. Prasad's family members corroborated her testimony in terms of her current physical and emotional state, the fact that she requires help with household tasks, and that, in the last several years and certainly since the Accidents, she has been less social, less able, and often clearly in physical discomfort and pain. Ms. Hintz was blunt in her assessment of the state of Ms. Prasad's living situation due to her inability to clean.

[79] Ms. Prasad also called former colleagues, Krystal Rowell and Janet Wort.

[80] Ms. Rowell was an administrative supervisor with the RCMP, and the shop steward for their union. She became friends with Ms. Prasad in and outside of work. Ms. Wort was elected president of the union local in 2011, and met Ms. Prasad the same year. She was Ms. Prasad's union representative.

[81] Both Ms. Rowell and Ms. Wort stated that Ms. Prasad was a kind, reliable, serious employee who was extremely proud of working for the RCMP. They characterized her as a good and capable worker who required, and was in many respects denied appropriate accommodation by leadership at the RCMP. They were both critical of how Ms. Prasad's issues were dealt with by management and HR at the RCMP, including Michelle Cho, Heidi Andersen and Michel Legault. They confirmed that grievances were vetted by the union before they were submitted.

[82] Ms. Wort and Ms. Rowell confirmed that they were advocates for employees.

[83] The defence called Ms. Andersen, Ms. Cho and Mr. Legault as witnesses.

[84] Heidi Anderson is the manager of the administrative, finance and executive services at the RCMP. She manages approximately 30-35 staff. Ms. Anderson hired

Ms. Prasad into the Chilliwack detachment, but she then later moved to the Pacific Region Training Centre (PRTC). Ms. Prasad came to work at the PRTC in 2015, and Ms. Anderson understood that Ms. Prasad had been off for some time due to a harassment complaint, and that “there was nowhere else to put her.”

[85] Ms. Anderson said that Ms. Prasad was open about her many grievances against the RCMP, and said that at the time she came to work at the PRTC, there were approximately 15 grievances pending, including against her previous supervisors, which made it difficult to place her. She stated that eventually, Ms. Prasad filed a grievance against her as well, and that she was advised that this was grievance number 18. Ms. Anderson found out about Ms. Prasad’s complaints against her due to a letter that was left in an office copier. She understood it to be about intimidation and bullying.

[86] Ms. Anderson said that Ms. Prasad was an accurate worker, but very slow. In her view, she was assigned less work, and completed less work than other comparable workers. She also confirmed that at one point she suggested to Ms. Prasad that instead of running to the union with every issue she had, she could come have a discussion with her face-to-face. She said Ms. Prasad interpreted this as “yelling” at her, and called her union representative. Ms. Anderson was subsequently questioned about whether there was “workplace violence” occurring in her unit.

[87] Ms. Anderson confirmed that Ms. Prasad had several accommodations, including no lifting overhead, no working behind barriers, no contact with a previous supervisor that she had accused of harassment, ergonomic desk equipment, and a flexible work schedule. She said that there was confusion, or a dispute about what the flexible schedule meant. Ms. Prasad understood (and the evidence suggests that this was true) that this accommodation allowed her to work a “compressed” four-day work week. Ms. Anderson felt this was unfair, as no other employee had this opportunity. Despite the actual wording of the accommodation, Ms. Anderson

thought a “flexible schedule” should mean – at most - extra time off for medical appointments.

[88] It was clear from Ms. Anderson’s testimony that she found Ms. Prasad to be a challenging employee to manage, both because of her accommodations, and her grievances. It was also clear that Ms. Anderson did not agree with certain of the accommodations and was frustrated by Ms. Prasad in general. Ms. Anderson confirmed that it was difficult to work with Ms. Prasad due to the lack of trust.

[89] Ms. Cho formerly worked in the RCMP’s labour relations unit. She testified that Ms. Prasad was difficult to place due to her many limitations, both in terms of the harassment/bullying grievances, as well as her the many accommodations mandated by Health Canada.

[90] Ms. Cho confirmed that Ms. Prasad worked with her accommodations at the PRTC for about a year and a half, before the 2017 Accident. She would not agree that Ms. Prasad would have continued to work full time at the RCMP had the Accidents not happened. She was equivocal on this point, saying that she could not say with certainty, given that there were so many other issues in play. She did confirm that with her accommodations, Ms. Prasad could physically continue to work in the position she had.

[91] At the relevant time, Mr. Michel Legault was the Superintendent in charge of the PRTC. He was an RCMP member for 35 years before his retirement. He is now a faculty member at Camosun College. He recalled being aware of, or “attached to” Ms. Prasad’s labour relations issues between 2012 through to 2022. Given the scope of Ms. Prasad’s work issues, he felt it was better to be the one decision maker on her file in order to insulate other managers.

[92] Mr. Legault acknowledged that Ms. Prasad also made a complaint against him after a performance review. He recalled that she felt he had raised her voice, which she considered to be harassment. Mr. Legault’s memory on this point wasn’t strong, but he stated that he never raised his voice. In his view, Ms. Prasad had

difficulty with constructive criticism with respect to the performance of duties. She performed adequately, but her interactions with coworkers was tense, and people were afraid of complaints being made against them.

[93] Mr. Legault, under cross, agreed that the RCMP was a paramilitary organization with a strict hierarchy, but stated that the civilian employees were not held to the same paramilitary organizational rigours. He did not agree that a female employee in particular may suffer for standing up for herself at the RCMP.

[94] He did not believe Ms. Prasad made complaints out of spite, but he confirmed she made more complaints than was usual, and that most of the issues she had was with supervisors, not with her immediate coworkers.

