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1. [Purewal v. Li, \[2016\] B.C.J. No. 2045](#)

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 **Purewal v. Li, [2016] B.C.J. No. 2045**

British Columbia and Yukon Judgments

British Columbia Supreme Court

New Westminster, British Columbia

B.M. Greyell J.

Heard: March 7-11 and 14-18, 2016.

Judgment: September 29, 2016.

Docket: M155346

Registry: New Westminster

[2016] B.C.J. No. 2045 | 2016 BCSC 1792

Between Jasvir Singh Purewal, Plaintiff, and Qiang Li, Defendant

(189 paras.)

Case Summary

Damages — Types of damages — For personal injuries — Considerations — Aggravation of pre-existing injury — Cost of future care — Special damages — Past loss of income — Employment income — Expenses and expenditures — Medical — Medications — Therapy or rehabilitation — Non-pecuniary loss — Pain and suffering — Prospective pecuniary loss — Action for personal injuries suffered in a 2012 motor vehicle accident allowed in part — Plaintiff was struck by defendant's vehicle at intersection — Plaintiff suffered from degenerative disc disorder prior to accident — Plaintiff worked as bus driver — Injuries from accident affected his ability to work overtime — Plaintiff suffered head injury and soft tissue injuries to back and shoulder — Plaintiff awarded non-pecuniary damages of \$110,000, lost earnings to date of trial of \$292,381, loss of future earnings of \$75,000, special damages of \$9,382 and cost of future care of \$7,500.

Tort law — Negligence — Duty and standard of care — Motor vehicles — Action for personal injuries suffered in a 2012 motor vehicle accident allowed in part — Defendant was solely liable for accident — Defendant struck plaintiff's vehicle when defendant made a left hand turn at intersection — Not a defence for defendant to rely on fact he was waved to proceed through intersection by drivers who were stopped — Defendant was required under to yield the right of way to plaintiff's vehicle.

Action for personal injuries suffered in a 2012 motor vehicle accident. The plaintiff sustained a head injury and soft tissue injuries to his back and shoulder. He had suffered from ongoing headaches as a result of the mild traumatic brain injury suffered, from ongoing back pain, sleep disturbance and depression since the accident. The defendant denied liability. The plaintiff was struck by the defendant's vehicle as the defendant made a left hand turn at an intersection. The defendant testified he proceeded to make his turn because he was waved across by the drivers of two vehicles which were stopped. The defendant agreed he did not look to see if there were vehicles approaching the intersection in the westbound curb lane. At the time of the accident, the plaintiff worked as a bus driver. He had been involved in a prior motor vehicle accident in 2010, during which he sustained neck, mid and low back soft tissue strain injuries. The defendant disputed that the plaintiff had fully recovered from the injuries sustained in the prior accident at the time of the 2012 accident. The plaintiff had been diagnosed with degenerative disc disease in his lower back.

HELD: Action allowed in part.

The plaintiff was awarded damages totalling \$494,263. The defendant was solely liable for the accident. It was not a defence for him to rely on the fact he was waved to proceed through the intersection by drivers who were stopped at the intersection. The defendant was required under to yield the right of way to any vehicle approaching the intersection that constituted an immediate hazard to his safe passage through the intersection. The plaintiff's evidence respecting his injuries was credible. He was significantly impacted by a mood disorder brought on by continuing pain and likely impacted by fear of his inability to adequately perform his duties as a bus operator. While the plaintiff had returned to work, he would likely continue to suffer from lower back pain which would, over time, limit his ability to work the amount of overtime as he had in the past. Non-pecuniary loss was assessed at \$110,000 which included a consideration of the degenerative condition of his lower back. The plaintiff's loss of earnings to the date of trial was \$292,831, based on three years and seven months of his regular wages plus an average amount of \$25,000 per annum overtime pay. It was likely that the plaintiff would be unable to work some overtime work for one year after he returned to full-time work. His ability to achieve the level of overtime he worked prior to the accident was significantly burdened by his underlying pre-accident degenerative stenosis in his lower back which was aggravated by the accident. The plaintiff was awarded \$25,000 for loss of future earnings for lost regular time wages and a further \$50,000 for loss of future overtime work as he reintegrated into an overtime regime that approximated the amount of overtime he was working at the time of the accident. The was awarded \$7,500 for the future cost of medication and special damages of \$9,382 for prescription medications, physiotherapy, massage therapy, acupuncture, and ambulance services.

Statutes, Regulations and Rules Cited:

Motor Vehicle Act, [R.S.B.C. 1996, c. 318, s. 158\(a\)](#), s. 165(2), s. 174

Counsel

Counsel for the Plaintiff: ***K.D. Cowan***.

Counsel for the Defendant: M.D. Wilhelmson.

Reasons for Judgment

B.M. GREYELL J.

1 Mr. Purewal claims general damages, special damages, past loss of income and future loss of earning capacity, and in trust claims for care provided by his relatives and friends arising from a motor vehicle accident (the "Accident") of August 19, 2012.

2 The defendant denies liability for the Accident. The defendant also says the plaintiff has exaggerated his injuries, that at the time of the Accident Mr. Purewal had not fully recovered from injuries sustained in an earlier accident and that he was fit to return to work sooner than he did.

The Accident

3 The Accident occurred when the plaintiff was traveling westbound in the curb lane of Southwest Marine Drive in the City of Vancouver. The plaintiff was proceeding straight through the intersection of Marine Drive and Columbia Street when his vehicle was struck on the driver's side by a vehicle driven by the defendant Mr. Li.

4 Mr. Li was traveling east on Marine Drive and was attempting to make a left turn onto Columbia Street.

5 Columbia Street intersects Marine Drive at a 70[degrees] angle from the north. The intersection is a "T" intersection as Columbia does not cross Marine Drive to the south. Marine Drive is a busy thoroughfare adjoining Vancouver, Burnaby and New Westminster.

6 The Accident occurred at about 11:45 on the morning of August 19, 2012. Mr. Purewal testified he was in no particular hurry that morning. He was traveling his regular daily route into work. He was traveling in the curb lane, as he said he usually did, and as he passed through the intersection of Southwest Marine Drive and Columbia Street his vehicle was struck on the left front side by Mr. Li's vehicle as the latter attempted to cross into his lane.

7 Mr. Purewal did not remember a second impact when his car was deflected ahead and to the right into a metal pole located on the northwest corner of the intersection.

8 At the time of the Accident the traffic in the two lanes closest to the center line of Marine Drive was stopped.

9 Mr. Purewal agreed in cross-examination that he took no evasive action prior to the impact as he did not see the defendant Li's vehicle prior to impact. Mr. Purewal testified he intended to proceed straight through the intersection in the curb lane but that eventually he would have to merge his vehicle with traffic in the lane to his left because the curb lane was obstructed by construction further to the west.

10 He testified it did "not seem important" to him that the traffic to his left was stopped. He testified he was the traveling speed limit and there was no traffic in front of him so there was "no point" in slowing down at the intersection.

11 Mr. Li was traveling eastbound on Marine Drive intending to make a left turn onto Columbia St. He testified there was a gap in the stopped traffic at the intersection. Mr. Li said he stopped at the intersection, turned his left turn signal on, waited about 15 seconds and then proceeded to make his left turn after being waved to do so by drivers in the first vehicles in both of the two westbound lanes who were stopped immediately before the intersection.

12 Mr. Li testified he thought it was safe to turn and proceeded to do so "very very" slowly.

13 In cross-examination Mr. Li agreed he did not stop before entering the curb lane but that he was proceeding at "such a slow rate it seemed like I was stopped". He testified he proceeded to make his turn because he was waved across by the drivers of the two vehicles which were stopped. Mr. Li agreed he did not look to see if there were vehicles approaching the intersection in the westbound curb lane. He acknowledged the vehicle being driven by Mr. Purewal was a small compact car and would have been somewhat obscured from his view by the traffic in the center and mid lanes. He responded "that's his problem: not mine". Mr. Li testified he did not see Mr. Purewal's vehicle until the moment of collision. Mr. Li's vehicle struck Mr. Purewal's on the left front side as he was making his turn.

Witnesses on the Issue of Liability

Mr. Hubbard

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14 Mr. Gregory Hubbard was the driver of the vehicle stopped in the middle westbound lane on the east side of the intersection of Marine Drive and Columbia Street immediately prior to the intersection.

15 Mr. Hubbard testified he saw the driver in the vehicle next to him wave to motion Mr. Li's vehicle to proceed through the intersection. Mr. Hubbard said he became concerned the hand wave was "a little reckless" and as Mr. Li's vehicle began its left turn to cross the intersection he looked in his rear-view mirror and saw the plaintiff's vehicle one to two car lengths from the intersection approaching it in the curb lane from the east. He testified the front of Mr. Li's vehicle hit the plaintiff's vehicle on the driver's side door causing the plaintiff's vehicle to glance off and hit a pole on the northwest side of the intersection.

16 Mr. Hubbard described the impact as a forceful one. He went to the plaintiff's vehicle where he said he found the plaintiff dizzy and unstable, shaking and unable to immediately answer questions. Mr. Hubbard considered the plaintiff to be in shock and having sustained a hit to his head.

17 Mr. Hubbard testified Mr. Li's vehicle appeared to be accelerating as it proceeded to make its turn through the intersection. He testified Mr. Purewal's vehicle appeared to be traveling at normal road speed prior to the Accident. He did not see the plaintiff slow down, brake or change his path of travel.

