

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tang v. Biring*,  
2023 BCSC 2230

Date: 20231221  
Docket: M134129  
Registry: Vancouver

Between:

**Jenien Tang also known as Je-Nien Tang**

Plaintiff

And

**Manjinder Pal Kaur Biring and Big-X Logistics & Transportation Inc.**

Defendants

Before: The Honourable Mr. Justice Thomas

## Reasons for Judgment

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Place and Date of Trial:

Vancouver, B.C.  
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December 1, 4 and 6

Place and Date of Judgment:

Vancouver, B.C.  
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[1] This action involves assessing the impact of a series of accidents on Ms. Tang. There is agreement that she suffered soft tissue and psychiatric injuries in the accidents, but there is a disagreement over the ongoing impact of the accidents, in particular, whether Ms. Tang continued to suffer from disabling psychiatric issues due to the accidents after she returned to full-time work as an elementary school teacher and had children.

[2] The defendants admit responsibility for the accidents and joint responsibility for all injuries and sequela attributable to the accidents.

### **Pre-Accident Issues**

[3] Ms. Tang had no relevant physical issues prior to the accidents. She was separated from her parents for less than a year in 1982 when she was a year old due to her parents' immigration to Canada from China.

[4] The impact that this separation had on Ms. Tang's current psychological health was a matter of dispute. The defendants led evidence from Dr. Dahi, a psychiatrist, that from a psychiatric perspective, this was the single most important issue impacting Ms. Tang's psychological health. The direct evidence indicated that Ms. Tang did not have any psychological issues prior to the accidents.

### **The Accidents**

#### **First Accident**

[5] On December 1, 2011, Ms. Tang was driving on her lunch break close to her school at West 45th Avenue and Cambie Street in Vancouver. She was struck from behind with significant force by a defendant's truck. She heard a loud bang. Her airbags deployed. Her body was flung forward and she lost consciousness. She remembers not being able to breathe. She was afraid. Her memory of this period is poor and has many gaps. She was taken to the hospital by ambulance.

[6] After the accident, Ms. Tang's head, neck, back (upper, mid and lower) and left hip were sore. Her eye was twitching, she had a headache, she was dizzy, she could not walk due to a sore ankle, she was sensitive to sound and light, she was

anxious and fearful of driving, she had nightmares related to car accidents and she suffered from panic attacks and memory problems.

[7] Her ankle healed shortly after the accident, but her other injuries persisted.

[8] Initially, she could not work. She began a gradual return to work in April of 2012, returning to full-time work in June 2012. At some point in 2012, she began dating her future husband Mr. Stone. She was unable to drive due to anxiety. She purchased a new car in October 2012, and I find that she resumed driving on a reduced basis at that time.

[9] As a teacher, Ms. Tang did not work in July and August. When she returned to work in September 2012, she took the odd day off work due to her symptoms. She enrolled in a Master's program which began in January 2013.

[10] She had a flare-up of her anxiety, fear of driving, nightmares and panic attacks in May 2013. She began cohabitating with Mr. Stone in 2013 in a one-bedroom apartment in Burnaby.

[11] Ms. Tang suffered flare-ups of her anxiety, fear of driving, nightmares and panic attacks in January and February 2014. She remains fearful when driving near the accident scene. Rain and dark conditions make driving more difficult for her and tend to aggravate her anxiety.

### **Second Accident**

[12] On August 19, 2014, Mr. Stone was driving with Ms. Tang when they were rear-ended by a defendant's car. The forces involved in the accident were not significant. Mr. Stone felt the impact as his head hit the back of his headrest. He pulled over his vehicle. He exchanged information with the driver and then returned to console Ms. Tang. Ms. Tang was slumped over crying and holding her chest. They returned home so that Ms. Tang could go to bed.

[13] Ms. Tang's anxiety, fear of driving, nightmares and panic attacks increased following the accident. She was unable to return to work due to her psychological

symptoms and started a gradual return to work on November 20, 2014, returning to full-time work at the end of February 2015.

### **Third Accident**

[14] On April 19, 2015, Mr. Stone was driving with Ms. Tang to a friend's house. Ms. Tang was in the front passenger seat. They pulled into a parking lot and were waiting for a truck to back out. The truck was backing towards them. Ms. Tang yelled at her husband to honk so that the truck would see them. He did not honk, though, as the truck was moving slowly and they were in clear view. Nevertheless, the truck backed into them with minor impact. The truck moved forward and Mr. Stone had to get out of the car to stop the truck from backing into them again.

[15] Ms. Tang was very upset at both Mr. Stone and the driver of the truck. She felt a little whiplash but her psychological symptoms were aggravated. They went home and Ms. Tang went to bed. She had to miss a few days of work due to the increase in her anxiety.

[16] Ms. Tang graduated from her Master's program in May 2015.

### **Fourth Accident**

[17] On October 8, 2016, Mr. Stone was driving with Ms. Tang. Ms. Tang was in the front passenger seat. They were in the drive-thru line at McDonald's when the car behind them rear-ended them. It was a very minor impact.

[18] Ms. Tang did not suffer any significant change in her psychological or physical symptoms as a result of the accident. She and Mr. Stone continued on with their day after the accident. She did not miss any work as a result of the accident.

### **Post-Accidents Work History**

[19] Ms. Tang married Mr. Stone in July 2017. She continued to work full-time until April 9, 2018, when she was off work for maternity and parental leave for the birth of her daughter.

