IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Craig v. Martin,*
2023 BCSC 785

Date: 20230510
Docket: M203218
Registry: Vancouver

Between:

Tyya Diane Craig

Plaintiff

And

Nicholas Edwin Martin, Floyd Roland Stolle and Stollco Industries Ltd.

Defendants

Before: The Honourable Mr. Justice Macintosh

Reasons for Judgment

Counsel for the Plaintiff:	J.T. Hamel P. Wingenbach
Counsel for the Defendants:	D. Pritchet J. To
Place and Dates of Trial:	Vancouver, B.C. February 27, 28 and March 1-3, 6-8, 2023
Place and Date of Judgment:	Vancouver, B.C. May 10, 2023

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Introduction

[1] The Plaintiff, Ms. Craig, now 23, was injured in two motor vehicle accidents. She claims damages under the normal headings.

[2] The Defendants in both accidents admit liability. Also by agreement, the Plaintiff's past income loss is $20,816, and counsel advise that her special damages will be agreed to.

[3] The other damage claims are addressed below, and are quantified as follows:

Claims	**The Plaintiff's Position**	**The Defendants' Position**
Nonpecuniary damages	$150,000	$80,000
Past lost earning capacity	$20,816	$20,816
Future lost earning capacity	$415,000	$65,000
Cost of future care	$84,818	$13,934
Special damages	Quantum will be agreed by the parties.	

The First Accident

[4] The first accident was on July 26, 2018.

[5] Ms. Craig, then 18, was driving a 2004 Chrysler Sebring on an on-ramp to the Trans-Canada Highway in Coquitlam. She was alone. The Defendant, Martin, was driving his 2008 Toyota Prius when he rear-ended the Plaintiff's car. The impact propelled her car across a low, concrete median and across the adjacent off-ramp, before stopping in the bushes on the far side of the off-ramp. The damage to the Plaintiff's vehicle was about $5,000, and it was a write-off.

The Second Accident

[6] The second accident was about a year later, on June 17, 2019, when Ms. Craig was 19. She was driving a 2009 Ford Focus. She was heading east on Kingsway Avenue, approaching McLean Avenue in Port Coquitlam. Again, she was alone in the car. The Defendant, Stolle, was driving a large pickup truck, a 2017 Ford F-350 crew cab truck. He had pulled out of a parking lot on the south side of Kingsway. The front of his truck hit the right side of Ms. Craig's car. Again, her car was a write-off. Repairs to the truck cost $35,000.

Credibility

[7] The Defendants placed the Plaintiff's credibility in issue and so I address it separately at the outset.

[8] The Plaintiff, and in fact all the witnesses called on her behalf, both lay witnesses and experts, appeared to me to be honest. All of them made a favourable impression by not overstating the facts or the opinions they presented. Nor did the Plaintiff, who was the focus of this credibility analysis, evade answering questions candidly in cross-examination, or otherwise exhibit the hallmarks of dishonesty.

[9] Incidentally, the defence called only one witness, a physiatrist. He too was credible. (The two physiatrists who testified, one for each side, were not far apart in their assessments.)

[10] With respect to the Plaintiff’s credibility, her job resume contained the following entry, under the education heading: “Ridge Meadows College … Administration Assistant … certificate program.” However, as the Plaintiff acknowledged in her evidence-in-chief, and in cross-examination, at trial, she did not complete a final project required for that program in a manner satisfactory to the teacher, and therefore did not complete the program. The entry in the resume is therefore misleading since a reader would naturally infer that the Plaintiff had completed the program. However, as a witness under oath at trial, including when she was cross-examined, the Plaintiff, as I noted above, was candid and

understated throughout. A job resume that is misleading in any respect is a serious matter, but I do not find that the misleading statement in the Plaintiff's resume undermined her credibility in the trial. There are gradations in what is misleading in a resume, and the Plaintiff's acknowledged misstatement was a relatively minor transgression.

