IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sellmer v. Watson,*
2025 BCSC 46

Date: 20250113
Docket: M181988
Registry: Vancouver

Between:

Marissa Andrea Sellmer

Plaintiff

And

Marie Watson and Andre Karol Ike-Duninowski

Defendants

- and -

Docket: M214909
Registry: Vancouver

Between:

Marissa Andrea Sellmer

Plaintiff

And

Modesto Alhambra Ranara and Ofelia Ranara

Defendants

Before: The Honourable Justice Caldwell

Reasons for Judgment

Counsel for the Plaintiff: K. Emond
E.J. De Vos

Counsel for the Defendants: L.L. Seneviratne
M. Putris

Place and Dates of Trial:	Vancouver, B.C. April 15-19, 22-24, 2024
Place and Date of Judgment:	Vancouver, B.C. January 13, 2025

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INTRODUCTION

[1] The plaintiff, Ms. Sellmer, claims damages arising from two motor vehicle accidents, the first on September 3, 2017 when the plaintiff was 21 years old, and the second on October 2, 2019. The first of the two accidents was much more significant than the second.

[2] Liability is not at issue for either accident. The issues are quantum for non-pecuniary damages, past income loss, loss of future income earning capacity, cost of future care, and mitigation.

[3] The rather unusual and complicating factor in this case is that shortly after the first accident, the plaintiff began using and then seriously abusing alcohol. She alleges that this was to assist her in dealing with her accident-related injuries and pain. She became addicted to alcohol and consumed it in very large quantities for over four years, but as at the first day of trial she had been sober for 397 days and counting. It is clear that this consumption of extremely high quantities of alcohol inhibited, delayed, and compromised rehabilitation and treatment as to both the physical and psychological injuries suffered by the plaintiff in the accidents.

PRE-ACCIDENT BACKGROUND

[4] Prior to the first accident, Ms. Sellmer was a reasonably fit and active 21-year-old.

[5] She had been primarily raised by her grandparents. She was largely estranged from her parents, both of whom are severely addicted to alcohol and suffer from other substance abuse issues as well.

[6] Before the first accident, she hiked, went to the gym, and partook in other typical activities such as housekeeping and yard work without significant difficulty. She enjoyed travel and went on annual family visits to Disneyland. She wore medium-sized clothing. She consumed alcohol socially and moderately.

[7] Ms. Sellmer completed grade 12 in 2013 and pursued post-secondary education, including the completion of a dental receptionist program. She never sought or obtained work in that field.

[8] She then took courses at Langara College over a period of one to two years and held a variety of part-time jobs. She appears not to have had any clear or serious life or career plans.

[9] In 2015, she experienced a fire in her apartment building – this was upsetting and stressful for her.

[10] Ms. Sellmer has a significant pre-accident history of persistent lower back pain complaints, headaches, and sleep difficulties from at least 2014 up to March 2017. She also has a history of seeking medical help for anxiety, sadness, and depression on several occasions during that same period. In March 2017, she was unable to attend school or work as a result of these overall complaints.

[11] These pre-accident issues were significant enough to cause Ms. Sellmer to be placed on academic suspension from Langara College in 2016, and later to cause her to withdraw from her studies at that school. She testified that even carrying school books and materials caused significant back pain at the time.

[12] In May 2017, she began employment as an Auxiliary Cashier at a BC Liquor Store in Squamish, where she was living at the time. That job required a significant amount of lifting, including lifting boxes of alcohol and other materials. It was not full-time employment.

[13] She enjoyed the work and her coworkers but she was terminated on the last shift of her probationary term.

[14] Ms. Sellmer subsequently began similar work at the Jericho Beach Liquor Store in July 2017. Again, she did not work a full-time schedule, but did work overtime as the seasonal demands of the position required.

[15] She enjoyed the work and her coworkers but this position required her to commute from Squamish to Vancouver – a not insignificant factor.

THE ACCIDENTS

[16] The first accident occurred on Highway 99 as Ms. Sellmer was returning home from work. She was “side-swiped” on the passenger side and knocked into the centre median guard at highway speed. It was a significant impact. She stopped, exchanged information with the other driver, and then continued on her way home.

[17] The second accident occurred when she was stationary at a red light and the car ahead of her backed up to get clear of the intersection. The impact was minor.

INJURIES

[18] Based on the evidence, including the testimony and reports of the experts, I am satisfied on the balance of probabilities, and I find as a fact, that the plaintiff suffered the following injuries as a result of the first accident:

- large L4-5 central disc herniation which spontaneously resolved by 2021; and
- “whiplash-associated” soft-tissue strain/sprain injuries to the neck and back.

[19] I find that these injuries caused Ms. Sellmer to experience:

- soft-tissue-mediate cervicogenic headaches;
- chronic mechanical back pain, sometimes extending down at least one leg;
- neck stiffness and discomfort;
- jaw pain and stiffness;
- sleep interruption; and

- anxiety and depression.

[20] The neck stiffness and jaw pain were new issues. The other symptoms were pre-existing problems which were intensified and made worse, at least for some period of time, by the injuries suffered in the first accident.

[21] Since the accidents, the plaintiff has also experienced significant weight gain, probably in the range of 75–100 pounds. She is significantly deconditioned. She now wears size XXL clothing.

[22] It is clear that the plaintiff's most significant complaints relate to the chronic back pain and headaches. Both were pre-existing problems which were made worse by the accidents, at least for a period of time. Her other complaints have largely resolved.

[23] I also find that the symptoms associated with these injuries were somewhat revived by the second accident, at least for a period of time, but that the second accident did not cause any new injuries nor did it cause any actual aggravation or worsening of the initial injuries themselves.

AFTER THE FIRST ACCIDENT

[24] The plaintiff felt no immediate pain at the time of the first accident but developed symptoms over the following days and weeks.

[25] Later that day, she experienced overall stiffness and an "achy feeling" particularly in her neck and upper back. She developed a headache which persisted. The following day, she began to experience lower back pain – a pinching and burning – which persisted and got worse over time. Within two weeks, Ms. Sellmer was experiencing significant back pain when standing.