Expert Witnesses

[95] Ms. Prasad called two expert witnesses:

- a) Dr. Zeeshan Waseem, physiatrist, who provided a report dated March 21, 2024; and
- b) Dr. Paul Devlin, psychiatrist, who provided a report dated May 10, 2024.

[96] The defendants called three expert witnesses:

- a) Dr. Darcy Muir, psychiatrist, who provided reports dated March 1, 2024, May 7, 2024, and June 27, 2024;
- b) Dr. Tom Elliott, a specialist in internal medicine, endocrinology, and diabetes, who provided a report dated May 16, 2024; and
- c) Dr. Amarjit Arneja, physiatrist, who provided reports dated March 13 and June 14, 2024.

Physiatry

[97] Dr. Waseem found that “against the backdrop of pre-existing lower back pain” Ms. Prasad sustained sprain/strain soft tissue injuries of the cervical and lumbar

spine and left shoulder in the 2017 Accident. The 2018 Accident reinjured and aggravated her underlying condition.

[98] Dr. Arneja determined that as a result of the 2017 Accident, Ms. Prasad suffered soft tissue injuries, or Whiplash Associated Disorder 2, which caused an exacerbation of pre-existing neck, back and hip pain caused by the 2012 car accident. He further found that she suffered an exacerbation of pre-existing back pain caused by abnormal spine posture, myofascial pain and dysfunction, as well as of her pre-existing depression.

[99] Dr. Arneja stated that the 2018 Accident exacerbated all the same issues discussed in relation to the 2017 Accident.

[100] Both Dr. Waseem and Dr. Arneja appear to agree that the Accidents are the proximate cause of Ms. Prasad's back, neck, hip and shoulder pain. Dr. Waseem stated that Ms. Prasad had developed "chronic widespread pain complicated with poor self-efficacy." Dr. Arneja disagreed with the finding of widespread or diffuse pain, and opined that Ms. Prasad instead had peripheral and central sensitizations due to myofascial trigger points. This disagreement results in differing opinions on the appropriate treatment, and likelihood of recovery.

[101] Dr. Waseem opined that Ms. Prasad's prognosis was poor: her chronic pain was likely permanent because of its long duration, and because the pain is diffuse, which makes it difficult to treat. He stated that Ms. Prasad does not appear to have the capacity to tolerate full time work, and that it is "doubtful that she will ever successfully regain a career as she once knew it."

[102] Dr. Arneja's opinion was that Ms. Prasad's seven years of chronic pain would improve with if she underwent his recommended treatment, which contemplated a four-week rehabilitation plan that highlighted trigger point therapy. He stated that if she did so, "it is more likely than not that she will make further improvement in her physical, emotional and functional level and will be able to return to her pre-accident occupation or gainful employment.

[103] With respect to resolving the conflict in conclusions as between Dr. Waseem and Dr. Arneja, Ms. Prasad provides several examples of previous cases where Dr. Arneja has come to a similar conclusion, and recommended the same plan to treat chronic pain, which was not accepted by the courts.

[104] Dr. Arneja was a challenging witness. Ms. Prasad referred me to a finding by a justice of this court that Dr. Arneja was an advocate for the defence. Further, I read the following comments regarding Dr. Arneja by Weatherill J in *Rabbani-Nejad v. Sharma*, 2020 BCSC 58 with some measure of recognition:

[68] ... Although it was apparent that [Dr. Arneja] was desirous of giving the court the benefit of his extensive expertise and experience, he became overly anxious to do so. He was argumentative, evasive and, at times, judgmental. Occasionally, he strayed beyond his area of expertise. Many of his answers were unnecessarily lengthy and prolix, even when asked simple “yes” or “no” questions. He provided complex answers to uncomplicated questions.

[105] The defendants conceded that Dr. Arneja was a “disputatious” witness. They encourage me to consider the rigour and reliability of his report, rather than focusing on him as a *viva voce* witness.

[106] Dr. Waseem testified that trigger point therapy is one of several pain management techniques, but it would provide, at best, only temporary relief. Further, Ms. Prasad did undertake treatments that were targeted at trigger points, along with the application of heat, and had an exercise regiment taught to her by professionals, providing short term relief after the 2017 Accident, and no relief after the 2018 Accident.

[107] Dr. Waseem was a clear and measured witness, who provided his opinion without elaboration or inappropriate advocacy. However, his evidence also had challenges. For example, he had not been provided with Ms. Prasad’s medical legal report from the 2012 Accident which referred to chronic pain, nor had he been provided with a copy of Health Canada’s recommendations with respect to Ms. Prasad’s work accommodations.

[108] Dr. Waseem was aware of the 2012 Accident through Ms. Prasad's self reporting. In his report, Dr. Waseem referred to injuries to Ms. Prasad's neck, upper back from the 2012 accident that he understood had resolved. However, the 2014 medical legal report describes Ms. Prasad's ongoing functional challenges due to pain. This pain was characterized as chronic. It is not clear when or if the "chronic" pain resulting from the 2012 accident resolved, if it did resolve.

[109] Dr. Waseem maintained that while it would have been helpful to have the 2014 medical legal report, he was aware of Ms. Prasad's pre-existing issues. He said that the 2014 report was outdated. When pressed in cross about how a diagnosis of *chronic* pain (as indicated in the 2014 report) could be "outdated", Dr. Waseem said that regardless of the pre-existing diagnosis, the report was clearly outdated in terms of Ms. Prasad's function before the 2017 Accident.

