

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Baughan v. Baughan*,  
2023 BCSC 938

Date: 20230602  
Docket: M192634  
Registry: New Westminster

Between:

**Paramjit Singh Baughan**

Plaintiff

And

**Manjit Baughan, Els Transport Ltd., Nissan Canada Inc.,  
and Jenny Mook Lan Wong**

Defendants

Before: The Honourable Justice Edelmann

## **Reasons for Judgment**

Counsel for the Plaintiff:

B.J. Yu

Counsel for the Defendants:

G. Christofferson

Place and Date of Trial/Hearing:

New Westminster, B.C.  
January 9–10, 12, and 17–19, 2023

Place and Date of Judgment:

New Westminster, B.C.  
June 2, 2023

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**Introduction**

[1] This action arises out of a motor vehicle accident that occurred in Langley, BC, on August 2, 2015 (the “MVA”). Mr. Baughan was the passenger in his cousin’s vehicle, when the vehicle collided with Ms. Wong’s vehicle after a lane change. Liability is admitted, and the defendants accept that Mr. Baughan was injured. The only issues to be decided are the extent of the injuries caused by the MVA, and the damages resulting from those injuries.

**Injuries and Causation**

[2] At the time of the collision, Mr. Baughan describes being thrown forward and back in his vehicle but does not recall hitting his head but says the force was strong enough to have broken his sunglasses. He did not seek medical attention at the time, and returned to his work as a long-haul truck driver.

[3] Four days after the MVA, Mr. Baughan was driving a transport truck in Alberta when it was sideswiped by an oncoming car. Mr. Baughan says that the incident in Alberta was relatively minor, and that he was not injured. His description of the incident in Alberta was not inconsistent with the photographs of the damage. In any event, the defendants accept that even if the incident in Alberta contributed to Mr. Baughan’s injuries, that the injuries are indivisible on the evidence before me.

[4] Mr. Baughan took 1 or 2 weeks off work and went back to work at the end of August. He says he found the trips to be very difficult as he had pain in his upper and lower back, and had to take a break from driving every couple of hours. The upper back pain resolved after a short while, but the lower back pain continued to bother him. A few months after the MVA, Mr. Baughan’s back pain began to radiate to his right leg.

[5] Mr. Baughan had a long-standing issue with his knee which I will address in more detail below. He had been taking various forms of pain medication for his knee, and continued to take those to deal with the pain in his back. Since the MVA, he has taken a wide range of pain medication, including by direct injection into his spine.

Currently, he takes Gabapentin 2 to 3 times a day and Tylenol #3 once a day in addition to other medication.

[6] On October 24, 2016, Mr. Baughan was tightening the belt on his truck. It was raining and his hand slipped on the bars, and he fell. He hurt his shoulder and aggravated his back. He says his back pain was aggravated for two weeks before it went back to where it was prior to the fall. He did, however, take several months off work after the October 24, 2016 fall. He went to India in November 2016 and returned in March 2017.

[7] Upon his return from India, Mr. Baughan worked in April and May 2017 before there was an acute exacerbation of his back pain. He could not stand or sit and was unable to walk by himself. During this period, he could not go to the bathroom by himself, requiring assistance from his brother or his wife. Mr. Baughan was ultimately given an injection into his spine which helped a little, but the pain went back to the baseline after 2 or 3 months.

[8] After several attempts to secure a referral to a neurosurgeon, Mr. Baughan saw Dr. Melissa Nadeau in July, 2018. She identified an ossified disc herniation in his lower spine. In October 2018, Dr. Nadeau performed a discectomy in Mr. Baughan's lower back.

[9] There was some improvement after the surgery, but by April 2019, Mr. Baughan experienced a severe deterioration in his condition. Imaging showed a recurrent disc herniation, and Dr. Nadeau performed a second surgery in October 2019. It was evident that there had been significant scarring from the first surgery which was compressing the nerve root. Mr. Baughan did have some success after the second surgery. The pain in his right calf lessened although he still had pain in the rest of his leg if he sat or stood too long.