[26] She attended a medical clinic the following day and was prescribed anti-inflammatories, muscle relaxants, and physiotherapy.

[27] Ms. Sellmer saw Dr. Siemens, who became her family doctor, a few days later. Her complaints were consistent; she suffered from headaches, severe lower back pain radiating into her leg, and sleep problems due to pain. She also complained of anxiety related to her pain experience. She continued to be prescribed Tylenol 3, anti-inflammatories, muscle relaxants, and tramadol along with physiotherapy and massage therapy.

[28] Ms. Sellmer was not satisfied with the relief she received from the prescribed medications and she chose not to pursue the recommended physiotherapy and massage therapy. She consulted her mother who advised her to take her medications, or some of them, with alcohol. Ms. Sellmer began to mix Advil with wine. Within a short time, she replaced the wine with hard liquor. By a month post-accident, she was taking the Advil with a “mickey” – approximately 12 ounces - of hard liquor per day. That soon progressed to daily consumption of at least 26 ounces of hard liquor. That continued and increased for over four years until some time in 2022. Ms. Sellmer described that the alcohol “completely numbed me”.

[29] She returned to work at the Jericho Beach Liquor Store shortly after the accident. She reduced her hours of work and sought accommodation in her work environment and in her duties due to her back pain. She indicated that she did not tell her supervisor that she had been involved in a car accident but could not recall or provide any reason or explanation for not doing so.

[30] In any event, Ms. Sellmer’s employer granted the reduced hours and accommodations as requested. She did not seek further accommodations. Her supervisor testified that further accommodations could and would have been made available on request.

[31] Even with those accommodations, Ms. Sellmer’s return to work was fairly short-lived.

[32] By April 2018, she described herself as “loopie”. She was drinking very heavily by that time and she made a mistake in her role as cashier at work. She was

terminated shortly afterwards for cause – not for the error, but for failing to accept work shifts. She attributes this to her excessive alcohol use.

[33] Ms. Sellmer filed a formal grievance through her union and was reinstated to her position, but she never returned to work. She has not sought other work of any kind.

[34] In early 2018, Ms. Sellmer met her current partner, Josh, through Tinder, an online dating platform. Their common interests were alcohol, movies, and video games. They “drank together online” during the early part of their relationship. They met in person in August 2018.

[35] Separately, Ms. Sellmer and Josh were very heavy drinkers. Together, their alcohol consumption increased. The plaintiff drank throughout the day. Josh concentrated his drinking after work hours. They would normally consume a 40-ounce bottle of hard liquor, sometimes a 60-ounce bottle, over the course of an evening.

[36] In May 2018, Ms. Sellmer had a CT scan which showed a disc herniation at L4-5. She was referred to Dr. Badii, a rheumatologist. An MRI was done in November 2018 and confirmed the disc herniation along with a lesser bulge at L3-4. She received a series of epidural steroid injections relative to the disc herniation and experienced significant relief as a result of those injections.

[37] Dr. Badii cites the first accident as the likely cause of the disc herniation and I accept that opinion. He also notes that a subsequent MRI, performed in 2021, showed the herniation to have “remarkably resolved”. He describes that as not uncommon and as consistent with acute rather than long-standing herniations. It corroborates his opinion that the first accident caused the herniation.

[38] The plaintiff is not a candidate for surgery or for further epidural steroid injections as the herniation has resolved.

[39] Dr. Badii also diagnoses the plaintiff with “central sensitization” meaning that she is more susceptible to experiencing pain and associated symptoms such as depression, anxiety, poor sleep, cognitive dysfunction, and chronic fatigue. Very little evidence was led as to this condition.

[40] The plaintiff never seriously pursued any of the recommended physiotherapy or massage therapy, indicating in her evidence that she “couldn’t go wasted”. She did attend two physiotherapy sessions at some point but none thereafter. She has received some massage treatments fairly recently in Chilliwack but finds them painful.

[41] Ms. Sellmer pursued the recommended mental health counselling beginning in or after 2021 but was released by the counsellor for repeated failures to attend sessions. A psychological assessment was booked for her in 2022 but she failed to attend.

[42] She testified that by the time of trial she had returned to counselling and was attending once per week. She indicates that she is not prepared to take any of the prescribed mental health medications due to her earlier negative experiences with them.

[43] Since the plaintiff stopped drinking alcohol, she describes having less “inflammation” and finds it easier to walk and get around, but she says that she has more pain. She says that her back “goes out” three to four times per year. She says that she is happier, has less anxiety, and sleeps better but still has cravings for alcohol which concern her. She indicates an almost total inability to handle personal and household tasks. Her partner Josh has assumed responsibility for such duties. He also maintains full-time employment.

[44] Ms. Sellmer’s social activities are limited to walking her dogs for about 10 minutes once or twice per day and occasional outings with friends. She testified that she and Josh have been on a few camping or “campfire” outings to Chilliwack Lake

and to Harrison Lake in his Dodge Ram pick-up truck. They went on an Alaskan cruise in 2019 but she indicates being in pain throughout that trip.

CREDIBILITY

[45] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013) as follows:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Farnya v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Farnya*]; R. v. S.(R.D.), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> [187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd.* (1993), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). I have found this approach useful.

[46] The plaintiff gave her evidence in a reasonably straight-forward manner. She was clear and, with minor exceptions, consistent and unshaken on cross-examination. Other witnesses, including her partner and her aunt, essentially confirmed and corroborated most of her evidence.

[47] However, there were certain inconsistencies and matters of concern which arose during the plaintiff's evidence, including:

- she said that she resorted to alcohol because it "completely numbed" her, while also testifying to experiencing severe pain when intoxicated;
- in spite of such alleged pain and disability, she and her partner have adopted several pets, including large dogs which she walks twice per day;
- she told Dr. Siemens that her back pain was worsened by bike riding, but she testified that she does not know how to ride a bike; and
- she told at least one of the experts that she was working full-time at a BC Liquor store at the time of the accident and had been working in that capacity for two years – neither of those statements were true.