[11] The Defendants also pointed out inconsistencies between what the Plaintiff is reported to have said about her condition in some medical records, and what she said at trial. They said this in a further effort to undermine her credibility. I do not accept that submission. What a patient says to her doctors over a period of years will often contain inconsistencies compared with that patient's present recollection of what her condition was, or what she said about it, at earlier times. Also of course, the medical records sometimes fail to record accurately all that a patient was asked and said. In this case, to seize on a topic the Defendants pursued, there is no record of the Plaintiff having expressed suicidal thoughts to her doctors, even though she had such thoughts, at least sometimes, according to her testimony at trial. The Defendants say, as I understand their submission, that if the Plaintiff had really had such thoughts, she would have told the doctors about them. But I accept the Plaintiff's testimony that she was apprehensive of adverse consequences from such disclosure, and that any such thoughts were infrequent. Also, as both the Plaintiff and her father testified, since the accidents, Ms. Craig sometimes suffers from poor memory and confusion.

[12] I conclude that there is no inconsistency between the medical records and the Plaintiff's testimony at trial of a sort to undermine her credibility. Case law supports the Plaintiff in this assessment. See *Edmondson v. Payer*, 2011 BCSC 118, at paras. 34-35; and *Hardychuk v. Johnstone*, 2012 BCSC 1359 at paras. 9-11.

The Plaintiff Before the First Two Accidents

[13] Ms. Craig has lived all her life in Maple Ridge, in a stable and loving family. She is one of four children. She and her two younger sisters, now aged 22 and 14, continue to live in the family home. Tragically, Ms. Craig's older brother died in

March 2017, in his sleep at home. That was about a year and five months before the Plaintiff's first accident. She was in Grade 12 when he died. He died of a drug overdose from what Ms. Craig described as a ladder effect, meaning that he began with recreational drug use, then was prescribed antianxiety drugs and other medication after a motor vehicle accident, followed in the end by his experimenting with fentanyl. Her brother's demise left the Plaintiff with an understandable reluctance to take drugs in any form, which has meant, after her two accidents, that she has not always taken the medications prescribed for her.

[14] Ms. Craig, certainly until her brother’s untimely death and her first accident, enjoyed a happy, active upbringing focused on outdoor life. She, with her family and with her friends, enjoyed camping, dirt biking, hiking, competitive cheerleading, and other outdoor endeavours. She began taekwondo when she was eight and obtained her black belt at 15. It is the case that Ms. Craig had a little trouble with anxiety and slight depression before her brother’s death and her first accident, but these troubles were minor. Overall, her life was a happy one.

[15] Ms. Craig described herself as a very average student in school, until she met an inspiring English teacher in Grade 11 or 12, when her marks improved to all A’s and B's. She graduated from high school in the spring of 2017.

[16] In addition to the Plaintiff's own testimony, the Court heard from her mother and father, her boyfriend and two girlfriends who have known her all her life.

[17] She met her boyfriend in her neighbourhood in her pre-teenage years, and they began dating years later, in December 2017. He brought to the relationship his son Hunter, who is now six. He and the Plaintiff now also have their own child, Hudson, who is two. The Plaintiff looks after both boys as her own. They too reside in the Craig family residence. (Parenting time for six-year-old Hunter is shared 50/50 with that boy's biological mother.)

[18] All of the family and friends who testified corroborated the Plaintiff's evidence of her almost idyllic upbringing, with its focus on outdoor life. I should add, the

scouting movement was part of the Plaintiff's upbringing from age 13. She graduated from scouts to venturers, to rovers, and then became a beaver leader. Her father is active as a scout leader.

[19] On the employment front, Ms. Craig was a babysitter from age 12 to 16. That was followed by work as a cashier in a grocery store for a year (October 2016 to September 2017), in the deli at Safeway (September 2017 to November 2017), packing and collecting buggies at Costco (November 2017 to December 2017), and as a receptionist at a physiotherapy clinic in Port Moody (March 2018 to July 2018).

