

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mudhar v. Chawla*,  
2025 BCSC 2053

Date: 20251024  
Docket: M192325  
Registry: Vancouver

Between:

**Baljeet Kaur Mudhar**

Plaintiff

And

**Keshav Chawla**

Defendant

Before: The Honourable Justice Hoffman

## **Reasons for Judgment**

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Place and Date of Trial/Hearing:

Vancouver, B.C.  
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**Introduction**

[1] The plaintiff, Baljeet Kaur Mudhar, suffered soft tissue injuries in a motor vehicle accident. Since the accident, she has continued to suffer neck, back, and shoulder pain. She has been diagnosed with frozen shoulder, chronic pain syndrome, and depression. She experiences anxiety associated with driving in a car.

[2] As liability for the accident was admitted, the issues before me are confined to the assessment of damages.

[3] At the time of the accident on April 29, 2017, Ms. Mudhar was 52 years of age and married with four adult daughters. Ms. Mudhar was employed by the Royal Canadian Mounted Police (“RCMP”) as a public service employee with almost 30 years of service in various administrative positions. She was on the cusp of starting a new supervisory position when the accident occurred.

[4] Prior to the accident, Ms. Mudhar had no pre-existing physical conditions that had caused her to take time away from work, but she did suffer a bout of depression associated with marital discord between 2005 and 2007. This required her to take a leave from work for approximately two years.

[5] After the accident, in February 2018, Ms. Mudhar sustained a fall at home and thereafter, suffered vertigo including symptoms of nausea, imbalance, and issues with her vision. In August 2018, Ms. Mudhar was diagnosed with breast cancer and required aggressive treatment including chemotherapy, mastectomy, and radiation. Since 2019, she has been in remission. Ms. Mudhar concedes that the symptoms she suffered as a result of the vertigo and her breast cancer treatment are divisible from the injuries she suffered as a result of the accident.

[6] After two failed attempts at a gradual return to work, Ms. Mudhar opted in August 2020, at the age of 55, to take a medical retirement from the RCMP. Ms. Mudhar says that this decision was due to her accident-related injuries.

[7] The defendant does not dispute that Ms. Mudhar sustained soft tissue injuries to her neck, back, shoulder, and ankle in the accident and that she continues to experience pain as a result of these injuries. However, the defendant submits that Ms. Mudhar's cognitive symptoms, psychological conditions, and decision to withdraw from work stem from unrelated or intervening causes, namely a fall in 2018 and her breast cancer diagnosis and treatment in 2018 and 2019. Specifically, the defendant submits that Ms. Mudhar's ongoing disability is "more persuasively linked" to the lasting effects of her breast cancer treatment. As for her psychological functioning, the defendant submits this was already impacted at the time of the accident by long-standing marital strain and the health concerns of her husband.

[8] A central dispute is whether the cause of Ms. Mudhar's ongoing complaints and inability to work are caused by the injuries she sustained in the accident or by other unrelated and intervening events. Whether Ms. Mudhar has met her duty to mitigate her damages is also in dispute.

[9] Ms. Mudhar claims the following heads of damage: non-pecuniary loss; loss of housekeeping capacity; past income loss; future income loss; and the cost of future.

[10] Ms. Mudhar seeks a total award of approximately \$1.1 million. The defendant submits that appropriate compensation for her damages attributed to the accident is in the range of \$287,000 to \$409,000.

[11] The parties have largely agreed to the quantum of special damages in the amount of \$24,212.66. The only dispute relates to the expense Ms. Mudhar incurred to cover the costs of deficiencies in her pension arising from the leave she took following the accident.

### **Background**

#### **Ms. Mudhar**

[12] Ms. Mudhar was born and spent her early childhood in India. She immigrated with her parents and siblings to Vancouver at the age of 10. Ms. Mudhar describes

her upbringing as a happy one. She had loving parents who instilled in her the values of honesty, hard work, contributing to the family, respect for elders, and spirituality. After completing high school, she obtained an accounting diploma from Vancouver Community College. She and her husband married in 1984.

[13] After her marriage, she first worked at an accounting firm doing administrative and bookkeeping work. In 1987, she secured a position with the RCMP. Aside from leaves associated with the birth of her children, a short period of working part time after her twin daughters were born and the medical leave she took in 2005–2007, she worked full time with the RCMP. At the time of the accident, she had accumulated 30 years of service and would be entitled to retire with a full pension once she reached 35 years of service at the age of 57.

[14] For most of her marriage, she was the primary and consistent breadwinner. Her husband, who passed away in December 2024, worked in the import-export business, had a fluctuating income, and was often away from home for extended periods of time. Ms. Mudhar testified that her husband had been unfaithful to her and, while they were experiencing marital difficulties, she suffered depression and took a two-year leave of absence from work from 2005 to 2007.

### **The Accident**

[15] The accident occurred at the controlled intersection of 101 Avenue and 152 Street in Surrey, when the defendant ran a red light colliding with Ms. Mudhar's vehicle as she was travelling straight through the intersection.

[16] Ms. Mudhar testified that because the light was green when she approached 152 Street, she continued through the intersection. She was suddenly struck by a car on her left. The impact spun her car around. She had no chance to brace for impact. She testified that as a result of the collision, her body shifted left and right and her head moved in slow motion. When the car came to a stop, her body was thrown forward and back. Although the airbags did not deploy, the impact was significant; both cars were unrepairable and written off.

[17] An ambulance attended the scene, and Ms. Mudhar was checked by paramedics. Ms. Mudhar called her daughters, who then came to the scene. While still at the scene, Ms. Mudhar recalls feeling pain in her right wrist and left ankle. She told the paramedics that she would feel more comfortable going to the hospital with her daughters. At the hospital, in addition to her wrist and ankle pain, she complained of upper back pain, right arm pain radiating to her shoulder, and heaviness in her head. She was given medication for pain, and the attending physician informed her she had suffered soft tissue injuries.

### **Credibility and Reliability of Witnesses**

[18] The lay witnesses called in Ms. Mudhar's case were Ms. Mudhar, her daughters, Rubina Kang and Gavina Mudhar, a former co-worker, Rani Gill, and a former supervisor, retired RCMP member Andy LeClair. The plaintiff also called three practitioners who had treated Ms. Mudhar, Drs. Tom Iwama and Preena Sahota, former and current family physicians; and Joshua Bremner, her massage therapist, as lay witnesses.

[19] The defendant did not challenge the credibility of any of the plaintiff's lay witnesses with the exception of Ms. Mudhar, and to a lesser extent, Ms. Gill. With respect to Ms. Mudhar, the defendant submits that inconsistencies between her testimony at trial and the clinical records, as well as omissions from her evidence on direct revealed on cross-examination, raise serious concerns regarding her credibility and reflect a pattern of selective reporting and revisionist framing aimed at maximizing her damages. As for Ms. Gill, the defendant submits that as a result of her longstanding personal connection with Ms. Mudhar, Ms. Gill exaggerated her evidence regarding the casual work options available to retired RCMP employees.

[20] With respect to the assessment of credibility, I am guided by the principles set out in the frequently cited passages of Justice O'Halloran in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.); and Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 185–187, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, [2012] S.C.C.A. No. 392.

[21] Having considered the totality of the evidence, I am unable to accept the defendant's arguments that Ms. Mudhar and Ms. Gill were not reliable witnesses. Much was made of the fact that in Dr. Iwama's clinical records of visits in the days and weeks following the 2018 fall, there is no mention of the fall having occurred. Ms. Mudhar maintained on cross-examination that she would have told Dr. Iwama about the fall and could not explain the omission from Dr. Iwama's notes. Dr. Iwama on cross-examination testified that if he had been told about a fall that he would have written it down. It is not disputed that Ms. Mudhar disclosed the fall to all of the experts who assessed her for the purposes of this litigation and to other treating medical practitioners outside this litigation. As such, I am unable to conclude that Ms. Mudhar deliberately withheld this information from Dr. Iwama to advance her interests in this litigation.

[22] Overall, I find Ms. Mudhar to be a credible witness who gave her evidence in a straightforward fashion. She took care to ensure that her testimony was accurate, to exhaust her memory and not to speculate or guess. She readily admitted when she did not have a clear recollection. It is evident that Ms. Mudhar is justifiably proud of her long-standing career as a public servant with the RCMP and the support she was able to provide to her family. Her frustration and distress at being unable to continue in her career due to her injuries struck me as genuine. The same can be said of the times that Ms. Mudhar became emotional when describing how the impact of her injuries have prevented her from engaging fully with her grandchildren. I observed during the trial that she has some difficulty sitting for long periods. She required a pillow in the witness box for support and had to adjust her position during her testimony.

[23] As for Ms. Gill, I find her to be a credible witness who understood her oath to be truthful in giving her testimony to the court. She struck me as genuine and knowledgeable about internal RCMP hiring practices and agreed to reasonable propositions during cross-examination. I do not accept the defendant's argument that she exaggerated her evidence with the aim of assisting Ms. Mudhar, as there is little evidentiary basis for this argument. I was not given the opportunity to assess

Ms. Gill's credibility on this point as she was not confronted in cross-examination with the suggestion that she was modifying her evidence due to a close personal friendship with Ms. Mudhar.

[24] I have no credibility concerns regarding the remainder of the lay witnesses.

### **Analysis**

#### **Causation of Ms. Mudhar's Injuries**

##### ***Legal Framework***

[25] The plaintiff bears the onus to establish on a balance of probabilities that the defendant's negligence caused an injury. This negligence need not be the sole cause of the plaintiff's injuries, but it must be a necessary cause: *Clements v. Clements*, 2012 SCC 32 at para. 8. As the Supreme Court explained in *Clements*, a defendant cannot seek to reduce his or her liability due to the existence of other preconditions. A defendant is liable for all injuries caused, or contributed to, by their negligence.

