

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dadwan v. Kim*,  
2023 BCSC 1903

Date: 20231031  
Docket: M202863  
Registry: Vancouver

Between:

**Inderjit Singh Dadwan**

Plaintiff

and

**Jason Saul Traub, Lynn Kim, and Charles Kim**

Defendants

Before: The Honourable Madam Justice Wilkinson

## Reasons for Judgment

Counsel for the Plaintiff:

R. Marcoux

Counsel for the Defendants:

K. Ho

Place and Dates of Trial:

Vancouver, B.C.  
February 27-28, 2023  
March 1-3, 2023  
April 24, 2023

Place and Date of Judgment:

Vancouver, B.C.  
October 31, 2023

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**Introduction**

[1] These are my reasons for judgment in a vehicle personal injury claim.

[2] The plaintiff was involved in a motor vehicle accident on November 6, 2018 in Surrey, British Columbia (the "Accident"). He was 35 years old at the time. The Accident occurred as a result of a three-car chain collision. The defendant Ms. Kim's vehicle rear-ended the defendant Mr. Traub's vehicle, which then rear-ended the plaintiff's vehicle.

[3] All three vehicles involved in the Accident were rendered a total loss. The plaintiff has discontinued his action against Mr. Traub. The remaining defendants have admitted liability for the Accident. These reasons reflect my decision on the appropriate quantum of damages.

[4] As a result of the Accident, the plaintiff claims he suffered a number of injuries, the primary of which being chronic pain in his neck and back and post-traumatic headaches.

[5] The plaintiff claims losses under the following heads of damage:

- a) Non-pecuniary damages;
- b) Cost of future care;
- c) Past and future loss of housekeeping capacity; and
- d) Special damages.

[6] The defendants agree that the plaintiff suffered soft tissue injuries in the accidents to his lower back and neck and has related persistent headaches. They dispute that those injuries have impacted the plaintiff's life to the extent claimed.

[7] The plaintiff seeks a total award under all heads of damages of approximately \$800,000. The defendants submit an award between approximately \$170,000 and \$235,000 is more appropriate.

[8] For the reasons that follow, I find that the plaintiff is entitled to compensation and order a total award of \$310,882.54.

### **Background**

[9] The plaintiff is presently 40 years old. He resides in Surrey with his spouse and two daughters. Both daughters were born after the Accident. At the time of trial, they were ages three and one.

[10] The plaintiff was self-employed at the time of the Accident. He owns and runs a gas station in Abbotsford, which he bought in early 2018.

[11] The plaintiff is clearly passionate about his work. He has worked in the fuel industry ever since he was 23 years old. For about 10 years, he had been eyeing a specific gas station in Abbotsford that he would frequent. In February of 2018, nearly nine months before the Accident, he bought that gas station with a loan provided by his brother.

[12] The plaintiff's career became the main priority in his life when he bought the gas station and transitioned from a 7-Eleven managerial employee, working 9–5, five days a week, to a new business owner. The plaintiff described this as a “big change” which caused him some stress. His spouse said that he had warned her that he would need to work weekends and evenings for at least six months in order to build the business. One gas industry witness described the plaintiff as being one of the top gas station managers in customer service.

[13] Upon buying the business, the plaintiff had immediate plans to renovate the gas station and provide it with a “facelift” by repainting the store and the car wash and installing new shelving. The plaintiff did this work himself, along with managing the operations of the gas station and providing hands-on customer service. He worked long hours, including evenings and weekends.

[14] The plaintiff testified that soon after the Accident, he suffered pain in his neck, wrist, ankle, left elbow, and left fore arm. He also recalls suffering from a massive

headache, which caused him to feel dizzy and nauseous. Ever since the Accident, he has suffered from ongoing headaches, shoulder, upper back pain, and agitation. The defendants do not dispute that the plaintiff has suffered those injuries and symptoms, and they accept the following diagnoses by the medical experts:

- (a) whiplash-associated soft tissue injuries of the neck and back; and
- (b) persistent headaches related to soft tissue injuries of the neck, which have developed into chronic myofascial pain syndrome in those areas.

