

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Chand v. Aujla,
2023 BCSC 1473

Date: 20230825
Docket: 200286
Registry: New Westminster

Between:

Praveen Chand

Plaintiff

And

Sital Singh Aujla and Sukhdeep Aujla

Defendants

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment

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Place and Dates of Trial:

Abbotsford, B.C.
April 17-21 and 24-26, 2023

Place and Date of Judgment:

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INTRODUCTION

[1] Praveen Chand (the “Plaintiff” or “Mr. Chand”) seeks damages in connection with personal injuries sustained in a motor vehicle accident that took place in Surrey on March 9, 2016 (the “Accident”). Liability for the Accident is admitted by the Defendants. At issue is the amount of damages to which Mr. Chand is entitled in compensation for his injuries.

BACKGROUND

The Plaintiff’s Circumstances Prior to the Accident

[2] Mr. Chand was born in 1962. He grew up in Fiji, where he obtained his Grade 12 diploma.

[3] Mr. Chand immigrated to Canada in the late 1980’s. He married Damanti Chand (“Ms. Chand”) in 1990. Together, they are the parents of five children.

[4] In 2007, Mr. Chand began working as a HandyDART bus driver. HandyDART provides public transportation for persons with disabilities in Greater Vancouver. At the time of the Accident, Mr. Chand was earning \$25.29 per hour, plus an extra dollar per hour if he was training new bus drivers. He loved his job, and he was good at it. Mr. Chand once won an international award from his employer for his safety and customer service record.

[5] Outside of work, Mr. Chand enjoyed being with his family at their home in Surrey. He liked doing household chores and home maintenance projects. He would get some light exercise and would go for a daily long walk with Ms. Chand. They would regularly socialize with friends over dinner, and took holidays that involved trips out of town.

[6] Mr. Chand had some pre-existing health issues before the Accident. He is a diabetic and has colitis, hyperthyroidism, and hypertension. He controls these conditions with medication.

[7] Furthermore, Mr. Chand injured his lower back while unloading a trailer at a previous job. This took place some fifteen years before the Accident. Mr. Chand was also involved in another motor vehicle collision about five years before the Accident. While these incidents required Mr. Chand to take significant time off work (approximately one year for the former, a few months for the latter), they did not cause any long-term consequences for Mr. Chand.

The Accident

[8] On the afternoon of March 9, 2016, Mr. Chand was working a shift as a HandyDART bus driver. The bus he was operating was a GMC C5500 van. It was transporting three passengers. Mr. Chand was driving in Surrey along Crescent Road near the 144th Street intersection. While rounding a curve, the bus was struck on its left side by a Honda Accord that was approaching from the opposite direction. The Honda's driver was the defendant Sital Aujla. Its owner was the defendant Sukhdeep Aujla.

[9] Mr. Chand was wearing his seatbelt. While he did not lose consciousness, Mr. Chand was momentarily stunned by the force of the collision. Once he regained his senses, Mr. Chand noticed that the bus was starting to roll backwards. He applied the emergency brake and put the transmission in park, but these actions did not immobilize the bus. Mr. Chand therefore had to keep his foot on the brake pedal until the first responders arrived and secured the bus with chock blocks.

[10] Both vehicles sustained considerable damage. In addition to its broken driveshaft and brake lines, the bus also had a punctured gas tank. Mr. Chand initially understood that the Accident had killed the other driver. To his relief, he later learned that this was not the case.

[11] After giving a statement to the police who attended, Mr. Chand was driven back to the HandyDART office by his supervisor. Mr. Chand filled out the necessary paperwork, and then returned home. While he noticed some pain in his neck and head, Mr. Chand did not go to hospital or otherwise seek any immediate medical attention.

The Plaintiff's Injuries and Treatment

[12] Starting the day after the Accident, Mr. Chand's pain and discomfort intensified. He saw a number of medical professionals in the weeks and months that followed, including staff at a walk-in clinic and his family physician.

[13] It was noted that Mr. Chand was suffering pain in his neck, shoulder, back, hip, knees, ankles, and toes. His left arm had become particularly weak. He also suffered from headaches, dizziness and insomnia. For these conditions, he was prescribed pain relievers and sleeping pills. Mr. Chand was also encouraged to undergo chiropractic care, acupuncture, active rehabilitation, massage care, and cortisone injections. He tried them all, but found that they only gave him temporary relief.

[14] By early 2017, much of the pain Mr. Chand was experiencing on the right side of his body had resolved. However, this was not the case for the left side, particularly in respect of his head, neck, shoulder, back, arm, hip, and leg. Mr. Chand's dizziness, headaches, and insomnia also persisted.

[15] In addition, Mr. Chand experienced some mental health issues, including post-traumatic stress disorder (PTSD) and depression. He treated them with the help of a psychiatrist who prescribed medication and a psychologist who provided counselling sessions.

[16] On August 29, 2019, Mr. Chand underwent two surgical procedures performed by a neurosurgeon at a private clinic. The first (an anterior cervical discectomy and fusion) targeted his neck, and the second (an interlaminar decompression with DIAM stabilization) targeted his lower back. The surgery was largely successful, especially with respect to Mr. Chand's back. Notably, it put an end to the debilitating pain he would feel radiating down his left back to his lower thigh. The surgery also resulted in a significant improvement of Mr. Chand's left arm strength.

The Plaintiff's Circumstances After the Accident

[17] Mr. Chand did not work for a considerable period of time following the Accident, only returning to HandyDART on a graduated basis in January 2018.

[18] The return did not go well. Mr. Chand was in pain while he drove, which he managed by pulling his bus over to take breaks and stretch. As a result, the level of customer service he was providing fell below his personal standards. He was now slow, anxious, and less friendly with his passengers than he was before the Accident.

[19] By June 2018, Mr. Chand could not take it anymore. Further to his doctor's recommendation, he ceased working again, this time for over two years.

[20] In August 2020 Mr. Chand finally returned to HandyDART for good. He was required to retrain because he had been away for so long. Mr. Chand still finds the work physically difficult - especially when he goes up and down stairs, loads wheelchairs, and assists heavy passengers - but he is able to perform his tasks. In order to manage the pain, Mr. Chand tries to maximize his time off work. He does so through a compressed work schedule of four days on/three days off, and by taking a combination of sick days, vacations days, and some unpaid days. Mr. Chand's current rate of pay at HandyDART is \$30.35 per hour. His employment earnings in 2022 were \$57,194. This amount is lower than some of his colleagues as he does not train new drivers and rarely works overtime. Mr. Chand nevertheless continues to receive positive performance reviews from his managers.

[21] Mr. Chand's post-Accident home life has been challenging. He initially required assistance with personal care, although he can now manage on his own. However, he has significantly curtailed his recreational and social activities. Mr. Chand's relationships with his family are also not the same as they used to be. He has intimacy issues with Ms. Chand, and anger management issues with their adult children who live in their home. These issues stem from Mr. Chand's pain, fatigue, depression, and financial concerns. While the Chands used to travel together for fun, they have made only two major trips since the Accident: one to Australia and Fiji in

2017, and one to Australia in 2019. Neither one was for pleasure. The purpose of the first was to visit sick relatives, and that of the second was to attend a family funeral.

[22] With respect to domestic chores, Mr. Chand used to enjoy working around the house and performing small maintenance projects. Mr. and Ms. Chand would do both the interior and exterior cleaning tasks together, sharing them more or less equally. After the Accident, however, Mr. Chand could no longer do these things, and the burden of housekeeping fell mainly on Ms. Chand with help from their children. Following the surgery, Mr. Chand has been able to resume some household chores, although he tires quickly and feels he cannot complete them in a timely way.

[23] Mr. Chand is now 60 years old. He intends to work at HandyDART until he is in his 70's so long as he is able to do so. Mr. Chand notes that he requires the income because of the debt he took on during the years he was not working. He has thought about also driving for a ridesharing company such as Uber or Lyft, as some of his bus driver colleagues do. However, given the pain he continues to experience at the end of each day, Mr. Chand does not believe he could perform a second driving job on top of his work at HandyDART.