[26] As in the case before me, there are situations where subsequent intervening circumstances, either non-tortious events or torts committed by other tortfeasors, cause injuries that can be separated out from the injuries caused by the tortious event. As the Court of Appeal recently held in *7-Eleven Canada Inc. v. Tommy*, 2025 BCCA 220 at para. 1, "losses are divisible where it is possible to tease out independent chains of causation." The extent to which injuries are divisible and can be attributed to tortious and non-tortious causes is a question of fact: *B.P.B. v. M.M.B.*, 2009 BCCA 365. A plaintiff is only entitled to be compensated for loss caused by the actionable wrong: *Blackwater v. Plint*, 2005 SCC 58 at para. 74.

[27] Accordingly, I must determine what injuries and symptoms were caused by the accident and those that are attributable to Ms. Mudhar's 2018 fall and her breast cancer treatment. However, sometimes it is not possible to parse out the effects of a second insult to a tortiously caused injury. In *Neufeldt v. Insurance Corporation*, 2021 BCCA 327 at para. 68, the Court held that a second insult that aggravates an

existing injury is correctly considered to contribute to an injury that is indivisible from the initial injury. This applies where the original injury and the second aggravation cannot be distinguished from one another on the facts: *Bradley v. Groves*, 2010 BCCA 361 at para. 37.

[28] In assessing whether injuries are indivisible, I must also be mindful of whether it is possible to attribute specific heads of cumulative damages to the accident or to later injuries: *Neufeldt* at para. 90. As noted in *Khudabux v. McClary*, 2018 BCCA 234 at para. 20, “Divisible injuries are those that can be separated so that their damages can be assessed independently.” Where injuries are truly indivisible, it is not possible to do so.

[29] In order to reduce damages owing to a plaintiff to account for pre-existing conditions, the defendant must establish a measurable risk that the pre-existing condition would have detrimentally affected the plaintiff in the future regardless of his or her negligence: *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at para. 35. A measurable risk is one that rises above mere speculation to a real and substantial possibility supported by the accepted evidence: *Zacharias v. Leys*, 2005 BCCA 560 at para. 16.

[30] The plaintiff concedes that her symptoms of vertigo and of her breast cancer treatment are divisible and that the defendant is not required to compensate her for the effects of these events. However, the plaintiff takes the position that, to the extent that the fall and her breast cancer diagnosis aggravated injuries caused by the accident, those are indivisible injuries and are compensable.

[31] With this framework for causation in mind, I turn to an assessment of the evidence regarding Ms. Mudhar’s medical condition.

### ***Ms. Mudhar’s Pre-Accident Condition***

[32] Ms. Mudhar was involved in a previous motor vehicle accident in the 1980s and suffered soft tissue injuries. The only lingering effect of these injuries is that she

occasionally still gets pain in her right trapezius while lying down at night. She does not get this pain during the day.

[33] Aside from the period of depression associated with marital difficulties in 2005 to 2007, Ms. Mudhar was not suffering from any injuries or symptoms that prevented her from performing her employment duties in the period leading up to the accident. She suffered occasional aches and pains associated with office work, migraines, and plantar fasciitis, but none of these issues caused her to miss time from work.

[34] Prior to the accident, Ms. Mudhar's social and recreational activities focused on involvement with her church and cooking for and hosting gatherings for friends and extended family. She walked regularly with friends. She was looking forward to the marriage of her eldest daughter.

[35] Ms. Mudhar's daughters described their mom prior to the accident as a very proud and happy woman who had lots of energy to devote to cooking for her family and hosting get togethers. They described their home as the place where everyone gathered. They also described Ms. Mudhar as very dedicated to and proud of her career with the RCMP.

[36] Although the defence argues that marital conflict played a causative role in Ms. Mudhar's psychological symptoms, counsel did not question her daughters about ongoing marital conflict between their parents.

### ***Impact of the Accident***

[37] Ms. Mudhar testified that in the days following the accident, she had soreness and stiffness throughout her body and constant throbbing pain in her biceps, and experienced headaches. She could not complete personal care tasks, such as brushing her hair, and had difficulty dressing herself. Her daughters took over the cooking for the first few weeks. While being driven to doctor's appointments by her daughters, she got very anxious that she may get into another accident.

[38] She visited her family doctor, Dr. Iwama, two days following the accident who diagnosed her with acute soft tissue injuries to her neck and back. She told Dr. Iwama that she was not able to work due to the pain. Dr. Iwama advised her to stay home from work to rest and recommended that she start physiotherapy. She began this treatment on May 4, 2017. She also attended massage therapy and occupational therapy to prepare her to return to work. On following visits, she complained of pain in her neck, her left shoulder and bicep, right arm, mid and low back, and left foot. While there are some complaints of forehead pain in Dr. Iwama's records, reports of headaches are more consistently recorded in the records of her massage therapist, Joshua Bremner.

[39] Ms. Mudhar attempted a gradual return to work two months following the accident. Her data entry work increased the pain in her back, bicep, and left shoulder. She had difficulties reaching for binders and also had difficulties focusing and retaining information. She was regularly so exhausted when she got home after a shift that she had to take a nap. After five weeks, when she returned to see Dr. Iwama, he advised her to discontinue working. Her occupational therapist also recommended that she discontinue her return to work.

[40] Dr. Iwama's clinical records indicate that in the fall of 2017, Ms. Mudhar was receiving physiotherapy and massage treatments. A note in the clinical records suggests that Ms. Mudhar was not satisfied with the physio treatment because it involved application of a TENS machine and she was left alone on a table.

[41] In September 2017, Dr. Iwama referred Ms. Mudhar to an active rehabilitation program, but Ms. Mudhar told him that she felt she was in too much pain. Dr. Iwama ordered an MRI of the left shoulder that took place in October 2017. Dr. Iwama testified that, in his view, it was advisable to carry out scans to investigate the cause of the pain before she resumed treatment. Following these scans, Dr. Iwama told Ms. Mudhar that she had small tendon tears, bursitis, as well as frozen shoulder.

[42] Ms. Mudhar testified that she went to the emergency room in the fall of 2017 because she was in so much pain and could no longer get any relief from painkillers.

She became very discouraged, sad, and worried that her shoulder would never recover. By the end of 2017, she had not experienced any improvement in her pain in her arm, shoulder, and back, and her sleep was disturbed by pain in her arm and upper body as well as headaches.

[43] Ms. Mudhar's daughter got married in January 2018. Ms. Mudhar was unable to help with the wedding preparations because she was in too much pain from her injuries. As a result, her daughter and fiancée chose a destination wedding in Cancun. Ms. Mudhar was unable to enjoy herself at the wedding due to her low mood and physical limitations. Ms. Mudhar was very happy to welcome her first grandchild in 2019, but was disappointed because she could not hold him more than a few minutes due to pain in her left arm.

***Intervening Events: Fall in February 2018, Cancer Diagnosis and Husband's Health***

[44] Ms. Mudhar testified that on February 6, 2018, she was at home and reached up to turn off a ceiling fan and blacked out. She was able to get up and attend a planned lunch with a friend. The next day, she woke up and was so dizzy that she needed help to get out of bed and go to the washroom. She went to see Dr. Iwama who told her that she had vertigo, prescribed her medication, and recommended that she commence vestibular treatment. She did three or four vestibular treatments. These were effective to stop the spinning sensation, and the medication treated the nausea. These symptoms were debilitating for about a week. After the fall she began getting more frequent headaches.

[45] Ms. Mudhar testified that she went to the emergency department of St. Paul's Hospital in March 2018 with complaints of balance issues, problems with her vision and headaches. The doctor told her that she could have a concussion and he referred her to a concussion clinic. The clinical note for that visit confirms that Ms. Mudhar complained of several weeks of fatigue, vertigo, and intermittent visual disturbances as well as decreased concentration and memory following her fall in February 2018. She did not attend the concussion clinic because she spoke to her

occupational therapist who said that she was giving her the same type of treatment that she would get at the clinic. She had a recurrence of vertigo in 2024, but it was not as severe as in 2019. Following the 2024 recurrence, she had four or five vestibular treatments and has not had a recurrence of vertigo since.

[46] Ms. Mudhar testified that in July 2018, she felt a lump in her breast and got both a mammogram and an ultrasound. She was diagnosed with left breast cancer and, in September 2018, began chemotherapy and completed this treatment in January 2019. She experienced hair loss, nausea, fatigue, and aches and pains throughout her body. These aches and pain were distinct from the pain she experienced as a result of her accident-related injuries that persisted during her cancer treatment. She found it emotionally draining to be going through cancer treatment at the same time that she was dealing with her accident-related injuries. The associated body pain resolved once the chemotherapy was completed. In February 2019, she underwent a mastectomy and lymph node biopsy. Ms. Mudhar testified that the surgery did not have any impact on her accident-related injuries. After she recovered from the mastectomy, she completed a course of 16-18 radiation treatments over a six-week period from April to May 2019. The only side effect she experienced from radiation was dry and itchy skin. Since completing this treatment, her breast cancer has been in remission.

[47] Dr. Iwama testified that Ms. Mudhar's cancer was caught at a very early stage and that once she completed treatment, she was in remission and required no further care or treatment.

