

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Suri v. Thomasen*,  
2023 BCSC 334

Date: 20230307  
Docket: M125940  
Registry: Vancouver

Between:

**Alka Suri**

Plaintiff

And

**Catherine Ruth Thomasen, Rufino M. Fiangkiao and  
Rosalinda Fiangkiao**

Defendants

And

**Insurance Corporation of British Columbia and  
Deepak Suri**

Third Parties

- and -

Docket: M176088  
Registry: Vancouver

Between:

**Alka Suri**

Plaintiff

And

**Karanjot Heer, Karamjeet Heer, Kriti Suri,  
Deepak Suri Ltd.**

Defendants

- and -

Docket: M190005  
Registry: Vancouver

Between:

**Alka Suri**

Plaintiff

And

**Devendra Goel and Deepak Suri**

Defendants

Before: The Honourable Madam Justice Ahmad

**Reasons for Judgment**

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(January 4, 2022 and  
August 8–12, 15–18, 2022)

Place and Dates of Trial:

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March 7, 2023

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**1. Introduction**

[1] Between October 2010 and March 2018, the plaintiff, Alka Suri, was involved in four separate motor vehicle accidents in which she was the passenger. The defendants admit liability for all of the accidents.

[2] Ms. Suri claims to have suffered physical and psychological injuries which she says are chronic and from which she is unlikely to recover. She seeks compensation for non-pecuniary damages, past loss of income and future loss of income-earning capacity, loss of housekeeping capacity, costs of future care, and special damages.

[3] The defendants do not dispute that Ms. Suri was injured in the accidents. However, they dispute the amount of damages sought by Ms. Suri on two main bases. First, noting that Ms. Suri was able to return to work full-time in March 2020, they argue that neither the physical nor the psychological injuries preclude her from working. Second, to the extent that she continues to suffer from any accident-related injuries, the defendants say that Ms. Suri has failed to mitigate her damages by failing to follow the advice of her physician. The defendants argue that the quantum of damages should reflect both of these factors.

**2. Background**

**A. Pre-accident Background**

[4] Ms. Suri was born in India in 1966. At the time of trial, Ms. Suri was 55 years old. She was 44 years old at the time of the first accident in October 2010.

[5] She graduated from high school in India and subsequently married Deepak Suri in 1985. The couple has three children, Pooja Tuli, Kriti Suri, and Ujvval Suri, now adults. The family moved to Canada in 1999. Within a month, Ms. Suri obtained employment as a cashier and as a retail salesperson. However, with her and her husband's previous business experience, they intended to open their own business. They achieved that goal within a few years of their arrival to Canada when they incorporated Tandoori Delights Foods Inc. ("Tandoori Delights"), which they

operated both as a restaurant/food store specializing in marinated meats and other foods from India, as well as a movie rental outlet.

[6] Ms. Suri spent long hours at work, at first seven days a week, but then took Tuesdays off to allow her to care for her then-young children after school. Except for Tuesdays, when Mr. Suri helped with cleaning the kitchen and bathrooms, Ms. Suri was also responsible for all of the household chores, including laundry, cleaning, and meal preparation, and would get the children ready for school.

[7] Two of Ms. Suri's adult children, Pooja and Ujvval, gave evidence at trial. Both described Ms. Suri as being active with them as children, participating in activities such as badminton and frisbee, cooking elaborate Indian meals, hosting dinners and organizing picnics, and attending temple regularly.

[8] Both Pooja and Ujvval and Anupama Arora, a friend of Ms. Suri's who gave evidence on Ms. Suri's behalf, used words such as "social", "bubbly", "energetic", and "loving" to describe Ms. Suri's personality prior to the first accident in October 2010.

[9] Ms. Suri was capable of managing all aspects of her life and did not have any health or physical limitations that prevented her from successfully functioning in the workplace, as a mother, as a homemaker, or socially.

### **B. Pre-accident Work History**

[10] By 2005, Tandoori Delights operated two restaurants, one located at 51st Street and Main Street in Vancouver (the "Main Street Restaurant") and one located in Burnaby (the "Burnaby Restaurant"). Ms. Suri worked at the Burnaby Restaurant while Mr. Suri operated the Main Street Restaurant. Ms. Suri prepared all of the food for both restaurants at the Burnaby Restaurant.

[11] At first, the restaurants were run solely by the Suris and they were open seven days a week. Because Ms. Suri had to prepare food for both locations at night, she often worked more than ten hours a day. As the sole person responsible for all of the food preparation, Ms. Suri did everything from ordering and receiving

groceries, cutting, chopping, and deboning the meats, preparing the marinades and marinating the meats from scratch, and washing and sanitizing the kitchen, much of which was physically challenging work.

[12] In 2008, the Suris closed the Burnaby Restaurant but continued the Main Street Restaurant, adding seasonal outdoor food stalls and Halloween fireworks sales, both of which were popular with their customers and successfully contributed to their revenues. They had ambitious plans to expand the business and open a bigger restaurant, though construction issues curtailed those plans.

### **C. The Accidents and Injuries**

#### ***i. October 12, 2010 (the “first accident”)***

[13] In the first accident, Ms. Suri was the front seat passenger in a vehicle driven by Mr. Suri when it was struck on the rear left bumper by a vehicle driven by one of the defendants, Catherine Thomasen, as she merged into the lane in which the Suris were travelling.

[14] The Suris incurred damage to their vehicle of less than \$1,400. Ms. Thomasen sustained damage of approximately \$1,000 to her vehicle.

[15] In the days following the first accident, Ms. Suri had stiffness and soreness in her neck, upper shoulders and lower back, and had a headache on the right side. She attended her family physician, Dr. Gurdeep Parhar, two days after the first accident. His physical examination of Ms. Suri was consistent with those complaints.

#### ***i. November 3, 2010 (the “second accident”)***

[16] The second accident occurred just weeks after the first accident. Ms. Suri was the front seat passenger in a vehicle driven by her daughter, Kriti, when their vehicle was rear-ended by a vehicle driven by the defendant, Rufino Fiangkiao.

[17] The Suris incurred damage to their vehicle of approximately \$1,000. The Fiangkiao vehicle sustained damage of approximately \$550.

[18] Ms. Suri attended Dr. Parhar’s clinic the day after the second accident, complaining of immediate pain in her neck, shoulders, back, hips, and knees. The knee pain was the only new injury arising from the second accident. All those complaints were consistent with the physical findings of the attending physician. She also complained of increasing headaches that required daily Tylenol.

[19] Ms. Suri testified that in August 2013, her worst symptoms were ringing in the ears and headaches that affected her upper neck and shoulders. She complained specifically of pain in her right shoulder that radiated down to her fingers.

[20] She continued to report ongoing pain in those areas to the date of the third accident in August 2015, with varying severity. By January 2015, Dr. Parhar’s records indicate that she denied that her injuries were causing her any problems in her personal life, but reported that she continued to struggle with household chores and she had not returned to work due to her injuries.

[21] In addition to her physical injuries, for the period after the second accident, she reported issues with sleep and an irritable mood. By June 2011, she was feeling “quite depressed”, was scared to drive or be in a car, and had difficulty sleeping. Those issues continued to the date of the third accident in August 2015.

[22] During the period immediately after the second accident, she had been trying to do exercises at home and reported to Dr. Parhar that she had tried massage therapy and acupuncture. However, in January 2015, she reported that her pain had returned and even worsened since attending a session with her kinesiologist.

***iii. August 19, 2015 (the “third accident”)***

[23] At the time of the third accident, Ms. Suri was the right rear passenger in a vehicle driven by Kriti. Her other daughter Pooja, who was then pregnant, was also in the vehicle. They were stopped in a southbound lane when the defendant, Karanjot Heer, who was turning right to travel northbound, struck the driver’s side corner of the Suri vehicle.

[24] The Suri vehicle sustained damage of \$817.75. The defendant's vehicle sustained only a minor scratch to the left front corner.

[25] Ms. Suri's immediate symptoms after the third accident included panic, shock, and pain in her right shoulder and knees. She described the next morning after the third accident as being "back to square one", at which time, "everything", including her lower back, arm, right shoulder, and neck, was hurting. Emotionally, she described being "very scared" and "praying constantly".

[26] Over the next weeks and months, her physical health did not improve and her pain was exacerbated by sitting or moving too much. While she found some relief with massage therapy and medication, she continued to complain of pain, fatigue, sleep issues, concentration and memory difficulties, and ringing in her ears.

[27] Ms. Suri's physical injuries also had an impact on her mental health, including sadness, mood swings, and anxiety. She testified:

My injuries were just getting worse. And I thought I would be getting better when I started working, and I was hopeful that maybe slowly and slowly in coming years, you know, it will be a better health for me. But then there's another one and it brought me back to the same square one, but in a much worsened way. So it hit my mood. It hit my energy, my guilt, my depression and anxiety.

[28] At trial, she explained the guilt she was feeling this way:

[...] I was going to become a grandmother and I have to do so many things for my daughter and my grandchild. You know, taking care and everything. I wasn't able to do what I should have been done -- doing, you know.

[29] Ms. Suri's condition continued without improvement leading up to the fourth accident in March 2018. During that time, her worst symptoms were reported to be headaches, anxiety, depressed mood, low energy, and shoulder pain.

***iv. March 4, 2018 (the "fourth accident")***

[30] In the fourth accident, Ms. Suri was the front-seat passenger in a vehicle driven by her husband, Mr. Suri. The Suri vehicle was in the parking lot of their temple when it was struck by the defendant, Devendra Goel, as Mr. Goel was

reversing from his parking spot. The Suri vehicle sustained \$850 of damage. The Goel vehicle required no repairs.

[31] The fourth accident exacerbated the same physical injuries that continued to plague Ms. Suri. Her non-physical issues continued.

**v. June 24, 2018 (the “unlitigated accident”)**

[32] In addition to the four accidents that are the subject of this action, Ms. Suri was also involved in another accident while returning home from a park. Mr. Suri was driving when the tire blew and he struck the centre divider on the highway. Ms. Suri did not commence an action in respect of that accident.

[33] Ms. Suri testified that she was not injured in this accident. She does not appear to have reported this accident to Dr. Parhar nor is there any indication Ms. Suri sought any form of treatment for this accident.

[34] However, on a visit to Dr. Parhar in September 2018, three months after this unlitigated accident, she reported feeling “very depressed, helpless, dependent, and fatigued”. Her physical issues persisted, her worst symptoms being more severe headaches, right arm pain, foot pain, upper arm swelling, bilateral hand pain, and lower back pain.

**vi. Workplace accident – September 11, 2021 (the “September 2021 workplace accident”)**

[35] On September 11, 2021, Ms. Suri was injured at work. In that incident, she was transferring a large bag of rice from a push cart to the workstation when she lost her balance and fell on her buttocks. As a result, Ms. Suri suffered immediate pain in her upper and mid back, hips, and buttocks.