[110] He commented that Ms. Prasad's pain prior to the 2017 Accident was not diffuse or widespread, and was localized to her lower back. He also remarked that Health Canada's recommended accommodations for Ms. Prasad (ergonomic equipment, no lifting, etc.) are quite commonplace and many full-time workers have similar ones as a matter of course.

[111] Dr. Waseem reiterated that the fact that Ms. Prasad was working full time prior to the 2017 accident was a significant factor in terms of assessing the impact of the 2017 and 2018 Accidents.

[112] Where their evidence conflicts, I prefer the evidence of Dr. Waseem over that of Dr. Arneja. I appreciate Dr. Argeja's passion and expertise, but I agree with the comments of previous justices of this court with respect to the nature of Dr. Arneja's testimony, and I find that his evidence teetered dangerously towards advocacy. Further, certain of his conclusions relied on academic research that did not unequivocally support the premise that trigger point therapy could provide the type of long-lasting relief or improvement in Ms. Prasad's case.

Psychiatry

[113] Dr. Devlin opined that as a result of the 2017 Accident, and made worse by the 2018 Accident, Ms. Prasad experiences major depression and chronic Somatic Symptom Disorder (“SSD”).

[114] Dr. Devlin stated that Ms. Prasad is in a state of “learned helplessness” and is “entrenched ... with the realization that she may never return to a job that she enjoyed, and at which she was successful or indeed be able to experience life as she once knew it.” He opined that Ms. Prasad functioned well in her job despite difficult circumstances, but is now functioning at a dramatically lower level, with a consequent loss of confidence and self esteem.

[115] SSD is characterized by various symptoms that result in significant disruption of daily life, including excessive thoughts that are disproportionate or persistent, high levels of anxiety about symptoms, and excessive time and energy devoted symptoms or health concerns. Dr. Devlin stated that while Ms. Prasad’s pain was moderate in nature, it was punctuated with more serious episodes that led to a persistent lack of capacity for basic functions.

[116] The defendants pointed out that, similar to Dr. Waseem, Dr. Devlin was not provided with important materials before completing his report, such as the records of Dr. Tewfik Moussa, Ms. Prasad’s treating psychiatrist. Dr. Devlin agreed that it would have been helpful to have the records prior to the report, but that he based his opinion on Ms. Prasad’s function before and after the 2017 Accident, as well as on a review of other medical records. He significantly relied on the records and opinions of Dr. Ansel Chu, a physiatrist who had treated Ms. Prasad in 2020-2021.

[117] Dr. Muir, a psychiatrist called by the defendants, also did not have Dr. Moussa’s records prior to issuing his initial report, which he referred to as “notable” and added uncertainty to his review. However, he stated he had sufficient information to arrive at his conclusions.

[118] Dr. Muir characterized Ms. Prasad as “diagnostically complex” given her longstanding history with depression, previous motor vehicle accidents, a problematic work history with the RCMP. Dr. Muir found that Ms. Prasad had long experienced issues with mood and stress/anxiety. He stated that Ms. Prasad likely had chronic dysthymia predating even the 2012 accident, since early adulthood.

[119] Dysthymia is a persistent depressive disorder that is characterized by chronic depressed mood accompanied by various other symptoms, such as over or under eating, insomnia or excessive sleep, low energy and fatigue, low self esteem and feelings of hopelessness. Dr. Muir opined that Ms. Prasad likely also has an unspecified trauma and stress related disorder that is related to her workplace issues as well as her multiple health challenges, diabetes in particular.

[120] In his rebuttal report, written in response to Dr. Devlin’s report, Dr. Muir highlighted the differences in opinion in terms of diagnosis, treatment and prognosis of Ms. Prasad. He was of the view that Dr. Devlin did not give pre-accident records sufficient weight, and the diagnosis of SSD resulting from the Accidents was not supported by the evidence, in particular the report of Dr. Waseem. He maintained that while they agree on the effects of chronic pain, Ms. Prasad’s longstanding dysthymia, as well as difficulties coping with stress are her “baseline”, which have not changed as a result of physical pain.

[121] I found both Dr. Devlin and Dr. Muir to be measured, careful witnesses. Put simply, the conflict in their opinions goes to the heart of this case; namely, the extent to which the Accidents have caused her present state, as compared to the litany of pre-existing psychological, professional and physical issues that have unfortunately been hallmarks of Ms. Prasad’s life.

[122] On balance, I agree with various aspects of both psychiatric experts’ opinions. While Ms. Prasad certainly experiences chronic pain related to the Accidents, the “stressors” related to her physical pain are only part of the story, and I agree with Dr. Muir, that Ms. Prasad’s “baseline” conditions likely would have caused significant

problems in the future absent any accidents. I also agree with his comments that Ms. Prasad is a complex individual.

[123] I also find that on balance, Ms. Prasad's response to physical pain brings her within the list of characteristics of SSD. This may be as a result of her pre-Accident "baseline". Dr. Muir agreed under cross that there is a very fine line between SSD and something that is similar, but not SSD. As such, he agreed that Dr. Devlin's diagnosis was not unreasonable.

Internal Medicine/Diabetes

[124] Dr. Elliott was called by the defendants primarily to give evidence on the impact of Ms. Prasad's pre-existing health conditions, primarily her diabetes and associated complications, including questions regarding her life expectancy.

[125] Dr. Elliott did not meet with Ms. Prasad for the purpose of preparing his report. He commented that Ms. Prasad was a patient of his clinic, and as a result he had a vast amount of documentation at his disposal.