[48] Ms. Mudhar also gave evidence about health issues her husband experienced. In 2019, he was hospitalized in Toronto and was in critical condition. She travelled to Toronto to be with him and was there for two weeks. In 2021, he was hospitalized in Dubai, and she travelled to be with him for about a month. He was bed-ridden for three or four days but improved with medication. When her husband was not ill, he was able to function normally and help around the house. He contributed \$2,500 to \$3,000 per month to meet the family financial obligations. Her

husband unexpectedly passed away in December 2024. His death has had a big impact on her both emotionally and financially. She also lost a nephew the same year and her father a year earlier in 2023.

[49] On cross-examination, Ms. Mudhar became emotional when asked about her marriage. She admitted that she did not have a happy marriage and that her husband had been unfaithful to her. However, the extent and timing of ongoing marital conflict was not otherwise explored in cross-examination.

### ***Impacts of Accident Injuries 2019 to Present***

[50] Ms. Mudhar testified that after she recovered from her breast cancer and towards the end of 2019, she decided that she wanted to go back to work. She consulted with her family doctor who discouraged her from returning to work. However, she wanted to be the one to determine whether she could physically return to work. Due to the time required to have her security clearance redone, her return was delayed until the end of February 2020. She found her return overwhelming. She had difficulties with concentration and a hard time understanding what she was being asked to do. Her neck, back, and left arm pain made it difficult for her to sit at her desk and do reaching tasks. Shortly after she started back to work, the COVID-19 pandemic hit Canada. On cross-examination, Ms. Mudhar testified that her then supervisor, Inspector Andy LeClair, met with her on March 13, 2020, and told her that he had observed her physically struggling with her job duties. She also testified that Inspector LeClair told her that she could not continue her graduated return to work due to the pandemic.

[51] Andy LeClair testified that Ms. Mudhar told him that she did not realize how difficult returning to work would be. He further testified that in this initial conversation, he did not want to push her to either stay on or take a further leave. At a subsequent meeting on March 26, 2020, his notes indicate that Ms. Mudhar was going to be looking into a medical discharge because she was in too much discomfort at work.

[52] As Ms. Mudhar loved her work and it had been an important part of her life, taking a medical retirement was a difficult decision for her. In addition, it meant that

she would receive a reduced pension because she had 33 years of service, two years short of the service required for a full pension. Nevertheless, her family doctor supported her taking a medical retirement. Ms. Mudhar opted in August 2020 to take the medical retirement.

[53] Ms. Mudhar testified that neck, back, left shoulder, and arm pain and headaches continue to impact her day-to-day functioning. She has to modify how she cleans her house to avoid bending, reaching, or heavy lifting. She is also unable to sit for long periods of time. This is corroborated by my own observations of her shifting positions while testifying. Ms. Mudhar continues to take a medication for depression and anxiety, Escitalopram, and attends counselling for her mental health symptoms in particular, to address her grief arising from her medical retirement. She became emotional when describing other women in her family who are older than her but are more active and her fear that she will not be able to look after herself in the future.

[54] The evidence provided by Ms. Mudhar's two daughters corroborated Ms. Mudhar's evidence regarding the impact of her injuries on her daily functioning. They both confirmed that Ms. Mudhar had no prior issues being in a car. Since the accident, their mother exhibits significant anxiety when riding as a passenger, although she is now able to drive herself and has less anxiety when she does so. Ms. Mudhar's eldest daughter testified that her mother was unable to participate fully in her wedding due to her pain and that when her children were born, her mother could not hold them for any significant length of time. Both daughters observed that since the accident, their mother has far less energy, spends a lot of time resting because she gets achy and that, as a result, her social life and cooking for both her extended and immediate family has been significantly reduced. They also observed she was restricted in her ability to do housework and that she needs assistance to complete heavier tasks. While she kept a very clean house prior to the accident, she cannot keep it to the same level without the assistance of a housekeeper, and, if she does too much housework, she says that it causes her pain. They both observed that since the accident, their mother has appeared depressed and that, in particular,

has been unable to engage with her grandchildren or participate in family events due to her injuries and that this brings down her mood.

***Expert Evidence***

[55] The plaintiff retained two experts to assess Ms. Mudhar’s injuries and prepare reports for the assistance of the Court: Dr. Gillian Simonett, an expert in physical medicine and rehabilitation; and Dr. Soma Ganesan, a psychiatrist. The defendant retained Dr. Tamir Ailon, a neurosurgeon; and Dr. Dhineskumar Sivananthan, a physiatrist.

***Dr. Simonett***

[56] Dr. Simonett has practiced as a physiatrist since 2011. She assessed Ms. Mudhar on two occasions in May 2018 and July 2023. In her opinion, Ms. Mudhar suffered a soft tissue injury to her right wrist in the accident but this has since resolved and is no longer an active issue. When she examined Ms. Mudhar in 2018, Dr. Simonett was of the opinion that she had developed myofascial pain in her neck and shoulder as well as left adhesive capsulopathy, also known as frozen shoulder, following the accident. She noted that Ms. Mudhar had bruising over the left shoulder region after the accident indicating that she braced during the collision and that her left shoulder pain worsened after returning to work in July 2017. As a result of this increase in pain, Dr. Simonett opines that Ms. Mudhar likely reduced movement in her shoulder, a risk factor for developing adhesive capsulopathy. Based on the time of symptom onset and the mechanism of the injury, Dr. Simonett is of the opinion that Ms. Mudhar developed neck, upper back, and upper arm pain following the accident, and that she subsequently developed adhesive capsulopathy due to altered biomechanics. Dr. Simonett was of the opinion that Ms. Mudhar’s ongoing left mechanical ankle pain was due to the motor vehicle accident.

[57] Dr. Simonett’s report notes that Ms. Mudhar reported the onset of mechanical low back pain six months after the accident. Based upon the prolonged time between the accident and the onset of symptoms, Dr. Simonett is of the opinion that there is unlikely a relationship between the accident and her low back pain.

[58] Based on her assessment in July 2023, Dr. Simonett is of the opinion that Ms. Mudhar had developed chronic pain syndrome with diffuse pain throughout her neck and upper back and continued limitation of movement in her left arm. Dr. Simonett noted that this reduced range of motion had exceeded the expected period of recovery for adhesive capsulopathy and, thus, in her opinion, this condition was chronic with a poor prognosis. In addition, Ms. Mudhar's left ankle discomfort was continuing, but she had some improvement wearing orthotics. Dr. Simonett also expressed concern that Ms. Mudhar's low mood was interfering with her motivation to engage in physical activities.

[59] With respect to the impact of her injuries on Ms. Mudhar's ability to work, it is Dr. Simonett's opinion that it was not likely that Ms. Mudhar could have safely and reliably transitioned back to work in 2020 given her ongoing symptoms and that her limitations in this regard were both accident- and non-accident-related.

[60] With respect to treatments, Dr. Simonett expressed some concern that Ms. Mudhar was not engaging in physical activity due to her pain and mood. Once cleared for exercise, Dr. Simonett recommends that Ms. Mudhar work with a kinesiologist to help her progress back to physical activity and that she may also need support to work through any discomfort that would result from increased activity.

[61] On cross-examination, Dr. Simonett agreed that Ms. Mudhar's vertigo was more likely the result of her fall in February 2018. Counsel for the defendant also explored the issue of whether Ms. Mudhar's frozen shoulder was appropriately treated. Dr. Simonett testified that movement alone cannot be relied upon to thaw a frozen shoulder and that sometimes, it just needs time and movement to maintain the available range of motion. Dr. Simonett testified that forcing the shoulder beyond its range of movement is no longer considered appropriate treatment.

***Dr. Ganesan***

[62] Dr. Ganesan assessed Ms. Mudhar in June 2023 and again, in February 2025. In his initial assessment, he notes that Ms. Mudhar had a pre-accident history

of situational depression related to marital issues but returned to full function by 2008 and was functioning well at the time of the accident. He opines that as a result of the accident, Ms. Mudhar has developed pain syndrome, anxiety and depression, and a fear of driving. He opined that these latter symptoms fluctuate but at the time of the assessment, Ms. Mudhar had mild to moderate anxiety and moderate depression as well as ongoing sleep issues due to her ongoing pain. He was of the opinion that she was suffering from major depressive disorder and generalized anxiety disorder with some mild features of post-traumatic stress disorder. In his opinion, Ms. Mudhar is unlikely to become pain free. He recommended that she undergo cognitive behavioural therapy and that she take Escitalopram for at least three to five years. He also recommended driving instruction to overcome her driving anxiety.

[63] Dr. Ganesan testified that he saw little improvement in Ms. Mudhar's symptoms at his second assessment. In his 2025 report, Dr. Ganesan opines that Ms. Mudhar continues to suffer from chronic pain syndrome as well as moderate depression and mild to moderate anxiety with some features of posttraumatic stress disorder. In his view, she had "global difficulty with her physical, emotional and cognitive function" and that these overlapping challenges are difficult to treat. While counselling and anti-depressants assisted in preventing an aggravation of her emotional symptoms, her mental status examination results show that she is not close to a partial remission of her symptoms.

[64] With respect to the interplay of Ms. Mudhar's vertigo, Dr. Ganesan opined that some of her cognitive function difficulty is multifactorial but that she responded well to vestibular therapy. He noted that while some of her ongoing symptoms, such as sensitivity to light and sound, could be indicative of prolonged consequences of concussion, they could also be attributed to emotional difficulties arising from ongoing pain.

[65] Dr. Ganesan's prognosis is that it is more likely than not that Ms. Mudhar will continue having emotional difficulties although it is probable that this will reduce in

the next three to six months as she goes through the grief process. He recommended that she continue the medication and counselling previously recommended, as this had assisted her in preventing an aggravation of her emotional symptoms. Dr. Ganesan is of the opinion that Ms. Mudhar has been totally disabled since the accident.

