

 **Bahia v. Norton**

British Columbia Judgments

British Columbia Supreme Court
New Westminster, British Columbia

K.W. Ball J.

Heard: February 3, 10-14, 2020.

Judgment: October 28, 2020.

Docket: M172404

Registry: New Westminster

[2020] B.C.J. No. 1689 | 2020 BCSC 1599

Between Amandeep Kaur Bahia, Plaintiff, and Stephanie Roseann Norton, Ranjit Singh and Kavel Singh Multani, Defendants

(281 paras.)

Counsel

Counsel for the Plaintiff: R.K. Patro.

Counsel for the Defendants: T. MacLachlan.

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Introduction

1 These are reasons for judgment in a motor vehicle accident case where the plaintiff was a passenger in a motor vehicle involved in a collision on September 9, 2013. The plaintiff claims she was injured in the collision. Liability has been admitted by the defendant, Stephanie Roseanne Norton.

Facts

2 On or about the 9th day of September 2013, at or near the intersection of 152nd Street and 60th Avenue, Surrey at approximately 8:39 am, the plaintiff ("Ms. Bahia") was a seat-belted passenger in a vehicle then driven by the defendant, Ranjit Singh ("Mr. Singh"). Mr. Singh was driving that vehicle with the consent of the defendant, Kavel Singh Multani ("Mr. Multani"). That vehicle was struck at the location aforesaid by a vehicle owned and driven by the defendant, Stephanie Roseanne Norton ("Ms. Norton").

Agreed Statement of Facts

3 In an Agreed Statement of Facts (filed as Exhibit 1 in this trial), the following facts were elicited: the 1999 GMC Suburban vehicle ("GMC") driven by Mr. Singh was driving southbound on 152nd Street through the intersection with 60th Avenue in Surrey, BC at approximately 50 km per hour. Ms. Norton was driving a 2009 Mazda 3 motor vehicle ("Mazda") northbound on 152nd Street and made a left-hand turn on the same yellow light to travel west onto 60th Avenue. This resulted in the collision between the front of the GMC and the passenger side of the Mazda.

4 As a result of the collision, the Mazda was pushed into a lamp post at the southwest corner of the intersection and the GMC was redirected into a telephone pole, also at the southwest corner of the intersection.

5 As a result of the collision, airbags were deployed in both vehicles. Both vehicles were deemed obvious total losses by estimators for the Insurance Corporation of British Columbia ("ICBC"). Photographs of both vehicles, post-collision, were exhibited in the Plaintiff's Book of Documents, Exhibit 8 at Tabs 1 and 2.

6 The plaintiff was travelling to work with co-workers in transportation provided by her employer at the time of the collision. She was therefore a "worker" in the meaning of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 (the "WCA") and was thus barred by s. 82 of the *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83 (the "*Regulation*") from obtaining wage loss, and medical or other benefits under Part 7 of the *Regulation*. Accordingly, ICBC lawfully refused to provide such benefits when requested.

7 Ms. Norton, however, was not a "worker" as defined in the *WCA* at the time of this collision.

8 This action was discontinued by the plaintiff against Mr. Multani and Mr. Singh, who are no longer parties to this litigation.

9 Paramedics who gave aid at the scene of the collision recorded that the plaintiff had complaints of left-side chest pain (increasing on palpation), neck pain, and mouth pain (making it painful to talk) at the time. Upon being extricated from the GMC, the plaintiff was placed in a hard-collar and placed on a spine-board. Ms. Bahia was assessed at that time with a Glasgow Coma score of 15/15. She was taken by ambulance to Surrey Memorial Hospital ("SMH") arriving at 9:30 am.

10 Hospital staff at SMH recorded Ms. Bahia complaining of pain to the mouth, left-lateral neck and shoulder, and left-lateral chest. SMH staff assessed the plaintiff as being mildly confused/disoriented and recorded a Glasgow Coma Scale score of 14/15. X-rays were taken at SMH. Ms. Bahia was discharged at noon that day to the care of family members.

11 Subsequently, on April 10, 2014, Ms. Bahia attended the SMH emergency department with complaints of lower back and mild flank pain. An X-ray of her lumbar spine was taken on that date. Toradol was administered.

12 On June 14, 2014, Ms. Bahia attended the emergency department of the SMH with complaints of back pain, abdominal pain, and perineum pain radiating to the right-leg. Morphine, Gravol, and Toradol were administered, and an abdominal/pelvic CT scan was performed. The plaintiff was discharged from the hospital the same day.

13 On November 6, 2015, the plaintiff attended the emergency department of SMH with complaints of left-breast pain following a biopsy that had been done four to five months earlier. A left-breast ultrasound was ordered for the following day and the plaintiff was discharged from hospital. On the following day, Ms. Bahia attended the hospital for the administration of the left-breast ultrasound, and the findings were normal.

14 On July 22, 2017, Ms. Bahia attended the emergency department of SMH with complaints of lower back pain, left-rib pain, left-leg pain, and left-side body pain. Tylenol and Advil were administered. Ms. Bahia was assessed by the ER doctor as having mechanical lower back pain and was discharged from hospital with a prescription for Cyclobenzaprine (30 pills).

15 On October 5, 2018, Ms. Bahia attended the emergency department of SMH with complaints of a left-sided posterior headache. She was assessed by the ER doctor and a head CT scan was ordered. Ms. Bahia was given Tylenol and Advil for pain, and was discharged from hospital on the same day.

16 As listed in the Agreed Statement of Facts, Ms. Bahia underwent a number of imaging investigations at SMH including: on September 9, 2013, chest and neck X-rays; on October 12, 2013, X-rays of the left-shoulder, lumbar spine and left-rib on referral by Dr. Parmjit Sohal at CML Healthcare; on December 12, 2013, X-rays of left-ribs and chest on referral by Dr. Sohal at CML Healthcare; on April 10, 2014, a lumbar spine X-ray at SMH upon attendance at the emergency department; on May 13, 2014, an X-ray of her sacrum and coccyx on referral by Dr. Sohal at West Coast Medical Imaging; on June 14, 2014, a CT scan of her abdominal/pelvic area at SMH upon attendance at the emergency department; on April 16, 2015, a CT scan of her lumbar spine on referral by Dr. Kurt Samer at the Pattison Outpatient Centre; on April 8, 2016, a bone scan in relation to her thoracic and lumbar spine areas on referral by Dr. Sohal at the Pattison Outpatient Centre; on April 27, 2016, a left-hip X-ray on referral by Dr. Sohal at West Coast Medical Imaging; and on June 13, 2016, a CT scan of her left-leg on referral by Dr. Sohal at the Pattison Outpatient Centre.

17 Ms. Bahia commenced physiotherapy treatment at Optimal Recovery Physiotherapy on September 23, 2013, and attended 81 sessions of physiotherapy up to July 16, 2014.

18 On April 24, 2014, Ms. Bahia was referred to the Change Pain Clinic by Dr. Sohal.

19 On June 24, 2014, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Kurt Samer (Anaesthesiology). Dr. Samer administered trigger point injection treatment, which involved multiple injections to the right and left side of the plaintiff's neck and upper back musculature, as well as the plaintiff's low back and leg areas (left and right sides).

20 On July 7, 2014, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Aniz Khalfan (Anaesthesiology). Dr. Khalfan administered trigger point injections to the anterior neck fascia.

21 On July 14, 2014, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Kurt Samer, who administered:

- (a) peripheral nerve block injections to the right semispinalis capitis and cervicis T2;
- (b) peripheral nerve block injections to the coccyx; and
- (c) trigger point injections to the left and right multifidus triangle.

22 On July 31, 2014, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Carolyn MacCallum (Internal Medicine), who administered trigger point injections to the left and right piriformis.

23 On August 12, 2014, Ms. Bahia attended the Change Pain Clinic and was seen by Dr.

MacCallum, who increased Nortriptyline to 30 mg HS (at bedtime) and added Gabapentin to the plaintiff's medical regime.

24 On October 17, 2014, the plaintiff attended the Change Pain Clinic and was seen by Dr. Khalfan, who administered peripheral nerve block injections to the right gluteus maximus and right gluteus medius areas and trigger point injections to the lumbosacral fascia.

25 On September 23, 2014, the plaintiff attended the Change Pain clinic and was seen by Dr. MacCallum who recommended: trigger point injections; continuation of Gabapentin and Nortriptyline; commencement of the Tramacet and Gravol medications; and the purchase of a pillow for hemorrhoids to use for coccyx pain.

26 On October 8, 2014, the plaintiff attended the Change Pain Clinic and was seen by Dr. Samer who ordered a CT scan of the lumbar spine.

27 On November 3, 2014, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Alan Lam who administered trigger point injections to the right upper fibers of the trapezius, the middle fibers of the trapezius, right mid and posterior scalenes, and right transversal spinal C6/7 and T1.

28 On November 13, 2014, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Greg Siren who administered trigger point injections to the right and left rectus abdominis.

29 On April 8, 2015, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Allen Cyril Berkman (Anaesthesiology) who administered a peripheral nerve block injection to the T7/8 intercostal area.

30 On May 9, 2015, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Berkman who administered a SI joint block injection.

31 On June 10, 2015, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Berkman who administered trigger point injections to the lumbosacral fascia and nerve block injections to: the right suprascapular area; the left greater and lesser occipital nerves; and the left greater auricular nerve.

32 On August 12, 2015, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Stephen Gar Fai Ho who administered ultrasound-guided left-lumbar medial branch block injections at Levels 3, 4 and 5.

33 On September 9, 2015, the plaintiff attended the Change Pain Clinic and was seen by Dr. Hugue Alcide Ouellette who administered an ultrasound-guided left-sacroiliac joint local anaesthetic block injection.

34 On October 16, 2015, the plaintiff attended the Change Pain Clinic and was seen by Dr. Luck Louis who administered an ultrasound-guided right-sacroiliac local joint anaesthetic block.

35 On November 2, 2015, the plaintiff attended the Change Pain Clinic and was seen by Dr. Ouellette who administered an ultrasound-guided 5% Dextrose caudal epidural injection.

36 On November 12, 2015, Ms. Bahia attended the Change Pain Clinic and was seen by Dr. Berkman who administered ultrasound-guided Medial Branch Nerve block injections and left sacroiliac joint block injections.

37 On November 14, 2016, Ms. Bahia met Dr. Lukasz Soswa, an orthopedic surgeon on referral from Dr. Sohal. Dr. Soswa referred her for physiotherapy treatment and suggested that Dr. Sohal refer Ms. Bahia to a back surgeon if her pain did not improve over the next six months.

38 Ms. Bahia commenced physiotherapy treatments at Synergy Physiotherapy on November 24, 2016, and attended 20 treatment sessions up to March 30, 2017.

39 In the Agreed Statement of Facts, there is a listing of medications prescribed by medical personnel to Ms. Bahia from the date of the collision up to November 16, 2019, which contains 93 prescriptions listed pp. 7 to 10 inclusive of the Agreed Statement of Facts.

40 Finally, the Agreed Statement of Facts in para. 50 contains an admission that, as a result of injuries sustained in the collision, the plaintiff expended \$6,642.55 on special damages.