[20] She returned to work on a gradual return to work program in September 2019, returning to full-time work on May 20, 2020. She worked full-time from September 2020 to April 8, 2021. She then was off work for maternity and parental leave for the birth of her son.

[21] She returned to work full-time briefly in September 2022 but went on a gradual return to work in November. She returned to full-time work on April 3, 2023 and has worked full-time since then.

## **Injuries**

### **Soft Tissue Injuries**

[22] I agree with defendant's counsel that the evidence of Dr. Simonett and Dr. Paramanoff, the two physiatrists who conducted independent medical examinations of Ms. Tang, was similar with respect to the physical injuries Ms. Tang suffered in the accidents.

[23] Dr. Simonett saw Ms. Tang in 2014 and 2023. She diagnosed Ms. Tang with myofascial pain in the left neck/shoulder region, mechanical lower back pain and snapping hip syndrome. Dr. Paramanoff did not diagnose a snapping hip syndrome but agreed that Ms. Tang suffered from ongoing soft tissue injury/pain in the lower back/hip region.

[24] Ms. Tang had significant soft tissue pain in the months after the first accident. Her pain lessened and her function improved. She required some ergonomic assistance at work to minimize stooping and bending. She benefited greatly from the positional flexibility inherent to her employment as a teacher.

[25] With respect to these injuries, Ms. Tang reported to Dr. Simonett in August 2023 that she was back to her pre-accident level with respect to activities of daily living for herself and her children. Ms. Tang reported that she was swimming and doing yoga once a week. In addition, she reported that there were no limitations in her household chores. However, Ms. Tang had only recently moved to a larger residence.

[26] I accept that these statements accurately reflect Ms. Tang's level of function.

[27] There are no medical restrictions on Ms. Tang's ability to work full-time, participate in recreational activities or perform heavier household tasks. Restrictions are dependent on her ability to tolerate discomfort arising from her soft tissue injuries.

[28] With respect to prognosis, there was a difference in opinion between Dr. Simonett and Dr. Paramanoff largely due to the fact that Dr. Paramanoff found that Ms. Tang was deconditioned and suffered from muscle imbalances. I accept Dr. Paramanoff's opinion that despite the chronicity of Ms. Tang's soft tissue injuries, that a focused rehabilitation program focused on muscle strengthening would address these two issues such that it is likely Ms. Tang would have less soft tissue pain and further improvement in her level of function.

### **Headaches**

[29] Ms. Tang's headaches, in combination with her vertigo, were severe in the months following the first accident.

[30] In the fall of 2015, Ms. Tang received Botox injections from Dr. Robinson. After two injections, she noted that she was about 90% better but discontinued the injections because she suffered a severe vertigo attack and did not feel it was worth continuing with the injections.

[31] She continues to suffer from mild headaches though most are short-lived. She also suffers from more severe headaches usually precipitated by stress or mental concentration. They do not prevent her from working or participating in activities.

### **Dizziness**

[32] Ms. Tang saw a vertigo specialist in 2012 due to the severity of her dizziness and imbalance. She would be dizzy when she got out of bed. Ms. Tang was diagnosed with persistent postural perception dizziness due to the first accident. She

had an incident at school where she went to the hospital due to a severe dizziness attack. This was after she had received some injections to treat her headache by Dr. Robinson.

[33] Like her headaches, her dizziness remains but it does not prevent her from working or participating in activities.

**Concussion/Ankle Injury/Temporomandibular Joint Disorder**

[34] Ms. Tang suffered a concussion in the first accident. Ms. Tang suffers from some minor cognitive issues, mainly poor memory. I agree with Dr. Simonett that these minor cognitive issues are likely secondary to Ms. Tang’s psychiatric issues as opposed to the concussion.

[35] Ms. Tang suffered an ankle injury in the first accident. This injury healed after a short period of time.

[36] In August of 2015, Ms. Tang developed temporomandibular joint (“TMJ”) pain which was caused by her grinding her teeth. I do not accept that her TMJ issues are caused by trauma suffered in the accidents. I say this for two reasons:

- a) There is an unexplained temporal gap between the onset of her jaw pain in 2015 and trauma suffered in the first accident in 2011, which makes a relationship between the trauma and the onset of the jaw pain less likely; and
- b) This is not a situation in which a common sense inference links the onset of her jaw pain to her trauma on a balance of probabilities. In my view, these circumstances fall outside of common experience and require expert evidence.

I recognize that causation need not be proven with scientific or medical certainty: *Snell v. Farrell*, [1990] 2 S.C.R. 311, 1990 CanLII 70 at p. 328 [*Snell*]. However, on a balance of probabilities, the available evidence does not support the existence of a causal link between Ms. Tang’s TMJ issues and the accidents.

**Post-Traumatic Stress Disorder**

***Anxiety attacks***

[37] Since the December 1, 2011 accident, Ms. Tang has been anxious and fearful of driving, she had nightmares related to car accidents and anxiety or panic attacks (I use these terms interchangeably). The anxiety attacks range from relatively minor periods of discomfort to longer periods where she has difficulty breathing, her body shakes and she is incapacitated. In 2012, there was at least one occasion where she fell to the floor due to an anxiety attack. The severe anxiety attacks are rare and were more frequent between the first and second accidents. Ms. Tang typically contacts Mr. Stone when she has an anxiety attack. He can help her calm herself down.

[38] Ms. Tang's anxiety is usually triggered by driving, particularly in dark rainy weather, but also by loud noises or crowds of people.