[66] The defendant argues that Dr. Ganesan's opinion should be afforded limited weight because Dr. Ganesan failed to fully explore with Ms. Mudhar whether the marital stressors that caused her to take two years off work from 2005 to 2007 were still present at the time of the accident. Dr. Ganesan conceded on cross-examination that he did not directly ask Ms. Mudhar if she was subject to marital stressors at the time of the accident. Rather, he assumed ongoing marital conflict was not an issue based on the fact that Ms. Mudhar and her husband had discontinued counselling and were still together many years later. In Dr. Ganesan's opinion, Ms. Mudhar's continuing care of her husband when he got sick and their ability to raise a successful family with older children that continued to live in the home, were not consistent with ongoing marital conflict. Dr. Ganesan also viewed Ms. Mudhar's significant emotional reaction to the loss of her husband in 2024 as inconsistent with significant conflict. The defendant also argued that Dr. Ganesan failed to fully consider the psychological impact of Ms. Mudhar's breast cancer diagnosis.

[67] Based on Dr. Ganesan's reports and his testimony at trial, I am not persuaded that his opinion should be accorded less weight. From my review of his reports, the history he obtained from Ms. Mudhar is consistent with the evidence tendered at trial. Given his expertise, I accept his opinion that the accident played a causative role in the development of her chronic pain syndrome. He acknowledges that her fall and subsequent vertigo could be playing a role in her ongoing cognitive symptoms but explained that due to the overlap of these symptoms, it is difficult to draw a definitive conclusion as to the cause of the ongoing cognitive symptoms. Dr. Ganesan's psychiatric expertise was not challenged and no opposing psychiatric report was tendered by the defendant. In the absence of an opposing expert opinion

that Dr. Ganesan has drawn inappropriate conclusions, I cannot accept the defendant's submissions that he has done so.

***Dr. Ailon***

[68] Dr. Ailon examined Ms. Mudhar in November 2023. In his report, he opines that Ms. Mudhar's post-traumatic mechanical neck, mid-back, low back, and left shoulder pain were caused by the accident. He also attributed her left ankle pain and driving anxiety to the accident. He opines that she developed adhesive capsulitis in her left shoulder due to pain and reduced use of her upper extremity in the weeks following the accident and, therefore, this condition was only indirectly caused by the accident. Dr. Ailon is critical of the management of this condition and opines that the cessation of physiotherapy and mobilization has contributed to the perpetuation of her left shoulder condition. Dr. Ailon opines that her benign positional vertigo, tension headaches, and visual disturbance are unrelated to the accident.

[69] Dr. Ailon opines that it is difficult to parse out the relative contribution of her accident-related injuries to her ongoing disability. He would not expect her soft tissue injuries in isolation to render her permanently disabled from sedentary work. As such, he concludes that it is likely that non-accident associated disability has contributed to her unexpectedly poor clinical course.

[70] Dr. Ailon is of the opinion that Ms. Mudhar has developed chronic pain syndrome with persistent pain well beyond the expected time frame for her soft tissue injuries to have healed. His prognosis for her further recovery is guarded, but Dr. Ailon also emphasizes that her injuries have not had optimal management. In his opinion, Ms. Mudhar has relied excessively on passive modalities. He recommends that she engage in self-directed exercise, initially supported by a kinesiologist or physiotherapist. If this recommendation is followed, Dr. Ailon opines that some modest improvement could be expected but that Ms. Mudhar will likely continue to exhibit the same degree of subjective limitations in her daily function.

[71] Given his expertise in neurosurgery, Dr. Ailon conceded in cross-examination that he would defer to a psychiatrist for the diagnosis of psycho-social conditions. He

also conceded that it would be outside of his expertise to opine on whether Ms. Mudhar's mental health is playing a role in her ongoing disability and inability to work. He agreed that psychological overlays such as chronic pain can complicate recovery from soft tissue injuries.

[72] Dr. Ailon also conceded in cross-examination that low mood can cause lack of concentration and memory issues and there is considerable overlap between these conditions.

[73] In cross-examination, Dr. Ailon was taken to a number of clinical records that he had not seen in preparing his report that document Ms. Mudhar reporting headaches in the weeks and months following the accident. In light of those records, Dr. Ailon conceded that he would have to reconsider his opinion that her headaches were not caused by the accident.

***Dr. Sivananthan***

[74] Dr. Sivananthan assessed Ms. Mudhar in November 2023. Dr. Sivananthan has been practicing as a physiatrist in Ontario since 2021 and has carried out a few hundred independent medical assessments since 2022. He has never had a clinical practice in British Columbia.

[75] In his report, Dr. Sivananthan opines that as a result of the accident, Ms. Mudhar suffered cervical, thoracic, and lumbar strain with chronic myofascial impairment, post-traumatic headaches, and adhesive capsulitis that was diagnosed shortly after the accident. He also notes that she has a history of depression and that low mood can fuel pain and slow recovery. However, he opines that there are multiple causes for her presentation and that she has had many other events occur since the accident impacting her pain, cognition, and psychological wellbeing. He opines that "there is no validated tool to proportion what degree of impairment each of these etiologies are contributing to her current presentation." For example, he notes she reported to treating professionals about impacts to her physical, psychological, and cognitive function arising from her treatment for breast cancer. Dr. Sivananthan is also of the opinion that Ms. Mudhar's prognosis is guarded and

that the complete resolution of her symptoms is unlikely. He recommends that Ms. Mudhar focus on active treatments and neuropathic agents to manage her pain and headaches. From a purely musculoskeletal perspective, Dr. Sivananthan opines that there are no restrictions for Ms. Mudhar to continue her work without restrictions.

[76] Ms. Mudhar submits that there are significant issues with the integrity of Dr. Sivananthan's report and that, as a result, it should be accorded little weight. First, while Dr. Sivananthan opines that Ms. Mudhar's current symptoms may be caused by non-accident-related causes such as her fall and her breast cancer, he does not document the duration, frequency, or severity her symptoms arising from the fall and her breast cancer treatment. When cross-examined on this omission, Dr. Sivananthan suggested that those details are likely not in his report because Ms. Mudhar did not have answers when he asked her to provide this history. He conceded that he does not identify Ms. Mudhar as a poor historian in his report. He also admitted he did not have a vivid recollection of the assessment and could only rely on his report to confirm details of the assessment. Despite these concessions, he continued to blame the lack of detail in the report on the fact that Ms. Mudhar did not report them and refused to acknowledge that he may not have taken a full history on these matters.

[77] A further issue relates to Dr. Sivananthan's findings arising from his physical examination of Ms. Mudhar. He notes in his report that upon inspection of "the shoulder", no physical abnormalities were noted. On cross-examination, Dr. Sivananthan clarified that these findings relate to both shoulders and that he found that both shoulders had exactly the same range of motion. Given that Dr. Sivananthan indicated that he does not have a clear memory of the assessment, I find this clarification to be suspect. It is also inconsistent with the findings in Dr. Simonett's physical examination in July 2023 that Ms. Mudhar's range of motion in her left shoulder was significantly reduced in comparison to the right.

[78] Another issue with Dr. Sivananthan's report is that he recommended that Ms. Mudhar focus on active rehabilitation but was not aware that she had undergone 23 active rehabilitative visits as these records were not made available to him.

[79] Other statements in the report suggest that it may have been prepared with a lack of care. At one point in his report, Dr. Sivananthan states that after the accident, Ms. Mudhar sustained a fall resulting in concussive symptoms and frozen shoulder. However, in other portions of the report, he states that Ms. Mudhar was diagnosed with frozen shoulder months before the fall. Later, he states that the diagnosis of adhesive capsulitis was made shortly after the accident.

[80] In these circumstances, I have significant concerns regarding the reliability of Dr. Sivananthan's opinion evidence regarding the causation of Ms. Mudhar's ongoing physical complaints. As a result, as to matters within the expertise of physiatry, I prefer the evidence of Dr. Simonett. Further, as Dr. Simonett assessed Ms. Mudhar on two occasions, her opinion as to the chronic nature of Ms. Mudhar's condition carries greater weight.

***Conclusion: What Injuries Were Caused by the Accident?***

[81] Having considered the totality of the evidence regarding the impact of the accident on Ms. Mudhar, I find that she suffered soft tissue injuries to her neck, back, left shoulder, and left ankle. As a result of these injuries, she developed headaches and frozen shoulder. Regarding the connection of her low back injury to the accident, I prefer the evidence of Dr. Ailon to that of Dr. Simonett.

[82] I also accept the opinions of Dr. Simonett, Dr. Ganesan, and Dr. Ailon that Ms. Mudhar has developed chronic pain syndrome that is attributable to the physical injuries she sustained in the accident. I also find that she developed driving anxiety and accept the opinion of Dr. Ganesan that she has developed a major depressive disorder as a result of the accident. All of the medical experts agree that Ms. Mudhar's symptoms have become chronic and that her prognosis for a full recovery is unlikely.

[83] I find that the vertigo and balance issues that Ms. Mudhar experienced after her fall in February 2018 is not related to the accident and that these symptoms are divisible from those related to the accident. These symptoms were successfully treated on two different occasions. Likewise, the symptoms related to Ms. Mudhar's cancer diagnosis and treatment are unrelated to the accident and can be distinguished from her accident-related injuries. While no doubt she suffered fatigue, aches, and pains as a result of chemotherapy and radiation, I accept Ms. Mudhar's evidence that these symptoms were distinct from her accident-related injuries and eventually resolved following the completion of her treatments. Ms. Mudhar is not entitled to compensation for the effects of these divisible conditions.