ANALYSIS

Overview and Issues

[24] While liability for the Accident has been admitted on behalf of the Defendants, the parties dispute the quantum of the total damage award to which Mr. Chand is entitled.

[25] Mr. Chand claims damages under the following headings:

- non-pecuniary (general) damages;
- past loss of income;
- future loss of earning capacity;

- cost of future care;
- loss of housekeeping capacity; and
- special damages.

[26] Commendably, the parties have agreed that Mr. Chand ought to receive \$167,171.00 in respect of his past loss of income and \$66,835.78 in respect of his special damages. Awards in these amounts will be issued on consent.

[27] With respect to the four remaining heads of damage, an analysis of the parties' respective positions is set out below following a description of the nature of the evidence that was presented at trial.

Factual Evidence

[28] The factual evidence before the Court consisted of an agreed statement of facts, documentary material entered into evidence in accordance with the parties' document agreement, and the testimony of seven witnesses, all of whom were called by the Plaintiff. The factual witnesses were (set out in order of appearance):

- 1) Praveen Chand: the Plaintiff himself;
- 2) Damanti Chand: the Plaintiff's wife;
- 3) Balvinder Mandair: Uber driver (no relationship to the Plaintiff);
- 4) Atish Singh: the Plaintiff's adult son;
- 5) Christie Lamb: the Plaintiff's former co-worker and current manager;
- 6) Mulkeet Singh: the Plaintiff's friend; and
- 7) Ronald Graves: the Plaintiff's former manager.

[29] Mr. Chand was, of course, the primary and most significant of the Plaintiff's witnesses. He testified comprehensively about his background, work experience, the Accident, his injuries, the treatments he has received, and his post-Accident circumstances. I found his testimony to be relatively clear, forthright, and genuine.

[30] However, counsel for the Defendants argue that Mr. Chand's testimony presented credibility and reliability issues. To that end, they highlighted the following:

- (a) a discrepancy between the testimony of Mr. Chand regarding his lack of significant travel since the Accident, and the testimony of his son, Atish Singh;
- (b) a discrepancy between the testimony of Mr. Chand regarding how often he would socialize with friends since the Accident, and the testimony of his friend, Mulkeet Singh; and
- (c) discrepancies in Mr. Chand's testimony with some information he relayed to experts prior to the preparation of their reports.

[31] The first alleged discrepancy relates to Atish Singh's answer to a question he was asked in cross-examination about whether his parents had travelled outside of Canada since the Accident. Atish Singh said that the only foreign trip he recalled his parents taking was one to Mexico in October or November of 2022. However, Atish Singh did not mention his parents' 2017 and 2019 trips to Australia and Fiji. Also, Atish Singh did not explain how he learned of his parents' alleged Mexican holiday, when there was no indication he accompanied them. On the other hand, Ms. Chand confirmed Mr. Chand's testimony that they travelled to Australia and Fiji together, and that there were no other foreign trips. In these circumstances, I prefer the Chands' direct evidence regarding when and where they travelled. The apparently mistaken information provided by the Chands' son on this question is not an indication that Mr. Chand lacks credibility.

[32] The same goes for the discrepancy between Mr. Chand and Mulkeet Singh's recollection of how often they visited each other's homes. While Mulkeet Singh's testimony was earnest, I had some concerns with its reliability. In particular, Mulkeet Singh provided inconsistent information regarding both the frequency of his post-Accident visits with Mr. Chand (Mulkeet Singh first said it was weekly or bi-weekly, and then said it was once a month or once every two months) and the number of years he has known Mr. Chand (Mulkeet Singh initially said 8 to 10 years, and later said 10 or 11 years). I therefore preferred Mr. Chand's evidence with respect to

these issues which, like Mr. Chand's foreign travel, are not central to this case in any event. I also do not agree with the Defendants that the small differences between Mulkeet Singh's testimony and that of Mr. Chand constitute a valid ground for disbelieving Mr. Chand generally.

[33] Finally, I am also not persuaded that the minor examples of alleged misinformation provided by Mr. Chand to the expert witnesses that were brought to my attention by counsel for the Defendants justify impugning Mr. Chand's credibility either. They related to such matters as when Mr. Chand came to understand that no one had died in the Accident, and the extent to which Mr. Chand can vacuum his house.

[34] In sum, when I apply the well established principles for assessing witness testimony (see *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186 and 187; aff'd 2012 BCCA 296), I find Mr. Chand to be generally credible and reliable, and do not accept the Defendants' arguments to the contrary.

Expert Evidence

[35] Nineteen expert reports prepared by nine authors were entered into evidence. All but one was commissioned by counsel for the Plaintiff. Six of the authors (Dr. Heran, Dr. Watt, Dr. Chow, Dr. Grover, Dr. Gill, and Dr. Kokan) testified in relation to the thirteen reports they prepared, and they were all qualified as experts in their respective fields. The six remaining reports (those of Dr. Karapareddy, Ms. Walker, and Mr. Sheldon) were entered without objection and with the understanding that their authors did not need to testify. This expert evidence can be summarized as follows.

Dr. Navraj Heran

[36] Dr. Heran is the neurosurgeon who performed Mr. Chand's surgery in August 2019. He was also retained by the Plaintiff to prepare four expert reports on Mr. Chand's injuries. The reports are dated January 7, 2020, January 15, 2021, December 13, 2021, and December 2, 2022. They are based on Dr. Heran's in-

person consultations with Mr. Chand, as well as a review of his medical records. Dr. Heran testified after being qualified as an expert in medicine with a speciality in neurosurgery capable of diagnosing, treating, and rendering expert opinion evidence for traumatic injuries, including cervical and spinal radiculopathy and headaches.

[37] Dr. Heran opines that the Accident caused Mr. Chand to sustain the following injuries: (1) myofascial injuries involving the neck, upper torso, and low back; (2) mechanical structural neck pain; (3) mechanical structural spinal pain; (4) left knee injury; (5) left shoulder injury; (6) posttraumatic vertigo (since resolved); (7) psychological disturbances consistent with depression, anxiety and posttraumatic stress; (8) sleep disturbance; and (9) soft tissue injuries to the left elbow.

[38] Dr. Heran further noted that while Mr. Chand has demonstrated substantial improvement since the August 2019 surgery, Mr. Chand still has some neuropathic pain in his left arm. Dr. Heron also effectively opined that the treatments and medication that Mr. Chand has utilized have been reasonable, as were his decisions regarding the extent to which he has been willing to work and participate in physical activities since the Accident.

Dr. Christopher Watt

[39] Dr. Watt is a physician who was retained by the Plaintiff to prepare occupational assessments and functional capacity evaluations in respect of Mr. Chand. His first examination of Mr. Chand was conducted on December 18, 2019, and his second examination was conducted on December 8, 2022. Dr. Watt prepared three reports, dated December 30, 2019, December 8, 2022, and March 9, 2023 (the latter was a response report indicating that Dr. Watt's December 8, 2022 opinions were unchanged notwithstanding his review of additional reports and medical documentation). Dr. Watt testified after being qualified as an expert in occupational medicine capable of rendering expert opinion evidence in occupational and disability evaluation.

[40] Dr. Watt opined that the Accident directly caused Mr. Chand's neck, low back and left shoulder impairments, a major depressive episode and anxiety disorder, and

probably exacerbated his pre-existing left knee pain. While Dr. Watt felt that Mr. Chand is fit to continue working as a HandyDART bus driver, Mr. Chand is unlikely to be able to tolerate other types of full-time work involving greater physical demands.

[41] With respect to treatment, Dr. Watt recommends that Mr. Chand continue to follow an active rehabilitation program, graduate to a progressive exercise program, intensify treatment of his depression, and attempt to lose weight.