***Dr. O'Shaughnessy's IME***

[39] Ms. Tang had an independent medical examination ("IME") with Dr. O'Shaughnessy on June 24, 2014 (before the second accident). Dr. O'Shaughnessy was not cross-examined, and I accept his opinion evidence set out below.

[40] Dr. O'Shaughnessy noted that Ms. Tang had only received partial treatment. She had stopped seeing her counsellor, Dr. Wong, because she did not like the focus on exposure therapy and talking about the accident. Exposure therapy is a critical part of the treatment and necessary for Ms. Tang's symptoms to improve.

[41] Ms. Tang requires selective serotonin reuptake inhibitors ("SSRI") antidepressant medication, such as Effexor or Cymbalta, which are effective in managing anxiety symptoms. Medication should help her to tolerate exposure therapy by reducing the intensity of her symptoms, including the intensity and number of panic attacks.

[42] Her prognosis at this time was uncertain. Her symptoms have become prolonged and her aversion to talking of the accident may limit her ability to benefit from exposure therapy unless she is more heavily medicated.

[43] Dr. O'Shaughnessy diagnosed her with post-traumatic stress disorder ("PTSD"). Ms. Tang had been working full-time and was completing a Master's degree at the time of his assessment.

***After Dr. O'Shaughnessy's IME***

[44] After the second accident on August 19, 2014, Ms. Tang went on a graduated return to work in November 2014, which ended in February 2015 when she returned to full-time work.

[45] After the third accident on April 19, 2015, Ms. Tang missed three days of work due to an aggravation of her anxiety.

[46] Her symptoms were not aggravated by the fourth accident on October 8, 2016, and she did not miss any work due to that accident until she returned to work on a gradual return to work program in September 2019 following her maternity and paternity leave. This leaves a four-and-a-half-year gap between leaves of absence due to anxiety issues.

[47] Ms. Tang went on a low dosage of Effexor after receiving Dr. O'Shaughnessy's advice which caused a significant improvement in her symptoms; however, she was unable to tolerate a higher dosage. I find based on the evidence of Dr. Dahi that the dosage of Effexor tolerated by Ms. Tang was at a marginally therapeutic dosage and that she would benefit from a change to a different medication if she could tolerate a more therapeutic dosage.

[48] Ms. Tang had a few sessions with a different psychologist, Dr. Aube, and did an online cognitive therapy course but remains averse to exposure therapy or talking about the accident.

***Main issue in dispute***

[49] The critical point of contention between the parties is whether Ms. Tang has established that any loss of work or future loss of earnings after April 23, 2015 arose due to symptoms associated with PTSD attributable to the accident.

***Dr. Dahi***

[50] Dr. Dahi is a psychiatrist who conducted an IME of Ms. Tang on July 13, 2023.

[51] Ms. Tang had no psychiatric history, no panic attacks or any psychological symptoms prior to the accidents.

[52] Dr. Dahi obtained the following history from Ms. Tang:

Ms. Tang was born in China, Hayman Island. Her parents wanted a second child. They wanted to have a boy after their first child was a daughter. She was born out of normal delivery. She was breastfed. Ms. Tang's father's half brother was living in Vancouver. Her parents decided to move to Canada for better future of their children. At that time, they had two daughters. There was a problem with Ms. Tang's paperwork for visa/passport. The family left her behind and moved to Vancouver. She was around 1 year old. Several months later, Ms. Tang's paperwork was fixed and she was taken to Hong Kong and shortly after, a distant relative brought her to Vancouver and she joined with her parents and older sister. She was around 2 years old when she landed in Canada. She describes her family struggling to adjust to a new culture, new language, and build up some work and income. "It was quite touch on my parents for many years". She describes her mother in her early part of life as very gentle. She describes her father as a stern hardworking man. The relationship between her parents was harmonious. She felt closer to her mother. She remembers her two younger sisters being born. She went to kindergarten and elementary. She had friends and a good relationship with her teachers. She had average marks. Academically she did better in high school. She had her first boyfriend in grade 11. After graduation she went to UBC and obtained a Bachelor of Arts degree in Asian literature and had a minor in economics. She extended her university studies to two more years obtaining a Bachelor of Education. She taught for a year and half and later, at age 26 decided to teach English abroad in Taiwan for a year. She returned to Canada and continued teaching until now. In 2015 she was able to obtain Masters of Education from UBC.

She had three meaningful relationships before she met her husband when she was 30 years old. They got married when she was 36 years old. She describes their relationship as "quite functional but challenging with having two kids. The couple have close friends. Financially they are stable.

[53] From this history, Dr. Dahi opined:

... Ms. Tang has a history of serious disruption in her connection with her mother when she was 1 year old. She was left behind in China suddenly and did not have her mother for several months. She has no awareness of how she was taken care of, protected, fed and emotionally assured in that period of time when she did not have her mother and her father around her. This is a traumatic disruption and a roof for developing vulnerability to anxiety and fear of loss and perception of “unpredictable life.” On top of that disruption,, when she moved to Canada, her parents (more specifically her mother’s) anxiety affected Ms. Tang’s anxiety state. These deep-seated emotional disruptions were not visited and healed in a process of treatment and psychological support. She remained vulnerable to trauma and accidents and unpredictable life events.

[54] Dr. Dahi opined that Ms. Tang requires significant psychological intervention to address this issue, which is the psychological equivalent of a “mountain”. Any subsequent issues with panic and anxiety stem from Ms. Tang’s early separation from her mother when she was one year old as opposed to the PTSD caused by the first accident.