[84] On the evidence before me, it is not possible to parse out distinct psychological injuries associated with the fall, her breast cancer diagnosis, as well as the loss of her loved ones separate from the psychological injuries she sustained in the accident. I find that these events are properly viewed as aggravations of the psychological injury caused by the accident. This is supported by Dr. Ganesan's 2025 opinion that Ms. Mudhar's loss of family members aggravated her underlying emotional difficulties for a period of time and that, while she was recovering from her grief, her underlying emotional difficulties remain. Accordingly, I reject the defendant's submission that Ms. Mudhar's ongoing inability to work is solely attributed to psychological conditions that are unrelated to the accident and that her damages should be reduced by 15% to account for the impact of these intervening events.

[85] I am also unable to accept the defendant's argument that the damages owing to Ms. Mudhar should be reduced by 15% to account for a measurable risk that pre-existing conditions would have detrimentally affected the plaintiff in the future, absent the accident. While Ms. Mudhar had a previous episode of depression associated with marital difficulties requiring a two-year leave from work, this was 10 years prior to the accident. The evidence suggests that this period of depression was situational associated with marital discord and was resolved with counselling

and medication. For the following 10 years, Ms. Mudhar worked full time while raising her family and participated in an active social life unimpacted by depression.

[86] In my view, there is insufficient medical evidence before me to establish that there was a measurable risk that Ms. Mudhar would have suffered her current psychological conditions independent of the accident. The defendant's argument that, prior to the accident, Ms. Mudhar was dealing with the effects of significant marital discord is not borne out in the evidence. The defendant places considerable weight on Ms. Mudhar becoming overcome with emotion in cross-examination when confronted with the suggestion that she had an unhappy marriage. This is not sufficient to establish the measurable risk contended by the defendant. While, by her own admission, her marriage was not a happy one, after 2007, the defendant is unable to point to evidence that this was impacting Ms. Mudhar's ability to function. On the contrary, the evidence establishes that, prior to the accident, her husband was frequently away for work for extended periods of time and that, notwithstanding any marital discord, Ms. Mudhar participated fully in her work and social life, raised successful daughters and was the primary financial provider for her family. Further, Ms. Mudhar's emotional outburst during her cross-examination could also be explained by the fact that she is still grieving the loss of her husband.

### **Failure to Mitigate**

[87] The defendant submits that Ms. Mudhar has failed to mitigate her damages because she:

- independently reduced the use of her left arm post-accident and was diagnosed in the fall of 2017 with frozen shoulder;
- failed to engage in the right type of treatment and has relied on excessively on passive modalities such as massage therapy and point to the opinion of Dr. Ailon that her left shoulder adhesive capsulitis was likely due, in part, to sub-optimal management;

- could have taken stronger pain medication and stopped taking anti-depressants while still symptomatic;
- failed to disclose her fall in 2018 to Dr. Iwama depriving him of relevant context to treat her symptoms; and
- failed to follow through on a referral from St. Paul's Hospital to a concussion clinic.

[88] The defendant submits that a reduction of 15% from all heads of damage is appropriate to address these failures.

[89] As a general proposition, a defendant should not be held liable for damages that the plaintiff could have reasonably avoided. A plaintiff who has been injured has a positive obligation to take reasonable measures to reduce his or her damages, including pursuing treatment to alleviate or manage symptoms arising from their injuries: *Danicek v. Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111 at para. 234.

[90] Once the plaintiff has proven that the defendant's negligence caused their injuries, the burden shifts to the defendant to prove on a balance of probabilities that the plaintiff could have or should have reduced their losses. A defendant must prove both that the plaintiff was unreasonable in not pursuing recommended treatment and the extent to which the plaintiff's damages would have been reduced if they had acted reasonably: *Chiu v. Chiu*, 2002 BCCA 618 at para. 57.

[91] With respect to the argument that Ms. Mudhar failed to pursue appropriate treatment for her shoulder, Dr. Iwama testified that in the fall of 2017, he referred Ms. Mudhar to an active rehabilitation program but agreed to defer this treatment until imaging of her neck and shoulders could be done in order to investigate the causes of her ongoing pain. He did so because he believed that it was prudent to wait for the results of an ultrasound scheduled in October before proceeding with an intensive exercise program. The results he received in early October suggested that Ms. Mudhar had bursitis in both of her shoulders. According to the clinical records,

Dr. Iwama referred Ms. Mudhar back to physiotherapy, and she commenced this treatment on October 16, 2017. Dr. Iwama also ordered an MRI of the left shoulder. On October 30, 2017, the MRI confirmed that Ms. Mudhar had adhesive capsulitis.

[92] While the experts who assessed Ms. Mudhar solely for the purposes of this litigation suggest that she should have been engaged in more active therapy, these professionals were not in a position to oversee Ms. Mudhar's treatment and provide her with treatment recommendations. Dr. Ailon is careful in his report to opine that her frozen shoulder was due, in part, to "suboptimal management." In direct, Dr. Ailon clarified that this was a reference to the fact that Ms. Mudhar had been advised by her treating practitioners to stop all therapies when she received the diagnosis of frozen shoulder. Dr. Simonett is also of the view that Ms. Mudhar would benefit from more active therapies but notes that due to Ms. Mudhar's mental health symptoms associated with chronic pain syndrome, she will need support to address her motivation and to manage the increased pain that will come with engaging in more active therapies.

[93] Accordingly, I am unable to conclude that the defendant has met his onus to prove that Ms. Mudhar failed to take reasonable steps to mitigate her shoulder injury, by failing to engage in recommended treatment. To the contrary, she was diligent in discussing her symptoms with her doctor, and she engaged in treatment recommended by her doctor. This aspect of the defendant's mitigation argument amounts to a critique of the management of Ms. Mudhar's injuries by her treating health professionals, rather than a failure on the part of Ms. Mudhar to follow her treatment recommendations.

[94] I am also unable to conclude that Ms. Mudhar failed to mitigate her losses by failing to take prescribed medication. With respect to pain medications, Ms. Mudhar reported to her treating physiatrist in 2017 that she avoids taking pain medications. At trial, she testified that she does so because of side effects she experienced when she took stronger medications prescribed by her doctor. On cross-examination, Ms. Mudhar agreed that she could have asked for other medications but did not do

so. The defendant fails to identify any evidence that Ms. Mudhar was advised by her doctors to take stronger pain medications and does not point to any specific medical opinion as to what impact this may have had on her symptoms.

[95] Based on a clinical note, Ms. Mudhar confirmed on cross-examination that in November 2019, she stopped taking an anti-depressant prescribed by her psychiatrist because they were not helping with her pain and made her feel groggy. However, it appears that she resumed taking an anti-depressant at some point thereafter as, when she saw Dr. Ganesan in 2023, she was taking a small dose of amitriptyline. Dr. Ganesan prescribed what he considered to be a more effective anti-depressant that Ms. Mudhar continues to take. The defendant did not point me to any medical opinions or other evidence regarding the impact Ms. Mudhar's decision to stop taking an anti-depressant had on her symptoms. As a result, the defendant has not met his evidentiary burden to prove that Ms. Mudhar's symptoms would have been reduced by continuing to take the anti-depressant that she did not find helpful.

[96] The final two mitigation arguments advanced by the defendant relate to injuries arising from her fall that I have found to be divisible. As a result, it is not necessary to address the argument that Ms. Mudhar failed to pursue treatment at a concussion clinic for her vertigo symptoms. Even if these injuries were not divisible, the evidence does not support a conclusion that there was a failure on the part of Ms. Mudhar to pursue treatment. Both Ms. Mudhar's and Dr. Iwama's evidence was that she was already receiving, from an occupational therapist, the type of treatment that she would have received at the concussion clinic. Accordingly, it would have been duplicative for her to pursue this recommendation.

[97] I have already found above that Ms. Mudhar did not keep the information about her fall from Dr. Iwama to advance her interests in this litigation. The defendant argues that Ms. Mudhar's failure to disclose constitutes a failure to mitigate. However, Dr. Iwama's evidence supports a finding that knowing about the fall would have only changed what conclusion he drew about the cause of the

vertigo symptoms. His evidence is that it would not have changed the recommendations he made to address the symptoms she was experiencing. He prescribed rest and hydration and referred Ms. Mudhar to vestibular therapy. There is no evidence that she failed to follow these recommendations.

[98] Accordingly, the defendant has failed to meet his burden to establish that Ms. Mudhar failed to mitigate her damages.

### **Loss of Housekeeping Capacity**

[99] The loss of housekeeping capacity may be compensated as a separate pecuniary award or it may be considered as part of the award for non-pecuniary damages. While a trial judge retains discretion to determine which approach is more appropriate in the circumstances, the Court of Appeal in *McKee v. Hicks*, 2023 BCCA 109 at paras. 93–112, held that pecuniary awards are generally made where injuries have rendered a plaintiff unable to perform any household tasks. Where the plaintiff remains able to perform such tasks but does so with difficulty and frustration, the usual approach is to augment the award of non-pecuniary damages to fully reflect the impact of the injuries on the plaintiff.

[100] Ms. Mudhar testified that after the accident she was unable to clean anything in her house that required her to stretch, reach, or bend. She has had to find alternative ways of cleaning the tub and shower by using a mop. For periods of time after the accident, she has been able to hire housekeepers to do the heavy cleaning so that she could focus on doing basic cleaning. She finds vacuuming and mopping difficult and cannot do either for very long. Since her husband passed away, she has been unable to afford to hire housecleaners. Her daughters help her with some of the heavier household tasks. When she brings in groceries, she can only carry one bag up the stairs at a time.