Ms. Vita Sinclair

18 Ms. Sinclair testified she thought she was travelling in the center westbound lane on Marine Drive when traffic in front of her had stopped so she stopped just before the intersection of Columbia and left a gap in front of her vehicle. She testified she had been stopped for about 10 - 15 seconds when Mr. Li's vehicle approached the intersection from the east, driving in the lane closest to the center line and put his turn signal on. She testified she recalled looking in her rear view mirror to see if there was a vehicle in the westbound curb lane, but saw no vehicle. She testified she then made "eye contact" with Mr. Li and made a palm up gesture with her hand indicating he could proceed. She said he waved thank you and proceeded "slowly" through her lane and into the curb lane when the Accident occurred.

19 Ms. Sinclair said the Purewal vehicle appeared to "come out of nowhere". She testified the force of the collision "seemed ... intense" and that the Purewal vehicle flipped up onto its side and then came down.

20 After the Accident she testified she sat with Mr. Purewal in his car. She recalled that he was shaking and appeared to be in shock and "frantic" and that he called his work place. He spoke in a language she did not understand. In cross-examination Ms. Sinclair testified Mr. Li's vehicle did not stop before entering the westbound curb lane. She also agreed that, given the curve in Marine Drive to the east of the Accident scene, a driver looking down Marine Drive to the east "can see quite a way back" and that it would be possible to see a vehicle approaching for "some period of time" and that Mr. Purewal's vehicle needed to be "very close" to the intersection for the Accident to have occurred where it did.

Mr. Jonathan Gough

21 Mr. Jonathan Gough, an engineer with a specialty in accident reconstruction, was requested by the plaintiff to conduct an investigation of the scene of the accident and to provide an opinion as to the position of the two vehicles at impact.

22 Mr. Gough prepared a report dated July 16, 2015 after attending the intersection where the Accident occurred and reviewing photos of the two vehicles, statements given by both parties and the police file. In his analysis he wrote:

The damage sustained by the Purewal and Li vehicles indicates that the left front of the Li Audi struck the left side of the Purewal Toyota. The initial point of contact was to the left front wheel of the Toyota. As the

collision progressed, the left front corner of the Audi penetrated deeper into the left side of the Corolla. The collision forces acting on the Audi were directed rearward and to the left.

Determination on Liability

23 Counsel for the plaintiff relies on ss. 165(2) (a)-(d) and s. 174 of the *Motor Vehicle Act, R.S.B.C. 1996, c. 318* ("MVA"):

Turning at intersections

165 (1) ...

- (2) When the driver of a vehicle intends to turn it to the left at an intersection where traffic is permitted to move in both directions on each highway entering the intersection, the driver must
- (a) cause the vehicle to approach the intersection in the portion of the right side of the roadway that is nearest the marked centre line, or if there is no marked centre line, then as far as practicable in the portion of the right half of the roadway that is nearest the centre line,
 - (b) keep the vehicle to the right of the marked centre line or centre line of the roadway, as the case may be, at the place the highway enters the intersection,
 - (c) after entering the intersection, turn the vehicle to the left so that it leaves the intersection to the right of the marked centre line of the roadway being entered, or if there is no marked centre line then to the right of the centre line of the roadway being entered, and,
 - (d) when practicable, turn the vehicle in the portion of the intersection to the left of the centre of the intersection.

Yielding right of way on left turn

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn.

[Emphasis added.]

24 Counsel for the defendant relies on s. 158(a) of the *MVA*:

158 (1) The driver of a vehicle must not cause or permit the vehicle to overtake and pass on the right of another vehicle, except

- (a) when the vehicle overtaken is making a left turn or its driver has signalled his or her intention to make a left turn,

...

- (2) Despite subsection (1), a driver of a vehicle must not cause the vehicle to overtake and pass another vehicle on the right

- (a) when the movement cannot be made safely, or

...

25 Mr. Li's defence appears to have been that as he had been waved through by one of the other drivers he could proceed and was not required to look for traffic in the curb lane. It is not a defence for Mr. Li to rely on the fact he was waved to proceed through the intersection by drivers who were stopped at the intersection. A driver bears

responsibility for his or her own actions while driving. It is not a defence for a driver to assert that he or she relied on signals from another driver when the law places the driver in a subservient position of having to yield the right of way to a dominant driver: see *Abma v. Paul*, [2008 BCSC 783](#) where Madam Justice Gropper stated at paras. 19-21:

[19] Further, Ms. Brandy admitted that seeing around the cars in the curb lane attempting to enter the school parking lot was difficult and she had to move into the curb lane in order to accomplish that. Even if Ms. Abma changed lanes abruptly, it was Ms. Brandy who was crossing the line of traffic and who was entering the road from a driveway; in those circumstances she was required to yield the right of way to traffic on the highway. Whether Ms. Abma changed lanes in front of the driveway or before the driveway, when Ms. Brandy entered onto the road she did not yield the right of way to Ms. Abma. While Ms. Abma was required to execute her lane change with regard to the safety of other vehicles, that did not change the obligation of the driver coming onto the road to yield the right of way to approaching traffic.

[20] Finally, although Ms. Morgan appears to be confused about distances and time elapsed between her seeing Ms. Abma's vehicle and the impact, she was certain in her evidence about her observations of Ms. Brandy checking to the left and then to the right and not rechecking the left before emerging from the driveway. It may be that Ms. Brandy was confused by the southbound driver turning left into the parking lot and her attention was focused on that driver. She may have wrongly interpreted that driver's wave as a signal that it was safe to proceed. In that regard, if she relied on that signal, without checking again, she abdicated her responsibility to ensure that it was safe for her to leave the driveway to that southbound driver.

[21] I am thus satisfied that the liability for the second accident rests solely on the defendants Brandy.

26 See also for similar conclusions: *Ching v. McCabe et al*, [2006 BCSC 1589](#) at paras. 6-8; *Vahman v. Cutts*, [2015 BCSC 298](#); *Najdychor v. Swartz*, [2009 BCSC 801](#) and *Hiscox v. Armstrong*, [2001 BCCA 258](#).

27 In the present case Mr. Li was required under s. 174 of the *MVA* to yield the right of way to any vehicle approaching the intersection that constituted an immediate hazard to his safe passage through the intersection. Mr. Li did not look for vehicles approaching from his right as he moved through the intersection. He had a duty to do so.

28 I find that had Mr. Li looked to his right he would have seen Mr. Purewal's vehicle approaching from the west. Mr. Hubbard testified Mr. Purewal's vehicle was one to two vehicle lengths away from the intersection after Mr. Li commenced his turn. Mr. Purewal's vehicle constituted an "immediate hazard" to Mr. Li.

29 Counsel for the defendant argued Mr. Purewal was also at fault for the accident as he did not slow down as he approached the intersection with traffic stopped on either side. Counsel submits the facts in *Frers v. De Moulin*, [2002 BCSC 408](#), are on "all fours" with those in the present case. In *Frers* the defendant was found to be 60% at fault for the accident by "sailing" through an intersection in the curb lane.

30 I do not accept the defendant's position that *Frers* is applicable to the facts in this case. In *Frers* the trial judge found the defendant "was not paying sufficient attention to his driving". While all drivers must drive with due care and attention having regard to the prevailing circumstances, there is no evidence in this case to suggest that even had Mr. Purewal slowed down his vehicle as suggested by the defendant that the accident would not have occurred. The defendant has not established anything Mr. Purewal did or did not do would have prevented or lessened the damages caused by the collision. Simply put, Mr. Li was required to yield the right of way to the plaintiff. He did not look for a vehicle approaching from his right in the curb lane. Had he done so I find it more likely than not he would have seen Mr. Purewal's vehicle approaching the intersection and would have been able to stop his vehicle in time to avoid the collision.

31 I find Mr. Li is 100% responsible for the Accident.

Circumstances of the Plaintiff Prior to the Accident

32 Mr. Purewal was born July 22, 1968 in Punjab, India. Prior to moving to Canada in 2000 he completed high school, took his post-secondary education and obtained a diploma in pharmacy in India. He then worked as a pharmacist for four to five years before moving to Canada to, in his words, "seek a better life".

33 When he arrived in Canada he found a job as a security guard. He worked in several positions as a security guard and worked at the same time in sales and a number of other part-time seasonal jobs doing security work. He often worked seven days a week when he was doing security guard work at sporting events.

34 Ms. Purewal married Mr. Purewal in 2003. They have two young daughters, the first born in 2005 and the second in May 2014.

35 In August 2004, Mr. Purewal applied for and was accepted as a transit operator with Coast Mountain Bus Company ("CMBC") with whom he is currently employed. He initially was employed as a casual employee driving community shuttle buses but subsequently was trained and drove larger city buses, including trolley buses. As he gained seniority Mr. Purewal regularly sought and worked overtime hours. He did this with the approval of his wife as the two had the objective of building as much capital as they could during their working years to enable them to travel during their retirement years, afford weddings for their two daughters and pay for their daughters' education.

36 A very large part of Mr. Purewal's daily life prior to the Accident was spent either working or at a gym/social centre at the transit center from which he worked. He was an avid ping-pong player, regularly playing with co-workers and enjoyed working out at the gym.

37 While many of Mr. Purewal's daily activities involved his work (as he worked as many overtime hours as he could) and spending time at his workplace gym, he also spent family time doing activities with his wife and two daughters. He assisted his wife in household chores and did all the yard work at the family residence.

The Prior Motor Vehicle Accident (the "Prior Accident") of August 12, 2010

38 Mr. Purewal was involved in a prior motor vehicle accident on August 12, 2010, during which he sustained neck, mid and low back soft tissue strain injuries: similar injuries to those sustained in the Accident. He underwent physiotherapy and physical conditioning. He was off work as a result of his injuries for three-and-a-half months after which he returned to work on a graduated basis and then full-time on December 20, 2010.