41 Ms. Bahia testified that she worked in a number of manual jobs after arriving in Canada. The first job was on a ginseng root farm. She used the term "full-time" in relation to some of these tasks. I am satisfied that the reference to "full-time" should be taken to mean long hours in seasonal work for ginseng farming, berry picking (June to September or October), salmon runs, and green house harvest periods. Other work, including stocking grocery shelves in a supermarket and packing tea bags, took place between the busy seasonal events.

42 Rate of pay at the time of the accident for berry picking was \$10.25 with no overtime, vacation, or "stat" pay. Berry picking was completed in the fields, and then the berries were cleaned and packed into boxes. Ms. Bahia also assembled the boxes. The berry packing work was conducted standing up. The weights of packed berry boxes varied from one- to five-pound boxes for sale in stores. Boxes were put on a scale to weigh them. Ms. Bahia testified that she was regularly required to carry 20 pounds of boxed blueberries at once.

43 In the packing plant, the berries came to Ms. Bahia on a conveyor belt that moved quickly and required fast hand-eye responses by her.

44 Mr. Multani was Ms. Bahia's supervisor in the blueberry business and she picked blueberries virtually since the time she arrived in Canada. During the berry season, she worked between 8 and 10 hours per day and six or seven days per week.

45 Ms. Bahia described that her job in the fish cannery, Pacific Salmon Industries Ltd., included: cleaning fish; cleaning the plant; and washing racks upon which salmon were processed in the fish plant. She worked in the fish cannery for at least one season.

46 Work in the tea packing plant involved counting and placing tea bags, that were delivered to Ms. Bahia from a revolving piece of equipment, into boxes, and then packing the boxes for resale. This job was conducted while standing up.

47 In 2006, she worked in a green house. There, Ms. Bahia picked tomatoes that were placed in packages for sale at the Surrey Supermarket.

48 Ms. Bahia has not earned any income from employment since the accident, but she has received "sickness" benefits for about one year. She applied for, and later was paid, Canada Pension Plan continuing disability benefits. Dr. Sohal assisted the plaintiff to fill out the application for the disability benefits.

49 Prior to the accident, Ms. Bahia testified that she did not have any health problems that affected her ability to work or to perform household duties like cooking or cleaning at her home. She had not devised retirement plans at the time of the accident.

50 Prior to the accident, her husband's niece who was living in the family home would help with some interior cleaning. However, Ms. Bahia was the family chef. On an annual basis, after her husband prepared the garden, Ms. Bahia planted and tended the garden where, with great interest, she watered, weeded and harvested herbs, vegetables and flowers.

51 The other workers at the blueberry farm ranged from younger workers to some workers who were older than the plaintiff.

52 Prior to the accident, the plaintiff testified she was happy all of the time that she: pursued her interest in cooking; took her grandchildren to the park for play activities; gardened fruits, vegetables and flowers; and cleaned and maintained her home. She enjoyed community parties and weddings, where she particularly enjoyed cultural dancing and was "the first person to dance". She would wear out her children with her persistent dancing.

53 She also liked to exercise by walking at least an hour a day when not working elsewhere and playing in the park with her grandchildren. Each week, prior to the accident, Ms. Bahia would attend religious service in the local Sikh temple and volunteer in the temple kitchen. She helped

with: making Indian chapattis; cleaning up; and washing large quantities dishes after meal services in the Langar hall of the temple.

54 Prior to the accident, it was normal for family members, relatives and invited guests to attend the Bahia home to enjoy meals together prepared by Ms. Bahia alone on a regular basis. Following the accident, Ms. Bahia was unable to prepare food for her family members or invited guests. Guests simply were not invited as they had been and, if they attended at all, it was only to share a cup of tea.

55 The plaintiff now feels "very bad" as she is unable to make the favorite dishes of her husband, Balvinder Singh Bahia ("Mr. Bahia"). A typical food item cooked by Ms. Bahia prior to the accident was the samosa which requires two hours to produce a batch of 50 to 60 samosas. Post-accident, Ms. Bahia did not make samosas.

56 Before the accident, Ms. Bahia testified that she spent approximately 4 hours each day cooking and cleaning. If there were guests coming for a meal, there would be three additional hours of preparation, cooking, and cleaning. Post-accident, Ms. Bahia estimated that she spends two hours cooking and cleaning spaced out throughout the day. She does some work, but then must sit or lay down to rest and relieve pain.

The Experience of the Accident

57 At about 8:30 am on September 9, 2013, Ms. Bahia was on her way to work in a vehicle provided by her employer as a passenger. The vehicle was stopped at a traffic light and then the accident occurred. The airbag in front of Ms. Bahia's seat deployed and is visible in the Plaintiff's Book of Documents at Tab 2, photo 23. The photographs of both vehicles in the accident are at Tabs 1 and 2 of that book of documents.

58 There were three co-workers in the back seat of the vehicle and Ms. Bahia and the driver were sitting in the front seat. After the accident, she was disoriented by the collision from the front-seat airbag.

59 A school crossing-guard assisted by preventing the movement of Ms. Bahia's head with her hands. Paramedics removed her from the vehicle, and put her on a stretcher. A hard-collar was placed on her neck, and she was strapped to the stretcher before being transported in the ambulance to hospital.

60 She experienced immediate pain in the left side of her neck, shoulder, back, chest and left leg. She also experienced a headache and was feeling dizzy.

61 Pain increased generally when she was in hospital. She was given medication at the hospital,

but could not identify the name of the medication. X-rays were taken at that time. She was released from the hospital and taken home in the company of her daughter and son-in-law.

62 Ms. Bahia experienced bruising on her left-breast area and on the knee caps of both knees. Photos at Tab 3 and pp. 46 and 47 of the Plaintiff's Book of Documents showed bruising on the upper left-chest area and both knees.

63 One month after the accident, Ms. Bahia was obtaining assistance for regular living activities from the niece of her husband, her daughters, her husband, and her son. She continued to experience pain in her head, neck, left-shoulder, left-chest, lower back and left-leg. She experienced a negative mood due to the daily pain.

64 At that time, she experienced fear or anxiety when she rode in a vehicle. Particularly, when the vehicle was turning, she would hold tightly to the car door handle.

65 Ms. Bahia explained that physiotherapy helped her deal with her pain a "little bit". The bruising on her left-breast and knees gradually resolved. Ms. Bahia testified that heat and massage at the physiotherapist's office improved her mobility somewhat. Assistance with bathing and general mobility took two or three months, and then she could attend the bathroom on her own. Ms. Bahia described that her chest pain, since the first month to date, has brought continuous pain to chores such as folding clothing, chopping vegetables, or moving about in her home. The pain was described as a sharp pain. She still experiences back pain when sitting for long periods.

66 The plaintiff's neck pain and head pain remain the same. At trial, the plaintiff described that the pain made it "hard work" for her to remain seated to testify. This pain was also described as significant and continuous.

67 Ms. Bahia testified that she was experiencing constant pain in her left-shoulder while she was giving evidence as the pain was radiating into her left arm. She testified that there was no pain in the right-shoulder. She testified that the left-shoulder pain was tolerable.

68 She described that activities such as walking, preparing her own meals in the kitchen, and other exercises exacerbate the pain. Pain prevents her from doing household chores. She can walk for about 20 minutes and can stand in the kitchen for about 30 minutes preparing her own meals before she has to sit down to rest.

69 Sitting for a prolonged period causes pain in her left-neck, left-shoulder and back, and sometimes her leg. After about 15 minutes, Ms. Bahia finds that she must adjust her position to ameliorate the pain and massage her low back.

70 Ms. Bahia has a problem with her left-arm as she finds that her arm trembles when she tries to

hold a drinking cup or read a book, and her arm seems weak. Low back pain was described by Ms. Bahia as continuous.

71 Ms. Bahia described that her mood has improved as compared to earlier when she did not feel like going out anywhere and her daughters would come to her home to visit. More recently, her daughters have encouraged her to go out.

72 Ms. Bahia found cooking for her family very fulfilling and enjoyed entertaining family, friends and visitors for meals to enjoy samosas, pakoras (fritters) or tempura at home, which were all made with her own hands. Post-accident, Ms. Bahia has to seek the help of her family members to prepare food.

73 Ms. Bahia testified that her sleep patterns have changed. Dr. Sohal has provided a prescription to assist with sleep. She still does not sleep comfortably on her back or on her left side, and thus has to sleep on her right side. Because of changing positions during sleep, Ms. Bahia does not get her full sleep. She testified that, pre-accident, she slept for 8 to 9 hours each night. Now, she is limited to five hours. Prior to the accident, Ms. Bahia did not nap during the day. She now naps for two hours on average each day.

74 After the accident, Ms. Bahia received physiotherapy treatment for approximately one year and later she was referred by Dr. Sohal to the Change Pain Clinic. Ms. Bahia described attending the Change Pain Clinic, where she received spinal and nerve block injections for about a year. On each appointment, she received 14 or 15 injections in various locations including her back, neck, shoulder and tailbone. The injections were particularly painful in her tailbone. Her pain there improved for only a short period of time. She tolerated the distress and pain of the injections because she wanted to get better.

75 Ms. Bahia participated in physiotherapy for approximately one year. Dr. Sohal then prescribed further physiotherapy treatment, which the plaintiff described as helping her mobility for periods of time.

76 Ms. Bahia obtained pain relief from: medications such as Tylenol; exercises, including walking and other exercises prescribed by the physiotherapist; and hot water baths and heat pads. When she experiences a headache, Ms. Bahia finds that she must lay down. Her exercises include daily walks for about 40 minutes each day and she performs the exercises prescribed by the physiotherapist once each day.

77 When the weather is unsuitable to walk outside, Ms. Bahia walks on a treadmill in the garage in her home, which was provided by her son.

78 Physiotherapy treatments were provided for Ms. Bahia, although she could not pay for the

treatments. She did not know who made the payments, but she believes she is in debt to the physiotherapist.

79 Ms. Bahia understands that medications were paid for by insurance benefits connected with her husband's employment, as long as he was working. However, Mr. Bahia has been unemployed for approximately one year by the time of trial. Her medication costs have increased since her husband stopped working.

80 Since the accident, Ms. Bahia testified that in 2013, her niece, Seema, came to her home to help out with the housekeeping, but by the end of that year, Seema moved away and was no longer available to help with housekeeping. Ms. Bahia's two daughters provided some help as well. Her son and husband worked together to perform housekeeping. In 2016, the son got married and his wife, the plaintiff's daughter-in-law, has been doing housekeeping and cooking as trained by Ms. Bahia.

81 From 2014 to 2016, there was no other woman living in the Bahia home. The plaintiff testified that her home sank into an unkempt condition, which was not as clean as before the accident. During this time, her husband and son began bringing in food from outside restaurants.

82 Ms. Bahia's daughters would come to clean and provide cooked food when they had time. Her husband and son were both working full-time and helped with cleaning when they had time to do so. Ms. Bahia was able to do some household chores, but they were very limited. Her daughter-in-law would wash and dry the clothes for the family and Ms. Bahia would try to fold all of the clothes.

83 In 2016, after her daughter-in-law, Rajbir Bahia, joined the household, Ms. Bahia provided instructions for home cooking to the younger woman, who had little experience or training in cooking. Sometimes, Ms. Bahia chopped garlic, onions and ginger to help with the preparation for cooking. Ms. Bahia would also assist by wiping kitchen counters.