[101] In light of this evidence, I find that it is most appropriate to augment the award of non-pecuniary damages to compensate Ms. Mudhar for her diminished ability to perform housekeeping tasks.

## Non-Pecuniary Damages

### *Legal Framework*

[102] Non-pecuniary damages compensate the plaintiff for pain, suffering, disability, and loss of enjoyment of life. Non-pecuniary loss encompasses losses suffered to the date of trial and those suffered into the future: *Tisalona v. Easton*, 2017 BCCA 272 at para. 39.

[103] It is not the gravity of the injury, in and of itself, that determines the value of the award. The impact of the injury must be considered in the context of the plaintiff's specific circumstances: *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, leave to appeal ref'd [2006] S.C.C.A. No. 100. The Court in *Stapley* identified common factors influencing an award of non-pecuniary damages. They include: the plaintiff's age; the nature of the injury; the severity and duration of pain; level of disability; emotional suffering; loss or impairment of life; impairment of family, marital and social relationships; impairment of physical and mental abilities; and loss of lifestyle. Stoicism can also be a factor, but care must be taken not to penalize a plaintiff when taking it into account.

[104] Although focused on compensating plaintiffs, an award of non-pecuniary damages must be fair and reasonable to each party. Fairness is achieved, in part, through considering awards in comparable cases. Comparable cases, however, serve only as a rough guide. Each case must be decided on its own facts: *Trites v. Penner*, 2010 BCSC 882 at para. 189.

### *Determination of Non-Pecuniary Damages*

[105] The plaintiff seeks an award of non-pecuniary damages in the range of \$185,000 to \$225,000 for the injuries she sustained in the accident as well as her indivisible injuries, relying on *Oliver v. Loewen*, 2024 BCSC 604; and *Meckic v. Chan*, 2022 BCSC 182 to support this range.

[106] In *Oliver*, the plaintiff suffered injuries to her neck, shoulders, hips, predominantly her left hip, lower back, left arm, and lower limbs. She also developed

post-traumatic headaches. The plaintiff had ongoing pain, discomfort fatigue, mild ongoing cognitive challenges, and sleep disturbances at trial. The plaintiff had no pre-existing conditions. The plaintiff was back at work at the time of the trial, and the trial judge found that there was no medical evidence that she would be required to retire early due to her symptoms. However, it was found that her chronic pain and cognitive symptoms would likely prevent her from advancing to a management level position. The plaintiff was awarded \$185,000 in non-pecuniary damages.

[107] In *Meckic*, the plaintiff experienced chronic pain in the neck, shoulder, and back and at the time of trial, was associated with a severe and chronic somatoform disorder. The accident also caused the plaintiff to suffer anxiety, depression, and post-traumatic stress disorders as well as a post-traumatic headache disorder that severely limits her functionality. As a result of these conditions, the plaintiff was rendered unemployable. The trial judge would have awarded \$225,000 in non-pecuniary damages but reduced this amount to \$190,000 to account for a very low level contingency that her symptoms would improve.

[108] The defendant submits that an appropriate award for non-pecuniary damages falls within the range of \$120,000 to \$170,000. The defendant relies on the following cases to support this range: *Campbell v. Leslie*, 2024 BCSC 2351; *Rathwell v. Shorey*, 2024 BCSC 1578; *Mustafa v. Morneau*, 2021 BCSC 2152; *Rattan v. Li*, 2022 BCSC 648.

[109] *Mustafa*, relied upon by the defendant to establish the lower end of his range, is distinguishable from Ms. Mudhar's situation as that case did not involve diagnosed psychological injuries: *Mustafa* at para. 44. Some of the cases relied upon by the defendant reduced the award of non-pecuniary damages to take into account the impact that pre-existing medical conditions would have likely had on those plaintiffs in the absence of the accidents in question: *Rathwell* at para. 215; *Campbell* at para. 175. Given my findings that Ms. Mudhar was not suffering from any significant physical or psychological conditions at the time of the accident, these cases are distinguishable. Here, the defendant has failed to meet its burden to prove that

Ms. Mudhar had a pre-existing condition that had a measurable risk of detrimentally affecting her absent the accident.

[110] In my view, Ms. Mudhar's longstanding injuries and chronic pain have had a very significant disabling impact on her ability to work and function in her day-to-day life. She has also experienced significant emotional distress as a result of the pain she experiences and the restrictions it places on her family, social life, her ability to work and maintain her household. Taking into account the *Stapley* factors, my findings of fact regarding the effect of the injuries attributable to the accident, as well as the comparative cases cited by the parties, I consider that general damages in the amount of \$225,500 inclusive of an amount to compensate Ms. Mudhar for the loss of housekeeping capacity to be appropriate. This amount does not account for the divisible injuries and conditions.

[111] I do not accept the argument advanced on behalf of Ms. Mudhar that there is no possibility that her condition will improve. Both Dr. Simonett and Dr. Ailon suggest that if Ms. Mudhar consistently engages in active rehabilitation and she is supported in dealing with the increase in pain and discomfort this may cause, she could attain modest gains in her function. Accordingly, I reduce the non-pecuniary damages to \$205,000 to account for a very modest contingency that Ms. Mudhar's symptoms will improve with time.

### **Past Income Loss**

[112] Based on my findings above and the medical evidence, I find that Ms. Mudhar remains unable to work due to the injuries she sustained in the accident.

Dr. Ganesan is of the opinion that her ongoing inability to work is due to her emotional difficulties and chronic pain syndrome caused by the accident. He is unable to predict when she may be able to resume work as it depends on her response to future treatment. With respect to her physical symptoms, Dr. Simonett is of the opinion that Ms. Mudhar is likely to be disabled on an ongoing basis into the foreseeable future with the possibility that working with a kinesiologist may restore some of her physical function. While Drs. Ailon and Sivananthan express the opinion

that the nature of Ms. Mudhar's soft tissue injuries alone should not disable her from work, Dr. Ailon at least acknowledges that because she has developed chronic pain syndrome, her prognosis for further recovery is guarded.

### **Legal Framework**

[113] Damages for loss of earnings from the date of the accident to trial are to be based on what a plaintiff would have, not could have, earned but for the injuries sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30. To do otherwise would put the plaintiff in a better position had the injuries not occurred.

[114] While the burden of proof for actual past events is on a balance of probabilities, the assessment of how a plaintiff would have fared had they not been injured, both in the period leading up to trial and the future, is necessarily based on a consideration of hypothetical events: *Gill v. Probert*, 2001 BCCA 331 at para. 9, citing *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183.

[115] There is no burden on a plaintiff to prove hypothetical events on a balance of probabilities. Rather, such events are considered by the court when there is a "real and substantial possibility" that such events would occur: *Grewal v. Naumann*, 2017 BCCA 158 at para. 48; and *Rousta v. MacKay*, 2018 BCCA 29 at para. 14. Once it is established that there was a real and substantial possibility, the court must then determine the measure of damages by assessing the likelihood of the event: *Grewal* at para. 48.

### **Determination of Past Income Loss**

[116] As set out above, Ms. Mudhar was off work after the accident for two months. Her attempted gradual return to work in July 2017 lasted only five weeks before she left work again due to an increase in her symptoms. Her second attempt in February 2020, after she had completed her breast cancer treatments, was discontinued after less than a month.

[117] While the defendant does not dispute that Ms. Mudhar suffered past income loss as a result of the accident, he contends that she would have remained off work

until March 2020 as a result of her breast cancer treatment, a condition wholly unrelated to her accident-related injuries.

[118] The defendant disputes Ms. Mudhar's claim that, had the accident not occurred, she would have sought causal work with the RCMP after she was entitled to retire with 35 years of service and a full pension in August 2022. The defendant says that there is no concrete evidence to support this intention. He submits there is no substantial likelihood that absent the accident, Ms. Mudhar would have applied for causal work and that it is far more likely that Ms. Mudhar would have voluntarily retired and withdrawn from the workforce in 2022. Even if it could be established that there was a substantial likelihood that Ms. Mudhar would seek causal employment, the defendant says that the amount of available work would be dependent on the variable operational needs of the RCMP.

[119] I disagree with the defendant's submission. While I accept that there was no guarantee that causal work would have been available, Ms. Mudhar is not required to establish that she would be guaranteed this work. She is only required to establish a real and substantial possibility that this work would have been available. Based Ms. Mudhar's evidence as well as the evidence from retired RCMP member Andy LeClair, Rani Gill, and Ms. Mudhar's daughter, Gavina, who is also an RCMP member, I find that there was a real and substantial possibility that Ms. Mudhar would have taken the necessary steps to obtain causal employment with the RCMP. Ms. Gill and Gavina Mudhar corroborated Ms. Mudhar's evidence that she enjoyed her job and spoke frequently about her plan to continue working on a causal basis after her retirement in 2022 at age 57. The evidence of Andy LeClair, Ms. Gill, and Gavina Mudhar also establishes that the RCMP has a strong demand for causal workers and former RCMP employees are very attractive because of their experience and because the process to reactivate an unexpired security clearance takes 8–12 weeks as opposed the 12 months it can take to obtain a new security clearance. Ms. Mudhar's top secret clearance would have also enhanced her chances of securing casual work due to the sensitive work carried out by the RCMP. Further, at age 57, Ms. Mudhar would have been relatively young when she qualified

for a full pension. All of these factors suggest that there was a very high likelihood that Ms. Mudhar would have been employed as a casual worker after age 57 in the absence of the accident, at least until the date of trial.