39 The defendant disputes Mr. Purewal had fully recovered from the injuries sustained in the Prior Accident at the time of the Accident.

40 When Mr. Purewal returned to work he reported to his family physician, Dr. Ho-Asjoe, that his back pain was aggravated by the constant accelerating/braking while driving the bus.

41 In the twelve months preceding the Accident, Dr. Ho-Asjoe saw Mr. Purewal infrequently but when she did see him (on May 31, 2011 and January 31, 2012) Mr. Purewal complained of persistent lower back pain for which he took medication "once in a while" and which occasionally interrupted his sleep. The back pain had not caused him to miss work (or reduce his overtime hours) and he had been able to travel to India to visit family without difficulty. He reported, however, that a three hour drive to Seattle in January 2012 caused increased lower back pain.

Injuries Sustained in the Accident

42 As described earlier, the impact to Mr. Purewal's vehicle during the Accident was significant. He sustained an injury to his head and soft tissue injuries to his upper, mid and lower back and shoulder. He has suffered from ongoing headaches as a result of the injury to his head (diagnosed as a mild traumatic brain injury), from ongoing back pain, sleep disturbance and perhaps most significantly from a depressed mood which has been variously described by the physicians who have seen him as a "mood disorder", "anxiety and depressed mood", a "major

depressive episode", and as demonstrating sufficient symptoms to meet the criteria for depression by Dr. Wald, although Dr. Wald did not formally diagnose him as suffering from depression.

43 Mr. Purewal's recovery process has been a slow one. He has been under the care of his family physician, Dr. Ho-Asjoe, who has referred him to various specialists for specific treatment. Mr. Purewal attended many physiotherapy and rehabilitation treatments, some paid for by the Insurance Corporation of British Columbia ("ICBC") and some by his disability insurance carrier, Great West Life ("GWL"). He has been on numerous medications for pain and a "depressive disorder". He remained off work until March 2016, when he returned to work under his employer's graduated return to work program ("GRTW") but continues to experience lower back pain particularly. He has a history of lower back pain.

Plaintiff's Lay Witnesses

Ms. Jessie Purewal

44 Ms. Purewal is the plaintiff's wife. She was raised in Vancouver, and works as a certified dental assistant.

45 Ms. Purewal owns the home in which she, her husband, their two daughters and her parents reside. Ms. Purewal had purchased the home prior to the marriage and in 2015 she and her husband spent a considerable amount of their savings and a loan from her sister to renovate the house. The home has a rental suite in the basement.

46 Ms. Purewal testified she and her husband had planned that he would work as much overtime as he could so the two could enjoy a financially secure retirement which would enable them to travel as well as to pay for their daughter's education and for her wedding, which she said could be quite expensive. She testified their plans were for the plaintiff to reduce the hours he worked when he reached 60 years of age.

47 Ms. Purewal testified she had seen Mr. Purewal's personality change since the accident. She said he "snapped" quickly and was impatient, irritable and moody. She testified he complained of back and shoulder pain and headaches; that he did not sleep well, appeared depressed and had a lack of interest in personal hygiene and in the cleanliness of the household. She said that before the Accident he had a close relationship with his eldest daughter, but that since the Accident their relationship was more strained: that he "gets angry over the simplest thing" and the daughter "kinds of avoids him". She described him as not being the same person he was before the Accident.

48 Ms. Purewal described her relationship with Mr. Purewal now as "very strained": that they have disagreements almost daily but that their relationship had improved in February 2016 since he turned to work on a GRTW program, as he could now again contribute to their finances which she thought had been the source of his irritability

49 In cross-examination Ms. Purewal testified that prior to the Accident her husband handled the stress of his job well. She recalled Mr. Purewal complaining of back pain after a drive to Seattle in early 2012. She agreed that by the spring of 2013 Mr. Purewal was socializing with his friends more.

50 Ms. Purewal disagreed that the plaintiff's back pain started in 2010. She said he did have back pain as a result of the Prior Accident, but that it got better and Mr. Purewal was able to function at work. She denied she had been urging Mr. Purewal to return to work since 2013. She said he had never stopped trying to return to work: that she knew he wanted to return.

51 Ms. Purewal acknowledged Mr. Purewal had been driving the family car since 2013. She denied she had proceeded with the renovation of the family home in 2015 because she knew Mr. Purewal could return to work and would contribute to the financing costs.

Mr. Sukki Sidhu

52 Mr. Sidhu is a co-worker and friend of Mr. Purewal. He described the job of bus driver as being full of "action" and "drama" and said that it required focus and mental alertness when maneuvering a large vehicle through downtown traffic, particularly at rush hour. He testified a driver needed to be able to be focused and to make quick decisions: that it was both a physical and an emotional job. Mr. Sidhu also socialized with Mr. Purewal outside work.

53 Mr. Sidhu testified that prior to the Accident he saw the plaintiff frequently playing ping pong with fellow employees at a recreational facility at work which he said Mr. Purewal was very good at. He described him as being very fit and as having a happy family life.

54 After the accident he said Mr. Purewal was in pain and worried about his health and his future and that he spoke to Mr. Purewal and encouraged him. He testified Mr. Purewal angered easily. Mr. Sidhu referred to an incident when he was visiting Mr. Purewal's home and Mr. Purewal became angry with his wife for making too much noise when doing the dishes. He testified he had seen Mr. Purewal recently and said he saw improvement in his physical and mental condition.

55 In cross-examination Mr. Sidhu testified that Mr. Purewal had not complained of back problems before the Accident and that he knew Mr. Purewal had been in the Prior Accident but that he was "perfectly fine" physically before the Accident. He denied Mr. Purewal was worried about he and his wife being able to have a second child or that he had talked about wanting to have a son.

56 Mr. Sidhu testified he believed Mr. Purewal first talked about returning to work in 2014 or 2015 - he did not remember when but testified Mr. Purewal "was thinking and getting ready mentally" to return. Mr. Sidhu testified he could see Mr. Purewal had "low energy" and told him he would return when he was mentally ready. Mr. Sidhu testified there is much responsibility on a bus driver, even a part-time bus driver, and that it is difficult to perform the duties of the job unless the driver is physically and mentally fit.

The Plaintiff's Employment History as a Transit Operator Prior to the Accident

57 Prior to the Accident Mr. Purewal had been employed as a full-time transit operator by CMBC since August 2004. His rate of pay was \$29.20 an hour with minimum weekly hours of 37.5 hours. As stated, he regularly worked as much overtime as he could manage. As a senior employee he was able to bid and obtain maximum overtime hours for which he was paid overtime pay at one-and-a-half times his regular rate for the first two hours of overtime and at double time thereafter.

58 Mr. Purewal's gross earnings in the twelve months prior to the Accident were \$90,916.24 inclusive of his overtime earnings of \$25,702.06.

59 Mr. Purewal's annual taxable earnings from his employment with CMBC over last five years prior to the Accident have been:

2008 \$70,374

2009 \$77,054

2010 \$55,323

2011 \$96,153

2012 \$60,388

2013 \$4,186

2014 \$8,291

60 During the course of his employment, Mr. Purewal received several letters from CMBC commending him on his attendance, which in 2011 was described as "perfect attendance" and in January 2010 as "completing three years without any absences for illness or injury", which CMBC described as "a phenomenal accomplishment and demonstrates significant effort on your part".

61 In addition, Mr. Purewal received a number of commendations from customers for "excellent" service and received an extra one hour pay as recognition for his "excellent job".

The Plaintiff's Medical Evidence

Dr. Marianne Ho-Asjoe

62 Dr. Ho-Asjoe has been Mr. Purewal's family doctor since August 13, 2010, when he saw her for the injuries he sustained in the Prior Accident. She saw him on August 21, 2012, two days after the Accident and has followed him on a regular basis since that time.

63 Dr. Ho-Asjoe provided a medical-legal report dated January 16, 2014, and was cross-examined at trial. She opined the plaintiff suffered a concussion, a contusion to the left side of his scalp, depression and anxiety, bilateral neck, mid back, low back, and shoulder soft tissue strain.

64 In her report Dr. Ho-Asjoe noted Mr. Purewal had been attending physiotherapy treatments she had recommended and he had started active rehabilitation in March 2013, completing 25 treatments resulting in improvement in pain control in his neck, shoulders, and back. She noted he had had mood swings and irritability with daily headaches after the Accident until the spring of 2013 when he was diagnosed with a mild traumatic brain

injury. He was advised not to return to his position as a bus driver until he was physically and emotionally fit and, when he felt able, to try work first on a GRTW program.

65 Dr. Ho-Asjoe noted Mr. Purewal was on and off Cymbalta for depression during 2013, but with increased socializing with friends by early 2014 his mood had increased and his anxiety was recorded as improving to a moderate level. When she saw him January 16, 2014, she noted he still did not feel he could return to work as a bus driver as he was experiencing frequent headaches with neck and low back pain, impatience waiting in traffic and was not stable enough to return to work. He was concerned about dealing with hostile or difficult passengers, his ability to cope with driving the bus during rush hours and keeping to the schedule.

66 Dr. Ho-Asjoe opined Mr. Purewal would benefit from consultation with a physiatrist for pain control treatment and initiated treatment with Dr. Fan and a referral to a psychiatrist for treatment of mood disorder. She considered his prognosis for recovery from his physical pain and depression/anxiety to be "guarded" considering the duration of his injuries.

67 Dr. Ho-Asjoe did not consider Mr. Sidhu to be ready to return to work prior to November 2015. She testified she supported his decisions relating to his dealings with GWL and not to appeal GWL's decision to terminate benefits. She testified she asked Mr. Purewal to ask GWL to contact her. In essence Dr. Ho-Asjoe testified her treatment was directed toward assisting Mr. Purewal to return to work.