[48] I also note that a matter at least somewhat relevant to the issue of credibility arose during cross-examination.

[49] While the plaintiff has not worked nor sought employment since early 2018, she is a committed "contest person" and spends considerable time seeking out and entering contests. She normally sells prizes she wins for cash. She estimates that she earns about $5,000 per year from this pursuit.

[50] When entering the contests for financial gain, it is clear Ms. Sellmer is not constrained by the truth.

[51] For example, she wrote about gardening and making her own compost in a 2021 contest entry but in evidence she acknowledged that she has no garden.

[52] Moreover, in a 2020 contest entry for a $500 Staples prize package, she spoke of her challenges in working from her own home office. She has no home office and does not work from home.

[53] In August 2020, Ms. Sellmer entered a contest saying that she "would love to win a brand new bicycle …. I want to rediscover the city I adore while the summer is still here." As noted above, she has never learned to ride a bicycle.

[54] None of these matters are in or of themselves determinative as to a lack of credibility on other issues such as levels of pain and resultant disability. However, they are matters which raise concerns and give reason for careful consideration of her evidence as a whole.

EXPERTS

[55] The expert evidence, as I received and interpreted it, indicates that:

- the plaintiff suffered from significant pre-accident back pain, headaches, and emotional or mental health issues, including generalized anxiety disorder with panic attacks, which were serious enough to interfere with her schooling and work life;
- the first accident caused soft tissue sprain/strain-type injury to the plaintiff's back and it also caused a herniated disc which spontaneously resolved by 2021;
- those injuries caused a worsening of her pre-accident symptoms, at least for a period of time, including her back pain and headaches, and the accident created new symptoms including neck and jaw pain and tension;
- her physical injuries worsened her overall physical pain and this adversely affected her anxiety and depression;
- her back pain had improved by at least 50% by May 2021, and by that time the disc herniation had spontaneously resolved;
- the soft-tissue injuries were expected to resolve on their own within six to twelve months, but this may have been delayed by the continued presence of the herniated disc until 2021;

- the plaintiff continues to have back pain and headaches;
- the plaintiff rejected medical and mental health advice regarding medication, physiotherapy, and massage therapy and chose instead to self-medicate with extremely high consumption of alcohol over a period exceeding four years, ending in 2022;
- as a result of those actions, she has developed a severe alcohol use disorder;
- the plaintiff also has sleep apnea, which is probably related to the alcohol abuse and significant weight gain;
- her extremely heavy use of alcohol rendered impossible any meaningful physical or mental health rehabilitative undertakings for several years;
- the second accident caused at least some rebound to increased severity of symptoms for a short period of time;
- the plaintiff's mental health issues do not preclude her from employment;
- physiotherapy, massage therapy, active rehabilitation, mental health counselling, and medication are still recommended but their effectiveness may be negatively impacted by the years of alcohol abuse, significant de-conditioning, delay in implementation, and certainly by any relapse into alcohol abuse; and
- overall prognosis is guarded at best given that symptoms continue some seven years post-accident and given the negative effects of delay on appropriate treatment.

[56] I also note that all of the experts specify that their opinions are based on their assumption that all information provided by the plaintiff is true. The Court is in a different position: it must assess the evidence, particularly of the plaintiff, as it was presented in court subject to cross-examination and findings of overall credibility.

Only after having done that can a court properly determine whether to accept or reject all or portions of not only the expert evidence but all of the evidence presented on behalf of the plaintiff.

[57] Overall, I accept that the plaintiff was injured in the first accident and suffered a minor setback in symptoms as a result of the second accident. I accept that for a period of time, she suffered significant increase in pre-existing pain from those injuries, resorted to serious abuse of alcohol, and suffered an increase in pre-existing mental health issues as a result of both the increase in pain and the abuse of alcohol.

[58] I also find, however, that the plaintiff's present pain and other symptoms are not as significant or persistent as she portrayed them in her evidence but rather are more consistent with the levels which she had experienced during the three years prior to the first accident when she was unable to work and had to withdraw from her studies.

CAUSATION

[59] The plaintiff must establish on a balance of probabilities that the defendants' negligence caused an injury. Causation need not be determined by scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at para. 16. The defendants' negligence does not have to be the sole cause of the injury so long as it is a necessary cause: *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at para. 130.

[60] The primary test for causation asks whether the plaintiff would have suffered the injuries *but for* the defendants' negligence. The "but for" test recognizes that compensation for negligent conduct should only be made where there is a substantial connection between the injury and the defendant's tortious conduct: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21–23; *Zenone v. Knight*, 2024 BCCA 200 at para. 55.

[61] Causation must be established on a balance of probabilities before damages are assessed. As McLachlin C.J.C. stated in *Blackwater v. Plint*, 2005 SCC 58:

> [78] … Even though there may be several tortious and non-tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway…

[62] In the present case, it is clear that the first accident caused the injuries listed above, particularly the herniated disc and the back sprain/strain. Those injuries caused an increase in pain and emotional load for the plaintiff – a person already in significant pain and subject to emotional and mental health difficulties.

[63] The most basic principle of tort law is that the plaintiff must be placed in the position he or she would have been in if not for the defendant's negligence, no better or worse. Tortfeasors must take their victims as they find them, even if the plaintiff's injuries are more severe than they would be for a normal person (the "thin skull" rule). A defendant is fully liable for the unexpectedly severe injuries of the thin skull plaintiff because liability cannot be apportioned between causes: *Dornan v. Silva*, 2021 BCCA 228 at para. 41. However, the defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced anyway (the "crumbling skull" rule): *Athey* at paras. 32–35.