[20] The first accident, on July 26, 2018, coincided with Ms. Craig starting work at Dogtopia of Coquitlam (July 2018 to May 2019). To her credit, she did not miss much work after either accident. She was in her next job at the time of the second accident, June 17, 2019, working as a receptionist at Daryl-Evans Mechanical, a construction company, where she worked from May 2019 to September 2019. She was let go from Daryl-Evans because she had problems concentrating, a problem probably caused, or exacerbated, by the two accidents. Ms. Craig returned to Dogtopia of Coquitlam in September 2019 where she stayed until March 2022. At Dogtopia, the Plaintiff was a receptionist, but the operation was small, and her work responsibilities were broader, and included washing and shepherding the dogs. Two of Ms. Craig's bosses from Dogtopia testified. They both spoke of her enthusiastically as a person and an employee, but observed the considerable difficulty the Plaintiff encountered, as a result of her injuries from the accidents, in looking after the dogs. Ms. Craig took an office job at a company called Verus Valuations, which valued heavy equipment for financing purposes. She was an administrative assistant there. On February 27, the first day of this trial, the Plaintiff officially began her new employment, at a company called Care1 Inc. In that job, the Plaintiff is able to work from home. Her mother also works for Care1 and has done so since 2015. Care1 is a teleophthalmology clinic. It provides ophthalmological services for patients, and for the GPs and optometrists of those patients. Ms. Craig is to perform various clerical functions in this new position.

[21] The two accidents are described earlier in these reasons. Following the first accident, on July 28, 2018, Ms. Craig was off work until August 7, 2018. After the second accident, on June 17, 2019, she was off for a week. She was on a graduated return to work program from June 24 to July 12, 2019. The Plaintiff has had very little time off work otherwise. She is not someone who likes to complain, and she probably gets back to work after setbacks sooner than many people would with the same injuries.

The Plaintiff After the Two Accidents

[22] Speaking generally, the Plaintiff's claim is based on the aggravation from the second accident of the injuries the Plaintiff suffered in the first accident.

[23] Ms. Craig's primary physical injuries, originating with the first accident and aggravated by the second, were to her back and neck. Back pain is her worst physical problem. She also suffers from headaches now, and neck pain, neither of which she had before the accidents. As she recalls, the hip pain which she now encounters may have originated with the second accident.

[24] Mentally, the accidents have caused the Plaintiff to have trouble remembering and focusing. She has also experienced bouts of depression and anxiety, and is considerably more withdrawn socially than she was before. The defence argued that her bouts of depression and diminished enthusiasm for extracurricular activities are also the result of her brother's untimely death. It is impossible to know with any precision the residual psychological impact of Ms. Craig losing her brother, but I find that she has coped with that loss reasonably well, and that it is not a significant factor in her life today. She found the counselling she received after her brother died to be generally unhelpful, but it does not follow that she was unable to cope with the loss on her own, with her supportive family, in the ordinary course.

[25] In summary, Ms. Craig's problems, which are now chronic given the time she has had them, are a bad back, periodically, a sore neck, headaches and hips, a diminished capacity to concentrate and remember, a diminished zest for life and reduced ability to enjoy physical activities, and increased irritability.

[26] The Defendants argued that Ms. Craig failed to mitigate her loss by often not taking medicines prescribed for depression, anxiety, and other psychological troubles. Earlier in these reasons I wrote of the Plaintiff's reluctance to take medications for psychological problems in light of her brother's fatality from drugs. In *Haug v. Funk*, 2023 BCCA 110, the Court of Appeal reminds us that with a plea of failure to mitigate, the onus of proof, upon the defendant, is to show not only that the plaintiff acted unreasonably in not following recommended treatment, but also that the plaintiff's damages would have been lessened had she acted reasonably. It may be that Ms. Craig was unreasonable in not taking all the medications prescribed, but I make no finding in that regard. However, even if she was, I do not find that her damages would have been lessened by her taking all the medications. The evidence disclosed that the medications, almost invariably, were designed to hide symptoms rather than cure them. In the result, the Plaintiff's psychological symptoms today are largely the same as they would have been had she taken all the prescribed medications.

[27] Ms. Craig is able to continue with her tasks as a mother and in looking after her living quarters in her parents' house. The problem is not the inability to perform most of these chores; it is that doing so causes or exacerbates Ms. Craig's back pain so that she needs to work more slowly and rest more often.

[28] On the employment front, Ms. Craig's new job, with Care1 Inc., is ideally suited to her needs because she can work from home with a substantial control over the hours she works.

[29] The issue in the damages assessment regarding Ms. Craig's employment has to do with her inability to perform in physically-demanding jobs which pay more money. In Ms. Craig's case, that is a realistic consideration. Before the accidents, she was robust, in excellent physical condition. Both of her lifelong friends who testified are in physically active jobs, one in fire and flood restoration, and the other working in a warehouse for the liquor distribution branch. Also, Ms. Craig, as she testified, was never a particularly good student, apart from in her final year when a

particular teacher inspired her. In other words, but for the accidents, there is a real and substantial possibility that Ms. Craig would have been working in physically-demanding jobs, earning more than she has earned since the accidents in sedentary office and work-from-home positions.