68 In cross-examination Dr. Ho-Asjoe agreed that, given Mr. Purewal's return to work since the date of her report, her prognosis had changed from "guarded" to "good" to "excellent". She agreed she had approved his GRTW because Mr. Purewal had told her he felt ready to return. She said she disagreed with Dr. Wald's assessment made in May 2013, (which I will discuss below) or that she had ever spoken to Dr. Wald.

69 Dr. Ho-Asjoe agreed the main difference between the injuries sustained in the Prior Accident and the Accident was the mood disorder/anxiety/depression Mr. Purewal suffered as a result of the Accident which was "the main reason he was off work".

70 Dr. Ho-Asjoe also agreed she recommended Mr. Purewal undergo counselling for depression. He did attend psychological counselling with Dr. Wald for about 10 sessions in the Spring of 2013 but then declined further counselling, being of the view that he would rather socialize with his friends, which Dr. Ho-Asjoe said she urged him to do. Mr. Purewal did get out more and increased socializing with friends

71 Dr. Ho-Asjoe testified she did not recommend he participate in a GRTW before the end of 2015 as Mr. Purewal was undergoing an active rehabilitation program and attending work would affect his attendance at rehabilitation. She did not agree with the suggestion put to her in cross-examination that Mr. Purewal "was capable of some level of work" prior to his return to work.

72 She testified that prior to December 2015 she noted Mr. Purewal could not work in any capacity as he was not in a capacity to do so. She said she formulated this opinion after testing him for his mood/depressed mood.

Dr. Anita Fan

73 Dr. Fan is a specialist in physical medicine and rehabilitation. She first saw Mr. Purewal on March 31, 2014, and then again August 19, 2014 and on January 5, March 3, April 22 and May 15, 2015. Dr. Fan prepared a medical-legal report dated May 28, 2015, setting out her opinion of Mr. Purewal's diagnosis and prognosis. She was cross-examined at trial.

74 Dr. Fan described Mr. Purewal's symptoms when she first saw him as left shoulder pain radiating into the left arm, left arm weakness with numbness in the fourth and fifth digits, headaches which occurred three to four times a week each lasting four to five hours, bilateral tinnitus, constant low back pain aggravated by walking and sitting and occasional numbness and tingling in his left leg. At that time Mr. Purewal was taking Cymbalta, Celebrex, Tylenol

#1 and Clonazepam (the latter to assist him sleep). He advised Dr. Fan that the massage therapy, physiotherapy, the KARP program and attending his workplace gym had helped his symptoms improve. Dr. Fan ordered a CT scan of his lumbar spine, an ultrasound of his left shoulder and asked Mr. Purewal to continue to do active exercises.

75 The CT scan showed "multilevel degenerative changes" - a disc protrusion at L5-S1 and a dorsally displaced S1 nerve root, mild spinal stenosis at L4-L5 and minimal facet osteoarthritis in L4-L5 and L5-S1. On October 17, 2014 Mr. Purewal had electro diagnostic studies done. The results were "inconclusive with possible left L5 chronic radiculopathy".

76 Dr. Fan noted Mr. Purewal improved over time. His left shoulder pain decreased, although an ultrasound of his left shoulder showed calcified supraspinatus tendonitis. His low back pain continued with moderate restrictions on flexion and extension movements. Dr. Fan proposed a lumbar epidural steroid injection.

77 Dr. Fan concluded her report by noting Mr. Purewal's current difficulty was related to his lumbar spine area: that he had been diligent in keeping up with his exercises and had "been compliant with participating in physiotherapy, massage therapy, active rehabilitation and with taking medications for pain relief". She noted he continued to have pain but was motivated to attempt to restore himself to his prior level of fitness and function.

78 She considered him to be "medically stable": but opined that the pain he sustained from the Accident "is considered chronic" and his prognosis for a full recovery is "guarded". She said she "expect[ed] he will continue to experience residual soft tissue discomfort involving primarily his lumbar spine and left shoulder given the chronic nature of his symptoms".

79 In cross-examination Dr. Fan agreed she had not seen Dr. Ho-Asjoe's clinical records and that she had relied on Mr. Purewal for a history of his injuries.

80 When showed Dr. Ho-Asjoe's records, Dr. Fan agreed Mr. Purewal had reported some symptoms of chronic lower back pain and further inquiry was warranted. Dr. Fan noted Mr. Purewal had degenerative changes in his lower spine. She agreed his newly reported right sided lower buttock pain extending into his right leg was unrelated to the Accident but did not think it was related to "progressive arthritis in his back". She agreed that with his GRTW there had been functionally a significant improvement in Mr. Purewal's medical condition.

Dr. Christopher Honey

81 Dr. Honey is a neurosurgeon who was retained by the plaintiff's counsel to provide an opinion on Mr. Purewal's injuries, the cause of his injuries, his diagnosis and prognosis, including the extent to which any impairment would likely persist into the future, as well as limitations on daily living and his vocation.

82 Dr. Honey examined Mr. Purewal on January 31, 2014, prepared a medical-legal report dated April 18, 2014, and was cross-examined at trial.

83 Dr. Honey opined Mr. Purewal sustained post-traumatic headaches, soft tissue injuries to his neck, back and left shoulder, unresolved post-concussion syndrome and, if his reported cognitive impairments were true, a mood disorder as a result of the Accident. He said he would defer to a psychiatrist for a definitive diagnosis and management of depression.

84 Dr. Honey opined that, while he would defer to a vocational expert, from a neurological perspective Mr. Purewal's vocational impairment was "not permanent". He opined that the level of Mr. Purewal's post-traumatic headaches and soft tissue injuries would have prevented him from engaging in his normal recreational, social and household activities but would not have interfered with his ability to undertake activities of daily living. He was of the view Mr. Purewal's ongoing chronic back pain would continue to interfere with certain of his recreational activities and household duties (e.g. heavy lifting).

85 He opined Mr. Purewal's headaches would be chronic but would "gradually" become a milder problem for him, that his mood disorder, once treated, would be expected to improve, but that his soft tissue pain in his neck and back were "likely to be a chronic problem for him". He noted the Mr. Purewal "was coping with chronic back pain prior to his MVA on August 19, 2012 and I expect he will be able to do so again".

86 In cross-examination Dr. Honey disagreed that the suggestion Mr. Purewal's call into work from the accident scene made a diagnosis of concussion questionable but did say it could lead to a conclusion that the concussion had been mild. He agreed Mr. Purewal's post-concussion symptoms had resolved by August 2013.

Dr. Hiram Mok

87 Dr. Mok, a psychiatrist to whom Dr. Ho-Asjoe referred Mr. Purewal, treated him for symptoms of depression and anxiety between July 24, 2014 and February 23, 2016 and was continuing to see him. Dr. Mok testified at the trial.

88 Dr. Mok did not provide a medical report and was not asked to provide an opinion concerning the state of Mr. Purewal's mental health. His evidence was restricted to the treatment he provided to Mr. Purewal. Dr. Mok testified he saw Mr. Purewal on 12 occasions between the above dates. He prescribed Trazodone, an anti-depressant. He said that by the time of his last visit Mr. Purewal had returned to work on a GRTW program, was still in pain and was taking Trazadone and Cymbalta.

89 In cross-examination Dr. Mok agreed he was the only psychiatrist who had treated Mr. Purewal as a result of his injuries. He agreed that when he started treating Mr. Purewal he presumed he was suffering from depression and he proceeded with treatment on that basis. He agreed it was clinically significant that by about July 24, 2014 Mr. Purewal was attending a gym and exercising five times a week. He agreed there was a "big difference" between a diagnosis of clinical depression and a depressed mood. He agreed Mr. Purewal had been improving during the course of his treatment.

Dr. Jay Wald

90 Dr. Wald, a registered psychologist retained by GWL to provide psychological and cognitive therapy to Mr. Purewal, testified on behalf of the plaintiff. She saw Mr. Purewal between March 1, 2013 and May 2013. Dr. Wald had issued various reports both written and verbal to GWL as to Mr. Purewal's progress but testified at trial as to her course of treatment.

91 When Dr. Wald first saw Mr. Purewal, she described his complaints as being ongoing neck and back pain, headaches, anxiety, depression and a post-traumatic stress syndrome.

92 Dr. Wald saw Mr. Purewal on some eight occasions, each treatment session being 50 minutes in duration She testified throughout his attendances she found him "very motivated to receive treatment" and to return to work. She testified he was "engaged" in the treatment she gave to him. She treated him for persistent neck and back pain, headaches and sensitivity to light and noise, difficulty sleeping and becoming easily frustrated.

93 Dr. Wald noted there was no significant improvement in his condition during the time she saw him. Notwithstanding, on April 12, 2013, at GWL's request, she gave an estimated return to work date of one month. It is apparent from her subsequent clinical records that Mr. Purewal's recovery proceeded more slowly than she had originally hoped for and he was not ready to entertain a GRTW.

94 In cross-examination Dr. Wald agreed Mr. Purewal's resumption of his pre-accident exercise regime was a clinically significant event. She also agreed during the course of her treatment there had been a slight to moderate improvement in Mr. Purewal's condition. She also agreed a GRTW would assist with lessening his anxiety about driving a bus. She agreed that at the treatment session on April 12, 2013, Mr. Purewal told her he was in favor of a

GRTW. She said he had not shown any animus towards GWL during the time she treated him.