[126] Dr. Elliott opined that he did not expect Ms. Prasad to ever return to full-time work, primarily because of her chronic depression and related chronic pain. While her diabetes did not and do not prevent her from working today, he believes that her various complications related to diabetes will render her severely incapacitated within 5-10 years, such that, even if her pain and depression relent, a return to work will be impossible at that time.

[127] When diabetes is not controlled, it becomes an "enormous problem". It damages the tissues in the eyes, kidneys, nerves and blood vessels, and can lead to heart attack and stroke. Ms. Prasad has had significant damage to her eyes, and her kidneys are also malfunctioning. She is experiencing numbness in her feet. She has had "extraordinarily" high sugar levels for sustained periods

[128] He stated that the primary obstacles to Ms. Prasad's ability to get her diabetes under control (which would include compliance with medication and

devices and presumably some lifestyle changes) is her depression and pain. However, he also commented that Ms. Prasad's diabetes control has been severely inadequate since 2014. He speculated whether financial factors may also prevent optimal diabetes control.

[129] Ms. Prasad did not challenge many of Dr. Elliott's substantive conclusions, but alleges he is "biased" because of his propensity to veer into subjects not within his area of expertise, and his comments about her work status being impacted prior to the Accident.

[130] While Dr. Elliott tended to be generous (and somewhat flippant) with respect to offering his opinions on matters that were not directly within his area of expertise, I did not rely on his statements regarding mechanical forces in car accidents, and his central opinion did not rest on matters outside his expertise.

Credibility and Reliability of Evidence

[131] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013) as follows:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[132] Credibility and reliability are not the same thing. Reliability analysis “is concerned with the accuracy of a witness’s testimony; it involves consideration of a witness’s ability to accurately observe, recall, and recount the events in issue”: *Ford v. Lin*, 2022 BCCA 179 at para. 104; see also *R. v. Khan*, 2015 BCCA 320 at para. 44, leave to appeal to SCC ref’d, 36623 (17 March 2016).

[133] If the plaintiff’s account of his or her change in physical, mental, and or emotional state as a result of the accident is not convincing, then the hypothesis upon which any expert opinions rest will be undermined: *Samuel v. Chrysler Credit Canada Ltd.*, 2007 BCCA 431 at paras. 15, 49-50.

[134] Credibility is not a key issue of concern to me in this case. Generally speaking, all witnesses testified to the best of their ability. Even if I rely more heavily on one expert over another, I do not question the honesty or skillset of the expert witnesses. Further, while there were some differences in the testimony of Ms. Prasad and her coworkers and supervisors, I do not find any of those differences to call into question anyone’s credibility. Multiple people can view a situation or event very differently, as every person’s life experience informs how external events are perceived.

[135] The defendants ask me to consider whether Ms. Prasad’s presentation as a witness, for example, when she could or could not stand and for how long, whether she walked with a limp and whether that was a documented injury, and whether her difficulty hearing shifted depending on whether defence or plaintiff’s counsel was asking the question. I did not find this to be a compelling challenge to Ms. Prasad’s credibility.

[136] In cases involving soft-tissue injuries, as well as chronic pain or SSD, it is often difficult to assess the credibility of a plaintiff whose very purpose in testifying is to convince the court of the severity of her injuries and incapacity, in the face of an opposing party who denies or questions the story. For one thing, pain is largely a subjective experience. In this particular case, where there so many different issues at play, finding a clear “through-line” - whether from the Accidents or from pre-

existing conditions - to Ms. Prasad's current quality of life is fraught with difficulty. It would be understandable if Ms. Prasad wished to attribute her pain and current quality of life primarily to the Accidents, which can then be at least financially addressed through a damages award.

[137] I found Ms. Prasad to be an honest witness. I do not believe she exaggerated her pain, mischaracterized her difficult circumstances, or disingenuously attributed her losses to the Accidents. Where I have found that her current quality of life is at least partially attributable to other circumstances, it is not because I disbelieve her pain or her own perception of her life.

Causation

[138] The plaintiff must establish on a balance of probabilities that the defendant's negligence caused an injury. The defendant's negligence does not have to be the sole cause of the injury so long as it is a necessary cause: *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at para. 130. Causation need not be determined by scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at paras. 13-17; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.

[139] The defendants have admitted liability for the Accidents, and do not dispute causation for soft tissue injuries. The question is the extent to which the Accidents caused the losses claimed by Ms. Prasad.

[140] On a balance of probabilities, I find that the First Accident caused additional and different pain in Ms. Prasad's back, neck, shoulders and hip. I find that the Second Accident aggravated injuries from the First Accident. As a result of both Accidents, Ms. Prasad developed chronic pain, with a worsening of pre-existing depression.

[141] I find that Ms. Prasad was not in an ideal state of health, or professional standing prior to the Accidents. She had some remnants of pain and impaired ability resulting from the 2012 Accident including low back pain. She also had poorly controlled diabetes, and pre-existing mental health issues which were being

managed, but were longstanding and serious. Ms. Prasad had experienced significant professional setbacks as a result of her difficult and long-drawn out challenges resulting from harassment and accommodations-related issues at the RCMP. That said, I find that her pre-existing issues did not prevent Ms. Prasad from working full time in the year prior to the Accidents, and her long period off work cannot be (directly) attributed to pain or illness.

[142] In *Boyetchko v Mentias*, 2021 BCSC 172, Justice Forth summarized the state of the law in respect of causation in circumstances where there are pre-existing health conditions:

[78] In order to establish that the Accidents caused her injuries, Ms. Boyetchko must prove on a balance of probabilities that but for the Accidents, she would not have suffered the injuries: *Clements v. Clements*, 2012 SCC 32 at para. 8. The issue raised by the defendants is the extent to which the plaintiff's problems arise from pre-existing conditions and prior injuries.