Expert Evidence

[30] Five expert witnesses were called and qualified to give opinion evidence on behalf of the Plaintiff, Dr. Lisa Caillier (physiatrist), Dr. David William Morgan (psychiatrist), Ms. Natalie Hull (occupational therapist), Mr. John Lawless (vocational consultant) and Mr. Darren Benning (economist). The defence called one expert witness, a physiatrist, Dr. Alan Tam. As I noted above in the discussion of credibility, I found all of these witnesses to be credible.

Dr. Lisa Caillier

[31] Dr. Caillier found that Ms. Craig likely will have ongoing physical symptoms chronically, although with the opportunity to manage her symptoms. She, and other expert witnesses, testified that Ms. Craig's mental and physical injuries play upon one another, such that, for example, physical pain can heighten depression, and depression can heighten physical pain.

[32] Dr. Caillier opined that Ms. Craig likely will continue to have difficulty performing sustained and repetitive physical activities, whether at work or otherwise. Her enjoyment of recreational activities will continue to be diminished. The doctor recommends some homemaking assistance for Ms. Craig.

Dr. David William Morgan

[33] Dr. Morgan, the psychiatrist, opined that her brother’s early death does not appear to have impaired Ms. Craig’s functioning. From the accidents, he did not diagnose PTSD, although he found Ms. Craig to be exhibiting some PTSD symptoms.

[34] Dr. Morgan diagnosed somatic symptoms disorder, moderate but persistent. He described the symptoms of that disorder as excessive thoughts, feelings, or

behaviour, stemming from the physical symptoms from the accidents. It is a combination of psychiatric diagnosis with physical symptoms. With respect to his diagnosis of Ms. Craig having generalized anxiety disorder, he observed that she worries about anything, everything and nothing in particular.

[35] Here are two extracts from Dr. Morgan's written opinion:

> Ms. Craig experienced a global impairment of functioning following the accident, but she has recovered to a degree over time. She still finds driving unpleasant and anxiety provoking, worries excessively, and avoids recreational and domestic activities which she feels could cause her harm if she engages in.
>
> …
>
> Following the second motor vehicle accident, Ms. Craig suffered a worsening of her Somatic Symptoms Disorder, Major Depressive Disorder, Generalized Anxiety Disorder, and Unspecified Trauma and Stressor Related Disorder. I am not able to identify any other factors or unrelated events which could have caused this. I am therefore of the clinical opinion that it is medically more likely than not that Ms. Craig suffered a worsening of her Somatic Symptom Disorder, Major Depressive Disorder, Generalized Anxiety Disorder, and Unspecified Trauma and Stressor Related Disorder following the second motor vehicle accident.

[36] As to prognosis, Dr. Morgan opined that Ms. Craig will probably remain vulnerable to suffering relapses of her depression in the future, and will probably remain anxious about her health as long as she continues to experience significant physical pain. In his opinion, she will probably continue to gradually improve over time with appropriate treatment. She remains chronically anxious. The prognosis for her psychiatric disorders is probably intimately linked to the prognosis for her physical health, and in his clinical opinion, is probably guarded at this time.

[37] Further from his written report, addressing prognosis, Dr. Morgan wrote:

> Ms. Craig will probably remain vulnerable to suffering relapses of her depression in the future, and will probably remain anxious about her health and generally as long as she continues to experience significant physical pain. Her ability to function as a mother will be an important factor going forward. She is in a supportive relationship, has a young son, and a young stepson for whom she cares, and is working full time. She continues to struggle in her recreational and domestic functioning, and her occupational functioning is still suboptimal. In my clinical opinion she will probably continue to gradually improve over time with appropriate treatment. She remains

> chronically anxious. The prognosis for her psychiatric disorders is probably intimately linked to the prognosis for her physical health, and in my opinion is probably guarded at this time.

[38] Among his recommendations, Dr. Morgan focused primarily on cognitive behavioural therapy (“CBT”), which he considers to be well-suited to the Plaintiff's personality. He also recommends some medication, but not as a substantial part of the Plaintiff's treatment.