Dr. Raphael Chow

[42] Dr. Chow is a physiatrist who was retained by the Plaintiff to conduct an independent medical examination and to prepare a report on the extent of Mr. Chand's injuries. He did so after conducting an assessment of Mr. Chand on December 14, 2022. Dr. Chow also prepared an addendum report on March 21, 2023 indicating that his opinions had not changed even after reviewing other reports and medical documentation. Dr. Chow testified after being qualified as an expert with a speciality in physiatry and the medical management of patients with injuries arising from motor vehicle accidents.

[43] It is Dr. Chow's opinion that the Accident caused Mr. Chand to experience the following: (1) cervicogenic-type headaches; (2) neck, left arm, and back pain resulting from a soft tissue injury of the cervical, thoracic, and lumbar spine; (3) left shoulder pain and left rotator cuff syndrome; (4) left knee pain and knee contusion (which has subsided); and (5) psychological issues. Given the length of time since the Accident, Dr. Chow feels that it is unlikely that Mr. Chand's symptoms will ever fully resolve.

[44] While Dr. Chow acknowledges that Mr. Chand is able to do his current bus driver job (albeit with pain), Dr. Chow still feels that Mr. Chand is partially disabled. Dr. Chow says that Mr. Chand will require assistance with heavy housekeeping tasks and will have to limit his future recreational activities.

[45] With respect to future treatment, Dr. Chow's recommendations include undergoing a sleep study and consultation, continuing with medications and physiotherapy, learning an exercise routine to strengthen and condition his neck, back and shoulder muscles, and taking cognitive behavioural therapy for pain and sleep management.

Dr. Mandeep Gill

[46] Dr. Gill is a family physician who has been caring for Mr. Chand since July 2021. He was also retained by the Plaintiff to prepare an expert report on Mr. Chand's injuries. Dr. Gill's examination of Mr. Chand for the purpose of preparing his report was conducted on July 16, 2021. Dr. Gill testified after being qualified as an expert in family medicine and the medical management of patients with injuries arising from motor vehicle accidents.

[47] Dr. Gill opined in his report that the Accident caused the following injuries sustained by Mr. Chand: (1) cervical spine injury resulting in left arm radicular pain and post-traumatic headaches; (2) left hand carpal tunnel syndrome; (3) injury of Mr. Chand's thoracic and lumbar spine resulting in left leg radicular pain; (4) thoracic spine strain; (5) depression-like symptoms, including anxiety, anger, and irritability; (6) insomnia; and (7) chronic pain.

[48] Dr. Gill is also of the view that Mr. Chand's issues will continue to affect his life for the foreseeable future, and that Mr. Chand will likely remain limited in his work, non-work, household, and recreational activities.

[49] With respect to treatment, Dr. Gill recommends that Mr. Chand have access to medications, massage therapy, a gym pass for exercise, a carpal tunnel brace, injections, and psychological treatment.

Dr. Deepak Grover

[50] Dr. Grover is an orthopedic surgeon who was retained by the Plaintiff to prepare an expert report on Mr. Chand's injuries. His examination of Mr. Chand was conducted on December 3, 2022. Dr. Grover's original report was completed on

December 11, 2022. He also prepared a supplementary report on March 9, 2023 confirming that his opinion had not changed after reviewing other reports and medical documentation concerning Mr. Chand. Dr. Grover testified after being qualified as an expert in medicine specializing in orthopaedic and trauma injuries capable of giving expert opinion evidence in the treatment, diagnosis and prognosis of injuries caused by motor vehicle accidents.

[51] In Dr. Grover's view, the Accident caused Mr. Chand to suffer the following injuries: (1) myofascial injuries to the neck and lower back; (2) symptomatic manifestation of pre-existing degenerative disc disease of the cervical and lumbar spine; (3) radiculopathy in relation to cervical and lumbar spine vertebrae; (4) symptomatic manifestation of pre-existing osteoarthritis in the left knee; (5) post-traumatic left shoulder rotator cuff tendinopathy and posttraumatic subacromial bursitis; (6) blunt contusion to the right ankle and foot (since recovered); (7) soft tissue contusion to the left elbow (since recovered); and (8) chronic pain syndrome.

[52] Dr. Grover feels that these injuries will result in long-term symptoms and restrictions that will affect Mr. Chand's ability to pursue employment opportunities, as well as to engage in recreational and non-work activities. In particular, Mr. Chand will have to endure ongoing pain while working that will likely be permanent. While Mr. Chand will not require further assistance in terms of daily living, Dr. Grover feels that Mr. Chand will need help with heavier household and yard work.

[53] In terms of treatment, Dr. Grover's recommendations include physiotherapy, massage therapy, active rehabilitation, stretching, home-based exercises, and cortisone injections. Dr. Grover does not recommend that Mr. Chand be subjected to any further surgery.

[54] Finally, Dr. Grover's prognosis for Mr. Chand is that he has reached the point of maximal medical improvement and will suffer from chronic pain permanently.

Dr. Peter Kokan

[55] Dr. Kokan is an orthopaedic surgeon. He was the only expert retained by the Defendants in this case. Dr. Kokan was asked to prepare an orthopaedic opinion regarding Mr. Chand's musculoskeletal injuries. He did so further to his December 9, 2022 assessment of Mr. Chand. Dr. Kokan testified after being qualified as an expert in medicine specializing in orthopaedics and trauma injuries capable of giving expert opinion evidence in the treatment, diagnosis and prognosis of injuries caused by motor vehicle accidents.

[56] Dr. Kokan's opinion is that the Accident activated pre-existing degenerative conditions in Mr. Chand's neck and lower back, thereby causing symptoms which include: (1) cervical spondylosis with persistent mechanical discomfort and mild stiffness following 2-level disc fusion; (2) mild neurological impingement on the left side; (3) mechanical low back pain; (4) chronic rotator cuff tendinosis in the left shoulder; and (5) osteoarthritis in the left knee.

[57] Dr. Kokan feels that Mr. Chand's disability is temporary rather than permanent, as evidenced by Mr. Chand's ability to work full-time. That said, Dr. Kokan is of the view that Mr. Chand will continue to experience this temporary disability in the sense that he can expect some neck and back pain if he overdoes things.

[58] With respect to future treatment, Dr. Kokan does not recommend any further surgery, and does not feel that ongoing physiotherapy or other manual therapy is required. Instead, Dr. Kokan suggests that Mr. Chand should simply exercise and maintain a healthy lifestyle on his own. While Dr. Kokan indicates that Mr. Chand should use Tylenol or anti-inflammatories for pain control, he is not in favour of injections unless Mr. Chand experiences a significant flare-up.

Dr. Venu Karapareddy

[59] Dr. Karapareddy is a psychiatrist who was retained by the Plaintiff to conduct an independent medical examination and to prepare two expert reports on the extent

of Mr. Chand's mental injuries. Dr. Karapareddy's reports were prepared further to examinations conducted on December 9, 2019 and December 5, 2022, respectively. There is no dispute regarding Dr. Karapareddy's assessment or conclusions, and the parties agreed that he need not testify at trial.

[60] In his 2019 report, Dr. Karapareddy opined that the Accident caused Mr. Chand to sustain the following psychological injuries: (1) PTSD with residual features of road-related anxiety; (2) major depressive disorder with anxious predisposition (since resolved); (3) chronic pain symptoms; and (4) cognitive issues. In his 2022 report, however, Dr. Karapareddy only mentioned PTSD and major depressive disorder as having been caused by the Accident. The latter report also mentions that Mr. Chand developed post-Accident insomnia, but Dr. Karapareddy does not clearly state that this condition is causally linked to the Accident.

[61] Dr. Karapareddy's 2022 report further indicates that while Mr. Chand's PTSD symptoms have improved significantly, he still has some residual symptoms. As for Mr. Chand's major depressive disorder symptoms, Dr. Karapareddy says that they have fully resolved for Mr. Chand.