[79] The defendants are only liable for the injuries caused by the Accidents. As noted in *Athey v. Leonati*, 1996 CanLII 183 (SCC), [1996] 3 S.C.R. 458 at para. 35, if "there is a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future, regardless of the defendant's negligence, then this can be taken into account in reducing the overall award". See also *Moore v. Kyba*, 2012 BCCA 361 at para. 43.

Damages

Duty to Mitigate

[143] A plaintiff has an obligation to take all reasonable measures to reduce his or her damages, including undergoing treatment to alleviate or cure injuries: *Danicek v. Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111 at para. 234.

[144] *Chiu v. Chiu*, 2002 BCCA 618 sets out the test for failure to mitigate by not pursuing recommended treatment:

[57] The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably ...

[145] A defendant bears the onus of proving both branches of the *Chiu v. Chiu*, test on a balance of probabilities: *Haug v. Funk*, 2023 BCCA 110 at paras. 55 and 61.

[146] Dr. Arneja was asked whether Ms. Prasad failed to mitigate her injuries, and he responded that based on his review, Ms. Prasad followed the treatment recommendations made by her family physicians and other health professionals, including a chiropractor, physiotherapist and massage therapist.

[147] While it is not clear from their written submissions, during oral argument counsel for the defendants stated that they did not intend to argue that Ms. Prasad failed in her duty to mitigate. I find that there is no failure to mitigate in this case.

Non-Pecuniary Damages

[148] Ms. Prasad proposes an award for non-pecuniary damages in the range of \$180,00-\$215,000, based on the following authorities:

- *Bennett v. Lopez*, 2023 BCSC 1812
- *Gundarah v. Teves*, 2023 BCSC 1540
- *Pololos v. Cinnamon-Lopez*, 2016 BCSC 81

[149] The defendants propose an award for non pecuniary damages in the amount of \$50,000, based in large part on *Sawatzky v. Sicilia*, 2021 BCSC 2319:

[150] The defendants also submit that the lack of a functional capacity report means that the court does not have sufficient evidence upon which to base an award for loss of housekeeping capacity, and certainly does not have a basis upon which to make a separate award under that head. Should I decide to make an award for loss of housekeeping, the defendants say I could rely on the opinion of Dr. Waseem, who stated that Ms. Prasad may need help with heavier and/or seasonal house and yard tasks. They state an award of no more than \$25,000 could be added to the non-pecuniary award, for a range of \$50,000-\$75,000.

[151] Ms. Prasad submits that the evidence before the court establishes that she is unable to do housework, as opposed to being able to do her housework with some pain or modification, and so it is appropriate to make the award under a separate heading. I will address this below.

Law

[152] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. The compensation awarded should be fair and reasonable to both parties: *Trites v. Penner*, 2010 BCSC 882 at para. 188. Fairness is measured, in part, against awards made in comparable cases. That said, other cases serve only as a rough guide. Each case still depends on its facts: *Trites* at para. 189.

[88] In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined certain factors to be considered when assessing non-pecuniary damages:

[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).

[89] The “thin skull” rule provides that defendants must take their victims as they find them. In contrast, the “crumbling skull” rule provides that defendants are not required to compensate a plaintiff for the consequences of a pre-existing condition that the

plaintiff would have experienced regardless of the defendant's negligence: *Dornan v. Silva*, 2021 BCCA 228 at para. 40; *Athey v. Leonati*, at paras. 34-35.

[90] As many of the plaintiff's complaints were subjective, the plaintiff relies on *Rabiee v. Rendleman*, 2015 BCSC 595, where the court held:

[64] The defendants emphasize that Ms. Rabiee's injuries were very mild and that there is little "objective" evidence of her injuries. They rely on *Price v. Kostryba* (1982), 1982 CanLII 36 (BC SC), 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."

Conclusion

[153] I considered the cases submitted by the parties, and the facts established by the evidence. Ms. Prasad's cases were helpful with respect to the consideration of similar pre-existing conditions and prognoses, but I find that the change in Ms. Prasad's quality of life as between before and after the Accidents was somewhat less pronounced than in the cases cited. This is due to the many serious health and professional challenges Ms. Prasad had faced, and continued to face during the whole of her life, and right up to the date of the Accident.

[154] The primary case cited by the defendants was helpful in its analysis of pre-existing conditions; however, in that case, Justice Baker found that the plaintiff's function before and after the accident was not markedly different. In contrast, Ms. Prasad went from working full time, to not working at all, with all of the experts agreeing that since the Accidents, her functional ability to return to work was

minimal. Regardless of the many issues at the RCMP, Ms. Prasad remained dedicated to her career there, and her work was her primary source of self esteem and activity.

[155] I conclude that an award of \$150,000 for non-pecuniary damages is appropriate and reasonable under all the circumstances.

Past Loss of Earning Capacity

[156] Ms. Prasad's submits that she has not worked for seven years and two months since the 2017 Accident, and claims past wage loss based on her 2016 and 2017 income tax information as follows:

Monthly net income in 2016 – $39,325/12 = \$3,277$

Time off work – 84 months

Net past wage loss - $\$281,829 - \$18,790$ (2017 net income) =
 $\$263,039$.

[157] The defendants state that both with respect to past and future loss of income, I must consider the serious and ongoing issues between Ms. Prasad and the RCMP. Specifically, they say, I should consider the testimony of Ms. Anderson, Mr. Legault and Ms. Cho, who all testified that Ms. Prasad was both difficult to place, in terms of her many accommodations, and difficult on an interpersonal level, given the scope and breadth of grievances she filed, and continued to file against the RCMP and her supervisors.