[64] In dealing with and assessing psychological injury matters, Justice Lambert, writing for the Court of Appeal in *Yoshikawa v. Yu* (1996), 21 B.C.L.R. (3d) 318, 1996 CanLII 3104 (C.A.), reviewed prior authorities and extracted the following basic principles and guidelines, provided at para. 12:

> 1. The plaintiff must establish that the pain, discomfort or weakness is "real" in the sense that the victim genuinely experiences it.
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> …
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> 2. The plaintiff must establish that his or her psychological problems have their cause in the defendant's unlawful act.

3. The plaintiff's psychological problems do not have their cause in the defendant's unlawful act if they arise from a desire on the plaintiff's part for such things as care, sympathy, relaxation or compensation.

4. The plaintiff's psychological problems do not have their cause in the defendant's unlawful wrongful act if the plaintiff could be expected to overcome them by his or her own inherent resources, or "will-power".

5. If psychological problems exist, or continue, because the plaintiff for some reason wishes to have them, or does not wish to end, their existence or continuation must be said to have a subjective, or internal, cause. (NOTE: I consider that this proposition must deal with the conscious mind, otherwise it seems to me to beg the question; see my first observation, later in this Part of these reasons.)

6. If a court could not say whether the plaintiff really desired to be free of the psychological problems, the plaintiff would not have established his or her case on the critical issue of causation.

7. Any question of mitigation, or failure to mitigate, arises only after causation has been established.

8. It is not sufficient to ask whether a psychological condition such as "chronic, benign pain syndrome" is "compensable". Such a psychological condition may be compensable or it may not. The identification of the symptoms as "chronic benign pain syndrome" does not resolve the questions of legal liability or the question of assessment of damages.

9. It is unlikely that medical practitioners can answer, as matters of expert opinion, the ultimate questions on which these cases often turn.

10. Mr. Justice Spencer, at trial in the *Maslen* case, put the overall test quite correctly in these words:

> [C]hronic benign pain syndrome will attract damages ... where the plaintiff's condition is caused by the defendant and is not something within her control to prevent. If it is true of a chronic benign pain syndrome, then it will be true also of other psychologically-caused suffering where the psychological mechanism, whatever it is, is beyond the plaintiff's power to control and was set in motion by the defendant's fault.

11. There must be evidence of a "convincing" nature to overcome the improbability that pain will continue, in the absence of objective symptoms, well beyond the recovery period, but the plaintiff's own evidence, if consistent with the surrounding circumstances, may nevertheless suffice for the purpose.

MITIGATION

[65] A plaintiff has an obligation to take all reasonable measures to reduce his or her damages, including undergoing treatment to alleviate or cure injuries: *Danicek v. Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111 at para. 234.

[66] Once the plaintiff has proved the defendant's liability for his or her injuries, the defendant must prove that the plaintiff acted unreasonably and that reasonable conduct would have reduced or eliminated the loss. Whether the plaintiff acted reasonably is a factual question and it involves a consideration of all of the circumstances: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 202.

[67] The Court of Appeal discussed mitigation in *Haug v. Funk,* 2023 BCCA 110:

> [56] The test for a plaintiff's failure to mitigate their losses is set out in *Chiu*. This Court stated at para. 57:
>
> > The onus is on the defendant to prove that the plaintiff could have avoided all or a portion of his loss. In a personal injury case in which the plaintiff has not pursued a course of medical treatment recommended to him by doctors, the defendant must prove two things: (1) that the plaintiff acted unreasonably in eschewing the recommended treatment, and (2) the extent, if any, to which the plaintiff's damages would have been reduced had he acted reasonably.
> >
> > [Emphasis added.]
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> [57] This test is drawn from the principles in *Janiak v. Ippolito*, [1985] 1 S.C.R. 146, 1985 CanLII 62. Justice Wilson, in discussing the onus of proof at para. 34, quoted with approval the Australian case *Plenty v. Argus*, [1975] W.A.R. 155:
>
> > In all the personal injury negligence cases so far reported, it appears to have been established on the balance of probabilities both that the plaintiff had acted unreasonably and that had the operation been carried out, the incapacity would have been removed or reduced to a certain degree. In such cases the onus is discharged on either view and with the result that damages are assessed 'as they would properly have been assessable if he had, in fact, undergone the operation and secured the degree of recovery to be expected from it.'
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> [58] Elaborating on the assessment of damages, Wilson J. stated at para. 42:
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> > …the balance of probabilities test is confined to determining what did in fact happen in the past. In assessing damages the court determines not only what will happen but also what would have happened by

> estimating the chance of the relevant event occurring, which chance is then to be directly reflected in the amount of damages.
>
> [Emphasis original.]
>
> …
>
> [61] In my view, the correct approach to mitigation is still based on the first principles set out in *Janiak*. This Court's decision in *Gregory* rightly interprets the wording in the second branch of the *Chiu* test as requiring the defendant to prove on a balance of probabilities that the plaintiff's injuries would have been reduced to some degree had they acted reasonably. Only once this is established does the Court go on to assess the reduction to the damages award based on the extent to which the injuries would have been avoided, which is the true hypothetical.

[68] Thus, a defendant bears the onus of proving both branches of the *Chiu* test on a balance of probabilities, not direct certainty and not necessarily on direct evidence. In *Liu v. Bipinchandra*, 2016 BCSC 283, Justice Voith stated:

> [102] The legal question of whether a plaintiff would have been assisted by a procedure or course of treatment is to be determined on a subjective basis. Nevertheless, a defendant need not lead direct evidence that the particular plaintiff at issue would have benefitted from a specific treatment. The outcomes of many treatments, or therapies, or procedures are uncertain. A plaintiff who acts unreasonably in the face of the medical advice they are given cannot take refuge in that uncertainty.
>
> [103] Instead, it is open to a defendant to establish the second aspect or branch of the mitigation test indirectly. Thus, if most persons are assisted by a particular treatment the Court can, as a matter of inference, determine that it is probable that a particular plaintiff would have benefitted from that treatment.

[69] Alongside the failure to follow recommended treatment, British Columbia courts have dealt specifically with the issue of alcohol abuse in the context of personal injury claims and particularly as that issue relates to mitigation.