[55] However, Dr. Dahi agreed with Dr. O’Shaughnessy that the first accident likely caused Ms. Tang’s PTSD and the subsequent accidents likely aggravated her condition. Dr. Dahi nevertheless opined that Ms. Tang could have developed the same PTSD-like symptoms if the accident had not occurred due to the severely traumatic separation from her mother. In Dr. Dahi’s opinion, Ms. Tang’s early separation from her mother was the equivalent of a traumatic event for purposes of diagnosing PTSD.

[56] I note that Dr. O’Shaughnessy obtained a similar history from Ms. Tang and made no such diagnosis. Dr. Dahi was aware of this and commented that he was surprised that Dr. O’Shaughnessy missed such an obvious diagnosis.

[57] Dr Dahi explained that the history obtained from the patient and the criteria set out in the DSM-5 are not central to how he makes a diagnosis. The essence of his opinion comes from what he feels from the patient during his assessment. With respect to panic-related disorders, he claims he knows how these people come across such that he does not have to refer to the DSM-5 criteria.

[58] I do not accept that this is an appropriate way to conduct a forensic assessment. However, this does explain how Dr. Dahi reached the opinion that Ms. Tang suffered a significant psychological trauma in early childhood causing her to essentially suffer from PTSD despite no evidence of psychological symptoms until after the first accident.

[59] I do not accept Dr. Dahi's opinion that Ms. Tang experienced significant psychiatric trauma as a child due to her brief separation from her mother. There is no evidence of any psychiatric symptoms associated with this event. I prefer Dr. O'Shaughnessy's opinion that Ms. Tang's PTSD was caused by the first accident and that Ms. Tang did not have a psychiatric vulnerability due to early childhood trauma.

[60] This finding undercuts the linchpin of Dr. Dahi's assessment of Ms. Tang and leaves his conclusions with respect to treatment, prognosis and current psychiatric condition unreliable.

[61] I do, however, accept aspects of Dr. Dahi's opinion evidence that are independent of his underlying opinion of early childhood trauma. Specifically, I accept the following evidence:

- a) PTSD symptoms can wax and wane over time;
- b) A reminder of the original trauma can aggravate symptoms; and
- c) 37.5 mg of Effexor is an extremely small dosage and would be of marginal therapeutic benefit. Other medications besides Effexor are available to treat PTSD, such as Cymbalta.

***Dr. Reddy***

[62] Dr. Reddy is a psychiatrist who performed an assessment of Ms. Tang on June 29, 2023.

[63] Dr. Reddy has been previously criticized in her role as an independent medical examiner by this Court in *M.W.S. v. I.L.M.*, 2017 BCSC 2309 at paras. 206–212 for failing to note relevant information in records provided to her that did not support her prognosis and in *Williams v. Sekhon*, 2019 BCSC 1511 at paras. 74–78 for submitting reports with numerous errors not consistent with the evidence, such that the Court could not have confidence in her conclusions and prognosis.

[64] Unfortunately, I have reached a similar conclusion with respect to her evidence in this case. Ms. Tang’s test results obtained by Dr. Reddy in her examination, as well as clinical records provided to Dr. Reddy, did not indicate anywhere near the level of disability opined by Dr. Reddy in her report and during her testimony. For example, Dr. Reddy testified that:

- a) Ms. Tang is not working full-time and is unable to return to full-time work;
- b) Ms. Tang is unable to care for her children without assistance; and
- c) Ms. Tang is unable to enjoy her job as a teacher.

At the time of her assessment, the opposite of what Dr. Reddy stated was the case.

[65] The fact that these issues have arisen in this matter, and have arisen in Dr. Reddy’s reports and testimony on previous occasions, despite judicial comment, is troubling.

[66] In her report, Dr. Reddy noted that Ms. Tang meets the criteria for “a panic disorder, in remission”. She then testified that this was a typographical error and that the “in remission” should be removed because in her opinion Ms. Tang clearly suffered from a panic disorder.

[67] Dr. Reddy explained that the disorder could not be in remission because Ms. Tang suffered from a panic attack during her examination. I note, the DSM-5 criteria relied upon by Dr. Reddy require that the panic attack is followed by a month or more of behavioural changes before a diagnosis of panic disorder can be made. Dr. Reddy acknowledged that she did not know whether she reviewed the clinical

records that had been provided to her for the 12 months prior to her assessment for any information about the number, change in frequency or any clinical information with respect to panic attacks.

[68] I do not accept Dr. Reddy's explanation that a panic attack during her examination would impact whether Ms. Tang's anxiety disorder was in remission or not; as Dr. Reddy was, and could not, be aware of the impact the attack had on Ms. Tang's behaviour after her assessment.

[69] My concern is more elevated when I note that in *Singh v. Reddy*, 2020 BCSC 448, an action in which Dr. Reddy was a defendant as opposed to an expert witness, the Court noted that Dr. Reddy was not a credible witness, was not forthright and made deliberately inaccurate statements, such that:

[175] . . . Dr. Reddy's misconduct was serious and displayed indifference to the integrity of the administration of justice.

[70] When questioned about these comments, Dr. Reddy says that she respected the comments made by the Court, but that the misconduct in question arose from the fact that she did not read an affidavit presented to her by her lawyer and mistakenly swore that the false affidavit was true.

[71] I would expect that given these judicial comments, Dr. Reddy would carefully scrutinize her report for accuracy and ensure her testimony was accurate. In my view, she did neither.