[158] The defendants also point to the report of Dr. Elliott, which they state was not successfully challenged by Ms. Prasad, nor refuted by another expert, which concluded that Ms. Prasad would likely be seriously incapacitated within 5-10 years as a result of her uncontrolled diabetes. I do note that Dr. Elliott also opines that Ms. Prasad's current state of chronic pain and depressions contributes to her inability to undertake the necessary steps to control her diabetes.

[159] This Court discussed the principles applicable to loss of income earning capacity claims in *Engelhart v. Day*, 2022 BCSC 224:

[113] The steps for performing an assessment of past and future earning capacity are laid out in *Grewal v. Naumann*, 2017 BCCA 158. While Justice Goepel dissented in the outcome, the majority agreed with his summary of the applicable principles (see para. 66):

[48] In summary, an assessment of loss of both past and future earning capacity involves a consideration of hypothetical events. The plaintiff is not required to prove these hypothetical events on a balance of probabilities. A future or hypothetical possibility will be taken into consideration as long as it is a real and substantial possibility and not mere speculation. If the plaintiff establishes a real and substantial possibility, the Court must then determine the measure of damages by assessing the likelihood of the event. Depending on the facts of the case, a loss may be quantified either on an earnings approach or on a capital asset approach: *Perren v. Lalari*, 2010 BCCA 140 at para. 32.

[49] The assessment of past or future loss requires the court to estimate a pecuniary loss by weighing possibilities and probabilities of hypothetical events. The use of economic and statistical evidence does not turn the assessment into a calculation but can be a helpful tool in determining what is fair and reasonable in the circumstances: *Dunbar v. Mendez*, 2016 BCCA 211 at para. 21.

Conclusion

[160] I find that because Ms. Prasad was working full time immediately leading up to the Accidents, she would likely have continued in some capacity for a few years as an employee of the RCMP.

[161] As such, in coming to a reasonable award under this head, I use Ms. Prasad's numbers as a base, with a reduction to reflect the serious and persistent negative contingencies that were at play in the years before the Accidents. I find that absent the Accidents, Ms. Prasad's grievance process, her continuing interpersonal and accommodation issues with her supervisors, as well as increasing issues with her endocrinal health would have impacted her work life during the time period of 2017 through to the date of trial.

[162] I consider that an award of \$185,000 for past loss of earning capacity is reasonable in all the circumstances. I arrive at this number after applying a 30% reduction to Ms. Prasad's claimed amount.

Loss of Future Earning Capacity

Law

[163] The task before the court in considering damages for loss of future earning capacity is to compare the likely future of the plaintiff's working life without the injury to their likely future working life with the injury: *Davies v. Penner*, 2023 BCCA 300 at para. 25; *Rab v. Prescott*, 2021 BCCA 345 at para. 65. A plaintiff is not entitled to an award for loss of earning capacity in the absence of any real and substantial possibility of a future event leading to income loss: *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 14.

[164] The Court of Appeal issued a trilogy of decisions in 2021 regarding the proper approach to assessing a claim for damages for loss of future earning capacity: *Dornan v. Silva*, 2021 BCCA 228; *Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421. The Court identified a three-step process for assessing damages, described in *Rab* as follows:

[47] ... a three-step process emerges for considering claims for loss of future earning capacity, particularly where the evidence indicates no loss of income at the time of trial. The first is evidentiary: whether the evidence discloses a *potential* future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in [*Brown v. Golaiy*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.)]). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring—see the discussion in [*Dornan v. Silva*, 2021 BCCA 228] at paras 93–95.

[165] At the first step from *Rab*, there are, broadly, two types of cases involving the loss of future earning capacity: (1) more straightforward cases, for example, when an accident causes injuries that render a plaintiff unable to work at the time of trial and for the foreseeable future; and (2) less straightforward cases, for example, those in which a plaintiff's injuries have led to continuing deficits or exposed them to future problems, but the plaintiff's income at trial is similar to what it was at the time of the accident: paras. 29-30. In the former set of cases, the first and second step of the

analysis may well be foregone conclusions. However, it will be necessary to assess the probability of future hypothetical events occurring that may affect the quantification of the loss, and the court may make allowance for positive and negative contingencies: *Rab*, at para. 29; *Ploskon-Ciesla*, at para. 11.

[166] The second step of the analysis requires the plaintiff to prove there is a real and substantial possibility that the future event in question will give rise to pecuniary loss. Here, after determining that the plaintiff may suffer a loss of capacity, the court evaluates the likelihood that it will affect the plaintiff's ability to earn income. The standard of proof "is a lower threshold than a balance of probabilities but a higher threshold than that of something that is only possible and speculative": *Gao v. Dietrich*, 2018 BCCA 372 at para. 34; *Ploskon-Ciesla*, at para. 15.

[167] At the third step – the valuation stage – there are two possible approaches to assessing loss of future earning capacity, being the earnings approach and the capital asset approach: *Davies v. Penner*, 2023 BCCA 300 at para. 28; *Perren v. Lalari*, 2010 BCCA 140 at para. 32. The earnings approach will generally be more useful when the loss is easily measurable: *Lamarque v. Rouse*, 2023 BCCA 392 at para. 38; *Perren*, at para. 32. Where the loss "is not measurable in a pecuniary way", the capital asset approach is more appropriate: *Perren*, at para. 12.