[62] With respect to future treatment, Dr. Karapareddy recommends that Mr. Chand pursue ongoing supportive counselling to deal with his PTSD symptoms, cognitive behavioural therapy for pain, and a combination of behavioral therapy and medication for insomnia.

Claudia Walker

[63] Ms. Walker is an occupational therapist who was retained by the Plaintiff to prepare a future cost of care analysis report. This report was entered into evidence without objection, and Ms. Walker was not called to testify at trial.

[64] Ms. Walker's report was based upon the care recommendations made by Dr. Watt, Dr. Chow, Dr. Gill, Dr. Grover, Dr. Heran, and Dr. Karapareddy. Ms. Walker has outlined the main recommendations made by these experts, and set out estimates of their associated costs.

Peter Sheldon

[65] Mr. Sheldon is an economist. He was retained by the Plaintiff to prepare reports containing projections of Mr. Chand's past and future earnings and cost of care multipliers. His original past and future earnings report is dated December 20, 2019. His original cost of care multiplier report is dated January 2, 2020. Mr. Sheldon also prepared a third report dated January 26, 2023 titled "Mr. Praveen Chand – Projections of Past and Future Earnings and Cost of Care Multipliers" which is expressly stated to replace the two earlier reports. Notwithstanding this disclaimer, all three reports were entered into evidence without objection, and Mr. Sheldon was not called to testify at trial either.

Issue 1: General (Non-Pecuniary) Damages**Legal Principles**

[66] The legal principles applicable to assessing non-pecuniary damages designed to compensate a plaintiff for the pain and suffering and loss of enjoyment of life caused by a defendant tortfeasor are well established and not in dispute. The plaintiff bears the burden to show that there is a substantial connection between the accident caused by a defendant and the plaintiff's injuries: *Thompson v. Helgeson*, 2017 BCSC 927 at paras. 28–30. If causation is established, the court will then consider a number of factors when determining an appropriate quantum for non-pecuniary damages. In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, a non-exhaustive list of these factors was set out. It includes:

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

- g) impairment of family, marital, and social relationships;
- h) impairment of physical and mental abilities;
- i) loss of lifestyle; and
- j) the plaintiff's stoicism (as a factor that should not penalize the plaintiff).

Plaintiff's Position on Non-Pecuniary Damages

[67] Counsel for the Plaintiff submit that Mr. Chand's injuries were caused by the Accident. While acknowledging that Mr. Chand has been able to return to work full-time since August 2020, they note that his pain continues to flare up which results in Mr. Chand having to take considerable time off. They also highlight the deterioration of Mr. Chand's relationships with his wife and children, and the limited extent to which Mr. Chand can perform household chores since the Accident.

[68] With respect to quantum, the Plaintiff's position is that an appropriate monetary amount of compensation for Mr. Chand's non-pecuniary damages is \$185,000. Three jurisprudential authorities are cited in support of this submission:

- *Jafferi v. Hardcastle*, 2018 BCSC 486 [*Jafferi*]: \$150,000 award;
- *Broomfield v. Lof*, 2019 BCSC 1155: \$130,000 award; and
- *Sidhu v. Baturin*, 2022 BCSC 102: \$150,000 award.

[69] Counsel for the Plaintiff argue that the fact patterns in these cases are comparable to what occurred in the case at bar. Therefore, they say that a similar amount of damages, albeit with an adjustment for inflation, should be awarded to Mr. Chand.

Defendants' Position on Non-Pecuniary Damages

[70] The Defendants do not dispute that the Accident caused Mr. Chand to suffer physical and mental pain stemming from his soft tissue injuries. However, they

question their severity and submit that the quantum of non-pecuniary damages that ought to be awarded should be less than what Mr. Chand is claiming.

[71] In particular, counsel for the Defendants note that following the August 2019 surgery, Mr. Chand made a substantial recovery. Therefore, they say that much of Mr. Chand’s suffering occurred during the first three years after the Accident, and that he is now just experiencing some residual pain.

[72] The Defendants rely on three decisions in support of their position on non-pecuniary damages:

- *Gylytiuk v. Krause*, 2021 BCSC 2056: \$100,000 award;
- *Hedman v. Keykhosrowkiany*, 2020 BCSC 1974: \$100,000 award; and
- *Ali v. Stacey*, 2020 BCSC 465: \$135,000 award.

[73] While they do not propose a specific amount in respect of Mr. Chand’s award, counsel for the Defendants suggest that a range from \$90,000 to \$135,000 would be appropriate.

[74] Counsel for the Defendants also argue that Mr. Chand is a “crumbling skull” with significant pre-existing musculoskeletal conditions that contributed to the symptoms he experienced following the Accident. Accordingly, they argue that Mr. Chand’s damages ought to be reduced by 30%.

[75] Finally, counsel for the Defendants suggest that there has been some failure by Mr. Chand to mitigate his damages by not sufficiently embarking on a program of physical therapy, including active rehabilitation and weight reduction.

Analysis of Non-Pecuniary Damages

[76] I find that Mr. Chand’s soft tissue and psychological injuries were caused by the Accident and that they have significantly affected his enjoyment of life.

[77] I note in particular the time that elapsed between the Accident in March 2016 and Mr. Chand's permanent return to work in August 2020. This is a period of almost four and a half years. While it includes Mr. Chand's attempt to go back to HandyDART in early 2018, those five-months are reflective of stoicism on Mr. Chand's part as opposed to a recovery. Indeed, up until his August 2019 surgery, Mr. Chand was experiencing debilitating pain that seriously impacted his ability to work, interact with family and friends, and to maintain his home. While the surgery has alleviated Mr. Chand's symptoms to the extent that he is once again able to drive a HandyDART bus, it is apparent that his life outside of work remains less fulfilling and enjoyable than it was before the Accident. This is especially the case in terms of Mr. Chand's emotional and physical relationship with Ms. Chand, his interactions with his children and friends, and Mr. Chand's inability to do his share of household chores as he used to. Ample factual evidence of these circumstances was provided to the Court by Mr. Chand, Ms. Chand, Atish Singh, and Mulkeet Singh. It is wholly supportive of these findings, and was not meaningfully undermined in cross-examination.

[78] I also do not agree with the Defendants that Mr. Chand's pre-existing musculoskeletal conditions require a reduction in the non-pecuniary damage award to which Mr. Chand would otherwise be entitled. To use the established jurisprudential terminology, the expert evidence tendered supports a finding that these conditions amount to a "thin skull" situation as opposed to a "crumbling skull" situation. The distinction between the two is explained in *Filsinger v. ICBC*, 2009 BCSC 232 at paras. 24 to 26 as follows:

[24] The defendant does not go so far as to deny that the accident caused or contributed to the plaintiff's injuries. The concern is as to the extent. The issue is whether this is a "thin skull" or a "crumbling skull" situation. Both address the circumstances of a pre-existing condition, and its effect upon the accident victim. The law is that the defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition if the plaintiff would have experienced them regardless of the accident: *Athey v. Leonati*, 1996 CanLII 183 (SCC), [1996] 3 S.C.R. 458 at para. 35, 140 D.L.R. (4th) 235. The court requires "a measurable risk" or "a real or substantial possibility and not speculation" that the pre-existing condition would have manifested in the future regardless of the plaintiff's negligence. The measurable risk need not be proven on a balance of probabilities, but

given weight according to the probability of its occurrence: *Athey v. Leonati*, at para. 27.

[25] The injury is deemed “thin skull” when there is a pre-existing condition that is not active or symptomatic at the time of the accident, and that was unlikely to become active but for the accident.

[26] A “crumbling skull” injury is also one where there is a pre-existing condition, but one which is active or likely to become active. If the injury is proven to be of a thin skull nature, then the defendant is liable for all the plaintiff’s injuries resulting from the accident. If it is of a crumbling skull nature, then the plaintiff is liable only to the extent that the accident caused an aggravation to the existing condition.