**D. Post-accident Home and Social Life**

[36] All of Ms. Suri, Mr. Suri, Pooja, Ujvval, and Ms. Arora gave evidence that Ms. Suri was not the same after the first accident in October 2010, which has continued after the third accident in August 2015. She is no longer able to balance a

busy life operating the restaurant, being a mother, taking care of her home, and enjoying the company of family and friends.

**3. Injuries**

**A. Physical Injuries**

***Medical Evidence***

***Dr. Gurdeep Parhar***

[37] Dr. Parhar has been Ms. Suri's family physician since 2007. He confirms that Ms. Suri had no relevant physical or psychological injuries prior to the first accident.

[38] Dr. Parhar saw and assessed Ms. Suri over the period from the date of the first accident in October 2010 to the date of trial. He prepared seven reports between February 27, 2012, and May 6, 2022. Over that period, Dr. Parhar made several diagnoses in respect of her injuries, all of which he opines resulted from the four subject motor vehicle accidents. Those diagnoses include the following physical injuries:

- a) Musculoligamentous (soft tissue) injuries to the cervical, thoracic, and lumbar spine and hips,
- b) Strain/sprain to both shoulders, wrists, and ankles,
- c) contusions to the elbows, hands, kneecaps, and feet,
- d) right shoulder traumatic tendonitis and aggravation of pre-existing degenerative arthritis,
- e) muscle tension headaches,
- f) jaw joint dysfunction, and
- g) tinnitus (ringing in the ears).

[39] Dr. Parhar distinguished those injuries from the contusions to the buttocks and the thoracic spine and the aggravation of soft tissue injuries of the thoracic spine attributable to the September 2021 workplace accident.

[40] Dr. Parhar opines that by May 2022, Ms. Suri had recovered from the injuries sustained in the September 2021 workplace accident as well as the pain in her right knee and jaw he attributes to the accidents. However, he was of the view that Ms. Suri continued to suffer from pain from her neck, lower back, right wrist, hand, and shoulder, as well as headaches, issues with sleep, and tinnitus.

[41] Dr. Parhar also opines that the injuries to the cervical, thoracic, and lumbar spine, the muscle tension headaches, and tinnitus have remained chronic and will continue for the “foreseeable future”. He was of the view that the balance of the injuries to the right wrist, right hand, and right shoulder would fluctuate in their pain severity over time.

[42] Given the nature of the injuries, he reported that Ms. Suri has been left more vulnerable and susceptible to future trauma and has been left with an increased risk of having intermittent exacerbations of the pain in those areas.

[43] His treatment recommendations include participation in a personal fitness program and various medications. For the most severe exacerbations, he recommends treatments such as massage therapy, physiotherapy, acupuncture, or chiropractic treatment.

***Dr. Aaron MacInnes***

[44] Dr. Aaron MacInnes is a pain management specialist who gave evidence on behalf of Ms. Suri. He saw Ms. Suri on three occasions and authored three reports dated February 10, 2016, October 24, 2018, and May 13, 2022.

[45] His diagnosis of physical injuries over the course of his three assessments was consistent and included mechanical spine pain, whiplash-associated disorder, cervicogenic headaches, and bilateral shoulder and knee pain, all of which he described as chronic. He also diagnosed consistent mood symptoms and sleep disorder. He opines that all of the physical and psychological injuries were caused by the first accident and exacerbated by the subsequent accidents.

[46] Dr. MacInnes was of the view that Ms. Suri will need to maintain regular physical activity and self-management of her “chronic pain symptoms”. He also recommended restorative yoga and ongoing physiotherapy and massage therapy, the latter two of which he said would not be curative, but would assist Ms. Suri with managing her chronic pain and allow her to tolerate and maintain her work schedule. When asked in direct examination about the meaning of Ms. Suri’s “chronic” pain, Dr. MacInnes testified that with persistent pain after three or four years, change is unlikely and, in his opinion, Ms. Suri’s pain will likely never completely resolve.

[47] His overall prognosis was as follows:

Ms. Suri will require ongoing self-management [of] upper chronic pain symptoms and in addition to that she will require a combination of active and passive treatment modalities to best assist her to manage her symptoms so she can maximize her function and quality of life. At this time, it is my opinion that Ms. Suri has achieved maximal medical improvement and I would not expect any significant improvement or change in her symptoms.

### ***Finding and Conclusions on Physical Injuries***

#### ***Diagnosis***

[48] Based on the uncontroverted medical evidence, I find that Ms. Suri suffered from the following physical injuries:

- a) soft tissue injuries to the cervical, thoracic, and lumbar spine and hips,
- b) strain/sprain to both shoulders, wrists, and ankles,
- c) contusions to the elbows, hands, kneecaps, and feet,
- d) right shoulder traumatic tendonitis and aggravation of pre-existing degenerative arthritis,
- e) muscle tension headaches,
- f) jaw joint dysfunction, and
- g) tinnitus (ringing in the ears).

[49] Of those, I find that the spinal injuries, headaches, and tinnitus are chronic and will continue for the “foreseeable future”. The injuries to the right wrist, hand, and shoulder will fluctuate in their pain severity over time.

[50] Ms. Suri is also more vulnerable and susceptible to future trauma and has an increased risk of having intermittent exacerbations of the pain in those areas.

### **Causation**

[51] Based on the uncontroverted medical evidence, I find that all of the above-noted physical injuries were caused by the accidents.

### **Mitigation**

[52] The defendants argue that notwithstanding any causal link, Ms. Suri's continuing physical injuries are due in part to her failure to mitigate, primarily by her failure to diligently follow the exercise routine or to engage in passive and active therapies recommended by Dr. Parhar.

[53] In *Chiu v. Chiu*, 2002 BCCA 618, the Court of Appeal confirmed at para. 57 that the onus is on a defendant to prove that a plaintiff could have avoided all or a portion of their loss. When a defendant alleges that a plaintiff has not pursued a recommended course of treatment, the following elements must be proved:

- a) that the plaintiff acted unreasonably in eschewing the recommended treatment; and
- b) the extent, if any, to which the plaintiff's damages would have been reduced had they undergone the recommended treatment.

[54] The first question is subjectively assessed; the second is assessed objectively: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 56.

[55] Dr. Parhar raised the issue of engaging in a fitness program and the benefits of passive treatment modalities in his February 2012 report. At the time, Ms. Suri was completing a fitness and personal training program with Mountainview Kinesiology, which she found helpful. Dr. Parhar encouraged her to complete the program, after which he recommended that she continue to participate in a personal fitness program to maintain her strength, range of motion, and flexibility. He also suggested that she may require more passive modalities of treatment such as

massage therapy to help with the anticipated worsening of the symptoms of her musculoligamentous injuries. Those treatment recommendations remained the same throughout the period in which the accidents occurred, amended only to add yoga and stretching.

[56] Notwithstanding that advice, after attending Mountainview Kinesiology, Ms. Suri has not participated in an active rehabilitation program, has attended a gym only “a few times”, and participated in a “few” water exercise classes, and then only when “motivated”. She concedes that she did not go enough, even though she found them to be helpful.

[57] Her engagement in passive therapies has been similarly limited. Despite the passage of 12 years since the first accident in October 2010 and the number of times the recommendations have been made, she has attended relatively few sessions of physiotherapy, chiropractic treatment, or massage therapy.

[58] It is easy to conclude that Ms. Suri has not been 100% compliant with Dr. Parhar’s recommendations regarding exercise and passive therapies. Her own recognition of the benefits of those treatments makes her failure to do so unreasonable, even on a subjective basis.

[59] However, to prove that Ms. Suri did not properly mitigate her damages, the defendants must also prove not only that she could have avoided all or a portion of her loss, but the extent, if any, to which that loss would have been reduced had she fully complied with the recommended treatment.

[60] In *Forghani-Esfahani v. Lester*, 2019 BCSC 332, Justice Verhoeven considered the *Chiu* requirements. Having concluded that the defendants had not established that the plaintiff acted unreasonably in eschewing the recommended treatment, he went on to consider the second requirement of the *Chiu* test:

[72] There is no medical opinion in evidence stating that any treatment the plaintiff declined to undergo would have had a real and substantial likelihood of improving the plaintiff’s condition, or the extent of the potential for improvement. . . .

[73] The most straightforward method of establishing the point would be through a medical legal opinion. Dr. Craig was not asked to provide such an opinion and did not do so.

[74] The mere fact that various recommendations have been made and not always completely followed is not sufficient [to satisfy the second step of the *Chiu* test].

[75] In cross-examination Dr. Waseem stated that physiotherapy and massage therapy could have improved her function, but was unable to say to what extent. In my view this evidence does not go far enough. It only establishes that recommended therapies could have helped. Standing alone this is fairly obvious, as otherwise they would not have been recommended in the first place.

[61] The defendants relied on *Latuszek v. Bel-Air Taxi (1992) Limited*, 2009 BCSC 798, *Maltese v. Pratap*, 2014 BCSC 18, *Salzmann (Guardian ad litem of) v. Bohmer*, 2009 BCSC 1586, *Penner v. Silk*, 2009 BCSC 1682, *Taylor v. Loney*, 2009 BCSC 742, and *Daleh v. Schroeder*, 2019 BCSC 1179, to support their position on mitigation. In all of those cases, there were express findings that the eschewed treatment would at least improve the plaintiff's symptoms.

[62] No such evidence exists in this case. Dr. Parhar's recommendation for a fitness program was to allow Ms. Suri to "maintain" strength, range of motion, and flexibility. Similarly, the medical experts agree that the recommended passive treatments are not curative but would only assist in managing her chronic pain. There is no evidence to suggest that either form of treatment is likely to improve Ms. Suri's physical condition to any degree. In fact, Dr. MacInnes does not expect "any significant improvement or change" at all.

[63] In my view, the evidence in this case does not support a finding that Ms. Suri has failed to mitigate her injuries by her failure to diligently engage in passive and active therapies recommended by Dr. Parhar.

**B. Psychological Injuries**

***Medical Evidence***

***Dr. Parhar***

[64] In addition to Ms. Suri's physical injuries, as early as his February 2012 report, Dr. Parhar recorded that Ms. Suri suffered anxiety and depressed mood as a result of the accidents. However, it was only in 2017, after the third accident in April 2015, that he prescribed anti-depressant medication to alleviate those symptoms.

[65] Given her ongoing problems with those issues, for the first time in his October 11, 2018 report, Dr. Parhar recommended counselling and that Ms. Suri continue taking anti-depressant/anti-anxiety medication.

***Dr. Paul Waraich***

[66] Dr. Waraich is a psychiatrist who gave evidence on behalf of Ms. Suri. He assessed Ms. Suri in January 2019, and then in April 2022 after all five motor vehicle accidents and the September 2021 workplace accident.