[15] The plaintiff testified he suffered through brutal headaches for the first 15 months after the Accident.

[16] Following the Accident, the plaintiff said he had to cut corners and leave work undone. He relied more heavily on staff and missed a lot of productive time for appointments. He did not miss any days from work due to the Accident except for the day following the Accident.

[17] The plaintiff testified he finally received what he described as a life-changing benefit as a result of starting Botox injections. However, the headaches affect every facet of his life. Even with the Botox treatments, he testified he experiences a debilitating headache about once a week. He regularly has moderate headaches. He has some low-grade headache every day.

[18] The plaintiff described many triggers for his headaches, including sound, light, smells, barometric pressure changes, and elevation changes.

[19] The plaintiff testified he also has a chronic pain condition affecting his neck and back since the Accident.

[20] Socially, he says he has become much more withdrawn. Other lay witnesses corroborated that the plaintiff appeared more withdrawn since the Accident, and would leave social events early, but the plaintiff did not testify to these events himself.

[21] The plaintiff is a very religious person. He previously prayed three times a day. Now he prays twice a day. Praying was always very meditative for him and provides a connection to his faith. The plaintiff is no longer able to wear his turban because it increases his headache pain. He compensates by wearing the head covering of a youth. This he finds embarrassing.

[22] The plaintiff enjoyed ATVing, which he had done since he was a child. Since the Accident, he has only gone out ATVing a few times. Both the plaintiff and his brother testified to the fact that the plaintiff could no longer do this activity without pain and discomfort. The plaintiff testified that he is no longer able to go for difficult or long hikes because of his headaches. Other activities negatively impacted by his injuries were sledding with his children and a trip that he made to Whistler, which he could not enjoy due to pain.

[23] The plaintiff testified that when his first daughter was born, he was so numb and exhausted from his headaches that he did not feel the joy of being a dad.

[24] Despite regularly doing vacuuming and laundry before the Accident, the plaintiff testified he no longer does these chores since he has to conserve his energy.

[25] Since the Accident, the plaintiff has undergone extensive investigations and trialed different medications and treatments, including active rehabilitation, occupational therapy, physiotherapy, massage therapy, chiropractic therapy, and Botox. The plaintiff referred to this intensive treatment program as a “full-time job”.

**Prior Health Issues**

[26] Before the Accident, the plaintiff had some moderate health issues which did not apparently impede his function or daily activities. Nonetheless, he visited his family doctor about once a month in the two years leading up to the Accident, as well as other medical specialists. Specifically, his clinical records and testimony revealed that he had:

- a) Lower- and mid-back pain in 2017.
- b) Keratoconus in his left eye in 2005, which is a disorder that affects the cornea resulting in blurred vision and sensitivity to light. The plaintiff recalls having sharp pain in his left eye and light sensitivity before the Accident because of this condition. Surgery helped to address the issue. He also recalled seeing light halos as a result of that condition.
- c) Occasional dull frontal headaches since April of 2017, which he associates with the keratoconus in his left eye.
- d) Having an issue with his right elbow and forearm, which was recorded by Dr. Hassan as “tennis elbow” (elbow tendonitis) in August of 2018. He received one session of physiotherapy treatment.
- e) Foot and ankle pain in his right ankle at various times, which would be remedied by orthotics.
- f) Daytime sleepiness and fatigue in early 2017. He sought testing at a sleep clinic and sleep apnea disorder was ruled out.
- g) Stress reported to his doctor, which the plaintiff recalled was related to taking over the gas station business. His doctor recorded that the plaintiff had some anxiety, but the plaintiff denied recalling having anxiety in cross-examination. The clinical records reveal that the plaintiff was prescribed lorazepam in March of 2018, which an expert testified is a short-acting tranquilizer for treatment of anxiety or panic. The plaintiff did report to one of the experts that he felt anxious at times but did not have a history of depression.