[10] The last time Dr. Nadeau met Mr. Baughan was in July 2020, and she was of the view that further surgeries would not be of assistance. It would appear Mr. Baughan's body reacts to surgery by creating scar tissue which would make

further surgeries counter-productive. Another team at the pain management clinic took over his care.

[11] At various points, Mr. Baughan has undertaken various therapies as recommended by his treating practitioners including physiotherapy, active rehabilitation, and chiropractic treatments. He pursued exercises like going to the pool, going to the gym, and lifting weight. He currently exercises at home doing bending and stretching exercises. Mr. Baughan says that he can't lift weight without affecting his back, that he can't bend without aggravating his pain and cannot stand or sit for too long. He says he wakes up 2 or 3 times a night due to pain.

### **Experts**

[12] The plaintiff and the defendant each tendered expert opinion evidence with respect to the injuries. The defendants called Dr. Adam Sidky, an orthopaedic surgeon while the plaintiff called Dr. Harpreet Sangha, a physiatrist and Mr. Jeff Padvaiskas, an occupational therapist who performed a functional capacity evaluation. I also heard fact evidence from two of Mr. Baughan's treating physicians: his long-time family physician Dr. Jagtar Rai, and Dr. Melissa Nadeau, the neurosurgeon who performed the two surgical procedures on his spine.

[13] Both Drs. Sidky and Sangha agree that the MVA caused the injury to Mr. Baughan's lower back from which he continues to suffer. Although the fall from the truck in 2016 may have aggravated the injury, it would appear clear that the underlying cause of the injury was the MVA. While there was some disagreement about the prognosis for Mr. Baughan, it would appear evident that full recovery is unlikely. Dr. Sidky is "hopeful" that additional core-strengthening exercises could improve Mr. Baughan's circumstances but concedes that it is unlikely Mr. Baughan will ever experience a complete resolution of his symptoms. This is consistent with the other medical evidence before me.

**Prior Injury to Knee**

[14] In 2008 Mr. Baughan fell off a trailer, and injured his back and left knee. It would appear the back issues resolved by around 2010, but the knee continued to be a serious issue for many years. His knee would “lock” and leave him in substantial pain. Between 2009 and 2012, Mr. Baughan underwent three surgeries on his knee without resolution of the underlying issue. He did not work between September 2008 and June 2014, receiving support from WorkSafeBC until 2012 when he was found to have a permanent partial disability and awarded around \$10,000. Although WorkSafeBC continues to pay for his pain medication, Mr. Baughan stopped receiving a wage supplement after 2012.

[15] WorkSafeBC sent Mr. Baughan for re-training, which included an English class in late 2013. Mr. Baughan says he only attended the class once, then went to India in November 2013. His explanation was that he was in too much pain to sit through the class. When he went to India, Mr. Baughan says he saw a doctor, who he described as not a “regular doctor” but a “natural doctor.” The “natural doctor” knicked his knee in many places and took some blood out. He says that after this procedure, his knee stopped locking. Mr. Baughan came back to Canada and he began working.

[16] I have serious concerns with the reliability of Mr. Baughan’s testimony about his knee for a number of reasons. Even setting aside the complete lack of documentary evidence related to the “natural doctor” in India or the nature of the procedure in question, Mr. Baughan’s version accords neither with his medical records nor his own conduct. Dr. Jagtar S. Rai has been Mr. Baughan’s family doctor for some 20 years. In April 2014, shortly after his return from India, Mr. Baughan reported that his knee was “as painful as ever”, and Dr. Rai observed the knee to be swollen. Mr. Baughan both directly and through Dr. Rai continued to represent to WorkSafeBC that his knee was locking and was disabling him in 2016. As noted, WorkSafeBC has continued to cover the cost of his pain medication up to the time of trial on the basis of reports from Dr. Rai that Mr. Baughan continues to

suffer from his knee injury. Dr. Rai confirmed in his testimony that the knee continues to be an ongoing issue for Mr. Baughan.