[79] None of the expert witnesses (including the Defendants’ expert, Dr. Kokan), expressed the view that Mr. Chand’s soft tissue injuries would have occurred whether or not the Accident had taken place. To the contrary, there was an effective consensus that the Accident triggered and rendered symptomatic certain pre-existing conditions that were previously asymptomatic for Mr. Chand. As such, this is a thin skull situation. I find that on the evidence presented, it is mere speculation that Mr. Chand would have experienced his soft tissue injuries and related medical issues even if the Defendants’ vehicle had not collided with Mr. Chand’s bus on March 9, 2016.

[80] Similarly, I do not accept the Defendants’ position that Mr. Chand failed to adequately mitigate his non-pecuniary damages. As was noted by our Court of Appeal, the Defendants bear the “high burden” to demonstrate on a balance of probabilities that: (1) the Plaintiff acted unreasonably in eschewing recommended treatment; and (2) the extent, if any, to which the Plaintiff’s damages would have been reduced had he acted reasonably: *Chiu v. Chiu*, 2002 BCCA 618 at para. 57 and *Haug v. Funk*, 2023 BCCA 110 at paras. 56-81.

[81] While the Defendants assert that Mr. Chand’s active rehabilitation and weight reduction efforts were insufficient, their counsel did not clearly identify any factual evidence that was led in this regard. In the absence of such evidence, I cannot accept their argument that there has been a lack of mitigation simply because one expert, Dr. Chow, stated to counsel for the Defendants on cross-examination that, if appropriate and so long as it works within Mr. Chand’s tolerance, Mr. Chand could

expect to experience some improvement from physical therapy treatment. Furthermore, counsel for the Defendants did not indicate how this alleged failure to mitigate should be quantified, let alone identify what evidence would justify such a quantification. The Defendants' mitigation argument is rejected.

[82] With respect to quantum, I have reviewed the six cases that counsel for the parties referred to me for assistance in determining an appropriate amount for non-pecuniary damages. I find that the circumstances in *Jafferi* bear the most similarities to those in the case at bar.

[83] Mr. Jafferi was 54 years old when he was rear ended in a motor vehicle accident. He suffered soft tissue injuries similar in nature to those experienced by Mr. Chand, including an activation of a pre-existing degenerative disc condition. Mr. Jafferi underwent neck surgery a few years after his accident. Coincidentally, that operation was also performed by Dr. Heran, the same neurosurgeon who treated Mr. Chand. The surgery provided considerable relief but did not completely eliminate Mr. Jafferi's pain. As a result of the accident, Mr. Jafferi experienced fatigue and sleep disruptions. He had to curtail the work he was doing for his sole proprietorship, and was less able to perform household tasks. This caused some strain on his family life as Mr. Jafferi's spouse and children had to assist Mr. Jafferi both at home and with his business. Mr. Jafferi's non-pecuniary damage award was \$150,000 in 2018.

[84] I am cognizant of the principle that assessments of a plaintiff's injuries are done by reference to each individual's own circumstances, which obviously will never be identical to those of another litigant: *Schubert v. Knorr*, 2008 BCSC 939 at para. 97. Indeed, it appears that the impact of Mr. Jafferi's accident and the pain and suffering he felt were slightly less severe than that experienced by Mr. Chand, particularly in relation to physical pain and incapacity.

[85] Accordingly, I find that an award of \$170,000 would fairly compensate Mr. Chand for his non-pecuniary damages in the circumstances of this case.

Issue 2: Future Loss of Earning Capacity

Legal Principles

[86] Assessing a plaintiff's loss of earning capacity requires an examination of two hypothetical futures: one in which a plaintiff is assumed to be living with the aftermath of the injuries caused by a defendant, and another in which a plaintiff is assumed to be living as if these injuries had never been sustained. As stated by our Court of Appeal in *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 [*Gregory*] at para. 32:

... An award for future loss of earning capacity thus represents compensation for a pecuniary loss. It is true that the award is an assessment, not a mathematical calculation. Nevertheless, the award involves a comparison between the likely future of the plaintiff if the accident had not happened and the plaintiff's likely future after the accident has happened: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 11; *Ryder v. Paquette*, [1995] B.C.J. No. 644 (C.A.) at para. 8. ...

[87] The Court of Appeal prescribed a three-step test for assessing future loss of earning capacity in a trilogy of cases decided in 2021 indexed as: *Dornan v. Silva*, 2021 BCCA 228; *Rab v. Prescott*, 2021 BCCA 345 [*Rab*]; and *Lo v. Vos*, 2021 BCCA 421. The questions to be asked at these three steps were summarized in *Rab* at para. 47 as follows:

- 1) Is there a potential future event that could lead to a loss of earning capacity?
- 2) Is there a real and substantial possibility that the future event in question will cause a pecuniary loss?
- 3) If there is a such a possibility, what is its value?

[88] Valuation of the loss can be done using either the "earnings approach" or the "capital asset approach": *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 (S.C.) [*Brown*] at para. 7; *Perren v. Lalari*, 2010 BCCA 140 [*Perren*] at paras. 11–12. The earnings approach involves a calculation of the present value of a plaintiff's annual loss of income over the remaining years of employment, and is more appropriate when the loss is more easily measurable: *Westbroek v. Brizuela*, 2014 BCCA 48. The capital asset approach involves consideration of a person's lost ability to work in

a certain position in their field of work as the loss of an income earning asset, and is more appropriate where the loss is less easily measurable: *Park v. Targonski*, 2017 BCCA 134 at para. 123. Under either approach, the plaintiff must prove that there is a real and substantial possibility of various future events leading to an income loss (*Perren* at para. 33), and damages are assessed, not calculated (*Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18).

Plaintiff's Position on Future Loss of Earning Capacity

[89] Counsel for the Plaintiff submit that the first two steps of the *Rab* analysis are satisfied.

[90] With respect to the first step, they argue that the medical evidence shows that Mr. Chand suffers and will continue suffer from a loss of earning capacity. This loss stems from Mr. Chand's ongoing pain, headaches, and residual insomnia. They point to the weakness in Mr. Chand's dominant left arm, and to the fact that engaging in heavier activities causes flare ups of his pain and headaches.

[91] Turning to the second step, Plaintiff's counsel say that there is a real and substantial possibility that this lost capacity will cause pecuniary loss. This will manifest itself through a loss of opportunity for Mr. Chand to take overtime shifts at HandyDART, and to do work as a rideshare driver for Uber or Lyft.

[92] As for the valuation of Mr. Chand's loss of earning capacity, counsel for the Plaintiff propose amounts calculated using both the earnings approach and the capital asset approach.

[93] If the earnings approach is used, counsel for the Plaintiff posit two possibilities. The first is that but for the Accident, Mr. Chand would be working 30 hours of overtime at HandyDART every month, for which he would be paid double time at \$60.70 per hour. Annualized, such a loss equates to \$21,852 per year. The second is that but for the Accident, Mr. Chand would be working 10 hours per week as an Uber driver, earning \$14,000 per year. The mid-point of these two numbers is approximately \$18,000 per year. Applying the Civil Jury Instructions' 10-year

multiplier, Mr. Chand's estimated loss of earning capacity to age 70 is \$165,996.00. Applying the Civil Jury Instructions' 15-year multiplier, Mr. Chand's estimated loss to age 75 would be \$240,177.70.

[94] If the capital asset approach is used, counsel for the Plaintiff suggest that an equitable valuation would be to award Mr. Chand 2.5 years' worth of his current annual salary. As that salary is \$59,182.50 (\$30.35 per hour X 37.5 hours per week X 52 weeks per year), this equates to a loss of approximately \$148,000.