Ms. Natalie Hull

[39] Ms. Hull conducted a functional capacity evaluation of Ms. Craig on September 14, 2022, and prepared a functional capacity evaluation and cost of future care report, dated November 24, 2022. Her testing demonstrated to her that the Plaintiff was honest in her reports of complaints.

[40] Ms. Hull found that the Plaintiff can perform the office jobs of the sort she has performed since the accidents, provided she has adequate accommodation in the way of opportunities to stretch and so on.

[41] In her report, Ms. Hull set out a summary of appropriate treatments and related costs, which the economist Mr. Benning used in turn to determine his recommended award for the cost of future care.

Mr. John Lawless

[42] Mr. Lawless testified about his vocational assessment of the Plaintiff. The thrust of his evidence was that given Ms. Craig's fitness and aptitudes before the accidents, she was well suited to active, physical work and he noted the salaries associated with working as a longshoreman at the grain elevators because the Plaintiff told her of her interest in that work.

[43] Mr. Lawless in his report (page 10, para. 57) provided median annual employment incomes for women in B.C. working full time, full year, by selected levels of education:

Secondary school or equivalent:	$40,586
Apprenticeship with trade qualification:	$38,992
College certificate or diploma:	$46,394

[44] Mr. Lawless opined that the third category, college certificate or diploma, was the most likely for the Plaintiff but for the accidents. I will address that part of his opinion in the assessment of damages.

[45] By way of conclusion, Mr. Lawless opined as follows:

> To conclude, while Ms. Craig is working full-time in an entry-level clerical occupation, it is with physical limitations and accommodations from her employer. This is true with all sedentary occupations she might access, while more strenuous ones are probably lost. Thus she has a much reduced range of career choices at the start of her working life. Moreover she will also have to contend with chronic pain, fatigue, mood and cognitive issues in any work she might do, and perhaps have to settle for less education. As well, Ms. Craig faces a greater risk of unemployment over the course of her working life.

Mr. Darren Benning

[46] Mr. Benning provided his report, as an economist, to determine the present value of Ms. Craig's cost of future care and lost future earning capacity. I will refer to his evidence further when I assess the Plaintiff's damages claim under those two headings.

Dr. Alan Tam

[47] As noted earlier, Dr. Tam was the physiatrist called as the Defendants' only witness.

[48] In his written report, Dr. Tam opined:

> I would reasonably expect that Ms. Craig would be able to continue in her current occupation from a physical perspective, provided she continues to be provided accommodation in her work, specifically around pain management breaks, ability to get up away from her desk so that she is not staying in a static position for excessive periods of time. She will need to continue to engage in pain management strategies throughout the day.

[49] In his oral evidence, Dr. Tam testified that:

(a) there is no prescription pain medication with a curative effect, or which he currently recommends for Ms. Craig's use;

(b) it is not his recommendation that she use Trazodone or opiates;

(c) Ms. Craig was using over-the-counter, non-steroid, anti-inflammatory medication such as Advil, which is appropriate if used intermittently; and

(d) he does not recommend prescribed anti-inflammatory medication because of side effects.

[50] I adopt and set out here paragraphs 303-305 from the Plaintiff's argument, which compare and contrast the opinion evidence of the physiatrists each side called, Dr. Caillier for the Plaintiff and Dr. Tam for the Defendants:

> 303. Dr. Tam and Dr. Callier's reports have minimal points of contention. Both experts:
>
> (a) Diagnosed a whiplash condition that had evolved into chronic pain with associated headaches;
>
> (b) Agree Ms. Craig has a poor prognosis for reaching a pain free state, with ongoing treatment focused on managing her symptoms;
>
> (c) Agree that the Plaintiff's mental health issues were outside their expertise, but complicated the chronic pain condition due to their interrelated nature;
>
> (d) State Ms. Craig can continue in her current office administration role, provided she has micro-breaks and an ergonomic workstation; and
>
> (e) Agreed Ms. Craig will have symptom aggravation from her work and certain Household tasks.
>
> 304. The two differences between Dr. Callier and Dr. Tam are their treatment recommendations and the effect of those recommendations.
>
> 305. Below is a table comparing the two expert's future care recommendations:

Care Item	**Dr. Callier**	**Dr. Tam**
Kinesiology	22-24 sessions initially	10-12 sessions initially
	4-6 sessions per year for 3 years	Likely 10-12 additional sessions
	Childcare assistance during sessions	Not Addressed

Exercise	Access to a gym or home gym equipment 3x per week	Not Addressed
	Lifelong gym membership	
	Childcare assistance during sessions	
Passive Treatments	Massage therapy at least 1x per month	On cross examination stated it could be part of symptom control during an active rehabilitation program
	Chiropractor at least 1x per month	
Medications	Tylenol and Advil for symptom flares	
	Topical Anti-inflammatory creams	Not Addressed
	Cambia	
	Nortriptyline	Nortriptyline or Amitriptyline
	Gabapentin	
	Myofascial trigger point injections	
Mental Health	Should be addressed but differed to a psychiatrist	
Other	Ergonomic workspace	
	Supplements	Not Addressed
	Ergonomic cleaning aides	
	Monthly cleaning assistance	

Nonpecuniary Damages

[51] Ms. Craig claims $150,000 under this heading. The Defendants submit that $80,000 is the appropriate award.

[52] These damages, awarded to compensate a plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities, are determined in this province in accordance with the guidance from our Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34, at paras. 45-46:

> [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 added.]

[46] The inexhaustive list of common factors cited in ***Boyd*** that influence an award of non-pecuniary damages includes:

(a) age of the plaintiff;

(b) nature of the injury;

(c) severity and duration of pain;

(d) disability;

(e) emotional suffering; and

(f) loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

(g) impairment of family, marital and social relationships;

(h) impairment of physical and mental abilities;

(i) loss of lifestyle; and

(j) the plaintiff's stoicism (as a factor that should not, generally speaking, penalize the plaintiff: ***Giang v. Clayton***, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[53] The Plaintiff also relies on the following decisions of this Court: *Crookall v. Higby*, 2018 BCSC 1200; *Daleh v. Schroeder*, 2019 BCSC 117; *Miller v. Marsden*, 2014 BCSC 2331; *Wardrop v. Gleeson*, 2022 BCSC 2001; and *Tolea v. Huang*, 2021 BCSC 260.

[54] Those cases address claims by plaintiffs in the age range of Ms. Craig and award nonpecuniary damages in the range Ms. Craig is claiming. I do not propose to set out here all the similar and different facts in those five decisions in comparison with Ms. Craig's claim, but I am mindful of them in reaching the appropriate nonpecuniary damages award.

[55] The Defendants cite the following five decisions: *Floris v. Castillo*, 2020 BCSC 1447; *Reddy v. Enokson*, 2021 BCSC 412; *Caffrey v. Davies*, 2020 BCSC 792; *Rajan v. Budrugeac*, 2020 BCSC 1056; and *Patterson v. Gauthier*, 2019 BCSC 633. Speaking broadly, the Defendant's authorities also address plaintiffs in the age range of Ms. Craig. As I said with respect to the cases the Plaintiff cited, I do not intend to set out the particular facts from the Defendants' cases to show where they are the same or different from Ms. Craig's circumstances. Unsurprisingly, the Defendants cases appear to support an award of $80,000 and the Plaintiff's cases appear to support an award of $150,000.

[56] What is the Court to do? A judge can only scrutinize these 10 decisions cited above which the parties rely upon, and endeavour to fathom the right award for Ms. Craig, taking the decisions into account, in combination with the more general guidance from the *Stapley* decision.

[57] In my judgment, an appropriate award for nonpecuniary damages for Ms. Craig is $120,000. The conclusions I drew from the cases cited is, perhaps obviously, that the Plaintiff's cases were somewhat closer on their facts to the facts of Ms. Craig's claim.

Past Loss of Earning Capacity

[58] The parties are in agreement that the correct amount under this heading is $20,816, and I have no reason to disagree. I award that amount.

Future Lost Earning Capacity

[59] As is often the case, the greatest difference between the parties in this motor vehicle accident claim is with respect to future lost earning capacity. The Plaintiff claims $415,000. The defendant submits that $65,000 is the right amount.