84 Prior to the accident, Ms. Bahia would remain standing in her kitchen for up to four hours. She would wash and chop vegetables and then cook them. She would knead the dough for "roti" and prepare other vegetables. She would also wash floors and wash and fold laundry while food was cooking. She would also try to go for a walk and, if possible, take a nap during a busy day. She also cooked lunch for herself.

85 Post-accident, the garden work has been performed by her son and husband, but there are fewer plants and flowers. Ms. Bahia is only able to assist with the garden work when she can sit down, but not when she has to bend over or reach forward.

86 Ms. Bahia testified that her social life, where pre-accident her home was frequently peopled

by guests and invitees, is now quieter with fewer people coming to her home. Food, if served, is now brought in from outside restaurants.

87 Post-accident, she cannot provide volunteer services at the Gurdwara. She cannot sit on the floor and cannot sit through the religious service completely as she becomes dizzy.

88 When invited, she still attends weddings and family parties, but she experiences pain when attending and does not feel well. Ms. Bahia is not able to dance at weddings. She is no longer able to play with her grandchildren at the nearby park as before the accident.

89 Ms. Bahia travelled to India in 2015 and 2017. In December 2015, she travelled to India for her son's marriage and remained for about six months. During the flights, she found she could only sit for short periods of time on her "donut" cushion and would have to walk around for a few minutes in the airplane. She described the flights as "very bad" and unenjoyable.

90 At her son's wedding in India, guests were invited to dance, but Ms. Bahia could not participate in the dancing at the wedding.

91 In 2017, she went to India for the marriage of her husband's younger brother at the end of January and returned in March. Ms. Bahia attended the wedding, but she found the pain she was experiencing unpleasant and she could not dance at the wedding.

92 The flight to and from India in 2017 again featured sitting for short periods with walking to relieve pain.

93 Ms. Bahia testified that her relationship with her family has diminished because she is not able to cook her husband's favourite foods and she feels badly about that situation.

94 On December 1, 2019, Ms. Bahia's family wanted to go shopping at a shopping mall. She did not wish to accompany them, but they took her along to the mall anyway. She walked briefly in the mall and then sat down in the mall due to stiffness.

95 In a normal day before the accident, Ms. Bahia spent four hours each day cooking and cleaning in her house. If she was having company coming, Ms. Bahia would add three hours to her daily activity. After the accident, she spends about two hours each day cooking and cleaning, time which is interspersed with periods of rest and sitting down or lying down.

96 Ms. Bahia described the process of making samosas in some detail and that making 50 to 60 samosas would require two hours to make.

97 Apart from farm work, Ms. Bahia also worked at the Surrey Supermarket. She would seek work there when farm work was slow and the family needed money.

98 In 2013, Ms. Bahia earned less from Mr. Multani than in 2012. She explained that the berry season would start early or late depending on the weather. In 2013, the season may have started late and the accident prevented her from working further in that season.

99 In 2010, Ms. Bahia worked for BNN Enterprises Ltd, a blueberry farm. Ms. Bahia picked blueberries on that farm. In 2007, and 2008, Ms. Bahia worked on processing salmon at Pacific Salmon Industries Ltd., cleaning the fish and then cleaning up the racks used to process fish.

100 Ms. Bahia testified that if she could afford to pursue the treatment recommended by Dr. Sohal or a specialist, she would follow the treatment recommendations.

101 In cross-examination, Ms. Bahia agreed that she has issues with her hands in the form of numbness, which she defined as "sleepiness"; which occurred more in her left-hand than her right-hand. When testifying, she did not remember if she had it in her right-hand before the accident. Discovery evidence read to her refreshed her memory and she agreed that she did have problems with her hands before the accident. She testified that she had sworn to tell the truth on the discovery and she then answered questions to the best of her ability.

102 Ms. Bahia testified that she reported the hand numbness to various doctors, which appears to be a correct statement from p. 11 of Dr. Sohal's report dated November 1, 2014. Dr. Waseem reviewed the same report, but did not comment on it further. Dr. Gharsaa described, at p. 3 of his report, ongoing complaints of "numbness and tingling in the left hand and tips of the fingers". Dr. Gharsaa also mentions, at p. 6 of his report in the 2nd marked paragraph, "neck pain which radiates to the left trapezius muscle as well as down her left arm down to her fingers." He did not mention hands or fingers again in his report.

103 Ms. Bahia also agreed that she told staff at SMH in July 2017 that she had some fingertip numbness bi-laterally in her hands. Ms. Bahia also testified that she told Shannon Smith that her hands would become numb. Tests conducted by Ms. Smith were stopped due to hand problems.

104 None of the doctors who testified in this case were asked or found the need to express any opinion on the cause or etiology of the hand numbness except for Dr. Gharsaa who connected the pain in her fingers as radiating from her neck.

105 Ms. Bahia also testified that she has friends who have continued working past the age of seventy, and she thought she would also continue working for more years.

106 She explained that she trained her new daughter-in-law to cook. She also said that her daughter-in-law would be expected to contribute to cooking and cleaning in the home in which she was living with her husband and his family.

107 Ms. Bahia testified that she is currently able to get into and out of the shower, but if she takes a bath, her husband helps her get out of the tub.

Other Witnesses Called By the Plaintiff

Kavel Singh Multani

108 Mr. Multani was a labour contractor working through a company named Multani Enterprises Ltd. In September 2013, Ms. Bahia had been a worker on a blueberry farm supervised by Mr. Multani. There were workers on that farm from the age of 20 years to over 70 years of age. In any given year, the berry season occupied the period from June to September with some variation caused by weather.

109 Mr. Multani testified that he had never received a complaint about the ability of the plaintiff to perform her assigned tasks during berry processing. She had been a long-term employee of Multani Enterprises Ltd.

110 In cross-examination, Mr. Multani agreed that if an employee could not work at the required speed, then that employee would be terminated. Mr. Multani also noted that, as a senior employee, Ms. Bahia worked on the berry processing belt, which was a conveyor belt where berries were inspected and detritus removed.

111 Notably, Ms. Bahia was not terminated by Multani Enterprises Ltd, but was unable, following the accident in 2013, to continue working because of pain in her neck and back according to the medical evidence.

Balvinder Singh Bahia

112 Mr. Bahia is the husband of the plaintiff and they have been married for 38 years. Their home is a single story "rancher", which has a square footage of 2000 square feet. There are four bedrooms and two bathrooms with a two-car garage. The home was built about 40 years ago and was renovated in 1991.

113 Mr. Bahia's career was as a fire sprinkler installer, but in January 2019, he retired because of health issues in both of his knees. He has had a total knee replacement on one knee and is waiting for a total knee replacement surgery on the other knee.

114 Mr. Bahia observed his wife at the hospital immediately following the accident and noted, in the weeks following the accident, that she reported "lots of pain symptoms" in her neck, shoulder, back and chest. She had difficulty getting out of bed when she returned home in the days after the accident, and even had difficulty going to the bathroom.

115 Prior to the accident, Ms. Bahia was the cook, housekeeper, window cleaner, and did the laundry for the Bahia family. She had responsibility for everything inside the house. Outside of the house, she maintained and harvested the garden, which was planted for her by her husband.

116 At the time of accident, the plaintiff's niece, Seema, was living with the Bahias. Prior to the accident, Seema helped a little with the cooking and cleaning. After the accident and until she moved out of the house in November 2013, Seema took over the household cooking and cleaning. Harpreet Bahia was living with his parents at that time as well.

117 After Seema left, Mr. Bahia and his son tried to take over household chores with the help of his daughters who live in Surrey. At the time, both Mr. Bahia and Harpreet Bahia were working full-time and did not do a good job cleaning. After the beginning of 2014, Ms. Bahia did some chores. Mr. Bahia and Harpreet ordered take-out food from restaurants. Occasionally, the daughters would cook for their parents. Between 2014 and 2016, the house was not maintained in the good condition previously kept by the plaintiff. In 2016, Harpreet Bahia was married and his wife, Rajbir Bahia, took over the interior household chores and cooking under the direction of Ms. Bahia. She did a good job of cleaning the house.

118 Currently, the plaintiff helps her daughter-in-law by folding laundry and chopping vegetables before meals. Prior to the accident, Mr. Bahia explained that the plaintiff also vacuumed; cooked, which her family and their friends enjoyed; took her grandkids to the park with other kids and played with them; attended the temple for the entirety of the religious service and volunteered for about one hour after the service cooking, cleaning and washing dishes; helped at weddings and parties and danced; and took daily walks of approximately one hour.

119 After the accident, social life at the Bahia home has been reduced as the plaintiff does not invite friends over and the plaintiff does not want to go out of the home.

120 Since the accident, her sleep pattern has been disturbed. She sleeps fewer hours at night and she has a daily nap during the day after the accident. According to her husband, the plaintiff used to spend 3 to 4 hours at the temple and helped in the kitchen. She now spends a maximum of 30 to 40 minutes at the temple and she does not help in the kitchen. She has had no recent improvement in function.

121 Mr. Bahia testified that his wife does not want to go out much apart from short walks now. Whereas the plaintiff previously maintained the garden, Mr. Bahia now is the principal family gardener.

122 Prior to the accident, the plaintiff had a very happy emotional state. However, currently, she complains and is upset because of pain and tiredness.

123 The plaintiff is tense about automobile travel and reacts with discomfort at intersections.

124 The relationship between husband and wife has changed since the accident, as she is no longer the happy person he married. She has to take pills daily including Celebrex, a non-steroidal anti-inflammatory drug, as well as pills to control pain and promote sleeping.

125 The plaintiff and her husband, since neither are employed, are finding it more difficult to make ends meet. They pay the mortgage on their home of approximately \$1,100 per month. Their son and daughter-in-law, who are both employed outside the home, pay for food, utilities and other household expenses.

126 On two occasions since the accident, in 2015 and 2017, the Bahias attended weddings in India. On both occasions, Ms. Bahia found it uncomfortable to sit in the aircraft and would walk or stretch in the aircraft when ever she had an opportunity. If Mr. Bahia took a walk or otherwise left his seat, Ms. Bahia would lay across both seats. At the weddings, Ms. Bahia was unable to take part in dancing at the weddings, one of her favourite activities.

127 Mr. Bahia sees Ms. Bahia take pills every day including Celebrex and pills for sleep and for pain. Mr. Bahia also sees Ms. Bahia doing exercise in the family home, twice a day, which includes walking, stretching with a wide elastic band, walking on a treadmill or using a stationary bicycle. The stationary bicycle was originally purchased to assist Mr. Bahia with his knee problems.

Harpreet Singh Bahia

128 Harpreet Bahia is the son of the plaintiff. He was born in India in 1988. His parents moved to Canada in 1996. He immigrated to Canada in 2005. He has lived at his parents' home since then. He was married in 2016, and he and his wife have continued to live in his parent's home.

129 Immediately upon being advised of the accident, Harpreet Bahia went to see his mother in hospital. He observed that: she appeared to be in considerable pain; she had difficulty moving around; and the left side of her chest was badly bruised.

130 Harpreet Bahia works as the driver of a container hauling truck. He told the Court that prior to his mother's accident in 2013, she prepared snacks for him and his friends, which were very much enjoyed by them.

131 He testified that his mother was a very energetic person, who often attended the nearby park with his sisters and their children. She also volunteered at the temple to help with cooking meals and cleaning. The plaintiff enjoyed going for daily walks of an hour or more.