[95] Counsel for the Plaintiff also submit that positive and negative contingencies must be considered in measuring damages for future loss of income capacity. The positive contingencies relate to the chances that Mr. Chand will be able to obtain overtime shifts from HandyDART and lucrative earnings as a rideshare driver. The negative contingencies relate to the possibility that Mr. Chand will not be able to work full-time for the ten or fifteen years he expects to work into the future. This could occur if Mr. Chand experiences other non-Accident related health issues, unemployment, or premature death.

[96] While counsel for the Plaintiff have proposed valuations of Mr. Chand's lost earning capacity using both the earnings approach and the capital asset approach, they ultimately argue that the latter should be used as it is simpler and provides for a more equitable balancing of the interests of the parties. In sum, Mr. Chand is therefore claiming a total of \$148,000 for future loss of earning capacity.

Defendants' Position on Future Loss of Earning Capacity

[97] Counsel for the Defendants submit that there are four reasons why Mr. Chand should not be awarded anything for loss of future earning capacity.

[98] First, Mr. Chand has been gainfully employed as a HandyDART driver since his August 2020 return to work. He loves his job and his employer is satisfied with his performance. There is no real risk that Mr. Chand will become unemployed. As such, there is no real and substantial possibility that Mr. Chand will suffer a loss of future income as a result of the Accident.

[99] Second, counsel for the Defendants do not accept the Plaintiff's hypothesis that, but for the Accident, Mr. Chand would have become a rideshare driver with Uber or Lyft. They note that Mr. Chand has made no effort to even submit an application for such work, let alone attempt it in order to find out if he has the requisite capacity to perform rideshare driving.

[100] Third, counsel for the Defendants argue that Mr. Chand's inaction with respect to his stated interest in working as a rideshare driver constitutes another example of Mr. Chand's failure to mitigate his losses from the Accident.

[101] Fourth, counsel for the Defendants also argue that Mr. Chand has not been refused overtime by HandyDART as he has not applied for it. They say that there is no medical evidence that Mr. Chand cannot do overtime. Rather, Mr. Chand chooses not to work overtime because he subjectively feels that he is unable to.

[102] In the alternative, counsel for the Defendants submit that if the Court finds that Mr. Chand is entitled to some compensation for loss of earning capacity, it should simply be set at a nominal amount of \$10,000.

Analysis of Future Loss of Earning Capacity

[103] In *Rab*, our Court of Appeal explained that the first aspect of the three-step process for considering claims for loss of future earning capacity is to examine whether the evidence discloses a potential future event that could lead to a loss of capacity. This gives rise to the four considerations set out in *Brown* at para. 8. They are whether the plaintiff is: (1) less capable overall of earning income from all types of employment; (2) now a less attractive employee; (3) less able to take advantage of all job opportunities open to the plaintiff; and (4) less valuable in terms of earning income in a competitive labour market.

[104] On my assessment of the evidence, all four of these considerations are met. In particular, I find that the residual pain that Mr. Chand still experiences post-surgery limits his capacity to earn the same levels of income as a driver that he was capable of earning prior to his Accident. This finding is supported by both the

testimony of Mr. Chand and the expert opinions of Dr. Heran, Dr. Watt, Dr. Grover, and Dr. Kokan.

[105] This evidence is also relevant to the second step of the *Rab* analysis, namely, the question of whether there is a real and substantial possibility of a future event related to the Accident that will cause a pecuniary loss. I find that there is such a possibility, both in relation to Mr. Chand's ability to earn overtime pay at HandyDART, and to work as a rideshare driver for Uber or Lyft. This is demonstrated by the evidence of Mr. Chand, Ms. Lamb, and Mr. Mandair. Ms. Lamb testified in her capacity as Mr. Chand's current manager at HandyDART as to the availability of overtime at HandyDART for senior drivers like Mr. Chand. She also indicated that many HandyDART drivers take on supplemental driving work through rideshare, limousine, and care home companies. Mr. Mandair provided testimony based on his personal experience as an Uber driver regarding the relative ease by which a person with the requisite driving qualifications can earn income by using their personal vehicle for ridesharing. Furthermore, I can see no justification for rejecting the Plaintiff's assertion that he has lost the ability to work overtime at HandyDART and engage in ridesharing simply because Mr. Chand has not tried and failed, as the Defendants urge me to do. Such a precondition for obtaining an award for loss of earning capacity cannot be found in any of the jurisprudential authorities that were brought to my attention.

[106] The third and final step of the *Rab* analytical framework is to value the plaintiff's lost capacity. As noted earlier, this can be done using either the earnings approach or the capital asset approach. In my view, this is a case in which the latter is more appropriate. That is because the Plaintiff's injuries have exposed him to a future loss of capacity but his income at trial is at or near his pre-accident level of earnings: *Davies v. Penner*, 2023 BCCA 300 at para. 28.

[107] In *Pallos v. Insurance Co. of British Columbia* (1995), 100 B.C.L.R. (2d) 260, 1995 CanLII 2871 (C.A.) at para. 43, our Court of Appeal explained that there are

three acceptable methods for assessing the value of lost future earning capacity under the capital asset approach:

- (a) by postulating a minimum annual income loss for the plaintiff's remaining years of work, multiplying the annual projected loss by the number of years remaining, and calculating the present value of this sum (the "Present Value of Total Annual Income Loss Method");
- (b) by awarding the plaintiff's entire annual income for one or more years (the "Present Annual Income Multiplied Method"); or
- (c) by awarding the present value of some nominal percentage income loss per annum applied against the plaintiff's expected annual income (the "Present Value of Nominal Percentage Income Loss Method").

[108] I agree with counsel for the Plaintiff that the most appropriate capital asset approach method for calculating Mr. Chand's future loss of earning capacity is the Present Annual Income Multiplied Method. Given Mr. Chand's circumstances and the evidence presented, this is not a case that lends itself to employing the other methods for calculating the value of Mr. Chand's diminished capital asset.

[109] However, I do not agree with counsel for the Plaintiff's position that awarding Mr. Chand 2.5 years of his current salary would be appropriate simply because Mr. Chand "wants to work to 70-75", an optimistic positive contingency. It must be remembered that Mr. Chand is already 60 years old, and also faces negative contingencies in relation to the possibility of experiencing age-related health challenges, as noted by Dr. Watt in particular. In my view, therefore, an award that would approximate one year's worth of Mr. Chand's annual salary would be equitable in this case. Accordingly, Mr. Chand will be awarded \$60,000 in compensation for his future loss of earning capacity.

Issue 3: Cost of Future Care

Legal Principles

[110] A clear summary of the principles applicable to the assessment of cost of future care claims can be found in Justice Adair's judgment in *Golkar-Karimabadi v. Bush*, 2021 BCSC 990 at para. 107:

An award for cost of future care is based on what is reasonably necessary, on medical evidence, to promote the mental and physical health of the claimant. The award must (1) have medical justification, and (2) be reasonable. The medical necessity of future care costs may be established by a health care professional other than a physician, such as an occupational therapist, if there is a link between a physician's assessment of pain, disability and recommended treatment, and the health care professional's recommended care item. See *Gao v. Dietrich*, 2018 BCCA 372, at paras. 69-70. No award is appropriate for costs that a plaintiff would have incurred in any event: *Shapiro v. Dailey*, 2012 BCCA 128, at paras. 51-55. Moreover, future care costs must be likely to be incurred by the plaintiff. The onus is on the plaintiff to show that there is a reasonable likelihood that she will use the suggested services: see *Lo v. Matsumoto*, 2015 BCCA 84, at para. 20.

[111] In essence, the courts' paramount concern in adjudicating a cost of future care claim in a personal injury case is to ensure that the plaintiff is provided with adequate future care for which the need has been objectively demonstrated based on the evidence tendered: *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229, 1978 CanLII 1 (S.C.C.) at 261; and *Gregory* at para. 39.

Plaintiff's Position on Cost of Future Care

[112] Counsel for the Plaintiff stated that Mr. Chand is seeking an award of \$150,000 for his cost of future care.