[60] The Plaintiff was physically active, healthy and strong throughout her life before the first accident. Also, as she acknowledged, she was not strong academically, and generally had little aptitude or interest in pursuing academic achievements. I therefore do not accept the conclusion, of Mr. Lawless, the

vocational consultant called by the Plaintiff, that the most likely level of education and related earnings for Ms. Craig, absent the accident, would have been under the heading “college certificate or diploma… $46,394.”

[61] It is telling that Ms. Craig's two lifelong friends, whom she called as witnesses, both have physically demanding, non-sedentary jobs, one in a liquid liquor distribution branch warehouse, now earning in the range of $25 an hour, and the other in fire and flood restoration work, whose earnings were not disclosed.

[62] The Plaintiff led evidence, from her boyfriend or common-law husband, about possible employment at the grain elevator, where earnings can be in the $40 per hour range, but the evidence did not establish a real and substantial possibility of Ms. Craig getting employment there. She did not get hired there when she applied prior to her first accident, and no representative of the grain elevator was called to discuss any prospect of her obtaining that employment.

[63] In summary, the real and substantial possibilities for Ms. Craig's future earnings, but for the accidents, are to be premised on her not likely obtaining further education, and her likely obtaining physical work of the sort her friend has obtained working at the liquor distribution branch warehouse. That is the real and substantial possibility. (For purposes of the legal analysis, my use of the word “likely”, above, is not to be taken as analysing this part of the case on the balance of probabilities, as distinct from considering real and substantial possibilities.)

[64] It is plain from the evidence that Ms. Craig's limitations arise from the two accidents, both for determining her loss of future earning capacity, and more generally. The well-known tests from *Athey v. Leonati*, [1996] 3 S.C.R. 458, at paras. 13-20, are satisfied. The “real and substantial possibility” test, mentioned above, for concluding that the accidents impaired Ms. Craig's ability to earn, leading to diminished income, is also not in issue on the facts of her case. See *Perren v. Lalari*, 2010 BCCA 140, at paras. 21, 32-33.

[65] Another legal element in the analysis of Ms. Craig's lost future earning capacity claim is the selection of the “earnings approach” or instead the “loss of capital asset approach” for determining the award. Ms. Craig, through her final submissions, appears to recognize the difficulties of employing the earnings approach, and the need for using the capital asset approach (see her closing argument at paragraphs 366-370) given how young she was, with her related modest track record of earnings at the time of her first accident.

[66] The Defendants also submit that the capital asset approach is suitable for Ms. Craig's claim. They rely on two decisions of this Court: *Floris*, cited earlier; and *Campbell v. Peter Kiewit Infrastructure Co.*, 2020 BCSC 805.

[67] Ms. Craig at present is able to earn what she receives at Care1, which is $18-$19 per hour. But for the accident, at present, there is the real and substantial possibility that she would be earning around $25 per hour, as does her friend at the liquor distribution branch warehouse. Ms. Craig, in her closing argument (paragraph 379), converted that hourly rate of $25 to annual earnings of $40,000, compared with her present annual earnings of $27,360.

[68] In these circumstances, I adopt the reasoning of Justice Block in *Floris*, cited earlier, at paras. 144-149, with adjustments to take into account the different facts in Ms. Craig's case:

> [144] Since this loss cannot be readily measured in a pecuniary way, then it must be assessed using the capital asset approach. On this point, I am satisfied that Ms. Floris meets all the *Brown v. Golaiy* factors. She is less physically capable overall, she is less marketable and attractive to employers, she cannot take advantage of all job opportunities that may come her way and she is less valuable to herself in a competitive labour market.
>
> [145] The plaintiff submits that since Ms. Floris is relatively young and has not established a clear career path, this loss should be assessed based on two or three years’ income as a care aide. Since the current pay rate for care aides results in an annual income of about $48,000 per year, the plaintiff suggests an award in the range of $90,000 to $140,000.
>
> [146] The authorities establish that in cases involving young persons with no established career, the assessment of damages for loss of future earning capacity is more at large than it is a calculation or similar measurement: *Sinnott v. Boggs*, 2007 BCCA 267. In *Pallos v.*