[67] Dr. Waraich's diagnosis of Ms. Suri's psychological injuries was consistent after both assessments. In his first report dated February 7, 2019, he diagnoses (a) post-traumatic stress disorder ("PTSD"), (b) somatic symptom disorder ("SSD") with predominant pain, and (c) major depressive disorder with anxious distress.

[68] In his second report dated May 16, 2022, Dr. Waraich added (a) generalized anxiety disorder, (b) social anxiety disorder, and (c) panic disorder. He also changed the depression diagnosis to a "persistent" depressive disorder to reflect the long-standing nature of the problem.

[69] Based on the temporal relationship between the accidents and her symptoms, as well as the "medical plausibility of such significant post-accidents mental health issues emerging in these types of accidents and associated health issues", it was his view that the subject motor vehicle accidents "played a causative or exacerbating role" for all of the diagnosed psychological conditions.

[70] In coming to that conclusion, Dr. Waraich considered the potential impact of non-accident related stressors on her condition, such as family and financial stressors. However, the timing, Ms. Suri's self-report, and his review of the clinical records allowed Dr. Waraich to conclude that the non-accident stressors were "not the predominant factor in her post-injury presentation".

[71] Dr. Waraich makes several treatment recommendations, including sessions with a registered psychologist with expertise in cognitive behavioural therapy, a psychiatrist and occupational therapist, and if necessary, a neurologist and/or neuropsychologist. He also recommends various medications, aerobic exercise and resistance training, and various self-help treatment options.

[72] Of those, he described psychotherapy and medication as the "pillars of treatment". He acknowledged Ms. Suri's focus on working and meditation as possible treatment options, though he conceded he would not recommend those.

[73] It is difficult for him to accurately determine the period of time into the future that Ms. Suri will continue to be impaired after optimal treatment has been initiated.

[74] On cross-examination, he noted that given the structural changes to the brain caused by psychological disorders, once those disorders have developed, there is a "high relapse rate" regardless of subsequent stressors. As a result, patients are unlikely to function at optimum levels and are likely to go off work repeatedly. Though she returned to work in March 2020, Dr. Waraich therefore suggested that there may have been a "bi-directional link" between Ms. Suri's mental health vulnerabilities and the September 2021 workplace accident.

[75] Given her risk factors, Dr. Waraich is of the general impression that Ms. Suri has a "below average mental health prognosis", and she is at "high risk of recurrence" or "worsening symptoms" if exposed to further stressors.

***Dr. Karl Torbicki***

[76] Dr. Karl Torbicki is a psychiatrist who gave evidence on behalf of the defendants. His March 5, 2021 report is based on his assessment of Ms. Suri on February 26, 2021.

[77] Dr. Torbicki diagnoses Ms. Suri with (a) persistent depressive disorder with intermittent major depressive episodes, (b) anxious distress, (c) PTSD, and (d) SSD. He also is of the view that it is “more likely than not” that the third accident in August 2015 caused the depressive and PTSD symptoms, and that the SSD symptoms would have been triggered by the motor vehicle collisions more generally.

[78] However, he is of the view that, as of the date of his assessment in February 2021, all of the psychological injuries are in remission.

[79] Consistent with his view of remission, he opines that no treatment is required except to prevent further psychological symptoms. Given his view of Ms. Suri’s “mild severity of depressive symptoms” and noting her “strong preference” to avoid medication, his preventative treatment recommendations are focussed on psychoeducation and psychotherapy interventions including cognitive behavioural therapy. However, he suggests a trial of medication could both address her chronic pain symptoms and could reduce the risk of relapse of the depressive symptoms.

[80] His favourable diagnosis and prognosis appear to be based in large part on her ability to return to work and continue in the work setting. He explained:

There is a significantly positive prognostic value to her return to work as it demonstrates she is able to achieve a higher level of functioning than the plateau she was felt to have reached at the time of her assessments in 2018 by Dr. Waraich and Dr. MacInnes. She was described as totally disabled and unable to work on her most recent CL19 ICBC and fortunately, has experienced significant progress since that time and shown a high degree of motivation for returning to work.

With her return to work, she has established a healthier sleep routine and structure to her daytime schedule. She has found meaning from her work looking after elderly residents of the care home, has had a social outlet with other Punjabi speaking women working in the care facility, and a positive relationship with her manager who she stated reminded her of her value and significance to the workplace. She has remarkably been able to thrive during the coronavirus pandemic. It is anticipated that with ongoing involvement in

this work role, she will continue to progress in her function recovery, her confidence and ability to take on new tasks and activities and her sense of self-confidence in being a provider for her family and having a sense of value within society.

### ***Findings and Conclusions on Psychological Injuries***

#### ***Diagnosis***

[81] It is undisputed that Ms. Suri suffered psychological injury as a result of the four subject motor vehicle accidents, specifically: (a) persistent depressive disorder (b) PTSD, and (c) SSD. Dr. Waraich adds to that diagnosis: (d) general and social anxiety and (e) panic disorder. Dr. Torbicki did not contradict or expressly confirm either of those additional diagnoses. Based on that largely consistent medical evidence, I accept that Ms. Suri suffers from all of those psychological disorders.

[82] The disputed issue between the medical experts is whether those conditions are in remission, as Dr. Torbicki opines, or continuing, as Dr. Waraich opines. For the reasons set out below, I prefer Dr. Waraich's opinion on this matter.

[83] First, as is their practice, both doctors based their opinions and diagnoses on three main sources of information: the screening tests used as a preliminary assessment for psychiatrist assessments, their interviews of Ms. Suri, and their review of the medical records.

[84] However, there are inadvertent errors in the way in which Dr. Torbicki calculated Ms. Suri's scores on the screening tests. For example, Dr. Torbicki miscalculated Ms. Suri's score on the PHQ-9, the screening tool for depression, finding that her score indicated "mild depression". Ms. Suri's score was in fact 15, which is indicative of "moderately severe" depression. A similar issue arose with Dr. Torbicki's calculation of the screening test for anxiety.

[85] In addition to those miscalculations, Dr. Torbicki did not calculate Ms. Suri's Sheehan Disability Scale score used to measure the extent to which a patient's disability interferes with their day-to-day living. Ms. Suri scored 21 on that test, which indicates some concern over daily functioning.

[86] Ms. Suri does not suggest that the issues with the screening tests are, by themselves, enough to discount Dr. Torbicki's conclusion. She concedes that even with the correct scoring, Dr. Torbicki may have come to the same conclusion regarding remission. However, it is more notable that Dr. Torbicki did not appear to attempt to reconcile his (incorrectly calculated) screening results with the other sources of information relied on, including the clinical interview of Ms. Suri.

[87] Ms. Suri disclosed to Dr. Torbicki, among other things, some areas of difficulty in her functioning, including disordered sleep and taking Naproxen nightly, and using her hands on her back often for pain control. She disclosed that she sometimes wants to decline visits from her grandchild, she has feelings of guilt over her inability to help around the house, she is not able to follow a TV show or movie, and she eats for energy, not enjoyment.

[88] Notwithstanding that report, not only did Dr. Torbicki conclude that Ms. Suri's psychological conditions were in remission, he opines that Ms. Suri has "thrived" during the pandemic. Additionally, though Dr. Torbicki records in his notes that Ms. Suri "felt back to her normal self", Ms. Suri had told him only that she was "better" in November 2020. On cross-examination, Dr. Torbicki admitted that he had not clarified Ms. Suri's use of the word "better" and agreed that it might only mean improved but not resolved.

[89] While she had improvement leading up to and after her return to work in March 2020, as set out above, Ms. Suri continued to struggle in different ways at work, at home, and socially. In my view, Dr. Torbicki's optimistic diagnosis is not justified. The disclosures from Ms. Suri and the appropriately calculated screening test scores also do not support the conclusion that Ms. Suri was in remission.

[90] Though Ms. Suri's psychological health benefitted from her return to work in March 2020, I do not accept, as Dr. Torbicki suggests, that Ms. Suri's ability to work indicates a recovery or suggests an ability to continue to work in the future. Her quality of life was, and remains, very limited.

[91] Furthermore, Dr. Torbicki's prognosis does not address the uncontested evidence of Dr. Waraich that:

- a) the structural changes to the brain caused by psychological disorders results in a "high relapse rate" for further occurrences; and
- b) the "bi-directional link" between mental health vulnerabilities and physical injuries also creates an increased risk for physical injuries.

[92] I accept that both of those propositions could account for the 2021 workplace accident. I also accept Dr. Waraich's prognosis. While not wholly dire, he suggests that Ms. Suri may never fully recover from the psychological injuries and will remain at a high risk of recurrence or worsening in the event of further stressors.

### **Causation**

[93] The primary test for causation asks: but for the defendant's negligence, would the plaintiff have suffered the injury? The "but for" test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the defendant's conduct is present: *Resurface Corp. v. Hanke*, 2007 SCC 7 at paras. 21–23.

[94] To establish causation, a plaintiff must establish on a balance of probabilities that the defendant's negligence caused or materially contributed to her injury. The defendant's negligence need not be the sole cause of the injury, so long as it is part of the cause beyond the *de minimis* range: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13–17, 1996 CanLII 183 (S.C.C.); *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.

[95] The defendants do not accept that all of the psychological injuries sustained by Ms. Suri were caused by the accidents and say they do not meet the "but for" test. They point to other stressors that they say caused or, at least contributed, to her ongoing psychological symptoms. They say those stressors include: the fact that her pregnant daughter was involved in the third accident; her grandson's significant health issues following that accident; the family's financial problems from 2015 to 2019; an eviction from their home in 2019; and issues with Mr. Suri's health.

[96] Notably, all three experts were aware of the stressors in Ms. Suri's life. None opined that any of those stressors caused her ongoing psychological symptoms.

[97] In fact, in his assessment of causation, Dr. Waraich expressly summarizes and considers those other stressors, including those referred to by the defendants. This summary comprised almost two full pages of his report. Having reviewed those stressors, he opined:

Despite these stressors, / events, it is my opinion that these are not the predominant factors in her post-injury presentations based on the timing, her self-report and my review of her clinical records.

[98] That is the only medical evidence before the Court regarding the impact of the non-accident related stressors on the development of or continuation of symptoms. With no evidence to the contrary, I accept Dr. Waraich's opinion that the psychological conditions diagnosed by both him and Dr. Torbicki were caused by the motor vehicle accidents at-issue.

### ***Mitigation***

[99] As with the physical injuries, the defendants submit that, notwithstanding any causal link with the accidents, Ms. Suri's continuing psychological injuries are due to her failure to mitigate. In particular, they argue that her failure to take medication and access counselling contributed to those continuing psychological injuries.

[100] Ms. Suri does not deny that, except for a period in 2018, she did not take the anti-depressant medication that Dr. Parhar first prescribed to her in 2017, nor does she deny that she did not attend counselling. However, as previously noted, the first requirement of the *Chiu* test must be assessed on a subjective/objective standard. In my view, the subjective information Ms. Suri had in the circumstances of this case does not support a conclusion that her failure to take the prescribed medication or attend counselling was unreasonable.