[168] The assessment includes consideration of general contingencies as well as any specific contingencies relied on by the plaintiff or defendant: see *Hartman v. MMS Homes Ltd.*, 2023 BCCA 400 at para. 71 citing *Graham v. Rourke*, (1990), 74 D.L.R. (4th) 1, 1990 CanLII 7005 (Ont. C.A.).

[169] The earnings approach involves a form of math-oriented methodology that can include: i) postulating a minimum annual income loss for the plaintiff's remaining years of work, multiplying the annual projected loss by the number of remaining years and calculating a present value; or, ii) awarding the plaintiff's entire annual income for a year or two: *Pallos v. Insurance Co. of British Columbia*, 100 B.C.L.R. (2d) 260, 1995 CanLII 2871 at para. 46 (C.A.); *Ng v. Corness*, 2023 BCCA 185 at para. 18; *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 233.

[170] The capital asset approach involves consideration of the factors described in *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353 at 356, 1985 CanLII 149 (S.C.), including whether the plaintiff i) has been rendered less capable overall of earning income from all types of employment; ii) is less marketable or attractive as a potential employee; iii) has lost the ability to take advantage of all job opportunities that might otherwise have been open; and iv) is less valuable to himself as a person capable of earning income in a competitive labour market: see also *Ploskon-Ciesla*, at para. 13. Though the capital asset approach is not a “mathematical calculation”, the trial judge must still explain the factual basis of the award: *Dornan*, at paras. 151, 158; *Morgan v. Galbraith*, 2013 BCCA 305 at para. 56.

[171] Ms. Prasad states that she has met the first two steps of the three-step analysis, and the proper approach for assessing her loss of future earning capacity in her case is the earnings approach.

[172] Ms. Prasad was 46 years old at the time of trial. She submits that the court should consider the upper end of Dr. Elliott’s life expectancy and incapacity predictions due to his bias. I am not convinced of Dr. Elliott’s bias. However, I accept that given Ms. Prasad’s relatively young age, the upper end of his predicted life expectancy for Ms. Prasad is a reasonable estimate to use in this regard.

[173] Ms. Prasad claims future loss of earnings for the next ten years, undiscounted for a total of \$362,655, after applying the discount rate of 1.5% from the present value tables. She claims a further eight years of lost earnings at a 50% discount to account for disability caused by diabetes, for a total of \$147,173. Her total claim under this head is \$509,828.

[174] Ms. Prasad submits that any change to this calculation based on baseless speculation that Ms. Prasad may return to the workforce, or to reflect a greater emphasis on her pre-existing conditions, unfairly shifts the small risk of a windfall away from the negligent defendants, and on to the injured party, Ms. Prasad.

[175] The defendants state that Ms. Prasad cannot demonstrate that she has been disabled from earning income by the Accidents. They instead point to the “19 comorbidities” articulated in Ms. Prasad’s application for disability benefits, with only chronic pain being reasonably attributable to the Accidents. And, with respect to chronic pain, they refer to the 2014 medical legal report following the 2012 Accident, in which Ms. Prasad was diagnosed with chronic pain, as well as certain self-reporting to current practitioners that they say indicates that her pain is now stable or minimal.

[176] If I understand the argument correctly, the defendants also state that even if the court finds that Ms. Prasad’s current pain was caused by the Accidents, the exercise of factoring in all other causes and contingences with respect to future events would render the impact of physical pain on her future income earning potential below the *de minimis* level.

[177] The defendants submit that if I accept that Ms. Prasad would have continued to earn \$39,000 per year but for the Accidents, in applying the third stage of the *Rab* trilogy, I should apply a 75% to 95% discount to any total to reflect the likelihood that she will be “possibly blind and almost certainly on dialysis” within the next five years, according to Dr. Elliott.

[178] The defendants further submit that it is appropriate and necessary to deduct “Persons with Disability” benefits Ms. Prasad receives from the Province from awards for both past and future earnings loss. At \$260/month, such a deduction would total \$21,840 for the past seven years, and a further \$15,600 for the next five years. Depending on what discount percentage I use, this benefit deduction could outstrip any award under the head of future loss of earnings. At most, the defendants suggest that Ms. Prasad be awarded \$46,000 if I choose to reduce a loss of future earnings award by 75%.

[179] Ms. Prasad states that provincial disability benefits, like federal benefits, are not deductible, and provides case law in support of this position. Having been provided no support for the defendants’ position on this point, and very little in terms

of evidence regarding the receipt or amounts of these benefits, I decline to make the deductions proposed.

Conclusion

[180] I accept that there is a real and substantial possibility that Ms. Prasad would have earned more income for several years to come, but for the Accidents. I also accept that there are negative contingencies that suggest that Ms. Prasad's working life would have been shorter than she would have liked, and may have been curtailed by more than just her uncontrolled diabetes. Given that Ms. Prasad was working up until the First Accident, I consider that the earnings approach is the appropriate assessment method.

[181] I will adopt the basic calculation methodology proposed by Ms. Prasad, but in doing so I consider 1) Dr. Elliott's opinion regarding the likelihood that Ms. Prasad's working life would likely cut short even sooner than her unfortunately truncated life expectancy; and 2) Ms. Prasad's career at the RCMP had become increasingly fractious and difficult in the years leading up to the Accidents, with the risk of further disruption even after she returned to work in 2016.

[182] In light of my findings on causation, and a consideration of the evidence and the arguments of both parties, I award Ms. Prasad a total of \$263,250 for loss of future earnings.