**Assessment of the Evidence**

**Credibility of the Plaintiff’s Evidence**

[27] In *Welder v. Lee*, 2019 BCSC 1328, the Court reviewed the principles of assessing credibility and reliability as follows:

[58] The factors to be considered when assessing credibility were summarized in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal ref'd, [2012] S.C.C.A. No. 392. The assessment of credibility involves the consideration of the witness' ability and opportunity to observe events, the firmness of the witness' memory, the ability of the witness to resist the influence of interest in modifying her recollection, a consideration of whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes her evidence during direct examination and cross-examination (or between examination for discovery and trial), or is otherwise inconsistent in her recollections, the witness' demeanour generally, a consideration of whether the witness' evidence seems generally unreasonable, impossible, or unlikely and whether the witness has a motive to lie.

[59] Such an assessment of the validity of the evidence is aimed at considering whether the evidence is "consistent with the probabilities affecting the case as a whole and shown to be in existence at the time": *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) at 356.

[60] Credibility and reliability are not the same. Credibility is concerned with the veracity of the witness and assessment of reliability involves consideration of the accuracy of the witness' testimony; accuracy engages the ability of the witness to observe, recall and recount: *R. v. Khan*, 2015 BCCA 320 at para. 44, leave to appeal ref'd [2015] S.C.C.A. No. 374

[28] As is the case with these types of injuries, for the most part the plaintiff's symptoms are subjective, which means that his diagnoses and the expert opinions are based primarily on his own reporting. If the plaintiff's account of his pre- and post-Accident condition is not convincing, then the recommendations upon which the expert opinions rest will be undermined or qualified: *Samuel v. Chrysler Credit Canada Ltd.*, 2007 BCCA 431 at paras. 15, 44.

[29] The defendants say that the plaintiff is not a reliable historian or reporter of his pain caused by the Accident, the extent of his limitations, or the effectiveness of the treatments he has received to date. In particular, the defendants say that he has excessively attributed the difficulties of his current state to the Accident rather than his pre-existing conditions, his own decisions, and the other stressors in his life; exaggerated the extent of his impairment or disability caused by the Accident; and overstated the efficacy of his Botox treatments on his ability to function.

[30] With respect to the excessive attribution of the difficulties of his state to the Accident, the plaintiff had poor recollection of any medical issues that he suffered before the Accident and neglected to disclose his prior health issues to the experts that assessed him. During his direct examination, he did not attribute any of his fatigue or pain to the long hours and hard physical labour he was putting into his job following the Accident, or the stressors involved with raising a young family.

[31] He did take on projects at work that were physically demanding. When initially asked in cross-examination about the timeline of the construction projects that the plaintiff completed at work, he testified that the renovations and tasks that he did either occurred before the Accident or only recently in the last few months. When confronted with clinical records that revealed ongoing construction work between 2021 and 2022, the plaintiff testified that he was involved in numerous projects and that this work had to be regularly done as part of running the business. In that regard, the plaintiff said he is willing to push through the pain and take mitigation measures to finish the construction projects at work because he can and because he does not want to pay for contractors.

[32] However, the plaintiff maintains that he is unable to perform housekeeping or engage in other recreational activities because those activities aggravate his symptoms or because he is too drained from work. The defendant describes this as an inconsistency. However, it is consistent with the plaintiff's history of prioritising the success of his business. Where prior to the Accident he was not exhausted at the end of the work day, afterward he was.

[33] The defendant highlighted the plaintiff's reporting on the severity of his headaches as raising credibility or reliability concerns.

[34] In cross-examination, the plaintiff maintained that he would experience severe or incapacitating headaches, but conceded that during one of these episodes he would still be able to drive from work to home (about a 45-minute to an hour drive). Dr. Robinson testified that a severe or incapacitating headache would render an individual functionless such that they would not be able to drive for that period of

time during a headache episode. Based on his own reporting in tests administered by Dr. Robinson, the plaintiff would be considered “severely disabled”—a category, according to Dr. Robinson’s testimony, reserved for individuals who are functionally unemployable.