Physiotherapy

95 Mr. Roy Oreta, a registered physiotherapist, testified he initially treated Mr. Purewal commencing two days after the Accident for "diffuse pain" all over his body which then became defined to neck, left shoulder, upper and lower back pain complaints. His office, Champlain Heights Physiotherapy, was only approved to conduct six physiotherapy sessions with Mr. Purewal which ended January 23, 2013. Mr. Ortega applied for further treatments which were not approved.

96 Mr. Ortega had treated Mr. Purewal for injuries sustained in the Prior Accident. On February 14, 2010, he submitted a form to GWL in response to a request for Mr. Purewal's progress. He noted Mr. Purewal was improving in all areas and should continue active rehabilitation. He noted Mr. Purewal had a "decreased mood and affect".

97 Mr. Ortega agreed in cross-examination that the injuries described on an ICBC Form 19 prepared by Dr. Ho-Asjoe on April 14, 2011, contained a description of injuries which were similar to those Mr. Ortega observed in 2012 - 2013.

98 Mr. Purewal attended Mr. Ortega on some 47 occasions over a five month period in 2012.

99 He described Mr. Purewal as diligent in doing recommended exercises and compliant with the recommendations he made. He said he had no concerns with Mr. Purewal's engagement in the treatment he was receiving.

100 When he last saw Mr. Purewal he said that Mr. Purewal was improving and that his pain had declined by about 25%, but he had a decreased mood and effect.

Ms. Maia Gallant

101 Ms. Gallant, a kinesiologist employed by KARP, testified she treated Mr. Purewal commencing from March 13, 2013 to August 7, 2013, on referral from Dr. Ho-Asjoe and ICBC. She testified that she found limitation in his range of motion in his neck, trunk and shoulders and that his grip strength was "poor".

102 Ms. Gallant treated Mr. Purewal on some 51 occasions. She described his effort as "over all ... good effort - he was not particularly vocal". Later in the program she described his attitude as "poor": that she would "try to keep the session moving". She did not recall his responses on these occasions but described them as "not positive".

103 In her final report to ICBC of August 15, 2013, she reported KARP had:

[P]artially met our short-term goals of enabling Mr. Purewal to perform neck, shoulder, and trunk movements in greater pain-free ranges of motion. However, we have not met our long-term goal of returning Mr. Purewal to work and to his preferred leisure pursuits. ... Over the course of the program Mr. Liu [sic] either maintained or improved his mobility with most tested movements, except decreased left shoulder external rotation.

104 Ms. Gallant recommended Mr. Purewal continue to adhere to his prescribed rehabilitation routine, as further improvements were "likely to occur". She provided Mr. Purewal with an exercise program to follow independently.

105 In cross-examination Ms. Gallant acknowledged she knew Mr. Purewal had to use public transportation to access the KARP facility as it was some distance from his home and that would probably explain why he was late for some 20 of his sessions. She agreed he was early for some 14 treatments. She agreed she was not qualified to opine on whether a person was suffering from symptoms of depression and anxiety. She also agreed she did not turn her attention to whether Mr. Purewal was suffering from headaches or dizziness or any other psychological

symptoms and that she focused entirely on his physical limitations. She also agreed she was not responsible for return to work issues.

106 Ms. Gallant agreed that "most of the time" Mr. Purewal demonstrated "good attitude and effort" and when he did not his effort was pain focused and that it was "very unusual" for him to demonstrate poor effort.

107 She agreed in her discharge report to ICBC she described Mr. Purewal's improvement as "incomplete".

Defendant's Medical Evidence

Dr. Rehan Dost

108 Dr. Dost is a specialist in neurology who saw Mr. Purewal at the request of the defendant on May 12, 2015. Dr. Dost prepared a medical-legal report dated May 14, 2015 and an addendum report after reviewing the reports of Drs. Fan, Honey, Clark, Ho-Asjoe and Patton.

109 Dr. Dost noted that at the time he saw Mr. Purewal he was complaining of ongoing lower back pain, left shoulder pain, intermittent tingling in one of his fingers in the left hand, headaches several times a week, sleep disruption, depressive symptoms and irritability, and decreased focus and memory. Mr. Purewal told Dr. Dost he had not returned to work because the work would be too stressful.

110 After conducting a physical examination Dr. Dost concluded Mr. Purewal had chronic headaches associated with a "mild closed head injury" and that he did not expect a spontaneous recovery. He concluded the headaches had not been adequately treated.

111 Dr. Dost deferred any opinion on Mr. Purewal's left shoulder and low back pain to a musculoskeletal specialist and on his psychiatric issues to a psychiatrist. He did opine that Mr. Purewal's ongoing cognitive issues were not the result of brain injury but "reflect the cumulative impact of psychological duress, sleep disruption and pain". He concluded the issue with Mr. Purewal's finger was not accident related. He opined Mr. Purewal's ongoing left shoulder and low back pain was "not neurological" and deferred to the opinion of a "musculoskeletal evaluator".

112 In his Addendum Report dated December 9, 2015, Dr. Dost disagreed with Dr. Fan's conclusion that Mr. Purewal had left S1 radiculopathy due to the late onset of symptoms in his right lower extremity. He attributed these symptoms as not related to the Accident but "would represent the natural trajectory of spinal degeneration ...". He deferred giving an opinion on symptoms of pain radiating into Mr. Purewal's left leg to a musculoskeletal evaluator.

113 Dr. Dost agreed he could not diagnose a mood disorder - that often it was not possible to put a label such as "mood disorder" on symptoms but nevertheless the symptoms must be treated.

Dr. Benjamin Clark

114 Dr. Clark is a medical doctor specializing in physical medicine and rehabilitation. Dr. Clark saw Mr. Purewal at the request of the defendant for an evaluation on June 9, 2015, and prepared a medical report of July 29, 2015, setting out his opinion of Mr. Purewal's diagnosis and prognosis and an addendum report dated January 22, 2016. Dr. Clark's evidence was introduced at trial by way of a video deposition.

115 Dr. Clark testified he considered Mr. Purewal was "straightforward" with him and that he could rely on what he was told.

116 Dr. Clark noted that Mr. Purewal complained of low back pain aggravated by walking and cycling, intermittent left shoulder pain aggravated by heavy lifting and headaches which came on four to five times a week, which had in the past been constant but at that time came and went. Mr. Purewal "identified his mood as the number one issue [preventing him from returning to work] as he feels angry and irritable, noting he needs patience to work as a bus

driver...". After a physical examination Dr. Clark concluded Mr. Purewal had sustained a mild traumatic brain injury (a concussion), shoulder, cervical, thoracic and lumbar strains, and a contusion to his head. He found a mild left shoulder impingement which he did not consider related to the Accident and tenderness at the lumbosacral junction. He considered the latter to be "partially pre-existing". He opined the left shoulder pain "is easily managed with a cortisone injection" and in any event was not related to the Accident.

117 Dr. Clark was of the view Mr. Purewal's prognosis was "excellent functionally" and that there was "no basis for imposing any restrictions or limitations on [his] activity" with respect to his household activities, employment or leisure activities. Mr. Purewal had partially resumed assisting his wife in household chores when he saw him.

118 Dr. Clark was of the view Mr. Purewal's continuing "cognitive inefficiencies" were "better explained by medications, pain and possibly depression". He was of the view Mr. Purewal had "continuing mood disorders" and deferred to a psychiatric assessor.

119 He noted there would likely be some continuing lumbar myofascial pain "in relation to the prior accident", although the Accident had contributed to the pain. Dr. Clark was of the opinion that "from a physical perspective" no further treatment was necessary. He opined from a physical perspective a six month period of disability was a reasonable period.

120 In his addendum report Dr. Clark commented on Dr. Fan's medical-legal report. It was his view that Mr. Purewal had not recovered from low back pain arising from the Prior Accident and he "probably" had underlying degenerative changes in his low back. He also noted Mr. Purewal had a recent non-accident related deterioration in his lower spine in the spring of 2015 when he had a new onset of right buttock pain and his right ankle reflex disappeared both of which he considered to be indicative of underlying degenerative changes in Mr. Purewal's lumbar spine.

121 In cross-examination Dr. Clark agreed he did not disagree with the diagnosis that Mr. Purewal had suffered a concussion in the Accident. He agreed that symptoms can change from day to day depending on one's medications, sleep, activity level and other issues.

122 Dr. Clark testified that he considered that at the time he saw Mr. Purewal his injuries from the Accident, from a physical perspective, "should have settled down". He agreed he did not turn his mind to "the constellation of problems" that fall into other subspecialties of medicine. He also opined that people often improved when they returned to work.

123 In re-examination Dr. Clark testified that when a person with a mood problem returns to work and gets back into their former routine they often feel better. He said, with reference to Mr. Purewal's headaches, that he would "stand to gain" from a "rejigging" of his medications. He agreed Mr. Purewal's pre-existing low back pain history was "either non-contributory or contributory to a very modest degree" to the injuries Mr. Purewal sustained in the Accident. He agreed that "overall" he was in agreement with the diagnoses of Drs. Ho-Asjoe and Fan.

Dr. Sheila Patton

124 Dr. Patton, a psychiatrist, saw Mr. Purewal for an assessment at the request of the defendants on April 8, 2015. Dr. Patton prepared a medical report dated December 2, 2015 and testified at trial.

125 Dr. Patton opined that the plaintiff sustained a mild traumatic brain injury as a result of the Accident. She noted that while there were symptoms of Major Depressive Disorder, sufficient to meet the criteria for diagnosis, she did not diagnose him as having the disorder. She noted that psychiatric diagnoses are largely based on self-reporting and that Mr. Purewal had been a "vague historian", and there was "evidence of inconsistencies, and exaggeration, in the data". She wrote that "he minimized the presence of chronic pain" (arising from the Prior Accident) and "he was not forthcoming about the stress he and his wife had been undergoing with their infertility, and his wish for a son".