[101] Ms. Suri, describing herself as an "old school" person from India, explained that her reluctance to engage in counselling stemmed, at least in part, from her

cultural norms in which counselling is seen as being “taboo”. For that same reason, she tends to keep issues relating to her depression to herself.

[102] Ms. Suri explained that taking anti-depressant medication made her sleepy and her mind “blank”. By 2019, she felt the medication was not working and she understood it would only provide temporary relief even if it did. She also expressed concerns over dependence.

[103] Dr. Parhar recognized and accepted Ms. Suri’s reluctance to engage in counselling or to continue with the anti-depressants. Dr. Parhar notes that it is correct that medication comes with side effects and, in the circumstances, trying to force Ms. Suri to take such medication may actually worsen the problem. He did not push her to continue with either treatment.

[104] The SSD diagnosis also resulted in an excessive focus on her physical symptoms, likely causing Ms. Suri to fail to recognize the impact of her psychological symptoms. As Dr. Waraich noted, patients with SSD typically want their pain fixed. I accept that the SSD would have made it difficult for Ms. Suri to focus her attention on her psychological symptoms and their resolution.

[105] Given the circumstances of this case, including Ms. Suri’s cultural views regarding counselling and her concerns about medication, the fact that Dr. Parhar did not push the treatment recommendations on her, and the likely impact of SSD, I cannot conclude that Ms. Suri acted unreasonably in failing to engage in the treatments recommended to her.

[106] Furthermore, this is not a case in which Ms. Suri failed to address her symptoms at all. Rather, she sought relief through meditation and yoga, and when she was able, through her return to work in March 2020, all of which did provide her with some relief. Notably, while maintaining that counselling and medication should be the first line of treatment, both Dr. Waraich and Dr. Torbicki appear to agree that it was not unreasonable for her to pursue those forms of treatment. Dr. Parhar also felt that Ms. Suri had done her best to take care of herself and that she had gone outside her comfort zone by trying medication.

[107] In light of the above, I am not satisfied that Ms. Suri's failure to follow Dr. Parhar's recommendations was unreasonable. No reduction in damages is warranted.

#### 4. Damages

##### A. Non-Pecuniary Damages

###### *Legal Framework*

[108] As outlined by Madam Justice Kirkpatrick in *Stapley v. Hejslet*, 2006 BCCA 34, leave to appeal ref'd [2006] S.C.C.A. No. 100, at paras. 45–46, in assessing non-pecuniary damages, courts must consider the effect of the injuries on the plaintiff's particular circumstances, using factors such as the plaintiff's age, the nature of the injury, the severity and duration of the plaintiff's pain, the extent of any disability, the effect on family and social relationships, impairment of the plaintiff's mental and physical abilities, and the impact on the plaintiff's lifestyle.

###### *Analysis*

[109] It is not disputed that the injuries arising from the four subject accidents are indivisible. I will therefore assess non-pecuniary damages on a global basis.

[110] In this case, I have found that Ms. Suri has suffered from the psychological and physical injuries described above, including PTSD, anxiety, and depression, as well as the physical injuries of neck pain, lower back pain, right wrist, hand, and shoulder pain, headaches, issues with sleep, and tinnitus. All of the injuries have continued since the first accident and are unlikely to be resolved in the future.

[111] Fortunately, Ms. Suri has found some reprieve from the psychological conditions through her return to work, which provides social connection and meaning. Her prognosis is not completely dire if an optimal treatment plan is eventually initiated. However, given the fluctuating nature of both her physical and psychological injuries, her ability to continue to work is not certain. This uncertainty has an impact on the assessment of both non-pecuniary and pecuniary damages. I will discuss the latter below.

[112] Additionally, Ms. Suri described running her own business as a lifelong “dream” and “passion” that contributed to her self-worth. The injuries sustained in the accidents factored into the end of that dream.

[113] I accept that Ms. Suri has been deprived of her enjoyment of life, including her ability to enjoy more active time with her grandson. Her overall level of functioning is diminished to the point where she no longer attends temple and is reluctant to see her friends. She is tired, lacks motivation, is depressed and anxious, and experiences chronic pain. All of the above is in stark contrast to her life before the first accident.

[114] For the most part, the cases referred to by both counsel to guide the assessment of non-pecuniary damages involve plaintiffs who have suffered from chronic pain and psychological conditions, including depression, but with varying degrees of possible recovery and impact on the ability to work.

[115] Ms. Suri refers to numerous decisions with similar injuries in which the court awarded non-pecuniary damages ranging from \$177,000 to \$216,000, adjusted to today’s dollars for inflation. However, of those cases, several involved plaintiffs who were not able to work (*Sebaa v. Ricci*, 2015 BCSC 1492, *Marois v. Pelech*, 2007 BCSC 1969, and *Cantin v. Petersen*, 2012 BCSC 549) or “had little hope for the future” (*Pololos v. Cinnamon-Lopez*, 2016 BCSC 81), neither of which reflect Ms. Suri’s case.

[116] The defendants rely on *Khakh v. Josol*, 2020 BCSC 286, *Cumming v. Tellier*, 2019 BCSC 2067, *Leung v. Draper*, 2020 BCSC 219, *Baltadjian v. Schaeffer*, 2021 BCSC 752, and *Liu v. Bains*, 2015 BCSC 486, rev’d in part 2016 BCCA 374 (only on the housekeeping awards). Those cases also involve plaintiffs with chronic pain and some psychological symptoms. However, with the exception of the decision in *Leung*, the extent of the psychological issues in those cases are generally less than

those suffered by Ms. Suri. Non-pecuniary damages in those cases range from \$89,000 to \$111,000, adjusted for inflation<sup>1</sup>.

[117] Of those cases, the defendants highlight, in particular, the decision in *Liu*, which they say directly mirrors the circumstances in this case. In that case, the pain that Ms. Liu suffered was continuous and severe enough to prevent her from being able to return to even part-time employment. However, there was no evidence to establish that Ms. Liu had suffered any psychological symptoms such as depression. She was awarded \$90,000 in general damages in 2015, or approximately \$111,000 in today's dollars.

[118] In my view, while instructive, none of the cases relied on by either party directly mirrors Ms. Suri's circumstances. Indeed, it would be a rare occurrence in which it would. As is more often the case, in my view, the range of damages suggested by the plaintiff is too high, and the range of damages suggested by the defendants is too low. I assess non-pecuniary damages at \$150,000.

## **B. Past Income Loss**

### ***Legal Framework***

[119] Compensation for past loss of income is determined based on what the plaintiff would have, not could have, earned but for the injury that was sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.

[120] The plaintiff must show a real and substantial possibility of loss. This means that the loss must be shown to be realistic, having regard to what the plaintiff's circumstances would have been, absent the injury: *Gao v. Dietrich*, 2018 BCCA 372 at para. 36.

[121] The burden of proof of actual past events is on a balance of probabilities. However, an assessment of loss of both past income and future earning capacity involves consideration of hypothetical events. The plaintiff is not required to prove

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<sup>1</sup> <https://www.bankofcanada.ca/rates/related/inflation-calculator/>

these hypothetical events on a balance of probabilities. They will be taken into consideration as long as it is a real and substantial possibility and not mere speculation: *Athey* at para. 27; *Grewal v. Naumann*, 2017 BCCA 158 at para. 48.

[122] Pursuant to s. 98 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, a plaintiff is entitled to recover damages only for their past net income loss, less income taxes: *Lines v. Gordon*, 2009 BCCA 106 at paras. 186–187.

### ***Analysis***

[123] As set out above, at the time of the first accident, Ms. Suri was a businessperson who derived her income from her business operations. That changed over the period from the date of the first accident to trial. She has since been employed in various capacities earning varying incomes. The circumstances of Ms. Suri's return to the workforce after the accidents are further complicated by the number of accidents, each of which required varying degrees of recovery. All of these factors make it difficult to assess Ms. Suri's past income loss. However, it does not preclude her from being awarded compensation for any loss she may have incurred.

[124] Given the complexity of her claim, as an option for assessing past income loss, Ms. Suri suggests comparing her actual earnings to those of a professional chef, a position she submits is likely the best proxy for the work she performed and, thus, the best proxy of her economic value.

[125] While I do not reject the methodology as a means for assessing income loss generally, in my view, it is not suitable in the circumstances of this case.

[126] In my view, assessing Ms. Suri's past income loss on the earning of an employed "professional chef", a position that was not well-defined and that she was not trained for, is too speculative to be "realistic": *Gao* at para. 36. To establish a realistic assessment of loss, it is more appropriate to consider the specific changing circumstances of Ms. Suri's employment in the period from the date of the first

accident in October 2010 to the date of trial. I have broken down this assessment as follows:

- a) October 2010 to March 2014, being the period between the first accident and the date that Ms. Suri's business closed, which includes the second accident;
- b) March 2014 to March 2015, the period between the business closure and the start of Ms. Suri's employment at St. Michael's;
- c) March 2015 to August 2015, the period between Ms. Suri's employment at St. Michael's and the third accident;
- d) August 2015 to March 2020, the period between the third accident and the start of Ms. Suri's employment at New Vista; and
- e) March 2020 to the date of trial, the period between Ms. Suri's employment at New Vista and the date of trial.

***i. October 2010 (first accident) to March 2014 (business closure)***

***Background Facts and Evidence***

[127] In the six years before the first accident, the Suris operated their food businesses. Although they had to close the Burnaby Restaurant in 2008, they continued to dedicate themselves to expanding their business, adding seasonal outdoor food stalls and Halloween firework sales at the Main Street Restaurant, both of which were popular with their customers. In 2010, the Suris planned to open a bigger restaurant, but ran into construction issues that curtailed those plans.

[128] After the first and second accidents, the Suris stopped operating the food stalls and selling fireworks. However, Ms. Suri continued her work at Tandoori Delights.

[129] In the spring of 2012, the Suris opened a second restaurant, Suri's Flavours, in downtown Vancouver. Suri's Flavours was operated by Deepak Suri Ltd., a company owned by Mr. Suri. Mr. Suri operated Suri's Flavours and continued to assist Ms. Suri at the Main Street Restaurant. They also hired two different employees to help Ms. Suri in 2012 and 2013, both of whom quit within a relatively short period of time.

[130] The Suris permanently closed the Main Street Restaurant in August 2013. In 2014, Suri's Flavors closed as well. The Suris then attempted to sell marinades made by Ms. Suri on a wholesale basis, but they eventually abandoned those plans.

***Calculation of losses***

[131] From October 2010 to March 2014, Ms. Suri's personal income rose from \$9,557 in 2010 to \$10,780 in 2014. In that same period, Tandoori Delights Food Inc.'s retained earnings decreased from negative \$8,685 in 2010 to negative \$106,794 in 2014.