### **Past Loss of Income and Loss of Earning Capacity**

[17] The principles applicable to a claim of past lost earning capacity are the same as the principles applicable to a claim of future lost earning capacity: *Grewal v. Naumann*, 2017 BCCA 158 [*Grewal*] at para. 45, citing *Smith v. Knudsen*, 2004 BCCA 613 at para. 29. The plaintiff must establish:

- (i) impairment of earning capacity; and
- (ii) a real and substantial possibility of an event resulting in a loss.

See *Grewal* at para. 48.

[18] While in many cases the actual lost income will be the most reliable measure of the loss, it is not the actual lost income but the lost capacity which is compensable (see *Ibbitson v. Cooper*, 2012 BCCA 249 at para. 19). That being said, compensation for past loss of earning capacity is to be based on what the plaintiff would have, not could have, earned but for the injury that was sustained: *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at para. 49.

### **Assessing Without-MVA Income**

[19] There are significant challenges in trying to assess the extent of Mr. Baughan's actual income in the years since 2014, as he says he falsely inflated his expenses to reduce his income on his tax returns. The challenges this creates for him were aptly summarized in *Moini v. Liang*, 2016 BCSC 702:

[73] Mr. Moini has created difficulty for himself in the prosecution of this case by filing false income tax returns. Failure to report income on tax returns does not preclude an award based on actual income, although it does present the plaintiff with challenges of proof of what the actual income was: *Iannone v. Hoogenraad* (1992), 1992 CanLII 1630 (BC CA), 66 B.C.L.R. (2d) 106 (C.A.). Mr. Moini filed false returns so as to benefit himself financially. He has the burden of marshalling clear, convincing and cogent evidence of loss. I have the task of scrutinizing the evidence with care. In some cases, a

claimant's word on oath is sufficient to discharge the burden of proof of loss. But when, as here, there is a demonstrated track record over a number of years of a willingness to lie to the tax authorities for financial gain, a claimant like Mr. Moini is hard-pressed to clear the hurdle.

[20] Mr. Baughan has presented a large volume of documents to try to support various conclusions about the amounts he was actually earning during the relevant years. I accept that many of those documents, such as the receipts, pay stubs and trucking logs, may well be reliable. Unfortunately, Mr. Baughan is either a very poor or a very selective record-keeper. For example, there are no trucking logs and very few other supporting documents for the crucial period between February and August 2015, which is the only period between 2005 and the MVA when Mr. Baughan says he worked the 70 hours per week he claims is "full time".

[21] Mr. Baughan's own evidence about was remarkably devoid of details about which expenses set out on the tax returns were false and which were genuine. In cross-examination, he accepted the misrepresentation was mainly in relation to minor things like claiming personal gas receipts as a business expense. In submissions, plaintiff's counsel seeks to have me accept that the misrepresentations were much greater. For example, on his 2021 tax return, Mr. Baughan claimed a net business income of around \$36,000 having worked 6 or 7 months in total. His counsel presented a series of calculations based on what he submits were reasonable expenses, coming to an actual net income of some \$93,000. For example, counsel seeks to have me conclude that "management and administration fees" of \$15,705.20 claimed by Mr. Baughan in 2021 were false. The problem is that Mr. Baughan provided no testimony on that issue. To the contrary, he said that in 2021 he declared a higher income than in previous years because he was applying for a loan. In cross-examination, he said he "didn't add any extra expenses in 2021".

[22] Mr. Baughan appears to see it as the role of this Court to review a mass of incomplete and disorganized documents to cobble together an estimate of his actual income. I disagree. It is Mr. Baughan who bears the onus of establishing his losses, and any conclusions to be drawn about his actual income from the documents ought to have been put to Mr. Baughan. Notably, Mr. Baughan has not even testified that



the receipts or other documents before the court provide a complete picture for any given time period. In my view, little purpose is served in the exercise proposed by plaintiff's counsel of wading through an incomplete collection of receipts.