[35] In direct examination, the plaintiff described that one of his bad headaches, which he still gets to this day, could last from half a day to a full day. Again, this is inconsistent with his evidence about his working capacity in the time since the Accident (having never missed a day of work) and some reports to his treatment providers that he is able to manage his activities at work and home through pacing and other strategies. It is also inconsistent with respect to the headaches that he documented contemporaneously in April and June of 2022 in advance of his assessment with Dr. Robinson. That chart reveals that a severe headache would only persist for one portion of the day (where days are broken up between morning, afternoon, evening, and sleep time).

[36] Finally, the plaintiff reported the efficacy of Botox in a manner that is inconsistent with some reports in his clinical records. Those records between May 2019 and February 2020 indicate reported initial improvement and management of the plaintiff’s headache symptoms in the first year after the Accident, before he received Botox. This is consistent with Dr. Badii’s evidence about his understanding of the plaintiff’s progression since the Accident. It is also consistent with the plaintiff’s industry friend’s testimony that to the best of his recollection he observed a gradual, but significant, improvement in the plaintiff in the middle of 2019, about six months after the Accident. However, importantly, that friend also testified that the biggest improvement he observed was at a time after Botox injections started. The plaintiff’s spouse also testified that the plaintiff appeared to obtain the most relief from his headache symptoms after he started Botox injections. He had better relief for longer periods. He was no longer remaining quiet, and returned to talking with her and sharing with her the details of the more extreme pain he previously suffered. She no longer had to take care of him like a child.

[37] The plaintiff, while not denying that he reported improvements to his treatment providers, stated that he could not recall doing so or repeated that he did not have significant relief in his headaches until he received Botox treatments. In direct examination, the plaintiff testified that the Botox treatments were “life-changing”, yet no examples or corroborating evidence was provided to indicate how those treatments had actually changed his functioning. For instance, he did not testify to any increase in his recreational activities or change in work schedule following the Botox treatments he received in 2020. The clinical records from 2021 and 2022 indicate that the plaintiff’s consistent headaches continued to wax and wane depending on stressors in his life, including taking on new projects at work and helping out with his young children.

[38] The example offered by the plaintiff in his direct testimony about the effect of Botox related to the positive mood and the relief that he felt after a Botox injection he had right before the birth of his second child in September of 2021. However, a clinical record from 29 September 2021 indicates that the plaintiff reported an increase in headache frequency and intensity due to a lack of sleep since the baby had arrived. That record also notes that the plaintiff reported his headaches feeling similar to those before Botox therapy. This was after his seventh injection five weeks prior. In cross-examination, the plaintiff denied that he reported that to the treatment provider, but he admitted that it was possible that his headaches were just as bad as they were prior to receiving Botox because he was helping out more at home and his sleep was being interrupted.

[39] Clinical records put to the plaintiff from 2021 and 2022 do not corroborate the theory that Botox had a life-changing effect on the plaintiff’s life. Instead, they confirm that the plaintiff continued to suffer from ever-present mild to moderate headaches that increased in severity a few times a week depending in part on the stressors in his life, including taking on new projects at work and helping out with his young children. In March 2021, he reported having two to three bad days a week. In November 2022, he was having two to three really bad headaches a week with more mild daily headaches.

[40] I am aware of the difficulty in focussing on inconsistencies in clinical records when a number of clinical records made over a lengthy period are being considered. The plaintiff attended hundreds of treatment appointments over a four-year period. As set out in *Burke-Pietramala v. Samad*, 2004 BCSC 470:

[104] . . . the reports are those of a layperson going through a traumatic and difficult time and one for which she is seeing little, if any, hope for improvement. Secondly, the histories are those recorded by different doctors who may well have had different perspectives and different perceptions of what is important. . . . I find little surprising in the variations of the plaintiff's history in this case, particularly given the human tendency to reconsider, review and summarize history in light of new information.

### **Expert Witnesses**

[41] Dr. Gordon Robinson is a neurologist with expertise in headaches. Dr. Maziar Badii is an expert in rheumatology and spine medicine. Both experts opined that the plaintiff suffered from post-traumatic headaches and he is permanently aggravated by a condition known as central sensitization. Dr. Badii opined that the plaintiff has a chronic myofascial pain syndrome. Dr. Robinson stated the plaintiff has persistent headaches related to soft tissue injury to the neck (whiplash) sustained in the Accident, which will continue indefinitely.