[113] The claim is founded upon Ms. Walker's future cost of care analysis report. It includes a cost of future care table indicating that compensation for the following items is being sought (for those amounts expressed as a range, they are averaged here):

Magnetic resonance imaging (MRI) – one time	\$900.00
Viscosupplementation – twice per year, ongoing	\$900.00/yr

Botox injections – 2 to 4 per year, ongoing:	\$3,300.00/yr
Prolotherapy – one time treatment cycle	\$5,600.00
Platelet Rich Plasma (PRP) – initial consultation	\$650.00
Platelet Rich Plasma (PRP) – 1-2 per year, ongoing	\$2,250.00/yr
Physiotherapy – 6 per year, ongoing	\$627.00/yr
Massage therapy – 12 to 24 per year, ongoing	\$2,364.00/yr
Kinesiology – 12 to 18 sessions, one cycle	\$1,575.00
Certified personal trainer – 51 to 76.5 hours, one cycle:	\$4,400.00
Gym pass – annual, ongoing	\$443.00/yr
Carpal tunnel brace – 1 per year, ongoing	\$30.00/yr
Dietician – one consultation	\$1,000.00
Weight Watchers membership – annual, ongoing	\$240.00/yr
Clinical psychologist (initial) -12 sessions, one cycle	\$2,700.00
Clinical psychologist (ongoing) – 6 to 8 per year, ongoing	\$1,575.00/yr
Yard and garden assistance: 2 hrs every 2 weeks, ongoing	\$3,120.00/yr
Medications – ongoing	\$2,518.87/yr

[114] Counsel for the Plaintiff notes that Ms. Walker's report was admitted into evidence without objection. They also point out that Mr. Chand was not cross-examined on his statements to the effect that he wants to avail himself of the

treatments listed in the report, but has largely been unable to do so for financial reasons.

[115] With respect to the amount sought, counsel for the Plaintiff say that the mid-point of Ms. Walker's costing on an annual basis is approximately \$11,000 per year. They also submit that the present value of this amount is \$136,191 if it is payable for 15 years, and \$171,479 if it is payable for 20 years. These calculations are based on figures drawn from the Civil Jury Instructions. While not clearly explained by counsel for the Plaintiff in their submissions, it appears that the proposed \$150,000 award simply reflects an approximate mid-point between these two present values.

Defendants' Position on Cost of Future Care

[116] Counsel for the Defendants submit that Mr. Chand has only established an entitlement to an award of \$4,275 regarding the cost of his future care.

[117] This amount relates solely to the treatment recommendations made by Dr. Karapareddy in respect of Mr. Chand's mental health, namely, cognitive behavioural therapy and counselling. According to Ms. Walker's report, cognitive behavioural therapy will entail a one-time cost of \$2,700, and counselling will cost an average of \$1,575 per year. Since Mr. Chand is only suffering from residual mood swings and his depression has completely resolved, the Defendants say that they should only be required to pay for counselling for one year.

[118] As for the balance of the cost of future care amounts set out in Ms. Walker's report, the Defendants submit that they relate to care items whose medical necessity has not been demonstrated through the medical expert evidence tendered.

Analysis of Cost of Future Care

[119] On my review of the evidence, I am satisfied that many, but not all, of the cost of care items listed in Ms. Walker's report have been recommended by one or more of the medical experts who provided evidence in this case, and that they are therefore reasonably necessary. I also accept Mr. Chand's evidence to the effect that he is willing and likely to access these goods and services.

[120] My particularized assessment of each specific item that has been claimed is set out below. For those items that entail annual ongoing expenditures, I have used the present value cost of care multipliers set out in Mr. Sheldon's January 26, 2023 report.

- a) MRI: Dr. Heran recommended in his December 2, 2022 report that Mr. Chand should have a repeat MRI scan of his lumbar spine performed. \$900 will be awarded for this item.
- b) Viscosupplementation: Dr. Grover indicated in his December 11, 2022 report that Mr. Chand "may end up" requiring viscosupplementation injections/ cortisone injections. This speculative assertion does not demonstrate that such treatment is reasonably necessary. No award will be made in respect of this item.
- c) Botox injections, prolotherapy and PRP: Dr. Gill indicated in his January 7, 2023 report that all three treatments can provide a high level of healing and provide relief in respect of Mr. Chand's headaches, back pain, and neck pain. On cross-examination, Dr. Gill confirmed that these are alternative treatments, not cumulative ones. According to Ms. Walker's report, the most cost-effective of these options is prolotherapy. \$5,600 will be awarded for this item.
- d) Physiotherapy and massage therapy: Dr. Grover indicated in his December 11, 2022 report that Mr. Chand's chronic pain is best managed through treatments that include physiotherapy and massage therapy. This assessment finds further support in the reports of Dr. Gill and Dr. Chow. These are ongoing treatments which I am satisfied will be reasonably necessary to age 75. \$35,850 will be awarded for the present value of these items.
- e) Kinesiology, certified fitness trainer, and gym pass: Dr. Watt indicated in his reports dated December 30, 2019 and December 8, 2022 that Mr. Chand should be: (1) referred for a six week kinesiologist-supervised active rehabilitation program; (2) referred to a certified fitness trainer for a four-

- month progressive exercise program; and (3) provided with a one-year gym pass: \$6,418 will be awarded for these items.
- f) Carpal tunnel brace: Dr. Gill indicated in his January 27, 2023 report that Mr. Chand should continue to use a carpal tunnel brace to help with his carpal tunnel symptoms. I accept that the brace will require ongoing annual replacement. \$550 will be awarded for the present value of this item.
- g) Dietician and Weight Watchers: Dr. Watt indicated in his reports dated December 30, 2019 and December 8, 2022 that since Mr. Chand is “markedly overweight”, Mr. Chand should join a commercial weight-loss program such as Weight Watchers or be referred to a dietician. However, no specific evidence was led regarding Mr. Chand’s weight prior to March 9, 2016 and I have not been shown that there is a causal link between the Accident and any weight gain Mr. Chand might have experienced afterwards. No award will be made in respect of these items.
- h) Clinical psychologist: Dr. Karapareddy indicated in his January 6, 2023 report that Mr. Chand should undergo 12 sessions of cognitive behaviour therapy for pain. Dr. Karapareddy also indicated that Mr. Chand would benefit from supportive counselling to deal with his residual PTSD symptoms. While Dr. Karapareddy used the adjective “ongoing” to describe this counselling, he only advised that Mr. Chand attend six to eight sessions to prevent deterioration in his presentation and to improve his resiliency. \$4,275 will be awarded in respect of these recommended sessions.
- i) Yard and garden assistance: This item will be addressed as part of Mr. Chand’s claim for loss of housekeeping capacity.
- (j) Medications: Dr. Gill indicated in his January 7, 2023 report that Mr. Chand should be provided with prescription medication for his mood disorder and headaches. Ms. Walker estimates that the annual cost of this medication is \$2,488.87 plus \$30.00 for delivery, for a total of \$2,518.87. I accept that this is an ongoing expense that Mr. Chand will incur indefinitely as a result of the Accident. \$45,500 will be awarded in respect of its present value.

[121] An award for Mr. Chand's cost of future care will therefore be granted in the amount of \$99,093.