132 Even on days when she was working at the blueberry farm, according to Harpreet Bahia, the plaintiff cooked lunch for her son and evening meals for her family. Cleaning in the family home was a job performed well by Ms. Bahia and she was the principal person responsible for tending the family garden.

133 From September to December 2013, Harpreet Bahia described his mother as having difficulty moving due to neck, back and shoulder pain. He noted that she required assistance to enter and exit vehicles for most of the first year after the accident.

134 Harpreet Bahia's cousin, Seema, was living in the Bahia home for a period of time after the accident but then left to work in another province. Harpreet Bahia and his father then resorted to purchasing food from restaurants on a take-out basis.

135 In 2016, Harpreet Bahia married Rajbir Bahia, and she took over the cooking and maintenance duties in the Bahia home under the instruction and training of the plaintiff. Rajbir Bahia did not have cooking experience at that time.

136 The plaintiff attended her son's wedding in India but was not happy as she could not participate in the dancing. In the past, she was the first person on the dance floor and the last to leave it. On the flight to India, the plaintiff was unable to sit for long periods of time, and walked in the aircraft when she could. When others were walking in the aircraft, the plaintiff would lay down across their seats.

137 Harpreet Bahia testified that his mother had ceased to be the energetic hostess to guests and ceased cooking, except to the extent that she instructed Rajbir Bahia on cooking techniques and helped with the preparation of ingredients. Harpreet Bahia testified that he had to sternly encourage his mother to leave her home and to go shopping with the family.

138 He purchased a treadmill for his mother to use and placed it in the garage where he sees her using it, particularly on the weekends when he is not working. She also exercises with Therabands to improve her upper body strength.

139 Harpreet Bahia was not cross-examined.

Harvinder Nijjar

140 Ms. Nijjar has been a friend of the plaintiff for more than fifteen years. Ms. Nijjar works as a lunch time supervisor for the Surrey School district.

141 Ms. Nijjar and Ms. Bahia first met one another on the Sky Train when both were attending the Indian consulate in Vancouver for immigration issues. They exchanged phone numbers and

continued a relationship. They became friends and Ms. Nijjar helped the Bahia family move from Kamloops to Surrey after a couple of years.

142 Ms. Nijjar testified that she visited Ms. Bahia regularly before the accident and talked regularly on the telephone. She observed that Ms. Bahia's home was maintained in a tidy and clean manner and that Ms. Bahia was a very good cook preparing sweets, pakoras (fritters), samosas, and other foods in a delicious manner on short notice. Ms. Bahia taught Ms. Nijjar how to make tea and cook sweet potatoes and use those potatoes in a variety of recipes.

143 Ms. Nijjar observed that Ms. Bahia performed all of the household duties alone. Before the accident, Ms. Nijjar saw the plaintiff's garden where she actively weeded, watered, and grew squash, zucchini, hot peppers, beans and peas.

144 Ms. Bahia was friendly and outgoing and enjoyed meeting and playing with Ms. Nijjar's children. Her personality was charming and bubbly. She is now quiet.

145 Ms. Bahia had no physical limitations before the accident and was very busy around her home. After the accident, Ms. Bahia had difficulty moving and displayed a low level of activity.

146 Ms. Nijjar became aware of the accident in September 2013. For the period from September 2013 to December 2013, Ms. Nijjar observed Ms. Bahia in constant pain and sadness. Ms. Nijjar found Ms. Bahia to be a totally different person. Ms. Nijjar came to know Ms. Bahia's niece, Seema, who took over some of the cooking and household cleaning for part of that period. Seema's time in the home was limited, however, as she worked outside the home and was also going to school.

147 At that time, Ms. Bahia was not happy at all. She could not cook or clean and her husband and her son did not do a very good job of cooking or cleaning the house. The two men ordered in take-out food. For the period of 2014 to 2016, Ms. Nijjar noted the cleanliness of the Bahia home deteriorated and was not well-kept during that period. In the pre-accident days, the kitchen fridge was always full of tasty foods; but not after the accident.

148 In 2016, Ms. Nijjar met and came to know, Rajbir Bahia, Ms. Bahia's daughter-in-law. Under Ms. Bahia's instruction, Rajbir Bahia quickly learned how to clean the home which Ms. Nijjar observed. Rajbir Bahia is also being trained in cooking techniques by Ms. Bahia.

149 Ms. Nijjar observed that the plaintiff's mood has improved, although she still appears to be in pain to a lesser extent. She is less sad and her personality has improved although not to pre-accident levels. Ms. Bahia still becomes sad and cries if she talks about the accident.

150 The vegetable garden is not as it was pre-accident. Ms. Nijjar observed that this year there were greens and fewer vegetables in the garden than before the accident.

151 Ms. Nijjar noted that Ms. Bahia does not want to socialize as much with Ms. Nijjar or others anymore. If Ms. Bahia is at home when Ms. Nijjar comes to visit, Ms. Bahia will serve only tea with store-bought cookies and not the homemade sweets which she served before the accident. Ms. Nijjar does not see Ms. Bahia as frequently anymore because Ms. Bahia is busier with medical appointments and therapy.

152 According to Ms. Nijjar, the first three months appeared to be the worst. After that three months, Ms. Bahia began to cook her own lunch and tried to fold small amounts of laundry.

153 During cross-examination, Ms. Nijjar stated that she sometimes visits Ms. Bahia after a day of shopping for a cup of tea.

154 While her mood was at its worst for the three months after the accident, Ms. Bahia has gradually improved. Recently, when visiting her, Ms. Nijjar and Ms. Bahia were talking about when Ms. Bahia taught Ms. Nijjar cooking skills. Ms. Bahia said she missed that time and began to cry.

Rajbir Kaur Bahia

155 Rajbir Bahia married the son of Mr. Bahia and Ms. Bahia in 2015 and came to live with her husband, Harpreet Bahia, in Canada in 2016. The young couple lives in the home of the plaintiff.

156 Rajbir Bahia works as a health care assistant doing community health care work in Surrey, BC. Her hours of work are from 7 am until 3 pm on weekdays, and she previously worked on Saturday mornings from 7 am until noon.

157 She became aware of her mother-in-law's accident when she noticed that the plaintiff was not dancing at the 2015 engagement party or wedding reception. The plaintiff then told her about the accident which had occurred in 2013.

158 When Rajbir Bahia arrived at the Bahia home in Surrey, BC, the home was not as clean as she had expected that it would be. Ms. Bahia told her that she was unable to cook or clean at that time and that she would help Rajbir Bahia learn to cook. Rajbir Bahia has taken over the primary responsibility for housekeeping and family chores in the Bahia household. She now spends two to three hours to prepare dinner and lunch as required. She does an hour of cleaning and household chores during each weekday and two hours each day on weekends. Her mother-in-law provides culinary instructions to Rajbir Bahia in the kitchen.

159 Rajbir Bahia has seen little improvement in the plaintiff's condition since 2016 as Ms. Bahia still complains of pain in her neck, back and shoulder. Ms. Bahia has taught Rajbir Bahia to cook and helps her by chopping vegetables for short periods of time. Rajbir Bahia testified that she

does all of the cooking by herself. She prepares lunch for her parents and husband every day. Her parents then re-heat the meals at lunch time.

160 Rajbir Bahia saw her mother-in-law exercising with wide elastic bands and was aware that she walked every evening.

161 During cross-examination, Rajbir Bahia noted there are not many visitors to her parents' home; though her sister-in-laws are regular weekend visitors.

Dilraj Mann

162 Dilraj Mann ("Mr. Mann") is a private investigator who works for Lions Gate Risk Management Group, a firm which conducted surveillance of the plaintiff on behalf of the insurer. He personally conducted three days of surveillance of the plaintiff and other staff of the firm conducted an additional three days of surveillance.

163 Mr. Mann was not the videographer who took the video marked as Exhibit 3 during the trial. He apparently surveilled the plaintiff on December 1, 2019, and January 18 and 19, 2020 as part of a six-day surveillance program of the plaintiff undertaken by the defendants through Mr. Mann's employer.

164 According to a report prepared by Mr. Mann on December 1, 2019, he only observed the plaintiff once outside of her home and on that occasion lost sight of her in a shopping mall and did not see her again.

165 The observations of Mr. Mann commencing at 13:47 hours on December 1, 2019, were led in evidence.

166 On December 1, 2019, he followed persons who left from the Bahia residence in a vehicle. The vehicle was driven to the Guildford Town Centre shopping mall. The persons in the vehicle exited the vehicle and entered the mall. Mr. Mann followed those persons into the mall, including the person that he believed to be the plaintiff. He promptly lost sight of the family when they entered a store inside the mall, and did not see them again. No evidence was put forward as to the means by which Mr. Mann was able to identify the plaintiff. No history of any prior meeting between the plaintiff and Mr. Mann was put forward in his evidence nor was any evidence put forward of some other means by which he was able to identify the plaintiff. Mr. Mann testified that he returned to observe the vehicle but did not record any video of the person that he believed to be the plaintiff enter the vehicle. He also followed the vehicle back to an area near the Bahia home but did not see the occupants leave the vehicle. He gave evidence of his presumption about where the occupants went, but that is not reliable evidence of any sort.

167 Mr. Mann surveilled the Bahia residence for 5.5 hours on each of January 18, and 19, 2020. He did not see anyone at or around the residence on either of those days.

168 Mr. Mann's evidence was of little assistance in this case.

Expert Witnesses Called By the Plaintiff

Dr. Parmjit Sohal

169 Dr. Parmjit Sohal prepared a medical legal report as an expert in family practice dated May 12, 2016. Dr. Sohal has been the family doctor for the plaintiff since January 26, 2006. Following the collision, the plaintiff saw Dr. Sohal as a patient from September 10, 2013 regularly through to April 30, 2016. Dr. Sohal's notes (and those of his locum, Dr. B. Baby) for each of the appointments related to the collision symptoms are brief, clear, and included prescribed medications and treatment plans.

170 There were also recorded referrals to the Change Pain Clinic. These records indicate that Ms. Bahia attended that clinic approximately 20 times.

171 Following the accident, the plaintiff was diagnosed by Dr. Sohal with cervical, thoracic, and lumbar strain with a soft-tissue injury to the chest caused by the accident. The summary at p. 17 of Dr. Sohal's report states: "Mrs. Bahia sustained pain to neck, upper, low back, sacral spine, left chest, left shoulder, left arm, left face, left foot, right heel, bilateral knees and left lower extremity pain as a result of the MVA pain on September 9, 2013".

172 Dr. Sohal also noted the prescription medications that he had recommended for Ms. Bahia. He also described the referral to the Change Pain Clinic. With respect to treatments received at that clinic, Dr. Sohal noted: "her symptoms improved with medications, physiotherapy and going to the Pain Clinic but not to the extent expected from such treatment modalities. She has been still complaining of MVA related symptoms (particularly neck, left chest and low back pain)." Dr. Sohal also informed the Court of the investigations conducted to determine the source of left chest/breast pain, including a bone scan.

173 A further bone scan demonstrated abnormalities to the right-ankle and left femur which led to investigations by X-ray of the left-hip where "myositis ossificans" [calcification or bone formation in the muscle belly which can occur following a thigh-contusion] was noted. Dr. Sohal expected intermittent flare-up of MVA-related symptoms in the future. He noted that the plaintiff has been off work for almost 32 months since September 9, 2013, and it is unknown if she will return to work. He recommended a referral to an occupational therapist/physical medicine and rehabilitation specialist to determine her fitness for return to work. "Her prognosis is guarded".