[72] Dr. Reddy was extremely emotional during her testimony and required a recess in order to compose herself. There was no apparent explanation for the degree of her emotional outbursts. She was unnecessarily argumentative on straightforward questions. Her conduct on the stand, in isolation from the substantive issues I have discussed, was sufficient to question the reliability of her evidence.

[73] Given the extent of the problems with Dr. Reddy's report and testimony, I find her evidence to be completely unreliable. I therefore disregard the totality of her evidence.

**Credibility Concerns**

[74] The main credibility issue raised in the evidence was with respect to Ms. Tang’s evidence that she did not return to full-time work in September 2022 after the birth of her son due to anxiety issues caused by the accidents.

[75] In her February 17, 2022 examination for discovery, Ms. Tang testified that she was planning on applying for permanent part-time work at her school so that she could work four days a week instead of five days a week, allowing her to spend more time with her family and give her balance in her life. She specifically denied that her desire to work less than full-time was due to issues arising from the accident.

[76] At trial, Ms. Tang testified that she changed her mind about working reduced hours and decided that she would work full time and then went on medical leave due to PTSD symptoms shortly after returning to full-time work in September 2022. Ms. Tang testified that she changed her mind about wanting to work part-time because:

- a) she enjoyed her work;
- b) she had daycare lined up for the children; and
- c) her kids were fine and having two kids did not take as much time as she thought they would when she was pregnant with her son.

[77] I do not accept that Ms. Tang changed her mind a few months after her examination for discovery and decided that she wanted to work full-time. I say this because:

- a) she enjoyed her work prior to deciding that she would apply for part-time work;
- b) her son would have needed daycare whether she worked five days a week or four days a week;

- c) she testified that she had more difficulties after the birth of her son including an increase in her pain, dizziness and headaches;
- d) although both of her children sleep “fine”, she characterized her son as a little “rambunctious”, which I infer means that he can be a little more difficult than the average child; and
- e) none of the reasons provided by Ms. Tang address the fundamental reason that she gave at discovery for wanting to work less than full time—that is, to spend more time with her family and to give her balance in her life.

[78] Therefore, I find that as of September 2022, Ms. Tang’s preference was and remains to work less than full time for family reasons if possible and that she would prefer to do this on a permanent basis.

[79] Ms. Tang testified that when she returned to full-time work in September 2022, her anxiety symptoms increased. She discussed a panic attack that she had with her kids in a car she was driving in October that caused a flare-up in her anxiety symptoms.

[80] She then went to Dr. Tsang, a general practitioner, and requested a reduction in her work hours from five days a week to four days a week, returning to full-time work after spring break on April 3, 2023.

[81] Dr. Tsang testified that Ms. Tang initiated and requested time off work. Dr. Tsang testified that she felt the request was reasonable given that Ms. Tang’s symptoms had resolved after previous leaves from work in the past. She did not assess the extent of Ms. Tang’s symptoms. Dr Tsang’s recommendation for time off work was based on Ms. Tang’s request. Dr. Tsang would have agreed with two or three days off work every week if Ms. Tang had requested it.

[82] I do not accept that Ms. Tang’s anxiety symptoms were so severe that she required a reduction in her work schedule from five days a week to four days a week at this time.

[83] I accept that Ms. Tang had a panic attack while driving her children in October 2022; but in my view, it is more likely than not that this formed a convenient excuse for her to reduce her work schedule from five days a week to four days a week for work-life balance reasons, as opposed to a reduction in work that was required due to unmanageable anxiety. I say this because:

- a) the timing of her decision to work four days a week;
- b) her alleged change of mind on her preferred work schedule shortly before returning to work in September;
- c) her alleged onset of symptoms causing her to reduce her work schedule to four days a week shortly after returning to work;
- d) the reduction in work she allegedly required due to her disability was the same as the schedule she had originally said she wanted for work-life balance reasons in her examination for discovery; and
- e) in my view, these facts, in the absence of an adequate explanation for her change of mind with respect to her preferred work schedule, are too closely related to be coincidental.

[84] In my view, it is more likely than not that Ms. Tang exaggerated the extent of her symptoms to Dr. Tsang in order to work four days a week instead of five days a week for work-life balance reasons—not to accommodate her disability.

## **Assessment**

### **Loss of Past Earning Capacity**

#### ***Legal principles***

[85] In *Bolgar v. Fraser*, 2023 BCSC 468 [*Bolgar*], Justice Hughes summarized the proper approach to assessing damages for past loss of earning capacity:

[79] An award of damages for past or future loss of earning capacity compensates for a plaintiff's pecuniary loss. Compensation for past loss of earnings is based on what a plaintiff would have—not could have—earned

but for the accident-related injuries: *Sekhon v. Cruz*, 2023 BCSC 319 at para. 78, citing *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49. A claim for loss of earning capacity is in substance a claim for the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury: *Rowe* at para. 30.

[80] The burden of proof of actual past events is a balance of probabilities. However, an assessment of past loss of earning capacity also involves consideration of hypothetical events, which are then accounted for by contingencies. Such hypothetical events need not be proven on a balance of probabilities. They are given weight according to their relative likelihood, and will be taken into consideration as long as the hypothetical event is a real and substantial possibility and not mere speculation: *Dornan v. Silva*, 2021 BCCA 228 at paras. 63–64, citing *Grewal v. Naumann*, 2017 BCCA 158 at para. 48; *Athey v. Leonati*, [1996] 3 S.C.R. 458 at para. 27, 1996 CanLII 183.