[42] Dr. Badii opined that the whiplash contributed to the chronic neck pain, as well as the headaches.

[43] Dr. Robinson used a headache disability screening tool based on self-reporting. The plaintiff's headaches as reported have a severe impact on the plaintiff's functioning, according to Dr. Robinson.

[44] Both experts opined that the plaintiff will need a protocol of Botox every six weeks indefinitely. Dr. Robinson essentially qualified this opinion when he testified that he did not have enough data indicating headache experience before and after Botox treatments. The headache diary which the plaintiff completed was insufficient to form an opinion on the efficacy of the treatments.

[45] I accept that the plaintiff's reporting of headache symptoms under the scale used by Dr. Robinson is inconsistent with the definitions associated with that scale. Clearly, being able to drive with a very bad headache is not totally debilitating. However, as the defendant concedes, the plaintiff is very stoic. He also has central sensitization which heightens the pain felt in association with his injuries.

[46] As well, Dr. Robinson testified that patients are normally surprised by the greater number of headaches they actually experience when they start to keep a headache diary as requested by him before assessment.

[47] While the Botox treatment may not appear to be "life-changing" to those of us reading the clinical records, I accept that the Botox treatments have significantly improved the plaintiff's experience with headaches.

[48] The plaintiff's prior medical issues would not appear on the evidence to have had any significant association with the plaintiff's post-Accident symptoms.

## **Damages**

### **Non-Pecuniary Damages**

[49] *Stapley v. Hejslet*, 2006 BCCA 34 outlines the purpose of and considerations for assessing non-pecuniary damages. At para. 46, the Court of Appeal sets out an "inexhaustive list of common factors" to be considered, being the:

...

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

...

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

[50] The plaintiff refers me to non-pecuniary awards of \$150,000 which was by consent (present value \$268,000) in *Orregaard v. Clapci*, 2020 BCSC 1726; \$140,000 in *Vasan v. Herd*, 2022 BCSC 2000; and \$190,000 (\$213,750 present value) in *Han v. Ha*, 2020 BCSC 1136.

[51] The defendants refer me to the non-pecuniary awards of \$75,000 in *Chow v. Kandola*, 2021 BCSC 297; \$95,000 in *Simms v. Alzawad*, 2022 BCSC 2125; \$105,000 in *Fennell v. Mikulasik*, 2021 BCSC 2102; \$75,000 in *Johnson v. Heer*, 2020 BCSC 1168; and \$95,000 in *Merko v. Plummer*, 2016 BCSC 1403 .

[52] The plaintiff submits an appropriate range for a non-pecuniary award is \$150,000 to \$175,000, while the defendants submit a range of \$75,000 to \$105,000.

[53] As a result of his injuries caused by the Accident, and in particular the chronic neck pain and severe headaches, the plaintiff's quality and enjoyment of life has been significantly and likely permanently impaired. Through his stoic personality driven by his work ethic and the need to support his family, he is able to maintain the running of the gas station. The plaintiff accomplishes this at the expense of not being able to function at home, in social settings, in recreational activities, and with his religious faith at the high level he did prior to the Accident.

[54] The circumstances of the plaintiff in *Fennell* are similar to those of the plaintiff. Ms. Fennell was 25 years old at the time of the accident and sustained soft tissue injuries to her neck and shoulders. She also developed posttraumatic migraine headaches. At the time of trial, she had chronic pain and ongoing migraine headaches. The Court awarded the plaintiff \$105,000 for non-pecuniary loss based on the fact that she was able to continue with most, if not all, of her pre-accident activities, but her enjoyment was diminished by ongoing pain.

[55] In the circumstances, I find that an appropriate award for non-pecuniary damages for the plaintiff is \$130,000.

### Cost of Future Care

[56] The test for establishing a claim for cost of future care is set out in *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33, 1985 CanLII 179 (S.C.), aff'd (1987) 49 B.C.L.R. (2d) 99, 1985 CarswellBC 13. There must be a medical justification for claims for cost of future care, and the claims must be reasonable: *Milina* at paras. 210–211.