Issue 4: Loss of Housekeeping Capacity

Legal Principles

[122] A helpful summary of the law regarding loss of housekeeping capacity claims in personal injury litigation can be found in *Ali v. Stacey*, 2020 BCSC 465. In this decision, Justice Gomery distilled the legal principles established by our Court of Appeal in *Kim v. Lin*, 2018 BCCA 77 and *Riley v. Ritsco*, 2018 BCCA 366:

[67] Read together, these two judgments establish that a plaintiff's claim that she should be compensated in connection with household work she can no longer perform should be addressed as follows:

- a) The first question is whether the loss should be considered as pecuniary or non-pecuniary. This involves a discretionary assessment of the nature of the loss and how it is most fairly to be compensated; *Kim* at para. 33.
- b) If the plaintiff is paying for services provided by a housekeeper, or family members or friends are providing equivalent services gratuitously, a pecuniary award is usually more appropriate; *Riley* at para. 101.
- c) A pecuniary award for loss of housekeeping capacity is an award for the loss of a capital asset; *Kim* at para. 31. It may be entirely appropriate to value the loss holistically, and not by mathematical calculation; *Kim* at para. 44.
- d) Where the loss is considered as non-pecuniary, in the absence of special circumstances, it is compensated as a part of a general award of non-pecuniary damages; *Riley* at para. 102.

[123] It should also be noted that because the award reflects the loss of a personal capacity, it is not dependent upon whether replacement housekeeping costs are actually incurred: *O'Connell v. Yung*, 2012 BCCA 57 at para. 67.

Plaintiff's Position on Loss of Housekeeping Capacity

[124] The Plaintiff seeks a discrete award for loss of housekeeping capacity. His counsel submit that there has been a stark change in the extent to which Mr. Chand has been able to perform home and yard maintenance tasks following the Accident.

They argue that Mr. Chand should be compensated for both his past and future loss in this regard.

[125] With respect to the past, Mr. Chand submits that he effectively lost 10 hours per week of his housekeeping capacity during the first four years following the Accident. As of March 2020, however, Mr. Chand acknowledges that he regained some of his ability to do housework after having recovered from his 2019 surgery. Specifically, Mr. Chand says that from March 2020 to the time of trial in April 2023, his lost capacity to do housework was 7 hours per week. Valuing this loss at \$25 per hour, Mr. Chand claims a loss of \$52,000 for the first period (i.e., from March 2016 to March 2020), and \$28,350 in respect of the second period (i.e., from March 2020 to April 2023). Ultimately, Mr. Chand proposes that a rounded down amount of \$80,000 be awarded for his cumulative loss of past housekeeping capacity.

[126] Mr. Chand also claims \$150,000 in respect of his future lost housekeeping capacity. Mr. Chand maintains that he will continue to lose the equivalent of 7 hours of housekeeping capacity going forward, but submits that this should be valued at \$30 per hour to account for inflation. Counsel for the Plaintiff say that, when calculated using the Civil Jury Instruction’s multipliers, the present value of this future loss to age 75 is \$135,204.88, and to age 80 is \$170,234.06. It appears that the \$150,000 amount claimed represents an approximate mid-point between these two amounts.

[127] In sum, Mr. Chand requests a total award of \$230,000 for lost housekeeping capacity.

Defendants’ Position on Loss of Housekeeping Capacity

[128] The Defendants do not accept that the Plaintiff has demonstrated an entitlement to an award for lost housekeeping capacity. They say that the evidence regarding how housekeeping was conducted in the Chands’ home reflected the “usual give and take between family members”. Furthermore, the extent to which Mr. Chand was providing housekeeping services before the Accident was not of

sufficient magnitude to justify compensation for his reduced capacity to do domestic chores following the Accident.

[129] In the alternative, counsel for the Defendants suggest that Mr. Chand be given a nominal award of \$5,000 in respect of 1.5 years' worth of diminished housekeeping capacity.

Analysis of Loss of Housekeeping Capacity

[130] In my view, this is a case in which a pecuniary award for Mr. Chand's loss of housekeeping capacity is appropriate.

[131] On the basis of the uncontradicted evidence of Mr. Chand, Ms. Chand, and Atish Singh, I find that Mr. Chand was providing significant housekeeping services prior to the Accident. While Mr. Chand did not really have any hobbies, he was passionate about maintaining his large home and devoted much of his time outside of work to keeping it clean, organized, and functional. Furthermore, unlike some couples, the Chands would essentially split all of the housework evenly between them. After the Accident, however, Mr. Chand could no longer do such work until after he recovered from his August 2019 surgery. While Mr. Chand has been able to resume some lighter housekeeping duties, he does not perform them to the same extent as he did prior to the Accident. As a result, Ms. Chand and the Chands' adult children have had to assume chores that used to be done by Mr. Chand. According to Dr. Chow, Dr. Grover, Dr. Heran, and Dr. Watt, it can also be expected that Mr. Chand will continue to require help with housework into the future.

[132] With respect to valuating Mr. Chand's lost housekeeping capacity, I agree generally with the analytical framework proposed by counsel for the Plaintiff. In particular, I find that it would be appropriate to determine the approximate number of housekeeping hours that Mr. Chand would have contributed but for the Accident, and to then multiply that number by \$25 per hour. This is the notional rate that has commonly been used to value unpaid housekeeping in this Court, as was recently noted in *Howes v. Liu*, 2023 BCCA 316 at paras. 32 and 42. The product of these numbers will be used to calculate Mr. Chand's past loss. A similar exercise will then

be performed with respect to the expected value of future housekeeping services Mr. Chand will not be able to provide as a result of the Accident.

[133] Mr. Chand testified that prior to the Accident, he would spend 6 to 7 hours per week doing chores inside the house, and approximately the same amount of time on outdoor chores. Following the Accident, he could not work around the house at all. Mr. Chand now spends a total of about 5 hours a week on all household chores.

[134] According to Ms. Chand, she would do approximately 5 to 10 hours of housework per week prior to the Accident. That amount increased to approximately 10 to 12 hours per week during the period Mr. Chand was unable to provide any household assistance, from the time of the Accident in 2016 until 2020. Today, Ms. Chand estimates that she is still devoting 4 to 5 additional hours each week to home chores than she was prior to the Accident. The Chands' adult children who still live at home also continue to provide more assistance around the house than they would have if Mr. Chand enjoyed his pre-Accident physical tolerance for housework.

[135] On the basis of this evidence, I find that the Accident prevented Mr. Chand from contributing about 10 hours' worth of household labour per week during the initial four-year period following the Accident. After that, I find that Mr. Chand was able to work around the house for approximately 5 hours per week. However, this means that he was still effectively denying his family the benefit of approximately 5 hours of assistance with home chores every week, help that they then had to provide gratuitously. I also find that this situation is likely to persist until around the time Mr. Chand reaches the age of 75. As noted by Ms. Walker in her report, individuals become less able to perform housekeeping as they age in any event.

[136] Accordingly, I will issue an award in respect of Mr. Chand's past loss of housekeeping capacity from the time of the Accident (early March 2016) to the time of trial (late April 2023) that reflects: (1) a loss of 10 hours per week for the first four years; and (2) a loss of 5 hours per week for the remaining period, as follows:

- (1) 10 hours per week X 208 weeks X \$25 per hour: \$52,000; and

(2) 5 hours per week X 157 weeks X \$25 per hour: \$19,625.

[137] As for Mr. Chand’s future loss of housekeeping capacity, it will be calculated on the basis of an estimated annual loss of \$6,500 (5 hours per week X 52 weeks X \$25 per hour). According to Mr. Sheldon’s report, the present value of this amount calculated to when Mr. Chand turns 75 years of age is \$77,922.

[138] On the basis of the approximate total of these three figures (\$52,000, \$19,625, and \$77,922), I find that an appropriate compensatory award for Mr. Chand’s loss of housekeeping capacity is therefore \$150,000.

CONCLUSION

[139] Mr. Chand is awarded a total of \$713,099.78 in damages, under the following headings:

- Non-pecuniary damages: \$170,000.00
- Past loss of income: \$167,171.00
- Future loss of earning capacity: \$60,000.00
- Cost of future care: \$99,093.00
- Special damages: \$66,835.78
- Loss of housekeeping capacity: \$150,000.00

Total: \$713,099.78

COSTS

[140] If the parties are unable to agree on the form of a costs order, they may contact Supreme Court Scheduling within 30 days of the date of these reasons for judgment to schedule a hearing on this issue before me.

“Brongers J.”