### **Undisputed losses**

[86] The parties are in agreement that Ms. Tang is entitled to compensation for past loss of earning capacity for the following periods based upon the Vancouver School Board (“VSB”) absence records redacted by Ms. Tang for unrelated events (Exhibit 10):

- a) First accident: the periods of time from December 1, 2011 to June 10, 2012;
- b) Second accident: the periods of time from September 22, 2014 to February 28, 2015; and
- c) Third accident: April 20 and 21, 2015.

[87] The total past wage loss for these periods are \$46,226.37 (\$17,893.81 from the VSB sick bank and \$36,812 gross income, which is reduced to \$28,332.55 net income).

### **Disputed losses**

[88] Ms. Tang says she is entitled to compensation for her graduated return to work following the maternity/paternity leaves:

- a) of her daughter from September 3, 2019 to her return to full-time work on May 20, 2020 totalling \$27,820.30 (\$21,659.40 from the VSB sick bank and \$7,701.12 gross income, which is reduced to \$6,160.90 net income); and
- b) of her son from November 2022 to her return to full-time work on April 3, 2023 totalling \$7,990.05 (all from the VSB sick bank).

[89] The defendant says there is no entitlement to compensation for these periods for three reasons:

- a) There is no expert evidence supporting these periods of disability;
- b) There is no expert evidence supporting a need for a graduated return to work due to her anxiety symptoms; and
- c) Ms. Tang took this time off for work-life balance reasons as opposed to actual disability.

***Expert evidence supporting period of disability***

[90] I disagree with the assertion that there is no expert evidence supporting ongoing PTSD symptoms. I have accepted Dr. O’Shaughnessy’s opinion that:

- a) Ms. Tang suffered from PTSD; and
- b) her prognosis in 2014 was uncertain and would depend on the fact that her aversion to talking about the accident may limit her ability to benefit from exposure therapy unless she is more heavily medicated.

[91] Ms. Tang has not been more heavily medicated and has not overcome her aversion to talking about the accident. Therefore, her prognosis remains uncertain.

[92] I have accepted Dr. Dahi’s opinion that:

- a) PTSD symptoms can wax and wane over time; and
- b) a reminder of the original trauma can aggravate symptoms.

***Expert evidence supporting need for a graduated return to work***

[93] The defendants say that Ms. Tang only suffered a few significant panic attacks at work, most of her issues were relatively minor panic attacks and she was always able to resume work afterwards. There was no expert evidence providing medical support for Ms. Tang to limit her work from five days a week to three or four days a week.

[94] Ms. Tang followed a graduated return to work pattern after the first and second accidents. She testified that driving to and from work, particularly in the dark and in the rain, aggravated her symptoms. By taking regular time away from work each week, her symptoms decreased such that she was able to return to full-time work.

[95] Although there was no expert evidence supporting this pattern, in my view, none was necessary. It is common sense that limiting aggravating factors while one is symptomatic aids in reducing the severity and chronicity of the symptoms. In this case, there is additional evidence that this pattern of activity was successful in treating her condition after the first and second accidents facilitating her return to full-time work. I find further support for this conclusion in the principle from *Snell* that the court may infer causation, on the basis of common sense, even in the absence of positive or scientific proof: p. 328.

***Time off for work-life balance***

[96] The defendants say that Ms. Tang simply chose to be off work for both of these periods of time for work-life balance reasons as opposed to a disability that prevented her from working.

[97] I accept this argument with respect to the November 2022 to April 3, 2023 period of disability for the reasons set out earlier.

[98] However, I do not accept this argument for the September 3, 2019 to May 20, 2020 period of disability, following the birth of her first child. Ms. Tang did not decide that she wanted to work less than full-time until she was pregnant with her second

child. This decision was made only after a discussion with a colleague during her son's pregnancy.

[99] After Ms. Tang's daughter's birth, Ms. Tang suffered a panic attack while driving in the rain with her daughter to get a car seat. This incident aggravated her PTSD causing her to return to work on a graduated schedule. This evidence and the impact on her was collaborated by Mr. Stone and is consistent with the evidence of Dr. Dahi that a reminder of the original trauma can aggravate her PTSD.

[100] I accept Ms. Tang suffered an aggravation of her PTSD following the birth of her daughter, and that the aggravation was sufficient to require the time off work provided by the VSB.

***Conclusion on loss of past earning capacity***

[101] I therefore find that Ms. Tang is entitled to the undisputed past loss of \$46,226.37 and the disputed past loss of \$27,820.30 for a total of \$74,046.67.

**Loss of Future Earning Capacity**

***Legal principles***

[102] In *Bolgar*, Hughes J. also summarized the proper approach to assessing damages for loss of future earning capacity, including the three-part test, following the recent trilogy of decisions on this issue from our Court of Appeal:

[106] The proper approach to assessing damages for loss of future earning capacity was clarified by the Court of Appeal in the trilogy of *Dornan*; *Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421. The approach to this assessment post-trilogy was aptly summarized in *Rattan* as follows:

[146] The assessment of a claim for loss of future earning capacity involves consideration of hypothetical events. Hypothetical events need not be proved on balance of probabilities. A hypothetical possibility will be accounted for as long as it is a real and substantial possibility and not mere speculation. If the plaintiff establishes a real and substantial possibility of a future income loss, then the court must measure damages by assessing the likelihood of the event. Allowance must be made for the contingency that the assumptions upon which the award is based may prove to be wrong: *Reilly v. Lynn*, 2003 BCCA 49 at para. 101; *Rab v.*

*Prescott*, 2021 BCCA 345 at para. 28 [*Rab*], citing Goepel J.A., in dissent, in *Grewal* at para. 48. The assumptions may prove too conservative or too generous; that is, the contingencies may be positive or negative.