[132] The defendants argue that by either metric, i.e., Ms. Suri's increase in personal income or the negative retained earnings in Tandoori Delights, Ms. Suri did not suffer any loss in earnings.

[133] Ms. Suri argues that neither metric accurately reflects her losses over that period. She argues that because Tandoor Delights was a closely-held operating company, the assessment of her loss is more accurately determined by the full losses of the company.

[134] Although she only owns 50% of Tandoori Delights, a plaintiff who is the shareholder of half a family company is still entitled to the whole of the business losses that result from the injuries sustained, because the money all goes into the family "pot": *Hart v. Hansma*, 2014 BCSC 518 at para. 88.

[135] In this case, Ms. Suri made integral contributions to the family business. Her food preparation and marinade creations were the very core of the venture, and her social and outgoing nature helped sustain and grow the business. I accept Ms. Suri's submission that her losses are properly assessed on the basis of the losses incurred by Tandoori Delights Food Inc.

[136] In my view, the fact that Tandoori Delights was losing money before the first accident does not negate the effect of the larger losses after that accident. The larger losses meant that the Suris went from being able to withdraw modest

management fees and benefit from some tax advantages of self-employment, to having to inject large amounts of capital into their business.

[137] In this case, from 2005 to 2010, Tandoori Delights operated at a loss of an average of \$1,079 per year, including modest management fees and business expenses. From 2012 to 2015, its annual losses averaged \$23,456, which is \$22,377 more than the losses prior to the first accident, again including management fees and expenses.

[138] From the first accident to the date the businesses ceased operating in March 2014 is a period of three years and five months. Based on the increase in the average annual loss after the first accident, the total loss to March 2014 is \$76,082 (\$22,377 per year x 3.4 years). In my view, that amount is the proper starting point from which to assess Ms. Suri's potential loss for this period. However, it is only a starting point. To be compensable, those losses must be caused by the accidents.

***Are the losses attributable to the accidents?***

[139] Given her injuries, Ms. Suri had to close the restaurant for five to six days after each of the first and second accidents in October and November 2010. Although she kept working, she had trouble with many of the aspects of the jobs and reduced the hours she worked in the months and years after those accidents.

[140] Dr. Parhar agrees that the injuries contributed to Ms. Suri's inability to continue doing the work and working the hours that she did. In January 2013, he was of the opinion that Ms. Suri was unlikely to resume full-time work and full duties, due to the difficulties she would have with some of the physical demands of cooking as a result of her injuries. Given her condition, Dr. Parhar recommended that, if it was her intention to work full-time, Ms. Suri explore alternative career choices.

[141] I accept that the accident-related injuries affected her ability to continue to operate the Main Street Restaurant. Given her significant contributions to the business, I also accept that her injuries from the accident factored in the demise of the Main Street Restaurant in particular.

[142] However, I do not accept that the accident-related injuries were the sole cause of their losses or the demise of the business. Other factors indicate that the Suris may have lost money and would have had to close the business down regardless of Ms. Suri's injuries. Indeed, the fact that they had to close the Burnaby Restaurant before the accidents occurred is a clear indication of that reality.

[143] Other factors, such as high rent after initially moving locations, having no adequately trained staff to cover either restaurant when they were away for long periods, and choosing not to pursue expansion plans when they encountered construction issues with the Main Street location lead to the same conclusion.

[144] I do not discount the tremendous effort and passion that the Suris put into the operation of their businesses, including Tandoori Delights. I also accept that Ms. Suri's inability to contribute to the business to the same extent that she was able to prior to the accidents was a factor in their losses. However, based on the above and what I accept are the realities of the restaurant market, I am unable to conclude that the losses that Tandoori Delights incurred and its eventual demise in the years after the first and second accidents were solely due to Ms. Suri's injuries.

[145] In the circumstances, based on the losses incurred by Tandoori Delights, I assess Ms. Suri's gross income loss for the period prior to the close of the Suris' businesses at \$25,000.

***ii. March 2014 (business closure) to March 2015 (job commenced at St. Michael's)***

[146] By the latter half of 2014, Ms. Suri felt well enough to look for employment and applied to several different care homes close to her home, including as a full-time head chef at St. Michael's Care Centre. She did not look for other jobs after applying for that position in July 2014. She obtained employment at St. Michael's in March 2015, almost one year after Suri's Flavours closed.

[147] I accept that the period of no employment after March 2014 was due to the injuries sustained in the accidents. I also accept that, but for the injuries, she could have applied for jobs earlier than she did after her business closed, and could have

potentially obtained employment sooner than she did, either at St. Michael's or elsewhere. On that basis, she is entitled to an award for past income loss for the one year after Tandoori Delights Food Inc. closed to the date she obtained employment in March 2015.

[148] In 2014 to 2015, a full-time position at St. Michael's paid approximately \$38,000. However, two significant issues dictate that it is unlikely that Ms. Suri would have earned that amount in this period.

[149] First, it took Ms. Suri eight months to obtain employment after she started looking in July 2014. Second, the job she did get was as a casual food service worker/dietary aide and she earned an average of approximately \$1,350 per month. There is no reason to conclude that she would have found higher-paying employment sooner, even without her injuries.

[150] Had she started looking in March 2014, she may have found employment by November 2014, four months sooner than she did. At \$1,350 a month, Ms. Suri's gross lost income for this period was therefore \$5,400.

***iii. March 2015 (job commenced at St. Michael's) to August 2015 (third accident)***

[151] Ms. Suri worked at St. Michael's from March 2015 until the date of the third accident in August 2015.

[152] The work at St. Michael's was much lighter than operating Tandoori Delights, but longer shifts were challenging and Ms. Suri would take medication afterwards to manage her symptoms. Both she and Mr. Suri testified that after work, Ms. Suri had little energy left for chores at home or attending temple and engaging in her social life. Given her demonstrated work ethic and the family's financial situation, I am satisfied that Ms. Suri would have taken as many shifts as she was able to increase her income. However, given that her position was casual, there is no evidence that more work was available. I cannot conclude that Ms. Suri suffered any income loss for this period.

*iv. August 2015 (third accident) to March 2020 (employment at New Vista)*

[153] After the third accident, Ms. Suri was off-work until March 23, 2020, when she started work at New Vista. The defendants concede that a portion of that period is compensable as past income loss. However, they argue that at least a portion of that period of no employment was due to her conduct in failing to keep in contact with St. Michaels about making a gradual return to work. St. Michaels then concluded that she had abandoned her position. The defendants argue that the fact that she was able to start work in March 2020 on a full-time basis is some indication that she may have been able to start back at work, even part-time, before then. The medical evidence suggests otherwise.

[154] Based on their assessments of her physical and psychological assessments, both Dr. Parhar and Dr. Waraich were surprised that she was able to return to work in March 2020. As noted, even then, this work impacted her quality of life. For the same reason that I discounted Dr. Torbicki's view that Ms. Suri's psychological condition was in remission, I also reject the argument that Ms. Suri was able to return to full-time work before March 2020. I am satisfied that the sole reason Ms. Suri sought out employment in 2020 was the family's dire financial situation at the time, and she did so despite her injuries.

[155] I am satisfied that Ms. Suri should be compensated for her inability to work between the third accident in August 2015 and March 2020. The issue to be determined is the quantum of that loss.

[156] As a starting point, had it not been for the third accident in August 2015, Ms. Suri would have, at a minimum, continued at St. Michael's on a casual basis. However, as she gained seniority, she may have increased her hours of work. Alternatively, she may have been able to obtain other employment to more closely approximate full-time hours. Given her demonstrated work ethic, I am satisfied that either represents a real and substantial possibility.

[157] Based on the collective agreement for St. Michael's employees, had Ms. Suri been employed on a full-time basis, she would have earned the following annual incomes for the period August 2015 to March 2020:

<b>Year</b>	<b>Potential full-time income</b>
2015 (August to December)	\$13,500
2016	\$38,300
2017	\$39,000
2018	\$40,000
2019	\$40,700
2020 (January – March 23)	<u>\$10,775</u>
<b>TOTAL:</b>	<b>\$182,275</b>

[158] However, the conclusion that Ms. Suri would have tried to achieve the equivalent of full-time hours does not mean she would have been able to do so. That depends on several factors including whether she could have found another casual position at another facility, or if the logistics of working in more than one place would have been possible. Additionally, it is unclear how quickly she could have gained seniority at St. Michaels to increase her hours there. Given those potential contingencies, in my view, it is appropriate to apply a downward adjustment.

[159] Applying a 40% discount to the possible full-time income results in a gross loss of \$109,365, rounded to \$110,000 for this period.

**v. March 2020 (employment at New Vista) to trial**

[160] On March 23, 2020, Ms. Suri obtained employment at New Vista Society, a long-term care home for older adults, as a casual food service worker. Although casual, during this period, Ms. Suri was able to work close to full-time hours, earning:

- a) \$29,453 for the period March 23, 2020 to December 31, 2020 of a possible full-time income of \$32,325; and

- b) \$31,355 for the period January 1, 2021 to September 2021 (the date of the workplace accident) of a possible full-time income of \$31,182.

[161] No past income loss is awarded for that period.

[162] She was off-work from the September 2021 workplace accident until January 18, 2022, when she started a graduated return to work program. After an interruption due to contracting COVID-19, on April 17, 2022, she started a permanent position at New Vista as a relief cook for the Korean residents (a position she referred to as the “Korean cook”), working two days a week.

[163] Ms. Suri concedes that her time off-work after September 2021 and up to April 17, 2022 is attributable to the workplace accident. She makes no claim for past income loss for that period. None is awarded.

[164] However, she argues that had it not been for the workplace accident, she would have returned to work on a full-time basis in April 2022. She claims past income loss for her inability to work full-time for the period of April 2022 to the date of trial.

[165] Again, referring to the fact that she was previously able to work on a full-time basis, the defendants argue that Ms. Suri is able to work more than two days per week. They argue that no income loss should be awarded for this period.

[166] For the reasons set out above, I do not accept the defendants’ position. Again, in my view, the fact that she has worked full-time or more than the two days that her position required is not indicative of her ability to do so. There is also no evidence that full-time hours would have been available to her.

[167] Had she been working full-time from April 2022 to the date of trial in August 2022, she would have earned \$14,004 rather than the \$9,568 she did earn. The difference is \$4,500 (rounded). Applying a 40% discount to account for the fact that there is no evidence that full-time hours would have been available results in a gross past income loss of \$2,700 for this period.

**vi. Summary of gross past income loss**

[168] I find that Ms. Suri has suffered a total gross past income loss of \$143,100 (\$25,000 + \$5,400 + \$110,000 + \$2,700), rounded to \$145,000.

[169] Counsel has advised that they will calculate the effect of tax to ensure that the award is made on a net basis as required by s. 98 of the *Insurance (Vehicle) Act*. I leave it to them to do so. If they are unable to agree on that calculation, they have leave to address the matter before me at a later date.