[70] In *Zawadzki v. Calimoso*, 2011 BCSC 45, Justice Voith, having found that the plaintiff's alcohol abuse was actually caused by the accident and was reasonably foreseeable, said:

> [155] The word "fortitude" may be misplaced when describing a person who suffers from a mental illness such as depression or from an addiction disorder. The law requires, however, that a person take reasonable steps to mitigate or abate the harm caused to them by a wrongful act. It is here, in the desire and concomitant obligation to seek help and to try and get well, that

> the concept of fortitude is engaged. It was not open to Mr. Zawadzki to allow his life to deteriorate in a downward spiral. Instead, it was incumbent on him to try, in a reasonable way, to address and rectify his physical and psychological difficulties. These efforts included, at a minimum, that he get competent professional advice and that he try to follow that advice. In saying this, I am mindful that there may be instances where the very nature of one's injury acts as an impediment to seeking help. Thus, in *Elloway v. Boomars* (1968), 69 D.L.R. (2d) 605 (B.C.S.C.), the court concluded that the plaintiff's psychosis was itself a factor in his refusal to seek assistance. In this case, there is no evidence that Mr. Zawadzki suffered from any such enduring underlying disability. He has for the most part been able to go to work. He has attended before numerous physicians in connection with this litigation. He attended at the trial itself.

[71] In *Zawadzki*, Justice Voith applied a variety of deductions to various heads of damage to account for the failure to mitigate.

[72] In *Harris v. Kuntz*, [1993] B.C.J. No. 1682, 1993 CanLII 493 (S.C.), Justice Kirkpatrick battled with similar concerns as arise in the present case. In assessing damages, she begins by saying:

> [143] The extent of Mr. Harris' disability and the extent to which Dr. Kuntz's negligent conduct contributed to that disability is difficult to assess. It is complicated by a pre-operative history of headaches and back pain and a postoperative history of excessive consumption of alcohol and pain killers. It is further complicated by Mr. Harris' apparent unwillingness to follow an exercise regime which has resulted in his badly deconditioned state. The assessment of Mr. Harris' pain is made difficult because it requires an evaluation of the extent to which it is rooted in psychological and economic factors. Inserted into this tissue of complexity is the assessment of Mr. Harris' credibility. …

[73] In addressing the issue of alcohol abuse specifically, she went on to say:

> [149] In my opinion, the plaintiff's approach is too simplistic. There is really no doubt that Mr. Harris experienced significant pain in the years following the surgery. There is little doubt that alcohol served to alleviate or mask that pain. It is really a matter of degree. At some point it must be taken that Mr. Harris' consumption of alcohol passed beyond the bounds of masking a condition to the point where it created a worsened condition. Mr. Harris cannot be relieved of his responsibility to behave reasonably in the face of what are admittedly very difficult circumstances.

[74] Justice Kirkpatrick reduced the amounts awarded on certain heads of damage in recognition of the plaintiff's actions.

[75] I find the foregoing comments helpful in approaching damages in the present case.

[76] Here, Ms. Sellmer did not follow medical advice regarding medication, physiotherapy, massage therapy, physical rehabilitation, and counselling. In her evidence, she acknowledged that she knew that it would have been prudent and proper to do so.

[77] Instead, Ms. Sellmer sought advice from her mother, a lay person who herself suffers from long-standing alcohol abuse issues. Based on the advice she received, Ms. Sellmer embarked on a four to five-year journey of almost unbelievable alcohol consumption. As has been mentioned in various of the cited cases, it is not necessary to have evidence presented to establish that the daily consumption of 20 to 30 ounces of hard liquor for over four years is unreasonable and a clear detriment to one's physical and mental health.

[78] In short, the plaintiff not only failed to follow proper medical advice aimed at both physical and emotional rehabilitation, she actively pursued an alternate, prejudicial, and even destructive course of action which greatly compromised the speed and extent of her recovery.

[79] I find that the plaintiff's actions constitute a failure to mitigate. I will address that failure in relation to the various heads of damage as they arise.

NON-PECUNIARY DAMAGES

[80] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities.

[81] The well known and oft-cited case of *Stapley v. Hejslet*, 2006 BCCA 34, outlines the factors to be considered when assessing non-pecuniary damages:

> [46] The inexhaustive list of common factors cited in *Boyd* that influence an award of non-pecuniary damages includes:
>
> (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;
>
> I would add the following factors, although they may arguably be subsumed in the above list:
>
> (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: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[82] The assessment of non-pecuniary damages is necessarily influenced by the individual plaintiff's personal experiences in dealing with his or her injuries and their consequences, and the plaintiff's ability to articulate that experience: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[83] The correct approach to assessing injuries that depend on subjective reports of pain was discussed in *Price v. Kostryba* (1982), 70 B.C.L.R. 397 at 4, 1982 CanLII 36 (S.C.), recently cited with approval in *McGlue v. Girvan*, 2024 BCCA 208 at para. 48. In referring to an earlier decision, Chief Justice McEachern said:

> In *Butler v. Blaylock*, [1981] B.C.J. No. 31 [S.C.], decided 7th October 1981, Vancouver No. B781505, I referred to counsel's argument that a defendant is often at the mercy of a plaintiff in actions for damages for personal injuries because complaints of pain cannot easily be disproved. I then said:
>
> > I am not stating any new principle when I say that the court should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery.
> >
> > An injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence – which could be just his own evidence if the surrounding circumstances are consistent – that his complaints of pain are true reflections of a continuing injury.

[84] In the present case, the plaintiff suffered an objectively determined injury – a herniated disc – which had spontaneously resolved by 2021. There is medical

opinion that the soft-tissue injuries to her back should reasonably have resolved within six to nine months of the injury. There is no doubt that the injuries, including the soft-tissue injuries, have led to a curtailing of her activities and her social life and have led her to have significant concerns regarding the potential of her having children now or in the future.