Dr. Zeeshan Waseem

174 Dr. Waseem is a physiatrist and an expert in physical medicine and rehabilitation. He prepared an independent medical report dated September 12, 2019, which was filed in Court. No exception was taken to his qualifications.

175 He recorded his meeting with the plaintiff, which took place on August 26, 2019 in the presence of a Punjabi/English interpreter. Dr. Waseem reported that there were no ongoing concerns of a musculoskeletal nature prior to the accident. Right foot and bilateral knee pain documented in pre-accident clinical records had been resolved prior to the accident as "Ms. Bahia had no prior ongoing medical concerns and did not require the use of medication". Dr. Waseem also described information that he was given about the plaintiff's pre-accident functional status and her education and employment. Her current employment was described as "Ms. Bahia was employed seasonally as a blueberry packager. She was responsible for standing at a line along the conveyor belt removing defective blueberries or unwanted items, such as twigs and leaves, from entering the final packaging area. The physical demands included standing, walking, forward reaching, twisting and bending/stooping. There was no significant lifting or carrying component. She had been employed in this capacity since 2008. She enjoyed her work and intended to continue working in this capacity until retirement. There is no prior history of prolonged work absences for medical reasons."

176 Dr. Waseem reviewed the medical records of: the British Columbia ambulance service; the SMH attendants on September 9, 2013; and the medical records of Dr. Sohal, which were in handwriting and hard to decipher. Dr. Waseem also assessed all of the available radiological records including X-rays, bone scans, and CT scans. Dr. Waseem also reviewed the records of the trigger point injections of the neck/upper back and lower back regions in 2014-15 at the Change Pain Clinic, including records of an ultrasound-guided lumbar epidural dextrose injection in 2015. He noted that none of these injections have proved beneficial.

177 Dr. Waseem also referred to the records of physiotherapy over several years, including passive and active modalities of treatment. He noted that physiotherapy was helpful in improving strength and mobility with the benefit maintained to-date, and that it helped reduce pain on a temporary basis. Dr. Waseem also discussed Ms. Bahia's exercise program consisting of: stretching and strengthening performed each day; use of resistance bands; a stationary bike; and the treadmill. He then listed the current symptoms experienced by Ms. Bahia in order of severity as follows:

1. lower back pain; and
2. neck/upper back/left-shoulder/left-arm/left-chest pain which have not changed since their onset on September 9, 2013.

He noted that Ms. Bahia also experiences dizziness. Ms. Bahia told Dr. Waseem that she was not experiencing ongoing symptoms of mood disturbance or generalized anxiety.

178 Dr. Waseem reviewed Ms. Bahia's functional status including her needs for assistance transferring in and out of the car and holding onto railings going up and down stairs. However, otherwise, she remained independent with respect to personal care, mobility transfers and ambulation. She is also able to conduct domestic and household responsibilities limited by the degree of pain she experiences.

179 Dr. Waseem conducted a physical examination which indicated normal body habitus. Ms. Bahia was notably hypersensitive to touch during a palpatory examination. Dr. Waseem examined Ms. Bahia's cervical spine, and pain responses were noted to palpation of the sub-occipital, cervical paraspinal, upper fibers of the trapezius, and laboratory scapular muscles bilaterally. In these areas, muscle stiffness, increased muscle tone, spasms, taut bands, and trigger points were notable. In other words, these observations were objective. The cervical spine range of motion was reduced by approximately 10. due to pain and stiffness and all cervical spine movements increased her neck pain. On examination of the thoracic spine, pain was noted to palpation of the thoracic multi fitness and paraspinal muscles bilaterally of the left upper thoracic spine. Again, muscle stiffness, increased muscle tone, spasms, taut bands, and trigger points were notable. Thoracic spine movements increased left upper neck pain.

180 On examination of the lumbar spine, pain was reported to palpation of the lower lumbar paraspinal muscles bilaterally. Again, in these areas, muscle stiffness, increased muscle tone spasms, taut bands and trigger points were notable. No pain was reported to palpation of the sacroiliac joint bilaterally. Range of motion in the lumbar spine was globally reduced by 10-20degree as compared to normal due to pain and stiffness. Dr. Waseem reported crepitus during range of motion testing. Crepitus indicates a grinding sound produced by joint movement of upper and lower extremities. On examination, tests revealed no pain with palpation of the joint lines ligaments or tendons with active or passive movement. Dr. Waseem, at para. 390 of his report, states "Ms. Bahia did not have any pain behaviours and did not appear to amplify or magnify her complaints. Specifically, she did not report pain to superficial palpation, axial loading did not elicit low back pain, distracted straight leg arrays in a seated position was negative, non-anatomical sensory changes were absent, there was no give-way weakness and there was no overreaction to painful stimuli."

181 Dr. Waseem had Ms. Bahia complete several questionnaires including the Pain Catastrophizing Scale, and the Central Sensitization Inventory; the latter which indicated severe central sensitization.

182 With respect to the opinion, Dr. Waseem, based on findings on examination, concluded that Ms. Bahia initially sustained sprain/strain and soft tissue injuries predominantly of the cervical,

thoracic and lumbar spines as a result of the accident. These injuries resulted in chronic mechanical lower back pain with a secondary myofascial component and chronic myofascial pain of the cervical and thoracic spines. With respect to the lumbar spine, Dr. Waseem opined that Ms. Bahia likely had pre-existing degenerative changes of the lumbar spine, which prior to the accident, were clinically asymptomatic. The soft tissue injuries from the accident destabilized her lumbosacral spine, thereby exerting greater strain on the stabilizing ligaments and joints of the lower back and leading to chronic mechanical lower back pain, rendering the degenerative changes symptomatic. He also noted "standardized disability questionnaires that she completed at the conclusion of the assessment revealed that her response to pain has become amplified due to central sensitization, poor self-efficacy and catastrophic thinking."

183 Dr. Waseem also reported that, as there were no reported documentary history of similar complaints predating the subject accident, the present physical complaints are attributable to the subject accident on a balance of probabilities. The onset of symptoms was reported and documented within a reasonable time after the accident. The injuries complained of were biologically plausible given the mechanism of injury and the symptoms have persisted continually since the accident.

184 Dr. Waseem opined that chronic lower back pain has reduced functional tolerances thereby diminishing Ms. Bahia's ability to tolerate standing for longer periods of time. These injuries have compromised her ability to meet the physical demands of employment as a blueberry packager. Dr. Waseem noted "at this stage, it is unlikely that she will be capable of returning to her pre-accident employment". With treatment involving pain management, the prospects of alternate employment may improve given that her functional tolerances can be accommodated.

185 Dr. Waseem also opined that Ms. Bahia's response to pain has had a devastating impact on her ability to perform her usual household chores "as she is largely unable to participate in housekeeping activities she engaged in prior to the accident."

186 Dr. Waseem recommended, as a future treatment, enrolment of Ms. Bahia in a multi-disciplinary chronic pain program in a suitable medical setting over a three-month period "to enhance her confidence performing activities while in pain and for pain education." The recommendation suggests that, following completion of the multidisciplinary chronic pain program, Ms. Bahia should participate in movement base classes in seniors' Yoga or Tai Chi to improve body movement. Dr. Waseem's recommendations included: 4 to 6 sessions with a trained practitioner in desensitization techniques; continued use of analgesics at current rates of utilization with the addition of Duloxetine, or Venlafaxine for pain management; 4 to 6 in-home sessions with an occupational therapist regarding proper body mechanics and pacing; as well as a vocational assessment to identify reasonable employment alternatives given her lack of formal education and current physical limitations.

187 The prognosis given by Dr. Waseem for full symptomatic recovery of Ms. Bahia was

considered poor for reasons including: symptoms having been long-standing for over six years despite conservative measures and medical attention; lack of any tangible improvement over time; the continued presence of objective physical findings on examination suggesting her recovery "will probably be refractory to medical management"; pain processing pathways having been sensitized; hypersensitivity and decreased pain thresholds are perpetuating her physical condition; she is coping poorly; she is catastrophizing her pain; and previously existing, yet asymptomatic, degenerative changes of the lumbar spine have been rendered symptomatic contributing to a protracted and less than complete recovery". Dr. Waseem's final statement concerning the prognosis of Ms. Bahia is that: "her physical condition would be considered chronic and unremitting and, therefore, permanent." (Page 14, para. 530 to 540)

Shannon Smith

188 Shannon Smith practices as a consultant occupational therapist and is a Certified Work Capacity Evaluator who prepares, on an expert basis, Certified Cost of Future Care Evaluations and Life Care Plans.

189 No issue was taken with Ms. Smith's qualifications.

190 Ms. Smith met with Ms. Bahia on September 23 and September 27, 2019. The first visit took place in a clinical setting for approximately six hours and the second visit in Ms. Bahia's home took place for approximately ninety minutes.

191 During clinical testing, Ms. Smith found that Ms. Bahia participated in the functional capacity testing with a reasonable level of physical effort overall. Her ability to put forth high levels of effort was limited by her reduced overall capacity and poor activity tolerance. As there were no observed inconsistencies on distraction-based and cross-correlated tests, results of the testing were considered an accurate representation of Ms. Bahia's current functional tolerances. Ms. Smith did testing involving:

- (a) reaching, handling, fingering and or feeling/upper limb coordination;
- (b) bending/stooping/kneeling/encroaching/other body positions;
- (c) strength for lifting, carrying, pushing and pulling; and
- (d) sitting, standing and walking.

192 With respect to overall work endurance, it was Ms. Smith's opinion that Ms. Bahia is not presently capable of working on a part-time or full-time basis. Comparing test results with the National Occupational Classification ("NOC"), the results showed that Ms. Bahia did not meet the full physical demands of this work, which include: constant standing; forward reaching combined with neck flexion; and lifting both with respect to strength and ability to access low levels. Ms. Bahia has further barriers to employment given her: age [59 years old]; limited English; limited

education; employment history of working primarily as a production worker/labourer; and physical limitations.

193 With respect to cost of future care needs, Ms. Smith noted that Ms. Bahia has potential for some modest degree of improved function with appropriate rehabilitation efforts including reduction of pain, in which event she will be able to increase participation in activities of daily living. Without that improvement, her participation in the activities of daily living will remain unchanged.

194 With respect to rehabilitation treatment, for which she provided thorough explanations, Ms. Smith estimated that the cost of:

- (a) occupational therapy intervention for 10 to 12 hours would be approximately \$1456 - \$1747;
- (b) the services of a rehabilitation assistant/ kinesiologist for 20 to 24 hours would be approximately \$1500 - \$2280, with the addition of a local community recreation centre's annual seniors membership in the amount of \$400.75;
- (c) an initial course of 10 to 12 sessions of psychological counselling recommended by Dr. Waseem and Ms. Smith as part of a community-based rehabilitation program would be approximately \$2000 - \$2700; and
- (d) the provision of 10-12 ongoing physiotherapy sessions for the specific purpose of symptom management, with initial sessions used to evaluate her current musculoskeletal status, and then to design the program to be implemented by the rehabilitation assistant/kinesiologist, would be approximately \$790 - \$1130.