[23] Even if I had a reliable indication of his level of work in 2015, I do not find that the few months between February and the end of July 2015 provide a reliable baseline for Mr. Baughan's capacity for consistent work on an annual basis. While some of his logs do confirm his ability to drive long hours, he also regularly travels to India and takes time off for other periods during which he does not work.

[24] The only other evidence before me on this issue is the information in the economist's report about the median wage for transport truck drivers of Mr. Baughan's age in BC. While this might provide some indication of his expected earnings, I also see significant deficiencies in this evidence. There is no evidence before me of the range of truck drivers included in the category or the variation in salaries. There is also no evidence of whether Mr. Baughan is representative of truck drivers in his age group. Presumably, a significant proportion of 50-year-old truck drivers would have decades of full-time experience which would be reflected in their salary. Although Mr. Baughan has been a truck driver since 2005, he only drove for two or three years before injuring his knee. He has worked somewhat sporadically over the past few years since the MVA, but not with a consistent record of full-time driving. There is no evidence before me as to whether this is representative of the drivers in his age group.

[25] I will note that it is evident in reviewing his driving logs and in the description of his work that Mr. Baughan is an experienced long-haul truck driver. He has consistently returned to that work in the years since the MVA, even committing to a lease on a truck and trailer.

[26] Ultimately, while I accept that the average earnings for truck drivers in BC provide some indication of Mr. Baughan's earning capacity, I also approach the number provided with some caution. Before applying contingencies, I find that Mr. Baughan has established a baseline income of 80% of the median salary for

truck drivers in the relevant years. While this may appear arbitrary and his baseline income may in fact be higher, the onus is on Mr. Baughan to present cogent evidence of the nature of his losses. It is not up to the defendants to compensate for deficiencies in the plaintiff's case.

### **Work History**

[27] I accept that there were periods of time when Mr. Baughan was unable to work as a truck driver due to the injury from the MVA, although those absences are also complicated by other factors. Following the August 2, 2015 MVA, he made one trip during which he was involved in the Alberta accident, after which he was off work for two weeks and then returned back to work. He says he stopped work between November of 2015 and January of 2016. A portion of this time, Mr. Baughan's truck was undergoing repair for damage from the Alberta incident. He then subsequently worked from February of 2016 to October 24 of 2016, when he fell from his truck injuring his shoulder and aggravating his back pain. He travelled to India between November of 2016 and March of 2017. In my view, this period is more reasonably attributable to the workplace injury. I do accept, however, that his shoulder had largely recovered and the back pain had returned to the post-MVA baseline by April 2017, when he tried to return to work. I find that in the period of time from May of 2017 until his initial meeting with Dr. Nadeau his back symptoms were clearly becoming aggravated to the point where two spinal surgeries had become necessary. I also find that he was unable to work in the period between the surgeries and March of 2021, when he returned to driving. He says he worked from April to October 2021. In 2022, he worked again from April to October, missing a month or so between June and July.

[28] In my view, there are two interrelated factors to consider in applying a negative contingency to the past wage loss. The first is that throughout this period, Mr. Baughan continued to suffer from a knee injury which he represented to WorkSafeBC as disabling. I find there to be some likelihood that even without the MVA, the knee injury would have prevented Mr. Baughan from driving full-time, year-round. The second factor is that Mr. Baughan does not have an established record

of full-time, year-round employment in almost 20 years. In my view, there is some likelihood that Mr. Baughan would have taken time off, including to travel to India for extended periods, even if he had not been injured in the MVA. Taking both these factors into consideration, I find that a negative contingency of 25% is appropriate, in particular in the context of the uncertainty surrounding the applicability of the proposed median wage to Mr. Baughan’s circumstances.