[57] The overriding test for any item claimed under cost of care is the reasonableness of the expense. In determining the reasonableness of an expense, McLachlin C.J.C. (as she then was) stated in *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9:

22 . . . The measure is objective, based on the evidence. This method produces a result fair to both the claimant and the defendant. The claimant receives damages for future losses, as best they can be ascertained. The defendant is required to compensate for those losses. To award less than what may reasonably be expected to be required is to give the plaintiff too little and unfairly advantage to the defendant. To award more is to give the plaintiff a windfall and require the defendant to pay more than is fair.

[58] If the evidence shows that the plaintiff is unlikely to use the services recommended, awards for those services should not be made: *Izony v. Weidlich*, 2006 BCSC 1315, at para. 74.

[59] Drs. Robinson and Badii recommend the following treatments:

- a) Botox;
- b) Continued regular massage and chiropractic treatment;
- c) Medications similar to what he is taking;
- d) Venlafaxine to treat anxiety;
- e) Psychology treatment; and
- f) Gym pass.

[60] The plaintiff has costed these expenses based on the current expenses that the plaintiff incurs over a 40-year period to age 80 using the CIVJII multiplier.

### **Botox**

[61] I accept that Botox gives the plaintiff meaningful relief by way of reduced frequency of severe headaches.

[62] While Dr. Robinson opined that “indefinite” treatments may be necessary in the event that a substantial response continues, “indefinite” does not equate to permanent. Given that the Botox injections provide temporary relief and the plaintiff derives only short-term benefits, a substantial contingency that the plaintiff would not avail himself of this therapy in the long term should be taken into account: *Parhar v. Clarke*, 2017 BCSC 550 at para. 279. Moreover, to the extent that the plaintiff’s headaches are related to other physical and emotional issues, an award of damages would overlap with treatment modalities aimed at addressing those issues.

[63] This Court has accepted that Botox treatments for 10 years is appropriate, as opposed to a lifetime treatment, in circumstances with a less beneficial result: *Rix v. Koch*, 2020 BCSC 1976 at para. 179, citing *Sharpe v. Koomson*, 2019 BCSC 558; *Johal v. Meyede*, 2013 BCSC 2381 at para. 83. See also *Merko* at paras. 126–128. Based on the treatment cost of \$1,000 as estimated by Dr. Robinson, and a treatment frequency of six times per year based on the current schedule, which was recommended by the experts, an annual rate for Botox treatment would be \$6,000. Applying the CIVJII discount rate of 2% discount rate for present value of future care (12.8493), the cost for Botox treatments over 15 years would be \$77,095.80, which I find is appropriate.

### **Chiropractic Treatment and Massage Therapy**

[64] Dr. Badii recommends an allowance of 24 passive therapies of either massage therapy or chiropractic therapy per year without any reference to a specific duration of time. The defendants submit a lifetime award of 40 years as sought by the plaintiff is not warranted since the treatments provide only short-term, temporary

relief and therefore are not curative; Dr. Badii stated that too many passive treatments can be detrimental without any active treatment or guidance; and 24 passive treatments per year is the upper limit of what Dr. Badii would recommend.

[65] I find a more appropriate award for physiotherapy and chiropractic treatments is 24 sessions per year, being on the higher end of Dr. Badii's recommendation, for a duration of a further eight years is reasonable on the evidence. Taking the average cost of massage therapy and chiropractic therapy based on the expenses incurred to date by the plaintiff (\$127 for massage therapy plus \$58 for chiropractic therapy divided by two) and multiplying it by 24 session amounts to an annual cost of \$2,220. Applying the CIVJII discount rate for present value for a duration of 8 years (7.3255), the total amount would be \$16,262.61.

### ***Medications***

[66] The only medications that are justified by the evidence and medically reasonable are Cambia and Diclofenac gel. While the plaintiff states that he continues to use venlafaxine, he testified that he derived no benefit from the medication and that he continues to take it because his family doctor advised him he had to do so. That doctor was not called as a witness to either corroborate or explain whether this is true or otherwise opine on the need for this medication.