126 She noted there were "multiple examples of Mr. Purewal not following through with, or engaging in, treatment as recommended" and that such examples could be found in the charts of the various physicians who had seen him and in the records of his rehabilitation program and GWL. She was of the opinion he was also inconsistent regarding his reports of stress while driving (which she says is contradicted by surveillance videos taken by the defendant and introduced at trial), not following through with treatment and other stressors in his life including the financial stress of being cut off from his disability payments and the birth of his second daughter.

127 In the penultimate paragraph of her report Dr. Patton noted:

[56] Thus, given the inconsistencies outlined above, including evidence of exaggeration; I am unable to form an accurate opinion regarding what psychiatric diagnoses, if any, Mr. Purewal experienced after the accident. I recognize issues of credibility are the sole domain of the courts, and defer to the courts in this regard.

128 In cross-examination Counsel for Mr. Purewal suggested that Drs. Ho-Asjoe and Fan had treated Mr. Purewal over a period of time and had formed a different conclusion than had Dr. Patton. Dr. Patton testified it was not her role to take issue with the opinions of other physicians but to provide her own opinion on the material she was provided. She agreed there could be divergent opinions.

129 Counsel suggested that Mr. Purewal attended 51 out of 51 scheduled KARP treatments and this showed he was actively engaged in his rehabilitation. Dr. Patton responded "he showed up" but said to "engage in" is "another thing". She was then asked if she agreed such attendance showed he was being compliant with the program. She responded "it depends - he showed up. I don't have enough details ...".

Mr. Purewal's Relationship with GWL and KARP

130 Mr. Purewal received disability benefits through a plan arranged between the Transit Employees Health and Benefit Trust and GWL.

131 GWL requested that Mr. Purewal attend KARP, a rehabilitation facility, for treatment.

132 KARP's treatment facility/gym was located in downtown Vancouver and it took Mr. Purewal some 45 - 50 minutes to travel each way to his sessions by bus. He had similar facilities available to him in a gym at his workplace. He went twice a week to KARP for a total of some 50 sessions between March and August 2013.

133 He was approved for the receipt of short-term disability payments at 100% of salary for the first eight weeks commencing August 19, 2012, and thereafter at 85% during his period of eligibility. He was advised he would be required to participate and cooperate in "reasonable and customary treatment" and to provide GWL with information from his physicians from time to time to enable GWL to monitor his medical status.

134 On December 16, 2012, Mr. Purewal was approved for long-term disability ("LTD") benefits which, under the terms of the plan, continued for 24 months as long as Mr. Purewal met the definition of not being physically or mentally able to work as a Transit Operator. His benefits equated to 50% of his monthly earnings before he became a totally disabled employee (50% = \$2,380.64). He was advised the terms of the plan provided that such benefits would continue for 24 months but then, to continue qualifying for long term benefits after August 18, 2014, he would be required, *inter alia*, to meet a definition of being wholly and continuously disabled from performing any job or work for which he was or could become qualified.

135 In March 2013, GWL gave a written notification to Mr. Purewal of the upcoming change in definition and requested that he complete a form relating to his education, training and experience. Mr. Purewal did not reply to the GWL letter or to numerous telephone messages left at his residence by GWL's rehabilitation consultant.

136 In letters in May and twice in June 2013, GWL provided Mr. Purewal with forms to complete in order to assess his claim. Mr. Purewal did not attend a medical assessment scheduled by GWL on July 17, 2013. On July 19, 2013, Mr. Purewal was notified by GWL he would not receive benefits beyond July 15, 2013, for failure to comply with his responsibilities under the plan.

137 On August 14, 2013, GWL wrote Mr. Purewal advising him if he did not "re-engage in the rehabilitation plan by August 31, 2013 ... [his] file would be terminated". The letters sent by GWL to Mr. Purewal were preceded by numerous unanswered telephone calls to his residence.

138 Mr. Purewal's explanation for not communicating with GWL was that he was depressed and did not want to deal with GWL.

139 Mr. Purewal acknowledged receiving the May 17, 2013 letter from GWL advising him that his qualification for benefit coverage would change and he would have to establish he was totally disabled from holding any position. He testified he found the letter "stressful". He acknowledged not responding to a GWL request he provide information about his medical condition.

140 Mr. Purewal testified he decided to pursue a GRTW in 2016 because he felt he had "better control over his impatient behavior" and the quality of his sleep had improved. He denied he felt pressured to return by financial pressures on the family.

141 Ms. Purewal testified she was not aware Mr. Purewal's LTD benefits would be stopped by GWL in July 2013. She said that at the time the family was depending on the benefits, but she understood Mr. Purewal's feelings of frustration: that he was depressed at the time, coping with pain and with having to travel by bus to various places for appointments. She knew Mr. Purewal did not appeal GWL's decision to stop the benefits and supported him in his decision. She testified it was a source of great frustration to Mr. Purewal that KARP made appointments without consulting him and that he had to travel some distance by bus to attend the appointments.

142 In her cross-examination Ms. Purewal agreed she did not know about appointments Mr. Purewal was scheduled to have in July 2013 with GWL and that she found out about them after his benefits were terminated. She said she did not see the letters from GWL. She agreed she ultimately supported him in his decision not to appeal GWL's decision to terminate LTD benefits.

143 In my view the issues between Mr. Purewal, KARP and GWL do not bear on the issues to be determined in this case. The defendant has not established that by attending further KARP treatments the condition of Mr. Purewal's physical or mental health would have been any different. The defendant has not established that Mr. Purewal failed to take reasonably steps to mitigate his loss. KARP's facilities were some distance from Mr. Purewal's residence and entailed considerable inconvenience in attending. Further, as stated, the defendants have not established his attendance would have improved his condition and enabled him to return to work any earlier than he ultimately did.

144 Mr. Purewal's refusal or failure to co-operate with GWL in regard to continued benefits is not simply not relevant except to the defendant's argument Mr. Purewal could have gone back to work earlier than he did but did not as he was receiving LTD benefits. I accept Mr. Purewal did not respond to GWL's requests for information was entirely due to his mental state during the time such information was being requested. In my view his failure to cooperate with GWL had nothing to do with his ultimate return to work or any attempt to hide information concerning his health from his insurance carrier.

Findings on Credibility of the Plaintiff

145 The defendant says Mr. Purewal has exaggerated his symptoms (reporting he had daily headaches and dizzy spells (to GF Strong Rehab Centre in March 2013) and reporting "severe balance problems and severe cognitive

problems (when attending Vancouver General Hospital for an MRI in May, 2013), was vague and inconsistent resulting in confusion between his physicians and accuses him of "circular reporting" and of complaining of symptoms that appear, resolve and reappear. The defendant relies on the evidence of Dr. Patton.

146 The test for determining credibility was set out in the often referred to comments of O'Halloran J.A. in *Faryna v. Chorny*, [\[1952\] 2 D.L.R. 354](#) at 357:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

147 Having observed Mr. Purewal testify, I am of the view his testimony concerning his injuries and how the Accident has affected him is honest and credible. There is little doubt that prior to the Accident Mr. Purewal had been strongly motivated to work hard and to perform well for his employer. He took personal pride in his work and in his ability to financially contribute to his family's expenses and to a secure financial future for his family. He had, in the main, except for lingering issues with his lower back, recovered from similar injuries sustained in the Prior Accident in some three months and had returned to work with no absences in the period from his return to the date of the Accident.

148 Mr. Purewal's recovery from injuries sustained in the Accident was not as quick as his recovery from the Prior Accident. His recovery was not for lack of trying. He initially attended physiotherapy with Mr. Oreta at Champlain Heights Physiotherapy, and then attended some 50 rehabilitation treatments with KARP. Overall he showed good effort in his attempts to improve. He took massage therapy, acupuncture treatments, underwent a spinal injection, attended treatment for his head injury, and attended a number of other caregivers. Mr. Purewal was described by most of those who saw him as trying to get better, cooperative and as wanting to return to work. Dr. Clark was careful to qualify his opinion that Mr. Purewal was "physically" disabled from returning to work for six months. He agreed he was not qualified to offer an opinion about Mr. Purewal's mental capacity to return to work.

149 The preponderance of the evidence supports a conclusion that Mr. Purewal was significantly impacted by a mood disorder or depressive type symptoms brought on by continuing pain and likely impacted by fear of his inability to adequately perform his duties as an operator given the stress inherent in the nature of the position of a transit operator. Dr. Ho-Asjoe supported him in not returning to work until he felt he was ready to do so for this reason.

150 I do not accept the opinions of Dr. Patton. In my view her report is founded on facts and assumptions which have not been proven at trial. In fact I am satisfied, based on the evidence I heard, that Mr. Purewal cooperated fully in attending physiotherapy and rehabilitation treatments. He is reported by most of his therapists as making a "good effort". I am satisfied Mr. Purewal and his wife were not overly "stressed" about infertility issues, his wish for a son or the other issues raised in her evidence. I accept the Purewal's evidence that they "moved on" from these issues. As Dr. Patton aptly noted, credibility issues are the sole domain of the courts.