[120] Although they arrive at Ms. Mudhar's past income loss by different routes, both parties submit that her past loss amounts to \$200,000. Ms. Mudhar concedes that she would have been off work for approximately one month due to her fall and 16 months due to her breast cancer treatment. As a result, she submits that it is appropriate to reduce her overall past income loss claim by 17 months, amounting to \$200,000.

[121] I draw on the expert report tendered by Ms. Mudhar of Darren Benning, an economist, to assist me in determining the past loss of income. In his report, Mr. Benning arrives at a past loss of income in the amount of \$232,713 based on the assumption that Ms. Mudhar would be off work for 15 months from February 2018 to May 2019 for non-accident-related reasons. At the conclusion of the trial, counsel for Ms. Mudhar submits that Mr. Benning's calculation should be further reduced to \$200,000 to reflect that she was off work for 17 months, rather than 15 months, due to non-accident-related reasons. Counsel for Ms. Mudhar acknowledged during submissions that this was a rough and ready calculation.

[122] Based upon my review of Mr. Benning's report, and in particular Table 2, had the accident not occurred, Ms. Mudhar would have earned approximately \$3,300 in net monthly income in 2018 and 2019. Therefore, reducing Mr. Benning's calculation by \$32,713 represents an additional 10-month reduction over what proposed by Ms. Mudhar's counsel, for a total of 25 months of income loss due to her breast cancer and vertigo.

[123] The defendant submits that Ms. Mudhar would have remained off work due to her breast cancer treatment until March 2020, a total of 26 months. Based on the clinical records, I find that Ms. Mudhar was still complaining of fatigue associated with her breast cancer treatment in July 2019 and in October 2019. While these complaints continued into the following spring, they were made in conjunction with

significant accident-related complaints. I find on a balance of probabilities that had Ms. Mudhar been only dealing with the effects of the breast cancer treatment and her vertigo, she would have remained off work until at least October 2019 for a total of 21 months due to non-accident-related injuries. Based on this finding, I find that it is appropriate to reduce Mr. Benning's past wage loss calculation by six months ( $\$3,300 \times 6 = \$19,800$ ) and as a result, award \$212,913 in past wage loss.

## **Loss of Future Earning Capacity**

### ***Legal Framework***

[124] The essential task in assessing a claim for future income loss is a comparison of the plaintiff's likely future had the accident not occurred to their future as altered by the accident. This is an assessment based on the nature of the injuries and the anticipated employment rather than precise mathematical calculation: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144. That said, economic and statistical evidence may assist the court to determine whether a particular award is fair and reasonable in the circumstances: *Gregory* at para. 33.

[125] There is a three-part test to establish a loss of future income earning capacity. Step one is to determine whether the evidence discloses a potential future event that could lead to a loss of capacity. Under step two, the court must be satisfied that there is a real and substantial possibility that the future event in question will cause a pecuniary loss. Finally, under step three, if there is a real and substantial possibility, the court must assess the value of that possibility and consider how likely it is that this possibility will come to fruition and the financial impact if it does: *Rab v. Prescott*, 2021 BCCA 345 at para. 47.

[126] The third step is often challenging: *Lamarque v. Rouse*, 2023 BCCA 392 at para. 40. Various approaches have been employed to arrive at the appropriate amount of compensation. Where there is a loss that is easily measured, *i.e.*, the plaintiff had a stable career and was unable to work for a period of time and either returned after a period of time off in their full capacity or not at all, it is a relatively simple matter to calculate their lost earnings. On the other hand, where there are a

number of variables, such as an irregular or untested employment history, a return to work with limitations on capacity but income that is the same or higher than it was prior to the accident, a capital asset approach may be more appropriate: *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at paras. 16–17.

[127] The court may also consider general contingencies that are likely events for most people or contingencies that arise from the peculiar circumstances of the plaintiff. Typically, both types of contingencies should be supported by evidence, but where the court relies on common sense and human experience, rather than evidence, to support a general contingency, the resulting adjustment should be modest: *Rattan* at para. 147. In considering contingencies, the court, however, must be mindful not to duplicate a reduction arising from a relative likelihood analysis: *Steinlauf v. Deol*, 2022 BCCA 96 at para. 84.

#### ***Determination of Loss of Future Earning Capacity***

[128] Ms. Mudhar seeks a future loss of income award in the amount of \$202,240 based upon the assumption that she would have worked as a causal employee with the RCMP for 90 days per year up until the age of 70.

[129] My finding above that absent the accident, there was a real and substantial possibility that Ms. Mudhar would have sought out causal employment with the RCMP or otherwise after her retirement in 2022 disposes of the defendant's primary argument that she is not entitled to any future loss of income. In the alternative, the defendant submits that if Ms. Mudhar did work after retirement, it is reasonable to assume that she would do so for only 45 days per year until she reached the age of 65 because the RCMP's demand for causal employees is variable based on operational requirements.

[130] Ms. Mudhar testified that prior to the accident, her plan was to continue working after she retired because she liked her job and because she would need the income to help pay for her daughters' weddings and to pay her mortgage. Ms. Mudhar's evidence that she would need to earn an income following her retirement is corroborated by her daughters' evidence that, since their father's death,

they have been providing monthly payments to their mother so she can meet her financial obligations. Ms. Mudhar was not asked, in either direct or cross-examination, how long she planned on working. I find that there is a substantial likelihood that Ms. Mudhar would continue doing part-time work until she reached age 65. However, I find that there is not a substantial likelihood that Ms. Mudhar would have continued beyond the age of 65 while in receipt of both a pension as well as other government benefits. Given that she also lives with her elderly mother, there is also the possibility that she would have to curtail her hours or stop working to do full-time elder care.

[131] Based on the evidence that the demand for casual workers with the RCMP is variable and entirely dependent on operational needs, I agree with the defendant that it is not reasonable to assume that Ms. Mudhar would be guaranteed to obtain 90 days of casual work each calendar year. However, Ms. Mudhar is not required to establish that this level of work would be guaranteed. All that is necessary is that there is a real and substantial possibility that absent the accident, she would be working 90 days per year either as a casual worker with the RCMP or in some other capacity. In my view, this burden has been met. Ms. Gill was unshaken in her evidence on cross-examination that the RCMP has a very strong demand for casual workers, particularly those with Ms. Mudhar's experience and top security clearance. Further, Andy LeClair testified that the RCMP headquarters at Green Timbers, where Ms. Mudhar worked, houses hundreds of civil servants that support multiple RCMP operational and administrative units. It is reasonable to infer from this that the need to fill leaves and vacancies with casual workers would arise regularly. In any event, based on Ms. Mudhar's financial need to continue working as well as her substantial experience, if she did not get sufficient hours with the RCMP, there is a substantial likelihood that she would have obtained part-time employment elsewhere.

[132] Mr. Benning calculates that Ms. Mudhar would have earned \$25,678 per year for 90 days of casual work. Based on my finding that this loss would continue for 10

years and applying the economic multiplier set out in Table 3 of Mr. Benning's report, I find that the present value of this loss is \$145,000.

[133] Keeping in mind that damages are assessed, not calculated, and taking into account a contingency to reflect a modest possibility of an improvement in Ms. Mudhar's functioning that allows her to return to the workplace, I award \$130,000 in loss of future income.

**Loss of Pension Benefits**

[134] Based on Mr. Benning's report, Ms. Mudhar seeks \$102,790 to compensate for the loss of pension benefits she says she incurred as a result of having to take early retirement. This amount is calculated on the basis that if the accident had not occurred, Ms. Mudhar would have retired at age 57.8 and would have received pension benefits with a present value of \$796,103. As a result of having to take early retirement, Ms. Mudhar will only receive a present value of \$693,312 and seeks to recover the shortfall.

[135] The defendant did not expressly address this loss in his submissions, presumably because he takes the position that Ms. Mudhar took medical retirement for reasons unrelated to the accident and that she retains residual functional capacity to work. The defendant raises no issues with the methodology used to calculate this loss.

[136] Given my finding that Ms. Mudhar had to retire early as a result of the injuries she sustained in the accident, I award \$102,790 to compensate for the loss of her pension benefits.

**Cost of Future Care**

***Legal Framework***

[137] The objective of an award for cost of future care is to restore the injured party to the position that they would have occupied but for the injuries sustained as a result of the negligence of the other party. What is reasonably necessary to promote the mental and physical health of the plaintiff is to be assessed on the basis of

medical evidence, and it must be fair to both parties: *Pang v. Nowakowski*, 2021 BCCA 478 at paras. 56, 58.

[138] Arriving at an award for future care cost necessarily involves an element of prediction and prophecy. Accordingly, it is an assessment rather than a precise accounting exercise although the court should determine the present value of future care cost and, if necessary, adjust for the contingency that the future may differ from what the evidence at trial indicates: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.

[139] In *Pang* at para. 57, the Court of Appeal summarized the following additional principles:

- i) The court must be satisfied the plaintiff would, in fact, make use of the particular care item: *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 40 and 54; *Hans v. Volvo Trucks North America Inc.*, 2018 BCCA 410 at paras. 86–87.
- ii) The court must be satisfied that the care item is one that was made necessary by the injury in question and that it is not an expense the plaintiff would, in any event, have incurred: *Shapiro v. Dailey*, 2012 BCCA 128 at paras. 54–55;
- iii) The court must be satisfied that there is no significant overlap in the various care items being sought: *Johal v. Meyede*, 2015 BCSC 1070 at para. 9(f); *Brodeur v. Provincial Health Services Authority*, 2016 BCSC 968 at para. 356; *Myers v. Gallo*, 2017 BCSC 2291 at para. 231.

[140] As held by the Court of Appeal in *Paur v. Providence Health Care Centre*, 2017 BCCA 161 at para. 109, while claimed care items should be supported by an evidentiary link between a medical expert's assessment of disability and the recommended care, there is no requirement that a medical expert opine on the medical necessity of each item claimed.