195 Services recommended by Ms. Smith include housekeeping with a recommendation for two hours of homemaking support each week, for a period of 6 to 9 months, which is estimated to cost between \$1,040 and \$2,262. Thereafter, the cost of housekeeping support will increase or decline depending on the response of Ms. Bahia to the proposed rehabilitation programs.

196 With respect to recommendations by Ms. Smith dealing with facilities in the home, grab bars for the bathroom are recommended at the cost of \$188 for two. Ms. Smith also recommended a bath seat for \$75 because Ms. Bahia has limited standing tolerance.

197 Ms. Smith also reviewed the current medications used by Ms. Bahia, which cost approximately \$220 per annum.

198 Ms. Smith provided the cost for the multidisciplinary pain management program recommended by Dr. Waseem, which is publicly funded through the Medical Services Plan and is available in hospital settings in Vancouver with a wait list for each. In the private sector, multi-disciplinary pain programs cost approximately \$13,300.

199 Vocational counselling was also recommended by Dr. Waseem for the purpose of identifying any reasonable employment alternatives for the plaintiff. Ms. Smith expressed the opinion that based on functional capacity testing, Ms. Bahia was not capable of working on even a part-time basis at this time. In the event that Ms. Bahia's rehabilitation improves to a level where return to work is considered, Ms. Smith would recommend a budget of \$2000 - \$2400 to achieve this purpose.

Expert Evidence Called by the Defendant

200 The sole medical expert called by the defendant was Dr. Osama Gharsaa, who was qualified as an orthopaedic specialist. Dr. Gharsaa prepared his opinion dated October 30, 2019 from an orthopaedic point of view.

201 The care Dr. Gharsaa took in preparing a medical legal report is in question. It is noted that he misspelt her name throughout the text of his report.

202 His opinion was that he could not identify any objective signs of any ongoing orthopaedic or organic impairment that could be attributed to the accident "apart from some self-limiting pain-focused decreased range of motion of her back and, to a lesser extent, her neck with some inconsistencies as described earlier in my report". Dr. Gharsaa diagnosed that the plaintiff suffered "a fractured rib, soft tissue injuries, WADII, at the most of her neck, sprain and strain of her lower back, sprain and strain of her left shoulder with contusion to her chest." These injuries according to Dr. Gharsaa's opinion were caused by the accident, but he could not correlate any subjective vocal complaints with any organic findings.

203 Dr. Gharsaa opined that there was no compelling evidence that she had any pre-existing medical conditions and the injuries as diagnosed were, more likely than not, the result of the accident.

204 Dr. Gharsaa opined that "all of [the soft tissue injuries] usually heal well within three months". He also expected the plaintiff "to have been temporarily disabled for a maximum of three months", and after that he would have expected her to recover extremely well from the injuries sustained in the motor vehicle accident". Further, Dr. Gharsaa opined that "any restriction at this point will be self-inflicted depending on her own perception of pain". The use of the phrase "self-inflicted" was not explained, but is inconsistent with a soft tissue injury that was caused by the subject accident six years earlier and of which continuing pain is an ongoing symptom.

205 Dr. Gharsaa opined that the plaintiff has had sufficient therapy to recover from the injuries sustained in the motor vehicle accident, but the opinion then contains a clear error on p. 11 at para. 11, where the following appears: "I would still recommend that she work on a self-directed active exercise program to her with her conditioning" and then she would be encouraged to

resume "all her pre-accident activities to prevent any further conditioning...". Conditioning is either a positive factor or it is not; Dr. Gharsaa's opinion is confused on this point.

206 Dr. Gharsaa further opines that he does not anticipate or expect any permanent disability as a result of the accident and "she should be able to return to all pre-accident activities including her occupation." He provides no explanation for the long-term hiatus in any medical improvement of the plaintiff.

207 Finally, when asked if any injuries suffered by the plaintiff were outside his area of expertise, his answer is that "[f]rom the orthopaedic point of view, the majority of her complaints are musculoskeletal in nature which is within the scope of my expertise". The exceptions according to the doctor were "headaches, dizziness, and left ear pain which she describes with the neck pain."

208 Plaintiff's counsel noted that an identical paragraph appeared under the heading "Facts and Assumptions" and "Impression and Opinion". Dr. Gharsaa suggested that was because he could not decide where to locate the paragraph which reads as follows:

Examination today failed to identify any radiculopathy or any musculoskeletal pathology or any signs of an ongoing objective orthopedic or organic impairment that could be attributed to the subject motor vehicle accident, apart from some self-limiting pain-focused decreased range of motion in her back and to a lesser extent, her neck, with some inconsistencies as described in my report.

209 Dr. Gharsaa placed this same paragraph as the second paragraph under the heading "Impression and Opinion." Clearly the paragraph is a form of opinion about what is the characterization, from an orthopaedic perspective, of certain facts. But the problem created is that by including this opinion as a statement of facts or assumptions, and repeating the same test in the subsequent opinion, that opinion is always true. Dr. Gharsaa was defensive when this issue was raised and refused to agree that the choice of location for this paragraph was inappropriate.

210 Dr. Gharsaa states that the formulations of his opinions and any conclusions in his report are "based on the material provided to me being accurate and complete". At para. 3, Dr. Gharsaa included "Ms. Baha [sic] followed up with her family doctor who referred her to a pain clinic soon after the accident where she went once." Based on the material provided to Dr. Gharsaa, including the records of Dr. Sohal and records of the Change Pain Clinic from April 30, 2014 to November 12, 2015, the above statement is incorrect. The records of Dr. Sohal and his evidence were clear that on April 24, 2014, Dr. Sohal referred Ms. Bahia to the Change Pain Clinic. Thereafter, she subsequently attended the Change Pain Clinic at least 20 times, not "once" as suggested by Dr. Gharsaa.

211 Continuing on the "Facts and Assumptions", Dr. Gharsaa stated in cross-examination that the

seven items which he included on p. 4 were significant because they included information such as radiological examinations. Dr. Gharsaa acknowledged that he had been provided the records of the Change Pain Clinic which detailed some 20 attendances by the plaintiff at that clinic. Contained in the Agreed Statement of Facts at para. 34 is a statement that Dr. Samer saw the plaintiff at the clinic and ordered a CT scan of the plaintiff's lumbar spine. For whatever reason, this CT scan was not of interest to Dr. Gharsaa.

212 In addition, Dr. Gharsaa did not notice in the records of Dr. Sohal a clinical report dated November 14, 2015 from Dr. Lukasz Soswa, an orthopaedic surgeon who investigated a complaint of lower back pain by the plaintiff using an X-ray.

213 Dr. Gharsaa also found that Ms. Bahia had no pain response on palpation to the neck and back. He was not able to describe the degree of pressure which he used to come to this conclusion. In any event, this finding is contrary to the evidence of the treating physician Dr. Sohal, Dr. Waseem, and the observations contained in the Change Pain Clinic and physiotherapy records referred to in the course of the trial. While this inconsistency is difficult to explain, the conclusion is at odds with other conclusions reached by Dr. Gharsaa concerning his opinion that Ms. Bahia suffered a whiplash injury, which by the time he saw the plaintiff, was clearly chronic.

214 Dr. Gharsaa's practice in opinion writing has become the subject of concerned comment in the cases of *Juelfs v. McCue*, 2019 BCSC 1195 and *Larson v. Bahrami*, 2017 BCSC 2308, where Dr. Gharsaa seemed to provide virtually identical opinions to the case at bar. His opinion was that soft tissue injuries should heal within three months and patients should be told to get back to work. This opinion makes no allowance for chronic pain of the type experienced by the plaintiff and is consistent only with a rigid orthopaedic view of injury held by Dr. Gharsaa. I find Dr. Gharsaa's opinion of little assistance in the case at bar and give it little weight.

Analysis

215 The following chart summarizes the positions of the parties on the various claimed heads of damage.

Head of Damage	Defendant	Plaintiff
Non-pecuniary	\$65,000 to \$80,000	\$125,000 to \$150,000
Past Income Loss	\$22,500 - \$33,750	\$70,277
Loss of Future Earning Capacity	\$0 - \$15,00	\$149,500
Cost of Future Care	\$1,000 - \$3,000	\$23,645.78
Loss of Housekeeping Capacity	Not mentioned in written submissions	\$105,000
Special Damages (agreed)	\$6,642.55	\$6,642.55
Total	\$95,142.55 - \$138,392.55	\$480,065.33 to \$505,065.33

Summary of the Submissions of the Parties

216 The plaintiff submits that she, an immigrant to Canada, long-time Surrey resident and mother of three adult children, was seriously injured in a motor vehicle accident on September 9, 2013 when she was 53 years old. Ms. Bahia has very limited English language skills and gave evidence with the assistance of an interpreter. Ms. Bahia's education is limited to Grade 8 in India and she had some difficulty when giving evidence with complex words and medical concepts even though translated for her.

217 Much of the evidence in this case, particularly the mechanics of the accident where the plaintiff was a front seat passenger in a vehicle transporting her to employment at a blueberry farm, was contained in an Agreed Statement of Facts, marked as Exhibit 1 in this trial. As Ms. Bahia was travelling to work in transport supplied by her employer, she was not eligible for benefits under Part 7 of the *Regulation* by virtue of s. 82 of the *Regulation*. Wage loss, home making, and medical benefits are not provided to Ms. Bahia because of the *Regulation*.

218 The defendants had denied liability for the accident in the pleadings in this action, but shortly before trial the defendant, Ms. Norton, agreed to admit liability provided the action was

discontinued against all other defendants. The action was discontinued against the defendants other than Ms. Norton on January 27, 2020.

219 Following the close of the case for the plaintiff, the defence counsel announced that the claim by the defendant that the plaintiff had failed to mitigate her damages was abandoned.

220 Prior to the accident, the plaintiff was a busy person who worked in seasonal employment, including: working on a ginseng farm near Kamloops following immigration to Canada; processing salmon in a canning plant in the Lower Mainland; blueberry picking and processing, and filling in between work seasons with employment in a supermarket. She cooked and cleaned to a high level in a busy household popular with friends, neighbours, and the company of her children and their friends, all of whom enjoyed the products of her capable culinary skills, particularly samosas. She maintained a significant vegetable garden, the harvest of which was used in her cooking. Flowers were also produced in some abundance.

221 Ms. Bahia loved dancing at weddings and cultural events, and she was a regular volunteer in the temple where she participated in worship and cooking in the community kitchen. Her activities included playing with her grandchildren in parks near her home, and she enjoyed walking in the park when she was not occupied by paid work.

222 Counsel for the defendant spent a good deal of time making submissions about finger tingling or numbness and headaches. No doctor provided a specific opinion about problems with finger tingling or headaches as the cause of the inability of the plaintiff to continue working. Rather, all of the doctors opined that the plaintiff suffered from principally soft tissue injuries to her neck, upper and lower back, torso and left shoulder; which were functionally limiting. There was consistent and unchallenged evidence that Ms. Bahia suffered significant bruising to her left-chest and to both knees in the accident. One rib was broken on the left side.

223 Dr. Waseem discussed, at length, objective findings including muscle stiffness, increased muscle tone, spasm, taut bands and trigger points in various areas of the neck, cervical thoracic and lumbar spine. Crepitus was noted in the lumbar spine on the left side, which led to his opinion that Ms. Bahia suffered a sprain/strain of the cervical, thoracic and lumbar spine with chronic mechanical lower back pain and chronic myofascial pain in the areas of the spine mentioned above.