151 The defendants complain the plaintiff is a "poor historian" in that he has given varying accounts of his injuries to attending physicians at different times. Given the number of attendances Mr. Purewal has had with health care providers during his recovery since 2012 and the nature of his injuries, including his depressed mood, it is not surprising his accounts may, from time to time, have varied: see comments of N. Smith J. in *Carvalho v. Angotti*, [2007 BCSC 1760](#) at paras. 15-17:

[15] The attack on the plaintiff's credibility is based, in part, on various contradictions and inconsistencies within her evidence at trial and between that evidence and her discovery evidence, documents she prepared for other purposes, or statements recorded in clinical records. It is a rare case of this kind where such inconsistencies cannot be found. By the time a personal injury case gets to trial, the plaintiff typically will have provided information to a number of people - including doctors, adjusters and disability insurers -

on a number of occasions over a period of years. This provides fertile ground for cross-examination precisely because very few people will have perfect and identical recollection on each of those occasions.

[16] The record created on many of those earlier occasions may consist of answers a plaintiff gave to questioners who were primarily interested in only part of what the plaintiff had to say. For example, a doctor treating a plaintiff for a specific injury may seek only very general information about aspects of the plaintiff's medical history unrelated to the injury that doctor is treating. The information recorded may only be a brief summary or paraphrase of what the plaintiff said. The plaintiff will usually have no specific recollection of what he or she said on that occasion, but, when confronted with the record on cross-examination, will usually agree with the suggestion: "That is what you told Dr. X, isn't it?" The danger of giving too much weight to such inconsistencies was noted by Parrett J. in *Burke-Pietramala v. Samad*, [2004 BCSC 470](#), at paragraph 104:

I make two observations at the outset about Dr. Keyes' criticism for the variations he finds exist in the versions of symptoms given to various doctors. First of all, the reports are those of a layperson going through a traumatic and difficult time and one for which she is seeing little, if any, hope for improvement. Secondly, the histories are those recorded by different doctors who may well have had different perspectives and different perceptions of what is important. As Dr. Samad made very clear his chart and records were a long way from being a verbatim record, indeed, some of his entries from a full appointment and an examination consisted of three or four phrases. I find little surprising in the variations of the plaintiff's history in this case, particularly given the human tendency to reconsider, review and summarize history in light of new information.

[17] Although there are inconsistencies in the plaintiff's evidence, I am satisfied that she was attempting to tell the truth as she recalls it. Those inconsistencies may cause me to question the accuracy of her recollection on some points, but they come nowhere near to being a basis for a finding of outright and deliberate dishonesty.

Assessment of Damages

Non-Pecuniary Damages

Plaintiff's Position on General Damages

152 The plaintiff submits general damages for pain, suffering and loss of enjoyment of life should be awarded in the amount of \$150,000. The plaintiff says this amount would adequately compensate for the multiple injuries he sustained and the effect of his injuries past and present on his life and family and on his capacity to work and enjoy life.

153 The plaintiff relies on *Athey v. Leonati*, [\[1996\] 3 S.C.R. 458](#); *Andrews v. Grand & Toy Alberta Ltd.*, [\[1978\] 2 S.C.R. 229](#); *Felix v. Hearne*, [2011 BCSC 1236](#); *Curtis v. MacFarlane*, [2014 BCSC 1138](#); *Stapley v. Hejslet*, [2006 BCCA 34](#); and *Bricker v. Danyk*, [2015 BCSC 2404](#).

154 The defendant submits non-pecuniary damages should fall in the range of \$40,000 and \$60,000 with a deduction of 25% for the plaintiff's degenerative back condition.

155 The defendant relies on *Dajani v. Khanna*, [1999 BCCA 694](#); *Kahle v. Ritter*, [2002 BCSC 199](#); *Zrnoh v. Stauber*, [2009 BCSC 944](#); *Beick v. Webb*, [2003 BCSC 1251](#); *Schrauwen v. Slater*, [2001 BCSC 987](#); *Travis v. Kwan*, [2009 BCSC 63](#); *Filsinger v. ICBC*, [2009 BCSC 232](#); *Trevitt v. Tobin*, [2009 BCSC 1249](#); and *Brown v. Raffan*, [2013 BCSC 114](#).

156 The impact sustained by the plaintiff's vehicle during the Accident was unexpected and substantial. The injuries sustained by the plaintiff included a concussion when he struck his head, ongoing headaches and substantial soft tissue injuries to his shoulder, upper, mid and lower back. I find the Accident aggravated injuries sustained by Mr. Purewal in the Prior Accident. In addition, I find Mr. Purewal had interrupted sleep and developed

a depressed mood as a result of his ongoing pain and discomfort which has affected his family life, including his relationship with his daughters and his wife. While Mr. Purewal has returned to work he will likely continue to suffer from lower back pain which will, over time, limit his ability to work the amount of overtime as he has in the past.

157 Based on the principles set out in *Stapley* and on my review of the cases cited by counsel Mr. Purewal's non-pecuniary loss should be assessed at \$110,000, which includes a consideration of the degenerative condition of Mr. Purewal's lower back.

Lost Earnings to Date of Trial

158 The defendant says Mr. Purewal should have returned to work earlier than he did: that he should have returned by October 2013. Based on my assessment of the evidence, I disagree.

159 In my view, the defendant's position does not take into account the plaintiff's physical or mental condition or the responsibilities and stress inherent in the position of a transit operator whose daily job requires negotiating large vehicles through the streets of Vancouver while paying attention to traffic, traffic signs and the security of passengers.

160 It is clear on the evidence that Mr. Purewal was a skilled professional operator who took pride in his work, who took pride in his unblemished attendance record and who was the recipient of numerous commendations from his employer. I find he was very conscious of when he could physically and mentally return to the responsibility of his position as a driver and that he returned to work on a graduated return to driving when he considered he was able to handle the work.

161 I agree with the defendant that Mr. Purewal had an obligation to mitigate his loss by considering a GRTW at one of the positions available to him if he was able to do the work. While neither party called a witness from CMBC to testify as to CMBC's GRTW program, it is clear from the evidence that several positions other than that of driver were available to Mr. Purewal to return to work, including those of a Utility Operator (assisting in the loading and loading of passengers); a Modified Service Person (cleaning drivers' compartments of Transit Vehicles); and a Building Service Worker (cleaning, mopping and vacuuming floors, washrooms, etc.).

162 The question is whether Mr. Purewal could have performed such work. The defendant says he considered the work beneath him and that he could and should have accepted such alternate work much earlier than when he did return to graduated work as a driver.

163 On May 28, 2015, and September 24, 2015, Dr. Ho-Asjoe responded to requests from CMBC for a medical opinion on Mr. Purewal's prognosis to return to work. She wrote in February his left shoulder pain and range of motion had improved but noted in both reports that he continued to suffer from chronic low back pain and stiffness and that he was still depressed and anxious. She considered his return to work in the foreseeable future as "guarded" and that he was "unlikely able to learn a new job in his present emotional state of depression and anxiety".

164 In short, Mr. Purewal relied on his attending physician for advice on when he should be returning to work and to what work he should return to. He cannot, in my opinion, be faulted for doing so.

165 Further, the defendant has not advanced evidence in support of its position Mr. Purewal could have performed the functions of the alternate work positions. A defendant who asserts a plaintiff has failed to mitigate his loss bears an onus to establish the plaintiff could, by taking reasonable steps, have actually mitigated the loss. The defendant has not met that onus.

166 I assess Mr. Purewal's loss of earnings to the date of trial in the amount of \$292,831. The calculation of this amount is based on three years and seven months of his regular wages or \$58,071 per annum (excluding overtime) plus an average amount of \$25,000 per annum overtime pay (as suggested by plaintiff's counsel).

Damages for Loss of Future Earnings

167 Mr. Purewal claims damages for lost future earning capacity in the amount of \$227,800. The plaintiff's analysis is based on an assessment of the amount of earnings he says he would have earned had he continued to work: his regular earning plus a reduced overtime amount of \$25,000 per year

Law

168 Mr. Justice Abrioux provided a helpful summary of the principles to be used by the court in assessing future wage loss in *Karim v. Li*, [2015 BCSC 498](#) at paras. 148-151. He explained the two possible approaches:

[148] There are two possible approaches to assessing loss of future earning capacity: (i) the earning approach (*Pallos*), or (ii) the capital asset approach (*Brown*). Both approaches are correct and their appropriateness in the circumstances depends on whether the loss can be quantified in a measurable way: *Perren v. Lalari*, [2010 BCCA 140](#).

[149] The earnings approach involves a form of math-oriented methodology such as (i) postulating 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, or (ii) awarding the plaintiff's entire annual income for a year or two: *Pallos* at 271; *Gilbert* [\[2011\] B.C.J. No. 1931](#) at para. 233.

[150] The capital asset approach is employed when future loss cannot be measured in a pecuniary way. Finch J., as he then was, described the factors to consider in *Brown* at 356:

1. The plaintiff has been rendered less capable overall from earning income from all types of employment;
2. the plaintiff is less marketable or attractive as an employee to potential employers;
3. the plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to him, had he not been injured; and
4. The plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.

See also *Perren* at para. 32; *Gilbert* at para. 233.

[151] Where an earnings approach is the most appropriate method of assessing an award under loss of future earning capacity but it does not fully encompass the realities of the situation, it is correct to consider all of the evidence and adjust the award for further negative contingencies: *Westbroek v. Brizuela*, [2014 BCCA 48](#) at paras. 64-66.