[147] Contingencies may be general or specific. A general contingency is an event, such as a promotion or illness, that, as a matter of human experience, is likely to be a common future for everyone. A specific contingency is something peculiar to the plaintiff. If a plaintiff or defendant relies on a specific contingency, positive or negative, they must be able to point to evidence that supports an allowance for that contingency. General contingencies are less susceptible to proof. The court may adjust an award to give effect to general contingencies, even in the absence of evidence specific to the plaintiff, but such an adjustment should be modest: *Steinlauf v. Deol*, 2022 BCCA 96 at para. 91, citing *Graham v. Rourke* (1990), 1990 CanLII 7005 (ON CA), 74 D.L.R. (4th) 1 (Ont. C.A.).

[107] The three-step process for considering claims for loss of future earning capacity is as follows:

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

See *Rattan* at para. 148, citing *Rab* at para. 47.

## **Discussion**

### **1. Is there a loss of capacity?**

[103] I have found that Ms. Tang suffers from ongoing PTSD symptoms caused by the accident that could impact her ability to do some types of work. This satisfies the first part of the *Rab* test.

### **2. Is there a real and substantial possibility that the loss of capacity will cause a pecuniary loss?**

[104] It is uncontested that Ms. Tang loves her job and has an employer that is willing to accommodate her disabilities. She testified that she plans on working in that job until she retires. There is no reasonable possibility that the schools and school board will disappear. Ms. Tang loves her job as a teacher and continues to

teach at an exceptional level. Therefore, even in the unlikely event that Ms. Tang was forced to move, I am satisfied that she would continue to work as a teacher.

[105] Ms. Tang's ongoing physical disabilities and ongoing PTSD symptoms do not impact her ability to work full-time as a teacher. However, an aggravation in her PTSD symptoms could cause a temporary impairment in her ability to work full-time as a teacher. Given her past history, in my view, any such impairment would be limited to a temporary period of having to work four days a week instead of five days a week at her current school and residence.

[106] However, there are a number of additional issues that will reduce the possibility of a pecuniary loss occurring as a result of her PTSD symptoms:

- a) The first is that Ms. Tang intends to pursue the recommendation to try new medications to treat her PTSD. Given the low dosage at which she is able to tolerate Effexor and the positive results she has received from that low dosage, in my view, there is a significant possibility of an improvement in both her PTSD symptoms and her ability to tolerate treatment with her change in medication. I assess this as a significant possibility of avoiding any future pecuniary loss;
- b) The second is that Ms. Tang's new residence is in the Vancouver School District. As a result, instead of taking time off work, the School District may be able to accommodate any aggravation of her symptoms by transferring her to a school closer to her residence, reducing the time she needs to spend driving to and from work. I assess this as a real possibility of mitigating any pecuniary loss; and
- c) Finally, I have found that Ms. Tang wishes to permanently work four days a week for work-life balance reasons, and I therefore expect she will apply for a permanent reduction in her hours for reasons unrelated to her PTSD symptoms. I infer that there is a good chance that such a request will be granted. I assess this as a significant possibility of avoiding any pecuniary

loss, as Ms. Tang will be better able to manage potential aggravations in her PTSD symptoms while working reduced hours.

[107] Ms. Tang has testified that in the last few months before trial, she has had an aggravation in her PTSD symptoms such that she believes she may have to apply to reduce her work down to four days a week.

[108] This aggravation has occurred despite the fact that she has moved to a residence substantially closer to the school where she teaches and that her husband is driving her son to daycare in Burnaby while they arrange to transfer him to a daycare closer to their new home.

[109] When Ms. Tang testified at trial, she appeared to suffer an anxiety attack when talking about the first accident, causing her to fall to the floor and require a lengthy recess to compose herself. This reaction was greater than anything witnessed by Dr. O'Shaughnessy, Dr. Dahi, Dr. Paramonoff or Dr. Simonett when discussing the accident.

[110] I accept that the trial aggravated Ms. Tang's PTSD symptoms. However, given my findings about her medical leave of absence following her son's maternity/paternity leave, I do not accept her testimony that her symptoms have been aggravated to the point that she requires a reduced number of days a week of teaching. Furthermore, the trial has now concluded.

[111] In balancing these contingencies, and considering Ms. Tang's historical level of function, in my view, she has not established a real and substantial possibility of incurring a future pecuniary loss as a result of her accident-related injuries. The hypothetical future loss of earning capacity claimed by Ms. Tang does not rise above the level of mere speculation.

[112] Given this finding, I decline to consider the value of any possible future loss.

**Special Damages**

[113] The parties have agreed that Ms. Tang is entitled to \$20,000 in special damages.

**Cost of Future Care**

[114] The “test” for future care awards is essentially that there must be a medical justification for an item and the award must be reasonable in the circumstances: *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 at paras. 210–211.

***Treatment for soft tissue issues***

[115] I have found that Ms. Tang suffers from chronic pain associated with her soft tissue injuries, but that it is likely that her symptoms will improve with appropriate conditioning focusing on her muscle imbalance and weakness issues. Her current symptoms are not disabling in the sense that she can do necessary tasks with appropriate pacing.

[116] I accept Dr. Paramanoff’s recommendations for a kinesiologist with a present value of \$2,112 and a gym pass to age 65 discounted at a 50% contingency to reflect the possibility that Ms. Tang may do the exercise program at home with a present value of \$5,456.