**C. Future Loss of Income-Earning Capacity**

[170] It has long been established that to prove entitlement for a loss of earning capacity, a plaintiff must demonstrate both (a) an impairment to their earning capacity, and (b) that there is a “real and substantial possibility”, and not “mere speculation”, that the diminishment in earning capacity will result in a pecuniary loss: *Perren v. Lalari*, 2010 BCCA 140 at paras. 11, 31–32.

[171] In the trilogy of *Dornan v. Silva*, 2021 BCCA 228, *Rab v. Prescott*, 2021 BCCA 345, and *Lo v. Vos*, 2021 BCCA 421, the Court of Appeal clarified the approach to assessing claims for loss of future earning capacity by setting out a three-step analysis. In *Rattan v. Li*, 2022 BCSC 648 at para. 148, Justice Horsman, then of this Court, summarized that analysis as follows:

- (1) Does the evidence disclose a potential future event that could give rise to a loss of capacity?;
- (2) Is there a real and substantial possibility that the future event in question will cause a pecuniary loss to the plaintiff?; and,
- (3) What is the value of that possible future loss, having regard to the relative likelihood of the possibility occurring?

[172] As the final step of the analysis, the court must consider whether the award of damages is “reasonable and fair”: *Lo* at para. 117.

### **Analysis**

#### **Step 1: Is there any potential future event that can lead to a further loss of capacity?**

[173] As the Court of Appeal noted in *Rab*, this question is an evidentiary one: does the evidence disclose a potential future event that could lead to a loss of capacity? The Court cites chronic injury as an example of evidence that can satisfy this step of the analysis: *Rab* at para. 47.

[174] As detailed above, I am satisfied that Ms. Suri's capacity to work has been impacted by her injuries. The physical injuries are chronic and will continue to affect Ms. Suri to varying degrees in the future. As set out above, I also accept that while the prognosis is not definitively negative, it is unlikely that Ms. Suri will function at optimal levels and likely that she will repeatedly be off work.

[175] In my view, Ms. Suri's chronic physical injuries, as well as the high relapse rate for the psychological injuries, satisfy the first step in the analysis.

#### **Step 2: Is there a real and substantial possibility that the future event in question will cause a pecuniary loss to the plaintiff?**

[176] Although currently only scheduled to work two days per week, Ms. Suri worked in a full-time, or near full-time, capacity in 2020, and has done so as recently as the period leading up to trial. On that basis, the defendants argue that there is no possibility that she will suffer any pecuniary loss in the future. However, as set out above, this ignores the negative effect working has had on her quality of life.

[177] In *Fox v. Danis*, 2005 BSCS 102, the Court considered the future wage loss claim of a plaintiff in similar circumstances. The plaintiff in that case suffered from periodic and chronic pain which, in turn, resulted in the plaintiff chronic tiredness and exhaustion as the day and week went on. At paras. 97 to 99, the Court stated:

[97] In her evidence Dr. Stewart opined that, because of her injuries, the Plaintiff had lost the capacity to work full time. She does not, and will not, in the future have the energy or the stamina to sustain full time employment.

[98] The fact that the Plaintiff has worked full time since the accident is not inconsistent with Dr. Stewart's opinion. To the contrary, the evidence supports it. The Plaintiff uses all of her energy to work. She has nothing left at

the end of the day to put towards any other activity. The fact that the Plaintiff is noticeably exhausted supports Dr. Stewart's conclusion that if she does not reduce her work load, she will soon burn out and not be able to work at all.

[99] It is on the basis of all of this evidence that I have concluded that because of her injuries the Plaintiff has sustained a significant loss in her capacity to earn income.

[178] Like Ms. Fox, when working full-time, Ms. Suri, too has little energy to partake in activities other than work. In fact, that is also case when working the two days a week that she does.

[179] Ms. Suri's chronic physical symptoms lead to the same conclusion. In *Morlan v. Barrett*, 2012 BCCA 66, the Court of Appeal considered the impact of chronic pain on a plaintiff's ability to work:

[41] Accepting that, to use the expression used at trial and at the hearing of this appeal, Ms. Morlan's condition had "plateaued", the fact remains that she would forever suffer from debilitating chronic pain along with headaches, symptoms that could be reduced, but not eliminated, by medication. In other words, throughout each and every day of her life, Ms. Morlan would have to cope with some level of discomfort. In my view, it was open to the trial judge to find—essentially as a matter of common sense—that constant and continuous pain takes its toll and that, over time, such pain will have a detrimental effect on a person's ability to work, regardless of what accommodations an employer is prepared to make. [...]

[180] Similar to both *Fox* and *Morlan*, in the present case, Dr. MacInnes opines that complete resolution of Ms. Suri's chronic pain symptoms is not possible and that she has achieved maximal medical improvement of those symptoms. Dr. MacInnes is of the opinion that working some days a week will "likely be sustainable", but that she would likely not be able to sustain a more intense schedule, "and it would likely cause an exacerbation of her chronic pain and associated symptoms".

[181] In my view, it stands as a matter of common sense that Ms. Suri's injuries, which have not resolved in the 12 years since the first accident, may take a toll on her and have a detrimental effect on her ability to work, on a full-time basis or otherwise, in the future. On the basis of the medical opinions, I am satisfied that there is a real and substantial possibility that Ms. Suri's chronic pain and the high

relapse rate for the psychological injuries will preclude her from working in a full-time capacity, thereby causing a pecuniary loss.

**Step 3: What is the value of the possible future loss, including the relative likelihood of the pecuniary loss occurring?**

[182] There are two possible approaches to assessing future losses: the “earnings approach” as described in *Pallos v. Insurance Co. of British Columbia* (1995), 100 B.C.L.R. (2d) 260, 1995 CanLII 2871 (C.A.) and the “capital asset approach” as described in *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.).

[183] The earnings approach will generally be more useful when the loss is easily measurable, such as where the plaintiff has some earnings history or where the court can otherwise reasonably estimate the plaintiff’s future earning capacity: *Perren* at para. 32. By contrast, where the loss is not measurable in a pecuniary way, the “capital asset” approach is more appropriate: *Perren* at para. 32.

[184] Ms. Suri is currently employed by and has known and possible earnings with New Vista, which makes it is appropriate to use the earnings approach.

[185] In *Kim v. Baldonero*, 2022 BCSC 167 at para. 87, Horsman J. set out the central task of the court in assessing future loss as follows:

While the award [for future loss] is an assessment of damages, not a calculation, the award nevertheless involves a comparison between the likely future earnings of the plaintiff if the accident had not happened and the plaintiff’s likely future earnings after the accident has happened. Accordingly, the central task for the court is to compare the plaintiff’s likely future working life with and without the accident: [*Dorman* at paras. 156–157].

***Likely without-accident earnings***

[186] I start this analysis with an assessment of Ms. Suri’s likely without-accident earnings.

[187] Ms. Suri is currently working as a relief Korean cook at New Vista at an hourly wage of \$30.95, which includes her base rate and permanent employee benefits.

[188] It will likely be another five years before she has the seniority to be eligible to be a full-time Korean cook. However, that would not necessarily have been the case if not for the third accident in August 2015. Without that accident, I find that Ms. Suri could have been working at the care facility as early as 2015 and thus would have the seniority to be working full-time now. For the purposes of this analysis, I accept that but for the accidents, Ms. Suri would likely currently be a full-time Korean cook.

[189] The next question is how long would she have worked in this position. Ms. Suri argues that had it not been for the accidents, she would have worked until at least 70 years of age. Several factors support that assertion, including Ms. Suri's history of working hard to support her family, despite her injuries. Furthermore, without any significant retirement savings, it would likely have been imperative that she continue to work beyond 65. Finally, she enjoys and derives meaning from her work at New Vista, increasing the likelihood of working past 65.

[190] All of these factors support the conclusion that there is a real and substantial possibility that Ms. Suri would have continued to work until 70 years of age. However, Jun Asuan, the director of human resource worker at New Vista, testified that the cooks at New Vista typically do not work beyond age 60. Indeed, Ms. Suri concedes that it would have been challenging to work as a full-time chef beyond 65 given the physical demands and long periods of standing required for kitchen work. She suggests however that after 65, she could have continued to work in a less challenging position. The evidence therefore supports the conclusion that, even if she works to 70, it will not be as a full-time Korean cook for the entire time.

[191] In the circumstances, I find that had it not been for the accidents, there is a real and substantial possibility that Ms. Suri would have worked as:

- a) a full-time Korean cook at New Vista (or equivalent) until age 60, earning annual income of \$60,352.50 (\$30.95 x 7.5 hours x 5 days x 52 weeks), the present value of which is \$255,351<sup>2</sup>; and

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<sup>2</sup>  $(\$4,231 / \$1,000) \times \$60,352.50 = \$255,351$

- b) a part-time food services worker / dietary aide (or equivalent) from age 60 to 70, earning an annual income of \$32,188 ( $\$30.95 \times 4 \text{ hours} \times 5 \text{ days} \times 52 \text{ weeks}$ ), the present value of which is \$293,845<sup>3</sup>.

[192] The present value of Ms. Suri's gross without-accident earnings is therefore \$549,220 ( $\$255,351 + \$293,845$ ), rounded to \$550,000.

### ***Likely with-accident earnings***

[193] As the next part of the analysis, I must consider what Ms. Suri will likely earn given her current condition.

[194] Given her injuries, in Dr. Parhar's estimates, Ms. Suri will only be able to work one to four days a week, "as tolerated". Dr. MacInnes expects that Ms. Suri will be able to maintain a schedule of two days a week but no more. Dr. Waraich testified that ideally she would not be working at all.

[195] Those estimates are consistent with her current work schedule at two days per week. As I have already found, this work takes a toll on Ms. Suri's quality of life. As also set out above, I do not accept that full-time work is sustainable for Ms. Suri.

[196] As the defendants argue and as Dr. Parhar also seems to suggest, it may be that Ms. Suri will be able to work more than the two days a week as she currently does. However, based on the medical evidence, there may be times that her symptoms relapse and she works less. I accept that, over time, Ms. Suri will likely be able to maintain an average of two full days of work a week until age 65.

[197] In addition, as noted, there is some likelihood that Ms. Suri will be able to and would continue to work two days a week as a part-time food services worker from age 65 to age 70. Given her work ethic, I agree that possibility exists.

[198] I find that there is a real and substantial possibility that, given her injuries, Ms. Suri will be able to work as:

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<sup>3</sup>  $(\$9,129 / \$1,000) \times \$32,188 = \$293,845$

- a) a part-time Korean cook, working two days a week until age 65, earning annual income of \$24,141 ( $\$30.95 \times 7.5 \text{ hours} \times 2 \text{ days} \times 52 \text{ weeks}$ ), the present value of which is \$208,385<sup>4</sup>; and
- b) a part-time food services worker/dietary aide from age 65 to age 70, earning an annual income of \$12,875 ( $\$30.95 \text{ per hour} \times 4 \text{ hours} \times 2 \text{ days} \times 52 \text{ weeks}$ ), the present value of which is \$59,753<sup>5</sup>.