[67] An award for medications based on the cost incurred for those medications averaged over the last three years where a total of \$3,470.77 was incurred (2020–2022) is \$1,156.92. Applying the CIVJII discount rate of 2% discount rate for a period of 25 years (19.5235), the total amount would be \$22,587.13.

### ***Counselling***

[68] Dr. Badii opined that it would be appropriate for the plaintiff to have access to a counsellor based on his understanding of how often the plaintiff had seen a counsellor in the past. However, the plaintiff's final session with a counsellor was in April of 2022, and he led no evidence that he intended to return to counselling as part of his future plans or would attend sessions if an award was made.

[69] I will not make an award for counselling.

***Gym Pass***

[70] The plaintiff paid for and held a gym membership before the Accident. This is an expense that the plaintiff would have incurred regardless of the Accident. I make no award for this expense.

***Total Award for Cost of Future Care***

[71] Therefore, the total award for cost of future care is \$115,945.54.

***Loss of Housekeeping Capacity***

[72] A damage award to the plaintiff to recognize a loss of or diminished capacity to take care of his household may be made under any of the five heads of damages including cost of future care: *Kroeker v. Jansen* (1995), 123 D.L.R. (4th) 652, 1995 CanLII 761 (B.C.C.A.).

[73] Where a plaintiff suffers an injury that would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work, that loss may be compensated by a pecuniary damages award: *Kim v. Lin*, 2018 BCCA 77, at paras. 33–34.

[74] The plaintiff and his spouse have an infant and a toddler. His spouse testified that she gave up her job because the plaintiff was unable to pick up and care for the girls after daycare. The plaintiff testified this was due to his inability to handle the noise created by his active children, which triggered or aggravated his headaches. His spouse testified that the plaintiff is better able to tolerate being around the children after he started Botox treatments.

[75] The medical experts did not opine on any loss of housekeeping ability. There is no evidence to support the finding that the nature of the additional services that his spouse provided which the plaintiff previously provided (i.e., laundry and cleaning of the bathrooms and floors) went above and beyond the usual "give-and-take" between family members. The plaintiff testified that he has a particular interest in

taking care of laundry as he has very high standards in that arena. His spouse agreed he has an unusual interest in ensuring the laundry is up to his high standards.

[76] The plaintiff gradually returned to doing some chores around the house, including shovelling snow and other tasks occasionally and “when he can.” It is his exhaustion at the end of the day that reduces his capacity to perform household chores.

[77] The plaintiff, in setting up his new store, was already spending less time at home and on home maintenance. His ambitions to increase his gas station holdings, if achieved, would likely have continued to limit his time available to contribute his labour to home maintenance.

[78] Any reduction in the plaintiff’s housekeeping capacity, in these circumstances, is adequately compensated for in my assessment of non-pecuniary damages.

### **Special Damages**

[79] The parties have agreed upon the plaintiff’s special damages arising from the Accident, with the exception of vision therapy and mileage to get to it.

[80] The plaintiff was diagnosed with a concussion at the hospital after the Accident and by his family doctor. He was referred to vision therapy by his family doctor for concussion-related issues. The defendants submit that the plaintiff has failed to establish his evidentiary burden that vision therapy was a medically justified treatment related to the Accident because there is no medical evidence that the Accident caused any issues with the plaintiff’s vision, let alone any issues that would warrant therapy, and given the evidence that the plaintiff had ongoing eye problems before the Accident.

[81] However, as a result of the Accident, the diagnosis was made as was the referral. It was reasonable for him to attend. I find the expense was incurred by reason of the Accident. I will include those expenses in the award.

[82] I award \$64,937 for special damages

**Conclusion**

[83] In summary, I make the following orders for awards in accordance with the reasons above:

Non-pecuniary damages	\$130,000.00
Cost of future care	\$115,945.54
Special damages	\$64,937.00
<b>Total</b>	<b>\$310,882.54</b>

[84] If the parties cannot agree on the matter of costs or otherwise wish to make submissions on costs, they may do so provided they contact Trial Scheduling within 30 days of receiving this decision to schedule a costs hearing.

“Wilkinson J.”