[141] Ms. Mudhar seeks future care costs in the amount of \$233,722 and relies upon the report of Ms. Szarkiewicz, an occupational therapist, and the future care multipliers set out in Mr. Benning's report. Ms. Mudhar concedes that the items for vision therapy and prescription lenses relate to injuries attributable to the divisible injuries from her fall and are, therefore, not compensable.

[142] The defendant agrees that several of the claimed items are appropriate future care costs but submits the remainder of the items are not medically necessary. The defendant submits that an appropriate range for an award reflecting Ms. Mudhar's future care costs is between \$58,811.72 to \$97,629.03. As discussed above, I have already rejected the defendant's submission that any future care amounts should be reduced by 30% to account for the impact of intervening events and risks presented by pre-existing conditions.

### ***Determination of Cost of Future Care***

#### ***Advil and Diclofenac***

[143] Ms. Mudhar seeks a total of \$9,572 for Advil (\$527) and Diclofenac (\$9,045), a topical pain-relieving ointment. The claim for Diclofenac is not supported by any medical evidence, in that its use has not been recommended by any of Ms. Mudhar's treating health professionals. However, Dr. Sivananthan did suggest several medications that could be used for pain management. In my view, the claim for these medications for the purposes of pain management is reasonable given Ms. Mudhar's diagnosis of chronic pain syndrome. Over time and with engagement in active rehabilitation, she may reduce her reliance on these medications, but I am satisfied that this is a medically necessary and reasonable care cost.

#### ***Massage Therapy***

[144] Ms. Mudhar claims \$32,795 for ongoing massage therapy on an annual basis. The defendant says that ongoing massage therapy at this frequency is not medically necessary but acknowledges that the use of massage therapy at a lesser frequency of four to six sessions annually to manage acute flare-ups would be more reasonable.

[145] All of the experts who assessed the extent of Ms. Mudhar's physical injuries are of the opinion that active therapy presents the best hope for Ms. Mudhar to regain some of her physical function. Dr. Simonett opines that absent physical conditioning, massage therapy is unlikely to be curative. Dr. Simonett, however, suggests that given Ms. Mudhar's reliance on massage therapy to date, coupled with

the increased pain that will come with increased exercise, it would be appropriate to allow for some massage therapy treatments to manage this transition. Accordingly, two years or 24 sessions of massage treatments is a reasonable and medically necessary expense. The present value of this cost is \$3,120.

***Physiotherapy and Occupational Therapy***

[146] Ms. Mudhar claims \$6,422 for occupational therapy for 30 hours for three to six months and 20 hours for the remainder of her lifetime and \$24,503 for physiotherapy for 24 sessions for one year and 12 sessions thereafter. The defendant says that these treatments are not medically necessary because they are not recommended by the experts who favor active, rather than passive, treatments.

[147] There is no doubt that Ms. Mudhar has pursued these treatments in the past as recommended by her family physician. However, according to the agreed statement of facts, Ms. Mudhar had not undertaken occupational therapy since 2021 and physiotherapy since 2022. It was not explained in the evidence how physiotherapy and occupational therapy would differ from the active rehabilitation that all of the experts endorse. Accordingly, Ms. Mudhar has not met her burden to establish that these treatments, over and above active rehabilitation, are medically necessary. I decline to grant an amount for these costs.

***Regular and Seasonal Household Cleaning and Yard Work***

[148] Ms. Mudhar claims the cost of regular household cleaning support that she can no longer afford to pay for due to the loss of her husband. Dr. Simonett opines in her report that it is appropriate for Ms. Mudhar to have some assistance with some cleaning tasks due to limitations on Ms. Mudhar's abilities. Ms. Szarkiewicz recommends access to the following, until Ms. Mudhar reaches age 80: six hours per month for regular household cleaning, 15 hours per year for seasonal cleaning tasks, and 15 hours a year for yard work.

[149] The defendant says that these amounts are not reasonable because Ms. Mudhar retains some capacity to do household chores, she lives with her

mother and two adult daughters who should be expected to undertake some of these tasks and because there is no evidence that Ms. Mudhar undertook seasonal cleaning tasks before the accident.

[150] Given the physical limitations confirmed by both Ms. Mudhar's treating medical professionals and the evidence of her daughters that she struggles with household chores, I accept that Ms. Mudhar would benefit from assistance to perform necessary household and yard tasks. Given that Ms. Mudhar's mother is 81 years of age, I do not consider it reasonable to expect that she should shoulder the deficit in Ms. Mudhar's housekeeping capacity caused by the accident. Furthermore, her two adult daughters are likely to leave home at some point and in any event, work full-time jobs. The hours claimed on a monthly and yearly basis are reasonable in that they account for the fact that Ms. Mudhar and her daughters will need to continue to do basic household tasks and yard work and that this will only be supplemented by paid assistance.

[151] The present value of the amounts claimed for these items to age 80 is \$70,150.

#### ***Pool/Gym Pass and Tai Chi***

[152] Ms. Mudhar claims \$16,781.00 to cover the cost of ongoing weekly Tai Chi sessions and an annual gym and pool pass. Ms. Mudhar relies on the recommendations of Dr. Simonett who, in her expert report, suggested that Ms. Mudhar would benefit from regular exercise. The defendant suggests that there is no medical basis to fund Tai Chi specifically. He notes that Dr. Simonett merely pointed to Tai Chi as an example of the type of gentle movements that Ms. Mudhar could begin when resuming physical activity.

[153] I agree with the defendant that Tai Chi is not medically necessary. However, I find that the cost for an annual gym/pool pass is linked to the recommendation that Ms. Mudhar commence active rehabilitation, a recommendation the defendant endorses. Having a gym/pool pass would allow Ms. Mudhar the ability to pursue

recreational opportunities on her own that will complement her active rehabilitation. Accordingly, the present value of this cost to age 70 is \$3,666.

[154] In summary, the present value amounts claimed for pain medications, massage, cleaning and yard work, and the pool/gym pass total \$86,508.

***Agreed to Items***

[155] The following items are agreed to although the parties differ somewhat on how these items should be costed. Where a range of costs was provided, Mr. Benning used the mid-range whereas the defendant submits that the low range costs should be used. The defendant took no issue with Mr. Benning's methodology to calculate lump sum present value of these amounts.

Cost	Initial Costs	Annual Cost or Replacement Frequency	Lump sum PV per Benning Report
Escitalopram			\$6,236
Counselling Year One			\$6,483
Counselling Ongoing		\$1,425	\$28,641
Active Rehabilitation – Year One		48 sessions	\$4,111
Active Rehabilitation – Year Two		24 sessions	\$2,006
Active Rehabilitation – Ongoing to Age 70		6 sessions annually	\$3,345

Driving Rehabilitation	\$3,765.00*		\$3,720
Heat Pad	33.73	Every 2 years	\$778
Long handled adaptive aids	\$45.46	Every 2 years	\$1,049
Robot vacuum and mop	\$93.33 to \$166.66	Every 3 years	\$3,072
Anti-fatigue mat	\$16.25	Every 3 years	\$384
Kitchen perch stool	\$44.00	Every 5 years	\$1,090
ObusForme low back support	\$33.33	Every 3 years	\$788
Custom Orthotics	\$225.00 to 242.50	Every 2 years	\$4,815
<b>TOTAL</b>			<b>\$66,518</b>

\*The amount attributed to this cost in the Benning report is not consistent with the \$3,765.00 cost noted in Ms. Szarkiewicz's report.

[156] The total of all items claimed that I consider to be reasonable and medically necessary amounts to \$153,026. To reflect the possibility that Ms. Mudhar may not utilize claimed items into the future or that they will become unnecessary either because she recovers some function or because the items are not useful to her or need to be replaced less frequently than anticipated, the present valued amounts should be subject to a modest reduction for contingencies. Accordingly, I have adjusted and rounded the claims for future care cost to \$140,000 to reflect the predictive, rather than mathematical nature, of the exercise of awarding future care costs.

### Special Damages

[157] The parties have agreed that Ms. Mudhar is entitled to be compensated for \$24,212.66 in special damages. An additional expense of \$17,477.28 paid by Ms. Mudhar to cover the costs of deficiencies in her pension arising from the leave she took following the accident remains in dispute. In final submissions, the only

issue that the defendant took with this amount is that this amount needed to be reduced by the number of months that the plaintiff was off work due to non-accident-related issues. As I have concluded that Ms. Mudhar’s decision to take medical retirement was the result of accident injuries, as aggravated by indivisible psychological injuries sustained after the accident, it is not appropriate to reduce this expense in the manner the defendant seeks.

[158] Accordingly, Ms. Mudhar is entitled to a total of \$41,689.94 in special damages.

**Disposition**

[159] For the reasons set out above, I award Ms. Mudhar damages totalling \$834,893 under the following heads of damage:

a) General Damages:	\$205,000
b) Past Income Loss:	\$212,913
c) Future Income Loss:	\$130,000
d) Loss of Pension Benefits:	\$102,790
e) Cost of Future Care:	\$140,000
f) Special Damages:	\$41,689.94
<b>TOTAL:</b>	<b>\$832,392.94</b>

[160] In the absence of circumstances being drawn to my attention, which would justify a departure from the ordinary rules of costs, Ms. Mudhar is entitled to costs.

[161] Should the parties wish to make submissions on costs, they may arrange to do so with Supreme Court Scheduling. Any such arrangements to speak to the

matter of costs must be made within 30 days of the date of these reasons for judgment.

“Hoffman J.”