[183] This total is notionally derived from the idea that but for the Accidents, Ms. Prasad would have worked full time for 5 years at \$39,000 from the date of trial, with a deduction of 30% to reflect increasing health concerns and other contingencies relating to her ongoing labour issues (\$136,500). I then apply a 50% deduction to the remaining for 5 years, based on Dr. Elliott's conclusion that Ms. Prasad would become incapacitated within 5-10 years due to uncontrolled diabetes (\$97,500).

[184] For the remaining three years of Ms. Prasad's 18-year life expectancy (according to Dr. Elliott's opinion, which is relied on by both parties), I shift to considering the likelihood that Ms. Prasad would have made some improvements to

her health such that the expectation of complete incapacity after ten years would not be accurate. I consider that there is chance Ms. Prasad could still be working in some capacity after 10 years, and consider that likelihood to be 25% (\$29,250).

Loss of Housekeeping Capacity

[185] In some circumstances, it may be appropriate to augment a non-pecuniary award with an award for loss of housekeeping capacity. The Court of Appeal provided guidance on whether a discrete award should be made in *McKee v. Hicks*, 2023 BCCA 109:

[112] To sum up, pecuniary awards are typically made where a reasonable person in the plaintiff's circumstances would be unable to perform usual and necessary household work. In such cases, the trial judge retains the discretion to address the plaintiff's loss in the award of non-pecuniary damages. On the other hand, pecuniary awards are not appropriate where a plaintiff can perform usual and necessary household work, but with some difficulty or frustration in doing so. In such cases, non-pecuniary awards are typically augmented to properly and fully reflect the plaintiff's pain, suffering and loss of amenities.

See also *Kim v. Lin*, 2018 BCCA 77 at para. 33.

[186] Whether a court chooses a distinct award or one that is included in the general non-pecuniary award, it is important to do so with an eye to the differing rationales behind them: *Kim*, at para. 34.

[187] Ms. Prasad submits that she is wholly unable to complete the usual and necessary household work and is fully reliant on Mr. Wilson, or family for assistance in this regard. As such, her loss under this head is a true loss of capacity, and not just a loss of amenity or increased pain and suffering.

[188] It is not disputed that there is minimal evidence before me on Ms. Prasad's functional capacity, or specifics in terms of services used or needed in the future. Ms. Prasad case authority for awards for loss of housekeeping capacity is assessed at \$25/hour without any evidence of expenses being incurred, and provides further cases where this metric was endorsed in substantial separate housekeeping awards

(see *Hrnic v. Bero Investments Ltd.*, 2018 BCSC 1880, *Broomfield v. Lof*, 2019 BCSC 1155, *Spencer v. Hussey*, 2020 BCSC 631.)

[189] Ms. Prasad claims a total of \$103,051 for past and future loss of housekeeping capacity, broken down as follows:

- 1492 hours x \$25 between the Accidents and trial = \$37,300;
- An annual loss of \$5,200 (\$25/hour, 4 hours a week, 52 weeks a year) for the next ten years; applying the discount rate of 2.0 in the present value tables, for a total of \$46,706; and
- A further annual loss of \$5,200 for a further eight years, applying the discount rate of 2.0 in the present value tables, and a 50% discount to account for diabetes being the cause of the loss, for a total of \$19,045.

[190] The defendants' position on loss of housekeeping capacity is set out above, under non-pecuniary damages. In sum, they submit that it is not appropriate to make a separate, or any award for this loss given the lack of evidence, but in the alternative, suggest a \$25,000 addition to the non-pecuniary damage award.

Conclusion

[191] I find that, on a balance of probabilities, Ms. Prasad established that she is currently unable to do her own housekeeping tasks. This is supported by the evidence of her sister, Ms. Hintz. It is also an area of loss that is arguably most directly related to physical pain caused by the Accidents, although Ms. Prasad's depression also certainly contributes to this lack of capacity. However, it is not clear what is needed now, or in the future, or what services might have been used or relied upon in the past. I acknowledge that Dr. Waseem did not indicate that that Ms. Prasad was entirely incapacitated from doing household chores, but on balance, I find that this is, and will be an ongoing need.

[192] I will make a separate award based on Ms. Prasad's method, but I will use the same time frames and discounts used above under cost of future care. I award a total of \$61,350 for loss of housekeeping.

Costs of Future Care

[193] Ms. Prasad does not advance a claim under this head, other than seeking an order that ICBC pay for services under Part 7 of the Act as they arise. The defendants say such an order is not necessary, nor is it appropriate, but state that Ms. Prasad's claims under Part 7 will continue to be paid if connected to injuries found by this court to be associated to the Accidents.

[194] In light of the submissions of the parties, I decline to make an order or an award under this head.

Special Damages

[195] It is well-established that an injured person is entitled to recover the reasonable out-of-pocket expenses he or she incurred as a result of an accident.

[196] The parties agree that Ms. Prasad is owed special damages in the amount of \$1,408.80, and I will accede to that amount.

Summary

[197] In summary, damages are awarded as follows:

- 1) Non-pecuniary damages – \$150,000
- 2) Past Loss of Earning Capacity – \$185,000
- 3) Future Loss of Earning Capacity – \$263,250
- 4) Loss of Housekeeping Capacity – \$61,350
- 5) Special Damages – \$1,408.80

Total – \$661,008.80

Costs

[198] I leave it to the parties to consider any tax, management or other fees, gross-up, statutory deductions or interest implications. I award costs to Ms. Prasad, who has been the successful party.

[199] If there are issues arising, or if the parties cannot agree on these items, they are at liberty to request a hearing to make further submissions. If such a hearing is required, an application should be made within 90 days of the date of this decision.

“J. Whately J.”