[117] I accept Dr. Simonett’s recommendation for RMT and physiotherapy for flare-ups of six sessions each on an annual basis to age 65. These recommendations have a present value of \$9,768.

[118] In my view, provision for items such as a heat blanket and rollers are not necessary given the provision for physiotherapy and RMT.

[119] In my view, an award for housekeeping services is not medically justified. Ms. Tang is capable of doing her household tasks with appropriate pacing. There is no medical prohibition against doing such work. To the extent that her ability to do

housework has been impacted, it is more appropriately compensated for in non-pecuniary damages.

[120] I am cognizant of the fact that Ms. Tang recently moved to a new townhouse that has more stairs. Mr. Stone testified that housework is a little more challenging because there are now three bedrooms and more stairs and they have hired a person to come in once a month to assist with cleaning. I do not accept that the hiring of a cleaner is due to injuries suffered by Ms. Tang in the accidents. I do not accept that there is a medical justification for housekeeping services due to injuries Ms. Tang suffered in the accidents.

***Treatment for other physical issues***

[121] I accept Dr. Tsai's opinion that Ms. Tang may benefit from further vestibular therapy sessions and award \$1,500 pursuant to his recommendation.

[122] Dr. Robinson recommended that further Botox injections may provide some assistance if Ms. Tang wishes to pursue the treatment. However, Ms. Tang suffered a severe vertigo reaction which she attributes to the injections in 2015 and has not pursued the therapy since. Given that her headaches do not have a significant impact on her level of function, the severity of her reaction, and her lack of interest in pursuing treatment over the last eight years, I do not expect that she will pursue any further injections. In my view, it would not be reasonable to award compensation for this treatment in the circumstances.

***Treatment for psychological issues***

[123] I agree with Dr. Dahi and Dr. O'Shaughnessy's opinion that medication is appropriate and that Ms. Tang will attempt a trial of Cymbalta. I accept Ms. Tang's calculations that a 75% contingency for the cost of Cymbalta and a 25% contingency for the cost of Effexor is an appropriate basis for calculating the present value of her future medication costs. The present value of these calculations is \$56,000.

[124] I have also found that Ms. Tang has not undergone sufficient exposure therapy and that, with appropriate medication, she would be able to tolerate the

treatment. Based on the historical expense of this treatment, I would estimate a present value of \$5,000.

#### **Total cost of future care award**

[125] I find the total value of her cost of care award to be \$79,836 (\$2,112 + \$5,456 + \$9,768 + \$1,500 + \$56,000 + \$5,000).

#### **Non-Pecuniary Damages**

[126] In assessing non-pecuniary damages, I rely on the factors and methodologies set out by the Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34. I will not review counsel's submissions on the law. The principles are well-known.

[127] Ms. Tang is 42 years of age. She is married with two children. I have set out the injuries caused by the accident. I will not repeat them.

[128] Ms. Tang's enjoyment of life has been significantly impaired due to her injuries. She has made a good recovery from her physical injuries, although she is still symptomatic. She is able to swim and participate in yoga, but pain is part of her daily life. Her most significant injury is her PTSD. Her anxiety causes her not only significant personal upset but impacts her self-identity, as her family, friends, colleagues and students observe her vulnerability. Her anxiety is the most significant ongoing injury and it has had a dramatic effect on her life and self-esteem.

[129] The defendants' counsel referred me to a number of cases with awards ranging from \$110,000 to \$125,000 in non-pecuniary damages. After reviewing the cases, I found the *Kazemi v. Sturmane*, 2023 BCSC 127 to be of most assistance. In that case, a 53-year-old plaintiff suffered from chronic pain to his neck and back, but his most significant injury was PTSD, which was defined in part by flashbacks, nightmares and recurring thoughts about accidents. His anxiety was characterized by driving anxiety. He withdrew from social interactions and was irritable. He was awarded \$110,000 in pecuniary damages. In this case, the Court awarded an additional \$20,000 for loss of housekeeping services but no compensation for the

impact of his injuries on his ability to perform housekeeping services as part of the non-pecuniary loss.

[130] Ms. Tang's counsel referred me to a number of cases ranging from \$160,000 to \$230,000 in non-pecuniary damages. I found the case of *Kim v. Khaw*, 2014 BCSC 2221 to be of assistance. In that case, a 54-year-old plaintiff was injured in a motor vehicle accident and suffered from moderate to severe PTSD. His pain complaints mostly resolved within a year, and his ongoing complaints were relatively minor. His ongoing PTSD issues would not impair his ability to continue to operate his daycare business in the future. The Court awarded \$130,000 in non-pecuniary damages, which are approximately \$160,000 in current dollars. Mr. Kim did not suffer from an impairment in his ability to perform housekeeping services.

[131] Considering the impact of the injuries on Ms. Tang and the cases that I have been referred to, also being cognizant of the fact that the non-pecuniary award should include some compensation for the pain and need for pacing required for Ms. Tang's housekeeping services, I am of the view that \$150,000 is an appropriate assessment of Ms. Tang's non-pecuniary loss.

### **Summary of Award**

[132] I award the following damages to Ms. Tang:

- a) \$150,000 non-pecuniary loss;
- b) \$79,836 cost of future care;
- c) \$20,000 in special damages; and
- d) \$74,046.67 in loss of past earning capacity.

[133] This amounts to a total award of \$323,882.67.

**Costs**

[134] The parties may appear before me within 60 days of the date of judgment if there is a need to make submissions with respect to costs.

“Thomas J.”