169 The legal principles in awarding loss of future income damage award are articulated in *Athey*; *Andrews*; and *Perren v. Lalari*, [2010 BCCA 140](#). Those principles were recently summarized by the Court of Appeal in *Schenker v. Scott*, [2014 BCCA 203](#), by Mr. Justice Harris at para. 50:

[50] The principles specific to assessing an award for loss of future earning capacity are well settled: see, for example, *Rosvold v. Dunlop*, [2001 BCCA 1](#), and *Perren v. Lalari*, [2010 BCCA 140](#). These principles were recently canvassed by this Court in *Meghji v. British Columbia (Ministry of Transportation and Highways)*, [2014 BCCA 105](#), where Smith and Willcock JJ.A. writing for the Court said:

(ii) *The approach to assessing loss of future earning capacity*

[81] It is correct to say that an award of damages under this head is a result of the careful weighing of all the evidence and the application of considered judgment to that evidence. It is not a calculation: *Mulholland v. Riley Estate* [\(1995\), 12 B.C.L.R. \(3d\) 248](#) at para. 43, [\[1995\] B.C.J. No. 1823](#) (C.A.). Because the court is required to take into account all substantial possibilities it is necessary to use

careful judgment in weighing those possibilities. In order to ensure that all reasonable substantial possibilities are taken into account, however, the conventional approach is that described in *Lines* [2009 BCCA 106]. In that case, at para. 57, Saunders J.A. held:

There are two major components to an assessment of loss of future earning capacity. One is the general level of earning thought by the trial judge to be realistically achievable by plaintiff but for the accident, taking into account the plaintiff's intentions and factors that weigh both in favor of and against that achievement, and the other is the projection of that earning level to the plaintiff's working life, taking into account the positive and negative vagaries of life. From these two major components must be applied an analysis that produces a present value of the loss, adjusted for all appropriate contingencies.

[82] The standard of proof to be applied when evaluating hypothetical events such as loss of future earnings, is simple probability rather than the balance of probabilities: *Athey v. Leonati*, [1996] 3 S.C.R. 458, [1996] S.C.J. No. 102.

170 A plaintiff, of course, must always prove there is a real and substantial possibility of a future event which will lead to an income loss. In *Perren*, the court stated at para. 32:

[32] A plaintiff must always prove, as was noted by Donald J.A. in *Steward*, [2007] B.C.J. No. 499 by Bauman J. in *Chang*, [2008] B.C.J. No. 48 and by Tysoe J.A. in *Romanchych*, [2010] B.C.J. No. 168 that there is a real and substantial possibility of a future event leading to an income loss. If the plaintiff discharges that burden of proof, then depending upon the facts of the case, the plaintiff may prove the quantification of that loss of earning capacity, either on an earnings approach, as in *Steenblok*, [1990] B.C.J. No. 1158 or a capital asset approach, as in *Brown*. The former approach will be more useful when the loss is more easily measurable, as it was in *Steenblok*. The latter approach will be more useful when the loss is not as easily measurable, as in *Pallos* and *Romanchych*. A plaintiff may indeed be able to prove that there is a substantial possibility of a future loss of income despite having returned to his or her usual employment. That was the case in both *Pallos* and *Parypa* [1999] B.C.J. No. 270. But, as Donald J.A. said in *Steward*, an inability to perform an occupation that is not a realistic alternative occupation is not proof of a future loss.

171 It is notable, however, that during the period prior to the Accident, Mr. Purewal was not symptom-free. In April and May 2011, he reported lower back pain to Dr. Ho-Asjoe with prolonged sitting while driving a bus after five to six hours and with continuous braking and accelerating. Mr. Purewal has recently reported right sided buttock pain (April 22, 2015 to Dr. Fan) and Dr. Clark (see addendum report).

172 I accept that, absent the Accident, Mr. Purewal planned to work overtime until age 60 and to retire at age 65, and that he would have continued working for CMBC until age 65. Both he and Ms. Purewal testified they had a financial plan which envisioned both working and saving for their retirements and to build sufficient funds to pay for their children's education and expensive marriages.

173 Mr. Purewal's counsel submits Mr. Purewal has suffered a capital loss as a result of the injuries sustained in the Accident which have impaired his future earning capacity. Counsel for Mr. Purewal relies on *Pallos v. Insurance Corp. of British Columbia* (1995), 100 B.C.L.R. (2d) 260. However, as noted in *Perren* at para. 21:

[21] I observe first that on its facts, *Pallos* is distinguishable from the case at bar. While it is true that, like Ms. Perren, Mr. Pallos continued to earn the same income from the same employer as he did before the accident, he was disabled from his previous duties. His employer had assigned him to lighter duties. He was disabled from his usual duties and had proven a loss of income earning capacity. Second, I observe that Finch J.A. found that the error of the *Pallos* trial judge was in following the *Steenblok* approach or test where it was clearly inapplicable. Pallos is not authority for the proposition that, in the absence of any real possibility of a future loss, a plaintiff is nevertheless entitled to an award for loss of earning capacity. It must

be remembered that there is no dispute that Mr. Pallos had proven a real possibility of future loss.
[Emphasis added.]

174 Plaintiff's counsel submits it is a "natural consequence" of Mr. Purewal's injuries that he will not be able to work the amount of overtime he had prior to the Accident and that I should consider this "diminished capacity" in a job which gave him "pride of job, pride of place and pride within his community" in awarding him damages for impaired future earnings loss.

175 The plaintiff seeks some \$227,800 in lost earning capacity which the plaintiff calculates as the present value of lost overtime earnings of \$25,000 per annum to age 57 (at which time it was submitted he would have worked less overtime to age 65) and then \$5,000 to \$10,000 annually to his planned retirement age at 65.

176 The evidence establishes Mr. Purewal suffers from degenerative disc disease in his lower back. While I accept he had substantially recovered from the Prior Accident when the Accident occurred, it is clear from complaints (infrequent) he made to Dr. Ho-Asjoe, from diagnostic testing results and from the onset of more recent symptoms subsequent to the Accident that he suffers from degenerative changes in his lumbar spine.

177 No medical expert or functional ability evaluator testified as to how or whether Mr. Purewal's back injury would affect his ability to perform in his regular position as transit operator (with the bending, turning and constant use of his feet to apply pressure to pedals), let alone take on the additional burden of overtime work.

178 Dr. Ho-Asjoe certified he was fit to return to work on a modified work schedule. I assume Mr. Purewal will complete that return to work and move from graduated hours to full time hours. There is no evidence to the contrary. The only limitation on his abilities, and the one which prevented him from at least attempting a modified return to work at a much earlier time (as early as 2014), was a condition of depressed mood/depression which continued until he did return.

179 The issues are (i) whether Mr. Purewal had established there is a real and substantial possibility that there will be a future event which will result in a loss of future earnings and (ii) whether I should apply the capital loss approach or the income loss approach to assess his loss. In my view it is more appropriate in this case to apply the income loss approach. I find Mr. Purewal will successfully complete the GRTW program and return to full-time employment as a bus operator and that he will gradually return to working overtime.

180 I think it is more likely than not that Mr. Purewal will be unable to work some overtime work for a period of time after he returns to full-time regular work as a transit operator. I assess this period as being for one year. I conclude that subsequent to that time he will gradually increase his overtime hours.

181 Mr. Purewal's prognosis for achieving the level of overtime he worked prior to the Accident is significantly burdened by his underlying pre-Accident degenerative stenosis in his lower back which was aggravated by the Accident but which has recently flared up with pain radiating into his leg, a condition that is independent of any injury sustained in the Accident.

182 On the medical evidence before me I am simply unable to conclude that Mr. Purewal will not be able to work overtime on an ongoing basis into the rest of his working years as a consequence of injuries sustained in the Accident. If there will be a limitation on his overtime hours I am driven to the conclusion such limitation will be the result of his degenerative condition rather than as a cause of injuries sustained in the Accident.

183 Mr. Purewal is entitled to compensation for loss of future earnings in the amount of \$25,000 to account for lost regular time wages from the date of trial to the date I estimate he will return to full-time regular work (roughly six months) in his first year back at work and a further \$50,000 for loss of future overtime work (roughly two years) as he reintegrates into an overtime regime that approximates the amount of overtime he was working at the time of the Accident. In awarding this amount I have taken into account the evidence that the Accident likely, in some measure, aggravated his pre-existing degenerative condition in his lower back.

Cost of Future Care

184 Mr. Purewal seeks an amount in excess of \$30,000 for the cost of medications, including the use of Cymbalta. Alternately the plaintiff requests the court to direct ICBC to pay for medications prescribed in respect to his ongoing complaints out of Part 7 *Insurance (Vehicle) Act, R.S.B.C. 1996, c. 231* benefits.

185 Given my conclusion that the probable cause of Mr. Purewal's future complaints may very well arise from his pre-existing condition I am not prepared to make the direction requested by counsel. However, Mr. Purewal was on medication arising from unresolved injuries sustained in the Accident at the date of trial and he will require medication for a period into the future. Based on the cost of his past medications, including the expense of medication taken for his depressed mood, I award \$7,500 to cover the future cost of medication.

Special Damages

186 Mr. Purewal claims special damages in the amount of \$9,382.23. His claim includes expenditures for prescription medications (the largest expense of which was for depression/mood related prescriptions), physiotherapy, massage therapy, acupuncture, ambulance services, and the cost of a medical letter from Dr. Ho-Asjoe relating to his return to work. In my view this claim has been proven. Accordingly, I award Mr. Purewal special damages of \$9,382.23.

In Trust Claim for Cost of Future Care

187 I award no sum for this head of damage claimed as in my view the plaintiff has not made out the basis for such a claim.

Summary

188 In conclusion I award the plaintiff the following sums:

1. Non-pecuniary damages \$110,000
2. Lost earnings to date of trial \$292,381
3. Loss of Future Earnings \$75,000
4. Special Damages \$9,382.23
5. Cost of Future Care \$7,500

Total: \$494,263.23

189 Counsel may speak to the issue of costs should they be unable to agree. Should costs be in issue then within 30 days of the publication counsel may arrange a time to appear before me.

B.M. GREYELL J.