[85] The evidence regarding current, ongoing symptoms is largely subjective in nature and, in my view, should be considered in the light of the above comments of Chief Justice McEachern.

[86] I find that due to the plaintiff's long-standing and extreme abuse of alcohol, her pain and emotional upset symptoms have continued longer than would have been the case had she followed medical advice as to her physical and mental health injuries.

[87] Counsel have both provided various authorities which they submit provide an appropriate range of awards for non-pecuniary damages. I have reviewed those cases. I need not recite them. The plaintiff has provided cases with high awards and the defence has provided cases with low awards. In all, the cases range from less than $100,000 to approximately $400,000, the latter being inclusive of an award for future housekeeping and other such expenses.

[88] I am satisfied that the plaintiff was moderately, not highly, active prior to the first accident.

[89] She was and had been, for some years, limited by physical pain, particularly back pain. It was severe enough that she could not carry school books without disabling back pain.

[90] Ms. Sellmer also suffered from emotional problems including anxiety and depression, which were severe enough that she was unable to continue her studies.

[91] As a result of the first accident, she was significantly limited in virtually all her personal and social pursuits for at least five years until the disc herniation resolved.

This injury and the associated pain caused a significant increase in her anxiety and depression.

[92] Thereafter, she continued and continues to be limited, although to a lesser extent, by the unresolved soft-tissue injuries and mental health problems. Ms. Sellmer has certainly contributed to these issues with her excessive use of alcohol and almost complete refusal to follow medical advice regarding medication and rehabilitation.

[93] I award the plaintiff $180,000 in non-pecuniary damages, subject to a 25% deduction for failure to mitigate, for a total net award of $135,000.

PAST LOSS OF EARNING CAPACITY

[94] The plaintiff provided expert economist evidence from Mr. Benning on the issues of past and future loss of earning capacity.

[95] While Mr. Benning's calculations are helpful for reference, it is clear that such damages are to be "assessed" by the Court as opposed to simply being calculated mathematically. This requires consideration by the Court of what would or might have happened in the past if the accidents had not occurred: see *Smith v. Knudsen,* 2004 BCCA 613; *Hartman v. MMS Homes Ltd.*, 2023 BCCA 400 at para. 64, citing *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.

[96] The loss under this head is to be calculated as net loss after deducting such things as tax and any financial benefits Ms. Sellmer received – in this case, disability benefits. Evidence of such deductions was presented in the Benning report and was summarized in submissions.

[97] In this case, and relative to both past and future loss, I consider a variety of specific factors including:

- the plaintiff had already obtained post-secondary training in a field which required little in the way of physical activities or performance but had rejected pursuing work in that field, both before and after the first accident;

- the plaintiff's employment with BC Liquor was not a full-time position, but was an auxiliary position held for approximately six months with variable hours available based on seasonal and other demands;

- the plaintiff did not advise her employer that she had been injured in a motor vehicle accident and sought only limited accommodations in her workplace, although the evidence establishes that additional accommodations were available and would have been provided on request;

- the plaintiff had a very limited work history overall and very modest income in all years up to and including the year of the first accident; and

- the plaintiff had a fairly long and recent history of serious, pre-existing back pain, anxiety, and depression prior to the first accident.

[98] The plaintiff seeks just over $118,600 in net past lost income.

[99] The defence in their submissions suggests that the actual loss is slightly over $123,000 but that such figure should be subject to a deduction of 30–50% for Ms. Sellmer's failure to mitigate.

[100] Based on the evidence and the submissions of counsel, I am satisfied that the plaintiff has established a past loss of income of $120,000.

[101] Although accommodations were available to the plaintiff, I find that the herniated disc was a serious, objective injury which was causing her serious pain and related emotional consequences. It was not unreasonable for her to favour a position of not working during at least a period from the first accident to late 2021 when it was established that the herniated disc had spontaneously resolved.

[102] I apply a 15% deduction to this figure as a result of the plaintiff's failure to mitigate, resulting in a net award of $102,000 for past loss of income.

FUTURE LOSS OF EARNING CAPACITY

[103] The central task before court in considering damages for loss of future earning capacity is to compare the likely future of the plaintiff's working life without the injury to their likely future working life with the injury: *Davies v. Penner*, 2023 BCCA 300 at para. 25; *Rab v. Prescott*, 2021 BCCA 345 at para. 65.

[104] The relevant legal principles are well-established and summarized by Justice Voith in *Pololos v. Cinnamon-Lopez,* 2016 BCSC 81 at paras. 133–134:

> [133] …
>
> a) To the extent possible, a plaintiff should be put in the position he/she would have been in, but for the injuries caused by the defendant's negligence; *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 185, leave to appeal ref'd [2009] S.C.C.A. No. 197;
>
> b) The central task of the Court is to compare the likely future of the plaintiff's working life if the Accident had not occurred with the plaintiff's likely future working life after the Accident; *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 32;
>
> c) The assessment of loss must be based on the evidence, but requires an exercise of judgment and is not a mathematical calculation; *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18;
>
> d) The two possible approaches to assessment of loss of future earning capacity are the "earnings approach" and the "capital asset approach"; *Brown v. Golaiy* (1985), 26 B.C.L.R. (3d) 353 at para. 7 (S.C.); and *Perren v. Lalari*, 2010 BCCA 140 at paras. 11-12;
>
> e) 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;
>
> f) The earnings approach will be more appropriate when the loss is more easily measurable; *Westbroek v. Brizuela*, 2014 BCCA 48 at para. 64. Furthermore, while assessing an award for future loss of income is not a purely mathematical exercise, the Court should endeavour to use factual mathematical anchors as a starting foundation to quantify such loss; *Jurczak v. Mauro*, 2013 BCCA 507 at paras. 36-37.

> g) When relying on an "earnings approach", the Court must nevertheless always consider the overall fairness and reasonableness of the award, taking into account all of the evidence; *Rosvold* at para. 11.