224 Ms. Bahia followed every medical doctor's recommendation for treatment, including many rounds of painful injections at the Change Pain Clinic.

225 The defendant submits that the Court should reject a recognized medical diagnosis of central sensitization, and hyperpathia should be rejected as "non-sense". If the defendant wished the Court to come to that conclusion, some evidence to that effect should have been presented during this trial. I am reminded that the submissions of counsel are not evidence. No evidence of the sort

required was proffered during this trial. In all of the circumstances of this case, while I find that the plaintiff was something less than a perfect witness, I am not prepared to dismiss the evidence of Dr. Waseem as "nonsense". In any case where his evidence in conflict with the evidence of Dr. Gharsaa, I prefer and accept the evidence of Dr. Waseem and reject the evidence of Dr. Gharsaa.

226 The causation of damages in this case has little or nothing to do with problems with the plaintiff's hands and the plaintiff did not advance a claim based on those problems.

Non-pecuniary Damages

227 Damages for non-pecuniary losses are an attempt at restitution for pain and suffering, loss of enjoyment of life and loss of amenities suffered by the plaintiff and caused by the conduct of the defendant.

228 In assessing non-pecuniary damages, the leading case is *Stapley v. Hejslet*, 2006 BCCA 34:

[45] Before embarking on that task, I think it is instructive to reiterate the underlying purpose of non-pecuniary damages. Much, of course, has been said about this topic. However, given the not-infrequent inclination by lawyers and judges to compare only injuries, the following passage from *Lindal v. Lindal*, supra, at 637 is a helpful reminder:

Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury" (Cooper-Stephenson and Saunders, *Personal Injury Damages in Canada* (1981), at p. 373). In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (*Thornton* at p. 284 of S.C.R.).

[Emphasis removed.]

229 In other words, in assessing non-pecuniary damages, it is not only a matter of comparing the injuries suffered, but also the effect of those injuries on the lifestyle and personality of each person.

230 In *Clark v. Kouba*, 2012 BCSC 1607, the Court stated the following with respect to the law of non-pecuniary damage assessments:

[71] In *Hartnett v. Leischner*, 2008 BCSC 1589, [2008] B.C.J. 2242, Russell J. provides a helpful summary of the law with respect to general or non-pecuniary damages:

[80] The purpose of non-pecuniary damage awards is to compensate the plaintiff for "pain, suffering, loss of enjoyment of life and loss of amenities": *Jackson v. Lai*, 2007 BCSC 1023, [2007] B.C.J. No. 1535 at para. 134; see also *Andrews v. Grand & Toy Alberta Ltd.*, [1978] 2 S.C.R. 229; *Kuskis v. Tin*, 2008 BCSC 862, [2008] B.C.J. No. 1248. While each award must be made with reference to the particular circumstances and facts of the case, other cases may serve as a guide to assist the court in arriving at an award that is just and fair to both parties: *Kuskis* at para. 136.

[81] There are a number of factors that courts must take into account when assessing this type of claim. Justice Kirkpatrick, writing for the majority, in *Stapley v. Hejslet*, 2006 BCCA 34, 263 D.L.R. (4th) 19, outlines the factors to consider, at para. 46:

The inexhaustive list of common factors cited in *Boyd* [*Boyd v. Harris*, 2004 BCCA 146] 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, 2005 BCCA 54 (B.C.C.A.)).

231 The plaintiff submits that she is entitled to non-pecuniary damages for pain and suffering and loss of enjoyment of life. The defendant agrees that the plaintiff suffered soft tissue injuries, pain in her neck, upper back, shoulders and arms, paresthesia in both arms, headaches, aggravation of pre-existing insomnia, depression, anxiety and post-traumatic stress disorder.

232 The combined effect of the plaintiff's physical and psychological injuries is severe. She is either unable, or has a significantly reduced capacity, to enjoy most of the activities she enjoyed pre-accident. She is in a vulnerable physical position, and her psychological symptoms have made it hard for those around the plaintiff to continue supporting her.

233 Each party submitted a selection of cases which provide some assistance in determining the quantum of non-pecuniary damages.

234 The plaintiff put forward *Cumpf v. Barbuta*, 2014 BCSC 1898, *Redmond v. Krider*, [2015] B.C.J. No. 208, *Scelsa v. Taylor*, [2016] B.C.J. No. 1272, *Alafianpour-Esfahani v. Jolliffe*, [2017] B.C.J. No. 813 and *Noori v. Hughes*, [2018] B.C.J. No. 1136.

235 In the *Cumpf* case, the plaintiff was injured in a motor vehicle accident where the defendant made a sudden lane change into the lane already occupied by the plaintiff at a red light. Liability was admitted. The plaintiff reported neck pain, burning pain in both shoulders radiating into her arms, hip pain, and back pain which radiated into her right-leg.

236 One of the significant issues in the *Cumpf* case was the argument made by the defendant that the plaintiff still suffered from injuries caused by a prior accident. Eventually the Court decided not to give effect to that submission. It was of some interest that the plaintiff in *Cumpf* scored high in the Pain Disability Index and the Pain Catastrophizing Scale. The social and family life of Ms. Cumpf had also changed in a negative fashion as a result of the injuries and chronic pain experienced.

237 Ms. Bahia, in somewhat similar circumstances, also scored high on the Pain Catastrophizing Scale, Pain Self-Efficacy Scale and the Central Sensitization Inventory indicating "severe central sensitization". These findings led Dr. Waseem to opine that "[a]lso notable on examination was hypersensitivity probably secondary to central sensitization. Standardized disability questionnaires that she completed at the conclusion of the assessment revealed that her response to pain has become amplified due to central sensitization, poor self-efficacy and catastrophic thinking" (Exhibit 9, Tab 2, Dr. Waseem's report at p. 12, para. 450).

238 In the *Cumpf* case, the plaintiff sought an award of non-pecuniary damages of between \$150,000 and \$175,000. The defence submitted the award should be between \$75,000 and \$100,000. The Court concluded that the appropriate award for non-pecuniary damages should be \$150,000.

239 *Redmond* is a case where both liability and damages were in dispute in a motor vehicle accident case. The plaintiff had been in two prior accidents and the third accident occurred in March 2010. She continued to work for two months after the accident. Essentially, the evidence indicated she was always employed despite the accidents.

240 The Court concluded that the defendant was wholly responsible for the accident after making a left-hand turn into the plaintiff's vehicle. The plaintiff advanced expert evidence that the defendant's negligence caused persistent somatic symptom disorder for which the expert prescribed a referral to a multi-disciplinary pain clinic. Dr. Shuckett, a rheumatologist, was also

called by the plaintiff. She diagnosed the plaintiff suffering from headaches, neck injury into her shoulder blades and mechanical low back pain, sacroiliac pain, and fibromyalgia. This latter condition was said to have been triggered by the accident.

241 In relation to non-pecuniary damages, the plaintiff submitted that the appropriate range of damages was between \$110,000 and \$200,000. The defendant submitted that the appropriate award was \$60,000, but the Court rejected this submission because it was based on two cases, one of which involved a significant credibility issue involving false statements in the plaintiff's tax returns and the second which involved a split in liability. The plaintiff received an award of \$150,000 as an appropriate award for pain and suffering.

242 The Court also reviewed the other cases cited by the plaintiff.

243 The defendant put forward *Dhanji v. Holland*, 2015 BCSC 1351, *Suc v. Skelton*, 2019 BCSC 1765 and *Sharma v. Chui*, 2019 BCSC 2115.

244 The *Dhanji* case involved a 39-year-old pedestrian walking in a marked cross walk who was struck by a vehicle on November 22, 2011, and liability was admitted. The plaintiff in that case claimed injuries, including to her hips, soft tissue injuries to her mid-back and upper back, and pain in her low-back with chronic pain syndrome. Ms. Dhanji had been involved in three motor vehicle accidents between 1992 and 1997, but asserted she had no symptoms attributable to those accidents for the ten years preceding the pedestrian incident. She had mild mid-level degenerative changes in her cervical and thoracic spine and back tightness, which was attributed to work-related "wear and tear" for several years before the accident. At the time of the accident, the plaintiff was a seven-year employee of the RCMP DNA laboratory where she worked as a DNA analyst.

245 In 2010, the plaintiff suffered a severe ankle sprain while hiking, and in January 2012, her ankle was operated on by an orthopaedic surgeon and she was off work for eight weeks after the surgery. Except for the time off after the surgery, the ankle injury and surgery did not prohibit Ms. Dhanji from working as a DNA analyst.

246 Although the plaintiff was away from work at the DNA lab until March 2012 and she was required to work reduced hours to deal with mid and upper back pain, she was able to work 40 hour weeks by November 2012. At that time she was involved in an active rehabilitation program, but mid-back pain still troubled her.

247 The plaintiff submitted that non-pecuniary damages should be awarded in the amount of \$120,000. The defendant presented cases where damages had been awarded between \$50,000 and \$60,000. The Court awarded \$75,000.

248 The clear distinction between *Dhanji* and the case at bar is that Ms. Dhanji has continued to

work and will continue to work, as assumed in that case, until she is 65. Ms. Bahia has not worked since the date of the accident in 2013 and, on the evidence, I am satisfied Ms. Bahia suffered a more serious and debilitating injury.

249 The *Suc* case involved a plaintiff who had been working in heavy labour jobs in an industrial metal fabricating plant. His vehicle was struck on the right side in an accident in 2013. He eventually attended a walk-in clinic about three weeks after the accident, although he was experiencing pain immediately after the accident. About a month after the accident, his doctor recommended only light work duties at that time. He continued to be employed for about three weeks when he left work and obtained Employment Insurance which continued until September 2014. Mr. Suc was treated with physiotherapy for about five months and went through a work hardening program and an exercise program. While he continued to see his doctor on an occasional basis, he continued to work.

250 He continued to work for his former employer from 2014 to 2017 on light duties at a reduced number of hours. In 2017, Mr. Suc applied to become a care giver; work which his doctor thought he was capable of performing.

251 Dr. Hershler, a physiatrist, examined Mr. Suc in 2014, 2015 and 2016. The doctor diagnosed a mechanical injury to the lower region of the thoracic spine and a disc bulge at L5-S1; injuries which caused pain on flexion and extension of his spine.

252 At the time of trial, Mr. Suc testified that his back pain was not too bad and that pain was intermittent. He managed the pain with medication, ice packs and rest.

253 In 2017, Mr. Suc began working as a support worker assisting persons with disabilities in a residential setting on a schedule which included evening and weekend work. He got some weekdays off work as a care giver, during which he took shifts with his former employer. In *Suc*, the Court concluded that while Mr. Suc suffered a serious injury which had a significant impact on his life, he was able to "manage his day to day pain reasonably well" (*Suc* at para. 45).

254 In the case at bar, the plaintiff has not worked since the date of the accident in 2013 due to injuries caused by the accident. Her prognosis is that she will be unable to return to work. The *Suc* case deals with a different type of injury which allows, albeit with some pain, the plaintiff in that case to continue working and is, therefore, distinguishable from the case at bar.