June–December 2017 (7/12)	\$28,592.20
2018	\$51,193.60
2019	\$54,341.60
2020	\$57,398.40
2021 (5/12)	\$24,318.00
2022 (6/12)	\$31,238.00
	\$247,081.80

Applying a 25% contingency, I find that Mr. Baughan has established a past loss of earning capacity of \$185,311.35, subject to the applicable tax deductions.

**Future Capacity**

[29] The defendants seek to impute an income earning capacity of \$25,000 over past years to Mr. Baughan. They argue that the loss going forward given his substantial injuries is best compensated on a capital asset basis of approximately five times yearly earnings, assuming 15 years of work until age 65, and discounting for negative contingencies. The defendants would discount the \$125,000 to \$100,000. I agree with the defendants that given the limited employment history, and lack of accurate records relating to income that the capital asset approach is appropriate. I do not, however, accept that Mr. Baughan’s earnings without injuries from the MVA would have been below minimum wage. As noted above, he is an experienced truck driver, and has consistently demonstrated his ability and willingness to return to that work when he is able. If one starts with a baseline annual income for 2022 of \$62,476 ( $\$78,095 \times 0.8$ ), five years of income would be \$312,380 before applying negative contingencies. For the reasons set out above, I find that a negative contingency of 25% should be applied to that figure, and I will therefore award \$234,285 in future loss of earning capacity.

[30] I note that taking an earnings-based approach, as suggested by the plaintiff, would result in numbers in a similar range. I find it to be a reasonable approximation on the evidence before me that Mr. Baughan will be capable of earning about half his baseline income (\$31,238), which is slightly below minimum wage. In my view, he may do this either by working half the year as he has done in 2021 and 2022, or by finding alternate employment. His presumptive annual loss would therefore be of \$31,238. Using the present value multiplier of 10.269 for a loss to age 65 gives \$320,783.022, or \$240,587.26 with the 25% negative contingency applied, which is well within the range arrived at above using a capital asset approach.

### **Housekeeping**

[31] Mr. Baughan testified that he was responsible for the housework prior to the MVA once he had gotten his knee fixed. He says that it would take him 1.5 to 2 hours per week to mow the lawn and do yard work. He says since the MVA, he only mows the lawn 2 or 3 times during the summer and that otherwise his wife does it. As I have noted elsewhere in these reasons, I find the evidence about Mr. Baughan's purported full recovery from his knee injury to be at best equivocal.

[32] I accept that there were periods during which certain outdoor tasks would have been more difficult, if not impossible for Mr. Baughan to perform as a result of his injuries from the MVA, in particular when he was recovering from surgery. Outside those periods, the scope of Mr. Baughan's inability to perform household chores is less clear. Therefore, while I accept that some housekeeping tasks may be more difficult than they would otherwise have been but for the MVA, I find the issue is more appropriately addressed in the context of non-pecuniary damages. I will therefore award \$2,000 in loss of housekeeping capacity for the periods when Mr. Baughan was effectively incapacitated, and will consider the impact of the injuries on housekeeping capacity more generally in the context of non-pecuniary damages.

### Non-Pecuniary Damages

[33] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities. In *Stapley v. Hejslet*, 2006 BCCA 34, the Court of Appeal outlined the factors to be considered when assessing non-pecuniary damages including the age of the plaintiff; nature of the injury; severity and duration of pain; disability; emotional suffering; and loss or impairment of life. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188–189.

[34] There is no question that the MVA had a significant impact on Mr. Baughan's life. He has been through two back surgeries, and is unlikely to ever find lasting relief from the chronic back pain caused by his injuries.

[35] The defendants point to a number of cases for awards made in relation to chronic back pain (*Domijan v. Jeon*, 2018 BCSC 1988 (\$100,000); *Brown v. Ponton*, 2022 BCSC 2248 (\$115,000); *Chernichen v. Mundy*, 2022 BCSC 1704 (\$110,000); *Sawires v. Paris*, 2021 BCSC 240 (\$110,000); and *Thompson v. Masse*, 2021 BCSC 159 (\$120,000)). I note that none of the cases cited by the defendants involved spinal surgery, much less two surgeries.