[134] In *Parypa v. Wickware,* 1999 BCCA 88 at para. 75, the Court said:

> … [P]erhaps the factor most difficult to overlook is the appellant's sporadic work history. … While past work history is not determinative of what will occur in the future, it is a significant factor to consider when estimating the likelihood of what would have happened in the future but for the accident.

[105] The Court of Appeal issued a trilogy of decisions in 2021 regarding the proper approach to assessing a claim for damages for loss of future earning capacity: *Dornan v. Silva*, 2021 BCCA 228; *Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421. The Court identified a three-step process for assessing damages, described in *Rab* as follows:

> [47] … a three-step process emerges for considering claims for loss of future earning capacity, particularly where the evidence indicates no loss of income at the time of trial. The first is evidentiary: whether the evidence discloses a *potential* future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in [*Brown v. Golaiy*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.)]). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring—see the discussion in [*Dornan v. Silva*, 2021 BCCA 228] at paras 93–95.

[106] The first step identifies that there are, broadly, two types of cases involving the loss of future earning capacity: (1) more straightforward cases, for example, when an accident causes injuries that render a plaintiff unable to work at the time of trial and for the foreseeable future; and (2) less straightforward cases, for example, those in which a plaintiff's injuries have led to continuing deficits or exposed them to future problems, but the plaintiff's income at trial is similar to what it was at the time of the accident: *Rab* at paras. 29–30; *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 11.

[107] In the former set of cases, the first and second step of the analysis may well be foregone conclusions: *Ploskon-Ciesla* at para. 11. It is still necessary to assess

the probability of future hypothetical events occurring that may affect the quantification of the loss. The Court may make allowance for positive and negative contingencies: *Rab* at para. 29; *Ploskon-Ciesla* at para. 11.

[108] The second step of the analysis requires the plaintiff to prove there is a real and substantial possibility that the future event in question will give rise to pecuniary loss. After determining that the plaintiff may suffer a loss of capacity, the Court evaluates the likelihood that it will affect the plaintiff's ability to earn income. The standard of proof for hypothetical events, both past and future, is a "real and substantial possibility"; it is "a lower threshold than a balance of probabilities but a higher threshold than that of something that is only possible and speculative": *Gao v. Dietrich*, 2018 BCCA 372 at para. 34; *Ploskon-Ciesla* at para. 15.

[109] At the third step, the valuation stage, there are two possible approaches to assessing loss of future earning capacity. They are the earnings approach and the capital asset approach: *Davies* at para. 28; *Perren* at para. 32.

[110] As noted above, the earnings approach will generally be more useful when the loss is easily measurable: *Lamarque v. Rouse*, 2023 BCCA 392 at para. 38; *Perren* at para. 32. Where the loss "is not measurable in a pecuniary way", the capital asset approach is more appropriate: *Perren* at para. 12.

[111] The earnings approach involves a form of math-oriented methodology as set out in *Pallos v. Insurance Corp. of British Columbia* (1995), 100 B.C.L.R. (2d) 260 at para. 43, 1995 CanLII 2871 (C.A); *Ng v. Corness*, 2023 BCCA 185 at para. 18; *Gilbert* at para. 233:

(i) postulate a minimum annual income loss for the plaintiff's remaining years of work, multiplying the annual projected loss by the number of remaining years and calculating a present value of this sum; or,

(ii) award the plaintiff's entire annual income for one or more years.

[112] The capital asset approach involves consideration of the factors described in *Brown* and endorsed in *Ploskon-Ciesla* at para. 13, including whether the plaintiff:

- has been rendered less capable overall of earning income from all types of employment;
- is less marketable or attractive as a potential employee;
- has lost the ability to take advantage of all job opportunities that might otherwise have been open; and
- is less valuable to himself as a person capable of earning income in a competitive labour market.

[113] Though the capital asset approach is not a “mathematical calculation”, there must still be a factual basis for the award: *Dornan* at paras. 151, 158; *Morgan v. Galbraith*, 2013 BCCA 305 at para. 56.

[114] Whatever the approach, the Court must ultimately determine a damage award that is fair and reasonable in the circumstances of the case: see *Lo*.

[115] In the present case:

- the plaintiff was not earning income as of the date of the trial and has not worked or earned employment income since early 2018, following the first accident in the fall of 2017;
- she has not sought employment in any capacity since that time;
- she had an extremely limited work and income history prior to the first accident making it difficult, if not impossible, to determine what the likely future of the plaintiff’s work life would have been without the first accident;

- at the time of the first accident, Ms. Sellmer already suffered from significant physical and emotional complaints which were impediments to her further education and employment;

- she has been diagnosed with chronic symptoms, including in respect of her back pain, and her prognosis is guarded at best and more likely poor; however, I am satisfied that such symptoms are largely caused by and related to her resolute refusal to follow medical advice as to proper medication, counselling, and rehabilitative procedures; and

- Ms. Sellmer may well be less marketable and competitive as an employee and somewhat less capable of earning income as a result of the injuries suffered in the first accident, but again, such assessment is difficult and speculative given her very limited work and income history.

[116] Mr. Benning provided various future loss calculations which were based on the plaintiff's continued employment with BC Liquor. His estimates of loss range from $694,985 to $1,332,565. These estimates are based on his assumption that Ms. Sellmer would have earned between $56,000 and $68,000 per year to approximately age 67.

[117] The evidence establishes that Ms. Sellmer never worked on a full-time basis and never earned annual employment income over $10,000.

[118] Although the plaintiff has suffered a compensable future income loss, I am satisfied it is not nearly as significant as estimated by Mr. Benning's report.