255 The *Sharma* case involves a plaintiff who was a passenger in a minivan struck from behind by the defendant's vehicle. Liability was not disputed. Prior to the motor vehicle accident, Ms. Sharma had been injured in a work place accident and her evidence concerning being cured since that accident was not accepted. That said, the plaintiff had fully returned to work since the accident. She sought \$90,000 to \$120,000 for non-pecuniary damages and the defendant

submitted that damages under that heading should be limited to \$60,000. The Court awarded \$80,000 in damages, making a deduction for prior injuries and an unrelated knee injury.

256 No such reduction would be appropriate in the case at bar. Further, as before, the plaintiff in the case at bar has not and in all likelihood, will not return to work, unlike Ms. Sharma. The *Sharma* case is distinguishable.

257 Having taken those authorities into account, including the submissions of counsel and the cases referred to directly therein, as well as the unique evidence heard in this trial, I conclude the plaintiff continues to suffer from a chronic pain condition which significantly affects her day-to-day activities. She remains disabled from performing any work-related activities and any activities performed around the home, except light tasks. Her medical condition affects her family, marital and social relationships. It must be remembered that the accident in this case occurred in 2013, and there has been no significant recovery nor cessation of pain. This Court concludes that the appropriate award of non-pecuniary damages in this case is \$130,000.

Past Loss Income

258 The case of *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para 30 states that past wage loss is "actually a claim for loss of earning capacity, that is, a claim for the loss of the value of the work that the injured plaintiff would have performed but was unable to perform because of the injury."

259 Ms. Bahia has not worked since the accident occurred on September 9, 2013. The evidence of T4 income was presented from 2007 to 2013 to demonstrate past income. All past income was apparently earned at minimum hourly rates. The table below reflects the incomes listed on Ms. Bahia's T4 slips and the average of minimum wages during the relevant years as stated in Exhibits 10 and 11, to obtain the average number of hours worked.

	Year	Average Hourly Rate	T4 Income	Number of Hours
1	2007	\$8.00	\$9,953.00	1244
.				
2	2008	\$8.00	\$9,697.00	1212
.				
3	2009	\$8.00	\$7,731.00	966
.				
4	2010	\$8.00	\$6,582.00	823
.				
5	2011	\$8.63	\$11,726.00	1359
.				
6	2012	\$10.00	\$8,134.00	813
.				

260 In 2013, the plaintiff's T4 income was \$4,226 and the hourly minimum wage was \$10.25. From the second half of 2013 until 2019, there were a number of increases in the minimum hourly wage; which changes are set out in Exhibits 10 and 11 in this trial. In particular, the minimum hourly wage was increased: on September 15, 2015, from \$10.25 to \$10.45 per hour; on September 15, 2016, from \$10.45 to \$10.85 per hour; on September 15, 2017, from \$10.85 to \$11.35 per hour; on June 1, 2018, from \$11.35 an hour to \$12.65 per hour; and on June 1, 2019, from \$12.65 to \$13.85 per hour (the rate at the time of trial).

261 None of these increases were included in the submissions made by the defendant's counsel. It would be unfair to leave out these increases in calculating the losses incurred by the plaintiff. The annual average hours worked is 1070 hours, which involved relying on an average of the annual hours worked between 2007 and 2012. Taking into account the aforesaid wage increases and using that calculation consistently, Ms. Bahia's gross income loss from September 2013 to the time of trial is approximately \$77,000.00. Given the low income she received on an annual basis, it is unlikely that tax liability would have been subtracted from her earnings.

262 The defendant, in written argument, submitted that because the plaintiff "mentioned" numbness and tingling in her hands to a doctor at a hospital in 2017, a 50% reduction in this award of past wage loss is appropriate.

263 The evidence presented by Dr. Sohal and Dr. Waseem was that the plaintiff was unable to work on a full-time or part-time basis as she had formerly done because of the injuries to her neck and back caused by the accident. This was without reference to any issue with numbness or tingling in her hands. Dr. Waseem's opinion was that Ms. Bahia had suffered injuries due to the accident, including sprain/strain soft tissue injury to the cervical thoracic and lumbar spines; chronic mechanical lower back pain [arising from the activation of pre-existing asymptomatic degenerative changes and destabilization of the ligaments and joints of the lower back]; and chronic myofascial pain of the cervical, thoracic and lumbar spines. Dr. Waseem also opined that Ms. Bahia suffered a hyper-sensitivity/hyperpathia, secondary to the physical or physiological process of central sensitization, a condition carefully explained by him during his evidence and for which a definition is provided at p. 16 of his report. It was Dr. Waseem's conclusion that "it is unlikely that she will be capable of returning to her pre-accident employment" and that regardless of what limited improvements there might be, "[h]er physical condition would be considered chronic and unremitting and, therefore, permanent".

264 Shannon Smith, the functional capacity evaluator, opined that Ms. Bahia did not meet the demands for constant standing/weight-bearing or the significant demands of forward reaching combined with neck flexion. Ms. Bahia was also not able to meet lifting demands. Ms. Smith opined that the plaintiff is not presently capable of working on a part-time or full-time basis.

265 The evidence aforesaid was not seriously challenged nor was any contrary evidence called by the defendant. There is no basis to reduce past wage loss on the basis of the "mention" by the

plaintiff of a medical condition which was not in the course of the evidence either investigated or diagnosed by any medical practitioner.

266 Based on the evidence referred to above in the submissions of counsel, I am satisfied that there should be no discount as claimed by the defendant and find the past wage loss of the plaintiff in this case is \$77,000.00.

Loss of Future Earning Capacity

267 Both counsel cited the passage from the case of *Perren v. Lalari*, 2010 BCCA 140 at para. 32 which reads:

"A plaintiff must always prove, as was noted by Donald J.A. in *Steward*, by Bauman, J. in *Chang* and by Tysoe, J.A. in *Romanchych*, 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*, 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*."

268 The approach of the defendant focuses almost entirely on numbness and tingling that the plaintiff referred to in cross-examination. It was agreed by counsel for the defendant that there was no evidence of the source of the variously described numbness, tingling, and pain in the plaintiff's hands, particularly her left-hand. The plaintiff was asked during cross-examination what she believed caused the numbness and tingling. Her answer, of course, was well beyond her educational capacity as she had not been educated to a level that would render her capable of offering an opinion on what had caused the pain and other problems in her hands.

269 The defence submits that even if the plaintiff did not suffer the injuries as described by Dr. Waseem above, the issue with her hands would have prevented her from working. This submission is contrary to the evidence because the injuries that prevent the plaintiff from working have been proven. The cause of the numbness and tingling in the plaintiff's hands was only the subject of her speculative evidence introduced during cross-examination. It was also the evidence of the functional capacity evaluator that the rubbing or massaging of the plaintiff's hands was connected with neck pain, the source of which was from the accident.

270 This Court is satisfied that the evidence is clear that Ms. Bahia will continue to lose income in the future because of the injuries suffered in the accident and the chronic pain which those injuries have produced.

271 I have relied on the decision in *Reilly v. Lynn*, 2003 BCCA 49 at para. 101 for the

proposition that the "valuation of the loss of earning capacity may involve a comparison of what the plaintiff would probably have earned but for the accident with what he will probably earn in his injured condition." The Court must also take into account the overall fairness and reasonableness of the award when assessing, but not calculating on a mathematical basis, losses. In the defendant's submission, an assessment of future wage loss would be based on minimum wage hourly rates which for post-trial 2020, they state would be approximately \$15,000. Without any further increase in the minimum wage, the plaintiff seeks to have the Court assess those damages until Ms. Bahia reaches the age of 70; the total amount of damages was submitted to be \$149,522 with a portion of 2020 added.

272 The approach to this case, that the minimum wage would not rise between 2020 and 2029, is unlikely and would represent a negative contingency. However, it may be that Ms. Bahia would also stop working earlier than her 70th year. Her health is not perfect and the physical effort exerted in a bulk of her work is significant.

273 Based on a review of the submissions of counsel and the cases cited therein, the loss of future income in this case is awarded in the amount of \$125,000.

Loss of Housekeeping Capacity

274 The plaintiff in the case at bar has brought a claim for loss of housekeeping capacity, both past and future. In the written submissions of the defendant, the defendant relies in respect to this claim on the decision in *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 168, where the following appears:

"When housekeeping services have been provided by other household members a claim for compensation must be scrutinised carefully. Although grievous injury need not be established, the court should ask whether the services went above and beyond the ordinary give and take to be expected in a home and were required by the plaintiff's injuries or would have been performed in any event. A relatively minor adjustment of duties within a household will not justify a discrete award under this head of damages: *Dykeman, Campbell v. Banman*, 2009 BCCA 484."

275 In the case at bar, at the time of the accident, the plaintiff was the only person who was providing cooking and housecleaning services to the rest of the household. Later, a new daughter-in-law took over some of those duties after careful tutelage by her mother-in-law, the plaintiff. The evidence before the Court was that the plaintiff required two hours a day for housework. Ms. Smith, the capacity evaluator, estimated the annual housekeeping costs would be \$2000 - \$3000 per year for costs for work provided by the plaintiff of approximately two hours per week. I'm satisfied that Ms. Smith has provided an accurate assessment of the housekeeping costs, which results in a total of \$52,500 for the period up to Ms. Bahia's 75th birthday, assuming 2 hours of support per week.

Cost of Future Care

276 With respect to the cost of future care, the defendant and the plaintiff verge significantly. The parties agree that a multidisciplinary pain clinic and kinesiology are treatments that the plaintiff should receive. With respect to the kinesiology treatments, these are detailed at a cost of \$1890 in the plaintiff's submissions. No objection was made to these costs in the defendant's submissions. That amount is awarded.

277 Dr. Gharsaa agreed that the claim for referral of the plaintiff to a multidisciplinary pain clinic was reasonable. Both parties agreed the clinic would be partially covered by MSP in British Columbia, but there is a significant waiting period attached. With respect to the private subscription to the pain management program, the cost is \$13,300 as per the plaintiff's submissions. It is not clear how the defendant arrives at a value of \$2,000 for that program. In the circumstances of this case, I am assessing the cost of the multidisciplinary pain management program at \$9,400. It is clear the plaintiff has the capacity to exercise at home with the equipment that has been provided by her family, including a treadmill and stationary bicycle. I also do not find that an award for occupational therapy is necessary in the case at bar, but I do award the claims for grab bars for \$188 and a bath seat for \$75 as recommended as a reasonable safety feature for use by the plaintiff. The plaintiff's claim for \$4,242.70 for the cost of medications going forward is awarded as reasonable.

278 The total cost of future care damages awarded is \$15,795.70.

Special Damages

279 Ms. Bahia's claim for special damages has been agreed as between the parties at \$6,642.55. That amount will be the award for special damages in this case.

Summary

280 In summary, damages are awarded as follows:

Non-pecuniary Damages	\$130,000.00
Past Loss of Income/Earning Capacity	\$77,000.00
Future Loss of Earning Capacity	\$125,000.00
Loss of Housekeeping Capacity	\$52,500.00
Cost of Future Care	\$15,795.70
Special Damages	\$6,642.55
Total	\$406,938.25

Costs

281 Finally, the plaintiff is entitled to her costs of this action as she was successful at trial. Unless there are circumstances unknown to the Court, the plaintiff is entitled to her costs assessed on Appendix B, Scale B, as a matter of ordinary difficulty, payable forthwith.

K.W. BALL J.

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