[36] The plaintiff submits that the appropriate award for non-pecuniary damages is \$200,000, relying on *Khashei v. Pirro*, 2020 BCSC 1048 in which the plaintiff also underwent two spinal surgeries. While I accept that the situation in *Khashei* is more similar to that before me, I note that the psychiatric injuries were much more severe than in Mr. Baughan's case. Mr. Baughan also concedes that some allowance should be made for the fact that he suffered from chronic pain, albeit in his knee, prior to the MVA.

[37] Taking all the circumstances into consideration, I find that an award of \$170,000 for non-pecuniary damages is warranted given the gravity of the back

issues Mr. Baughan has faced, the chronic nature of his pain and the poor prognosis for recovery.

**Costs of Future Care**

[38] Mr. Baughan seeks compensation for the costs of future care including active rehabilitation, vocational rehabilitation, and medication. I agree that given the recommendations of Dr. Sidky and Dr. Sangha that \$960 in active rehabilitation, and \$1,000 for vocational rehabilitation are reasonable.

[39] The issue of medication is somewhat complicated by the fact that currently WorkSafeBC is covering the cost of Mr. Baughan’s medication. It may well be that in the future those costs will no longer be covered. In my view, an award for the future costs of medication would clearly be appropriate. I suspect, given s. 83 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, that counsel may be able to come to some agreement about how to structure such an award as it would appear that they agree that \$10,000 is a reasonable estimate of the future cost of medication. Should they be unable to agree, I will hear further submissions as to how to assess the future risk of WorkSafeBC benefits not continuing.

**Special Damages**

[40] The parties agree on special damages of \$6,000.

**In Trust Claim**

[41] The plaintiff seeks compensation in trust for Pavandeep Baughan, who has attended the majority of Mr. Baughan's medical appointments because he requires a translator. The principles to be applied in determining “in trust” claims are well established, and were summarized in *Bystedt v. Hay*, 2001 BCSC 1735 at para. 180, aff’d 2004 BCCA 124:

[180] ...

- (a) the services provided must replace services necessary for the care of the plaintiff as a result of a plaintiff’s injuries;
- (b) if the services are rendered by a family member, they must be over and above what would be expected from the family relationship;

- (c) the maximum value of such services is the cost of obtaining the services outside the family;
- (d) where the opportunity cost to the care-giving family member is lower than the cost of obtaining the services independently, the court will award the lower amount;
- (e) quantification should reflect the true and reasonable value of the services performed, taking into account the time, quality and nature of those services; and,
- (f) the family members providing the services need not forego other income and there need not be payment for the services rendered.

[42] I am satisfied that the services provided by Ms. Baughan went well beyond those that would be expected in relation to an uncle, in particular given the number of appointments Mr. Baughan has had to attend over the course of several years. Beyond translation, Ms. Baughan also assisted her uncle during his recovery from surgery and at other times. Although there is not evidence before me of the cost of translation if Ms. Baughan had not been available, I accept that it would have been significant. While Ms. Baughan is not a professional interpreter, I accept that she provided diligent and accurate interpretation which was necessary for Mr. Baughan to get treatment for his injuries. Taking the overall circumstances into consideration, I find that \$5,000 reflects the value of the services provided in a manner that is fair to both parties.

**Summary**

[43] Damages are awarded as follows:

- a) Past income loss (subject to deductions): \$185,311.35;
- b) Loss of future earning capacity: \$234,285;
- c) Non-pecuniary damages: \$170,000;
- d) Cost of future care (subject to comments above): \$11,960;
- e) Special damages: \$6,000; and
- f) In trust for Pavandeep Baughan: \$5,000.

**Costs**

[44] If the parties are unable to agree on the appropriate order, including in relation to costs, they may arrange to make submissions on the matter within 60 days of the issuance of these reasons.

“Edelmann J.”