[199] The present value of Ms. Suri's with-accident earnings is therefore \$268,140 ( $\$208,385 + \$59,753$ ), rounded to \$270,000.

### ***Positive and negative contingencies***

[200] Subtracting the present values of Ms. Suri's likely with-accident earnings (\$270,000) from her likely without-accident earnings (\$550,000) results in a gross future income loss of \$280,000.

[201] However, "since the course of future events is unknown, allowance must be made for the contingency that the assumptions upon which the award is based may prove to be wrong": *Kringhaug v. Men*, 2022 BCCA 186 at para. 42, citing *Reilly v. Lynn*, 2003 BCCA 49 at para. 101.

[202] In this case, I assumed that Ms. Suri would work until the age of 70, both with and without the accidents. It may be, of course, that the toll of her chronic injuries may preclude her from working long hours (or four hours) per day from the age of 60 to 70. In that case, the assessment may be too low.

[203] On the other hand, given the Suri's plans to possibly re-start their marinade business as a wholesale business, it may be that she may not have worked at the care home until 70 if the accident had not occurred. In that case, depending on possible earnings from that business, the assessment may be too high.

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<sup>4</sup>  $(\$8,632 / \$1,000) \times \$24,141 = \$208,385$

<sup>5</sup>  $(\$4,641 / \$1,000) \times \$12,875 = \$59,752.88$

[204] As those examples demonstrate, it is equally possible that the assessment is either too high or too low. I am therefore satisfied that, overall, no contingency adjustment is required.

[205] I assess Ms. Suri's future loss of earning capacity to be \$280,000.

**Step 4: Is the award of damages fair and reasonable?**

[206] Having taken into account both the positive and negative contingencies, I consider that outcome to be fair and reasonable in the circumstances.

**D. Loss of Housekeeping Capacity**

***Evidence***

[207] Given her physical injuries, Drs. MacInnes and Parhar are of the view that Ms. Suri requires assistance with "heavier household chores and seasonal cleaning duties". Occupational therapist Simone Szarkiewicz gave a report dated January 9, 2019, and in Ms. Szarkiewicz opinion, Ms. Suri's need for assistance extends to "regular" domestic tasks as well. This was based in part on her observations of Ms. Suri in the home. Both Ms. Szarkiewicz and Dr. MacInnes leave open the possibility that Ms. Suri may experience some increased participation in lighter tasks.

[208] In her report, Ms. Szarkiewicz estimates the cost of hourly cleaning services at between \$35 to \$50. At trial, she confirmed that Statistics Canada data establishes that women spend, on average, 2.8 hours attending to daily housework.

[209] In this case, with the exception of Tuesdays when Mr. Suri helped with cleaning the kitchen and bathrooms, prior to the first accident in October 2010, Ms. Suri was responsible for all of the household tasks, including laundry, cleaning, and meal preparation.

[210] Since the first accident, Ms. Suri has had to rely on help from her family for the housekeeping chores. Mr. Suri testified that he took over housekeeping when Ms. Suri went back to work in 2015 and 2020 and remains in charge of

housekeeping at the time of trial. Ujvval corroborated that evidence, saying that Mr. Suri makes sure Ms. Suri does nothing more than the “odd dish” when she is working. When she is able, Ms. Suri prepares simple meals.

[211] All of Ujvval (who currently lives at home), Kirti, and Pooja (when they lived at home) assisted with housekeeping tasks when they could. Ujvval currently does some light household chores like laundry, mopping, and dusting.

### **Legal Framework**

[212] It is well established that a plaintiff, whose ability to perform housekeeping services is diminished in part or in whole, ought to be compensated for that loss: *Kim v. Lin*, 2018 BCCA 77 at paras. 33–34 [*Lin*].

[213] It is also well established that housekeeping provided for free by family members will not preclude an award for the loss of housekeeping capacity: *Dykeman v. Porohowski*, 2010 BCCA 36 at para. 28.

[214] It may be appropriate to compensate a plaintiff for a loss of housekeeping capacity under non-pecuniary general damages where only a “minor adjustment of duties within the family” is required. However, where a plaintiff has suffered a true loss of capacity that requires either hired or free family support, that loss may be compensated by a pecuniary damages award: *Crimeni v. Chandra*, 2015 BCCA 131 at para 45; *Reilly v. Ritsco*, 2018 BCCA 366 at para. 101.

[215] Whichever approach a court takes, the award must be reasonable and justified on the specifics of the case and the evidence regarding the plaintiff’s incapacity: *Lin* at paras. 33–37.

### **The Parties’ Positions**

[216] Ms. Suri’s claim for loss of housekeeping capacity is from the date of the first accident in October 2010 to the date of trial. Ms. Suri makes no claim for future loss of housekeeping capacity, choosing instead to claim future costs for housekeeping services as a future care item.

[217] Multiplying the roughly 4,300 days in that 12-year period by one hour per day (which is less than the average 2.8 hours spent doing housework), results in lost capacity of 4,300 hours. Using Ms. Szarkiewicz's lower estimate of the cost of household services of \$35 per hour, Ms. Suri values her past loss of housekeeping capacity at \$150,500.

[218] The defendants argue that an award under this head of damage is not appropriate, referring to the contribution of Ms. Suri's family members to housekeeping duties. They also submit that Ms. Suri has not met the burden required to establish that an award should be made under this head of damage. They say that, in the circumstances, a non-pecuniary approach is preferable.

### **Analysis**

[219] I accept the evidence of the medical experts that Ms. Suri has had limited capacity to complete heavier household chores and seasonal cleaning since the date of the first accident to date. Without doubt, her capacity to perform those chores has been significantly diminished. She has had to rely heavily on Mr. Suri, and occasionally her children, to ensure that housework is done. On that basis, I am satisfied that a separate award for past loss of housekeeping capacity is appropriate.

[220] The fact that Mr. Suri has ably assisted Ms. Suri in the tasks she was unable to do, and had done so before the accidents, does not detract from her loss of capacity: *Dykeman* at para. 28; *Buezo v. Ng*, 2022 BCSC 857 at para. 139.

[221] The issue is the quantification of that loss.

[222] As noted, Ms. Suri has valued her loss based on one hour of housework a day multiplied by \$35 per hour for each day since the first accident in October 2010. A similar approach, however, using \$25 an hour was considered and adopted in *Buezo*. While I agree with this method of analysis, further adjustments must be made to accurately reflect Ms. Suri's true loss of capacity. For the following reasons, in my view, a downward adjustment is warranted in this case.

[223] First, while I accept that Ms. Suri has diminished capacity, none of the evidence suggests that she has no residual capacity to perform any household chores. In fact, of the three experts who gave evidence on the issue, only Ms. Szarkiewicz was of the view that the impairment extended to “regular” domestic tasks as opposed to “heavier household chores and seasonal cleaning duties”.

[224] Second, the extent of Ms. Suri’s injuries has varied throughout the 12-year period since the first accident. It is reasonable to assume that her capacity varied with the fluctuating nature of her injuries.

[225] Third, the amount claimed is based on an hour of work a day. The only evidence before me is that, on average, women average 2.8 hours of daily housework, presumably not all of which can be characterized a “heavier household chores” or “seasonal work”. There is no evidence of the time required for those chores, nor is there any evidence of what chores are characterized as “heavy”. By its nature, seasonal cleaning is also not performed for an hour a day, all year.

[226] Based on the above, in my view, a downward adjustment to the amount claimed is warranted. I award for \$90,000 for the 12-year period for which loss of housekeeping capacity is claimed.

### **E. Cost of Future Care**

#### ***Relevant Facts***

[227] As set out above, all of the medical experts have recommended a number of treatments and interventions to help Ms. Suri manage her injuries. In her report, which she updated orally at trial, Ms. Szarkiewicz summarizes the treatments recommended by Drs. McInnes and Parhar and sets out her own findings and recommendations for care based on her visit to Ms. Suri’s home in October 2018.

[228] Ms. Szarkiewicz also sets out the estimated costs associated with the recommended future treatment. Curtis Peever, an economist, provided a table of multipliers to calculate the present value of the cost of that future care.

### **Legal Framework**

[229] To be entitled to an award for the cost of future care, there must be a medical justification for the claims for cost of future care and the claims must be reasonable: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.), aff'd (1987), 49 B.C.L.R. (2d) 99 (C.A.).

[230] Future care costs are “justified” if they are both medically justified and likely to be incurred by the plaintiff. The award of damages is thus a matter of prediction. If the plaintiff has not used the particular item or service in the past, it may be inappropriate to include it as a cost of future care award. However, if the evidence shows that previously rejected services will not be rejected in the future, the plaintiff can recover such services: *O’Connell v. Yung*, 2012 BCCA 57 at paras. 55, 60, and 68–70.

[231] The need for contingencies on future care costs depends on the specific care needs of the plaintiff. In some cases, the award is reduced based on the prospect of improvement in the plaintiff’s condition, or increased based on the prospect that additional care will be required. In other cases, negative contingencies are offset by positive contingencies and no adjustment is required. Each case is determined on its particular facts: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 253; *Warick v. Diwell*, 2018 BCCA 53 at para. 36. An assessment of damages for cost of future care is also a matter of prediction based on the evidence available, not a precise accounting exercise: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.

### **The Parties’ Positions**

[232] In closing submissions, Ms. Suri abandoned her claims for several of the future care costs set out in Ms. Szarkiewicz’s report, candidly conceding that she would likely not engage in them or that they were not reasonably necessary. However, she argues that other recommendations, including for limited prescription medicines, active and passive therapies, counselling, and assistance with heavier household chores and seasonal cleaning are required for her future care. Relying on

Mr. Peever's evidence, she suggests that, given the date of Ms. Szarkiewicz's initial report, any cost of care award should be increased by 14% to account for inflation.

[233] The defendants say that other than some limited massage therapy and other passive treatments, Ms. Suri has declined to engage in the treatment recommendations in the past and that she is unlikely to do so now. More generally, they argue that the Court should apply caution when considering future care.

***Analysis***

[234] I will assess each of the items recommended by Ms. Szarkiewicz under this head of damages separately.

***Occupational therapy***

[235] Both Dr. Parhar and Ms. Szarkiewicz recommend occupational therapy for various reasons: to provide an activation program to assist with Ms. Suri's daily living and recreational pursuits, to provide pain management education, to review equipment such as seating in her home, and to provide support for vocational transition as appropriate. As Ms. Szarkiewicz explained at trial, an occupational therapist can also guide patients in receiving treatment they need.

[236] As noted, I accept that Ms. Suri's physical injuries have impacted all aspects of her life, including at home. Accordingly, I am satisfied that the assistance of an occupational therapist is medically justified. I also accept that an occupational therapist will be able to provide Ms. Suri with the focussed and directed encouragement she needs to engage in a treatment plan that may include medication and counselling. However, other aspects of an occupational therapist's function, particularly as they relate to vocational needs, are not necessary.