[119] I find the case *Pickwell v. Rotter*, 2022 BCSC 18, a case cited by the plaintiff, to be factually quite similar to the present case in many ways. At paras. 99–101, Justice Francis said:

> [99] Moving to the third step of the *Rab* test, I will now assess the value of the possible future loss. Minimum wage in British Columbia is presently $15.20 an hour. A full-time minimum wage salary in British Columbia is therefore just over $30,000. With the exception of 2011, there was no year pre-Accidents when Mr. Pickwell worked full time for the duration of a

> calendar year. Given the instability of his employment pre-Accidents, in my view the average labour market contingencies posited by Mr. Hildebrand are too low. Rather than use the discount rate provided by Mr. Hildebrand, in my view, Mr. Pickwell's loss can be more accurately assessed by utilizing the actuarial multiplier provided by Mr. Pivnenko, and then providing a contingency discount for the real and substantial possibility, which is clearly supported in the evidence, that, but for the Accidents, Mr. Pickwell would have lengthy periods of unemployment and underemployment for the duration of his career. Based on the evidence, I assess that possibility at 40%.
>
> [100] Therefore, I calculate Mr. Pickwell's loss of income earning capacity as follows: $30,000 per year, multiplied by Mr. Pivnenko's age 70 multiplier of 26,651 per $1000 = $799,530 less 40% ($319,812) = $479,718.
>
> [101] There is another contingency risk that must be applied to Mr. Pickwell's loss of income earning capacity claim and that is the real and substantial possibility that he will recover from his injuries. While all the experts who opined on his prognosis were guarded, none opined with certainty that he was permanently disabled. Indeed the medical consensus is that, with the right therapy, Mr. Pickwell's suffering from his injuries could improve. Dr. McCarthy's guarded prognosis was based on Mr. Pickwell's resistance to active rehabilitation rather than a conclusion that his condition was permanent. Dr. Armstrong also felt that there was some prospect of recovery with therapy. Based on the opinions of these experts, I assess the possibility of Mr. Pickwell recovering from his injuries enough to engage in paid employment in the future at 15%. I therefore apply a further contingency deduction of $71,957 to the loss of income earning capacity award, making his award $407,761.

[120] I am of the view that:

- the assumption of full-time employment resulting in income of $56,000 to $67,000 is approximately double what I find on the evidence would have been a likely outcome;

- it is likely that the plaintiff's pre-existing physical and mental health problems would have limited her employment and income in the future and made it more likely that she would not have worked beyond age 60 at the latest;

- there is a higher likelihood of periods of unemployment that are not accounted for in the Benning report; and

- while there is a lower likelihood of the plaintiff obtaining paid employment in the future, a deduction for failure to mitigate is appropriate in the circumstances of this case.

[121] I calculate the plaintiff's future loss of earning capacity as follows:

Gross future loss of earning capacity:	$450,000
20% reduction for unemployment periods:	$90,000
10% reduction for potential employment:	$45,000
25% reduction for failure to mitigate:	$112,500
Total net future loss of earning capacity award:	**$202,500**

COST OF FUTURE CARE

[122] The plaintiff is entitled to compensation for the costs of future care based on what is medically necessary to restore the plaintiff to a position as though the accident had not occurred. In this regard, it must be noted that the plaintiff was suffering significant pre-accident physical and mental health issues which had resulted in medical recommendations for treatment and rehabilitation.

[123] The award is to be based on what is reasonably necessary on the available medical evidence to preserve and promote the plaintiff's mental and physical health: *Quigley v. Cymbalisty*, 2021 BCCA 33 at para. 43.

[124] The test for determining the appropriate award under the heading of cost of future care is an objective one based on medical evidence, and it must be fair to both parties: *Pang v. Nowakowski*, 2021 BCCA 478 at para. 58.

[125] For an award of future care:

(1) there must be a medical justification for claims for cost of future care; and

(2) the claims must be reasonable: *McGuigan Estate v. Pevach*, 2024 BCCA 106 at para. 92, citing *Paur v. Providence Health Care*, 2017 BCCA 161 at para. 109.

[126] Future care costs are “justified” if they are both medically necessary and likely to be incurred by the plaintiff.

[127] An award of damages for costs of future care has an element of prediction and prophecy: *Pang* at para. 58.

[128] In *Pang* at para. 57, Justice Voith identified three additional considerations of which the Court must be satisfied in this analysis:

1. the plaintiff would, in fact, make use of the particular care item;

2. the care item is one that was made necessary by the injury in question and that it is not an expense the plaintiff would, in any event, have incurred; and

3. there is no significant overlap in the various care items sought.

[129] In the present case, I am satisfied that a significant number of the items claimed by the plaintiff relate, at least in part, to her pre-existing injuries and conditions.

[130] It is also clear on the evidence, and I find as a fact, that the plaintiff has routinely and consistently rejected medical and other professional advice and has refused to participate in recommended rehabilitative or medicinal regimens. I see little to indicate that this would change significantly in the future, particularly in regard to physiotherapy and medications.

[131] Finally, I note it is well established that an assessment of damages for cost of future care is not a precise accounting exercise; it is a matter of prediction. To fix the damages for future care, courts rely on the evidence as to what care is likely to be in

the injured person's best interest: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.

[132] I award the following for cost of future care, including cost of housekeeping services:

Physiotherapy:	$5,000
Psychotherapy:	$10,000
Vocational assessment and counselling:	$5,000
Aids and supplies:	$5,000
General housekeeping:	$10,000
Seasonal housekeeping and yard-care:	$10,000
Total future care award:	**$45,000**

SPECIAL DAMAGES

[133] The parties have agreed that special damages are to be fixed at $176.83 and I so order.

SUMMARY

[134] In summary, I award the plaintiff damages as follows:

Non-pecuniary damages:	$135,000.00
Past income loss:	$102,000.00
Future income loss:	$202,500.00
Cost of future care:	$45,000.00
Special damages:	$176.83
Total:	**$484,676.83**

COSTS

[135] In the normal course, the plaintiff is entitled to costs subject to further submissions. In the event that such submissions are necessary, I direct that they be set down for hearing, subject to my availability, within 90 days of this decision.

[136] The parties will have liberty to apply for directions with respect to any matters arising from this decision, including but not limited to any considerations regarding s. 83 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231 and apportionment as between the first and second accidents if those matters have not been or are not resolved between counsel.

"Caldwell J."