[237] Ms. Szarkiewicz has recommended 20 to 24 sessions of occupational therapy over the next six to twelve months at an estimated cost of \$5,000 to \$6,600, followed by eight to ten sessions over the next two to three years at an estimated cost of \$2,000 to \$2,750. Ms. Szarkiewicz's recommendation also provides for a contingency of \$2,500 to \$2,750 if vocational transition is attempted.

[238] Given that I find the vocational transition support unnecessary, the amount of the claim is excessive. I award \$5,700 for occupational therapy. That amount includes the 14% adjustment for inflation suggested by Mr. Peever.

***Active therapies***

[239] The consensus among the medical experts is that Ms. Suri would benefit from various forms of active therapy. As Dr. McInnes opines, such therapy would not be curative, but would assist Ms. Suri managing her chronic pain symptoms. Noting the interplay between mood, pain, anxiety, and sleep, both Drs. MacInnes and Waraich are of the view that it would also assist in the management of her psychological symptoms. Some costs for active therapy is medically justified.

[240] Ms. Suri seek the cost of:

- a) ten sessions with a kinesiologist to review Ms. Suri's home exercise program at a cost of approximately \$75 per session; and
- b) an annual gym pass to age 80, the present value of which is \$6,380.

[241] Although the defendants acknowledge the recommendations that Ms. Suri engage in more active treatment, they say there is a real concern that she will not engage in that treatment. Indeed, with the exception of 20 sessions with a kinesiologist eleven years ago, Ms. Suri has not engaged in any form of active therapy since the first accident in 2010. Based on that history, I agree. It is difficult to conclude that there is any possibility that Ms. will engage in any active therapy in the future.

[242] I do not allow any award for this cost.

***Passive therapies***

[243] In addition to active therapy, it is undisputed that Ms. Suri would benefit from passive therapies such as massage therapy, physiotherapy, acupuncture, and chiropractic treatment. I agree the cost of such therapies are medically justified.

[244] For those treatments, Ms. Suri seeks the cost of:

- a) Six to eight physiotherapy sessions per year at a cost of \$482 to \$960 per year; and
- b) Six to eight sessions of other passive treatments per year, including massage therapy, acupuncture, or chiropractic treatments at a total cost of \$350 to \$840 per year.

[245] As noted, in the past, Ms. Suri's attendance at passive treatment has been limited, but more recently, she has used and benefitted from both massage therapy and physiotherapy. Given those recent attendances and their benefits, I accept Ms. Suri's evidence that she will attend and is motivated to continue those particular treatments. Again, neither of these therapies will be curative but may assist in managing her most severe exacerbations and chronic symptoms.

[246] In my view, it is appropriate to provide for both these items on an ongoing basis for up to six times a year at \$100 per session for physiotherapy and \$105 per session for massage. This results in annual costs of \$600 and \$630 per year for these passive treatments, the present value of which is \$9,449.40<sup>6</sup> for physiotherapy and \$9,921.87<sup>7</sup> for massage therapy, both to age 75.

[247] Again, however, given Ms. Suri's past sporadic reliance on these treatments, it is not certain that she will continue these for that period of time. It is appropriate to account for that contingency by reducing the award for passive therapies by 50%. Applying that discount results in future costs (rounded) for physiotherapy of \$4,700 and for massage therapy of \$5,000.

[248] I award \$11,058, rounded to \$11,000, being the total of those amounts plus an adjustment of 14% to account for inflation.

### **Counselling**

[249] The medical experts recommend various forms of counselling to address Ms. Suri's ongoing psychological symptoms.

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<sup>6</sup>  $(\$15,749 / \$1,000) * \$600 = \$9,449.40$

<sup>7</sup>  $(\$15,749 / \$1,000) * \$630 = \$9,921.87$

[250] Dr. Waraich recommends six months of weekly sessions at cost of \$5,200 (26 sessions at \$200 per session). He also recommends periodic ongoing sessions as needed thereafter. Assuming three ongoing sessions annually (\$600), the future counselling costs for life are \$13,594, again using Mr. Peever's multiplier of 22.657. However, conceding that the need for counselling will decrease later in life, Ms. Suri seeks \$10,000 for this cost of care item.

[251] I have discussed Ms. Suri's failure to partake in counselling based in part on cultural barriers in my discussion of mitigation above. Given my conclusion, the possibility that Ms. Suri will engage in those treatments now is low. However, I cannot conclude it is nil.

[252] However, since part of the role of an occupational therapist is to ensure that patients receive treatment they need, with the added encouragement of an occupational therapist and her adult children, together with what I accept is Ms. Suri's renewed commitment to engaging in counselling, I am satisfied that it is appropriate to award some amount to account for the possibility she may do so now. I award \$2,850, being 25% of the cost claimed for counselling, adjusted for inflation.

[253] Although Ms. Szarkiewicz also recommends couples counselling to address the strain the injuries placed on Ms. Suri's relationship with her husband, there is no evidence that either Ms. Suri or Mr. Suri would agree to attend couples counselling. I do not allow any award for the cost of that treatment.

### ***Medication***

[254] Drs. Waraich and Parhar also suggest that trials of Venlafaxine or Duloxetine be used to assist in managing Ms. Suri's psychological symptoms. Ms. Suri suggests that a "modest contingency" of \$2,000 be allowed for those trials.

[255] Similar to counselling, Ms. Suri has also declined medication for her psychological symptoms in the past, though she takes Naproxen for her physical injuries. Despite that history, she testified that she would be willing to take anti-depressants if it remains Dr. Parhar's opinion that she should do so. I accept that is

the case. For the same reasons provided regarding counselling, I am satisfied that it is appropriate to award some amount to account for the possibility she may take medication now.

[256] I award \$570, being 25% of the costs claimed, adjusted for inflation.

***Mindfulness meditation***

[257] Dr. MacInnes suggests and Ms. Szarkiewicz agrees, that mindfulness meditation may be helpful for self-management of Ms. Suri’s chronic pain. Indeed, Ms. Suri has practiced meditation periodically since childhood and Dr. Waraich appears to be of the view that meditation has assisted Ms. Suri in the past. Given that she already engages in the practice, an award for this care item is not reasonably necessary. I decline to make any award for it.

***Aids for independent functioning***

[258] In order to address Ms. Suri’s chronic pain and sleep disturbances, Dr. Parhar opined that Ms. Suri should be provided with appropriate sleep aids such as an appropriate cervical pillow, bed mattress, and mattress overlay. Ms. Szarkiewicz also recommends that Ms. Suri be afforded with the budget for “adaptive kitchen and cleaning aids” including, for example, a one-touch can opener, ergonomic relief knives, long-handled duster, and a long-handled toilet bowl brush.

[259] In my view, items such as the “adaptive kitchen and cleaning aids” claimed are items that would be required by most households anyways, as discussed in *Penner v. Insurance Corporation of British Columbia*, 2011 BCCA 135 at para 13. I decline to award any amount for this future cost.

***Household chores, yard work, and seasonal cleaning***

[260] As noted, Drs. MacInnes and Parhar opine that Ms. Suri requires assistance with “heavier housework”, yard work, and seasonal cleaning. Ms. Szarkiewicz additionally opines that Ms. Suri requires help for “regular” domestic tasks as well, though she may be able to participate in lighter tasks in the future. I accept that some cost for household assistance is medically justified.

[261] In her updated report, Ms. Szarkiewicz estimates that Ms. Suri will require eight hours per month for regular and heavy household cleaning (at \$35 to \$50 per hour) and 12 hours a year for seasonal cleaning at (at \$40 to \$50 an hour), for a present value cost between \$45,000 to \$64,000, including taxes, for services to age 70.

[262] At trial, Ms. Szarkiewicz confirmed that her estimate does not include any allowance for assistance with groceries, meal preparation, laundry, or any outside yard work. Accordingly, assuming a “modest doubling” of the recommendation to age 70, Ms. Suri claims between \$90,000 to \$128,000. In my view, that claim is excessive.

[263] At trial, Ms. Szarkiewicz confirmed that her estimate of services required assumes that Ms. Suri does not have any household support. I have noted that Mr. Suri, and to a lesser extent Ujvval, assist Ms. Suri at home. In *Travis v. Kwon*, 2009 BCSC 63, this Court considered the opposite situation where the plaintiff’s family was not particularly helpful, noting at para. 114: “it is not reasonable to expect defendants to pay to have someone perform services that can and should reasonably be taken on by members of the family”.

[264] Mr. Suri and Ujvval do presently contribute to the Suri household in various ways. In my view, it is not unreasonable for either family member to continue to making these contributions to household chores. However, I do not accept that these contributions should deprive Ms. Suri of any award for this future care cost.

[265] First, Mr. Suri and Ujvval’s contributions do not extend to any significant meal preparation. Although Ms. Suri attempts to prepare meals, she has been unable to do so to the same standard that she did prior to the accidents.

[266] Second, there is possibility that Mr. Suri will not always be available to contribute so significantly to the household chores, for reasons such as his own injuries or his work schedule. There is also the possibility that Ujvval will move out of the family home, leaving Ms. Suri without the daily assistance he provides.

[267] Finally, while Mr. Suri accepts his responsibility around the house, there is little doubt that Ms. Suri's inability to contribute to the extent she did before the accidents has created an imbalance in their partnership, such that Mr. Suri has taken far in excess of 50% of the household chores.

[268] In my view, a significant discount must be applied to account for the reasonable contribution of her husband and son to the household chores, however, this must be balanced against the reality of Ms. Suri's limited ability to contribute.

[269] Given those contingencies, I reduce the amount claimed for housework, seasonal cleaning, and yard work by 60%. Applying that discount to the mid-range of the estimated cost for those services to age 70 (\$109,000) results in a future cost of \$49,704, rounded to \$50,000, including an adjustment for inflation.

[270] To summarize, I award cost of future care as follows:

Occupational therapy:	\$5,700
Passive therapies:	\$11,000
Medication:	\$570
Household assistance:	<u>\$50,000</u>
Total:	\$67,270

### E. Special Damages

[271] Special damages have been agreed upon between the parties in the amount of \$4,932.75. I award that amount.

## 5. Summary

[272] To summarize, I award damages as follows:

Non-pecuniary damages:	\$150,000.00
Past income loss:	\$145,000.00
	(to be adjusted for income tax)
Future loss of income-earning capacity:	\$280,000.00
Loss of housekeeping capacity:	90,000.00

Cost of future care:	\$67,270.00
Special damages;	\$4,932.75

**6. Costs**

[273] If the parties wish to make submissions on costs, they may do so in writing within 30 days of these reasons.

[274] If I receive no submissions on costs, I award costs to Ms. Suri at Scale B.

“Ahmad J.”