> *I.C.B.C.* (1995), 53 B.C.A.C. 310 [*Pallos*], Finch J.A. said (at para. 43) that in some cases the assessment of this type of loss may be made by awarding the plaintiff's annual income "for one or more years". In that case, the court awarded the equivalent of about one year's income. Other cases have awarded or endorsed awards equivalent to of two years' income (*Romanchych v. Vallianatos*, 2010 BCCA 20) and three years' income (*Miller v. Lawlor*, 2012 BCSC 387).
>
> [147] In *Pallos*, the plaintiff had established a partial permanent physical disability that could have an effect on his employability and capacity to work. Even though he earned more after the accident than he did before, the court found there was a compensable loss of future earning capacity.
>
> [148] Taking all of the relevant factors into consideration, I conclude that Ms. Floris' loss of future earning capacity should be assessed by reference to two years' income. The plaintiff puts her expected annual income at $48,000 per year, but this assumes full-time work (40 hours per week for 52 weeks a year), without accounting for any negative contingencies, including typical labour market contingencies. It may be, for example, that she would not secure full-time, full-year work immediately after finishing her training. I conclude $40,000 is a more appropriate figure.
>
> [149] Accordingly, I assess damages for loss of future earning capacity at $80,000.

[69] I assess Ms. Craig's damages for loss of future earning capacity at $40,000 a year, times 3½ years, for an award of $140,000. I considered positive contingencies, such as promotion or advancement, and obtaining additional training or education; and negative contingencies, such as general labour market contingencies and illness, and expected absences from the workforce. The relatively short time frame for the assessment of damages, 3½ years, and the absence of any particular evidence with respect to any of the possible contingencies, has caused me to make no adjustment to the lost future earnings award based on contingencies.

Cost of Future Care

[70] Under this heading, the Plaintiff claims $84,818, and the Defendants submit that the award should be only $13,934.

[71] Justice Kent summarized the legal principles relevant to costs of future care in *Dzumhur v. Davoody*, 2015 BCSC 2316, as follows:

> [244] The principles applicable to the assessment of claims and awards for the cost of future care might be summarized as follows:

- the purpose of any award is to provide physical arrangement for assistance, equipment and facilities directly related to the injuries;
- the focus is on the injuries of the innocent party... Fairness to the other party is achieved by ensuring that the items claimed are legitimate and justifiable;
- the test for determining the appropriate award is an objective one based on medical evidence;
- there must be: (1) a medical justification for the items claimed; and (2) the claim must be reasonable;
- the concept of "medical justification" is not the same or as narrow as "medically necessary";
- admissible evidence from medical professionals (doctors, nurses, occupational therapists, et cetera) can be taken into account to determine future care needs;
- however, specific items of future care need not be expressly approved by medical experts..... It is sufficient that the whole of the evidence supports the award for specific items;
- still, particularly in non-catastrophic cases, a little common sense should inform the analysis despite however much particular items might be recommended by experts in the field; and
- no award is appropriate for expenses that the plaintiff would have incurred in any event.

[72] The medical-legal experts who have evaluated Ms. Craig have made recommendations as to her future care requirements for her accidents-related injuries. There is consensus amongst the medical experts that her prognosis is poor, her pain will continue, and that she would benefit from ongoing treatments and therapies.

[73] The table below lists the various treatments and therapies that have been recommended by the Plaintiff's medical experts.

Expert	Recommended Treatment	Duration / Frequency
1. Medical Assessments and Interventions		
Dr. Morgan	Psychiatric Consult	n/a
Dr. Callier Dr. Tam	Trigger Point Injections	n/a
2. Rehabilitative Treatment Services		

Dr. Morgan Dr. Tam	Psychological Counselling – CBT with registered psychologist or EMDR	16 – 24 sessions and subsequently deferred to treating practitioner
Ms. Hull	Occupational Therapy – Exposure to Driving	Weekly sessions over 12 weeks
Ms. Hull Dr. Tam	Occupational Therapy Treatment / Ergonomic assessment of workplace	12 – 16 hours
Dr. Callier Dr. Tam	Active Rehabilitation	34-42 sessions
Dr. Callier	Symptom Management Treatments of Massage therapy or Chiropractic treatment	12 sessions yearly
3. Supplies		
Dr. Callier	Gym Pass	Yearly until 60+
Dr. Callier	At home gym supplies	
Dr. Callier Dr. Tam	Medications	Yearly as symptoms persist
Dr. Callier	Supplements	Yearly as recommended by medical expert
4. Misc		
Dr. Callier	Housekeeping Services	Monthly basis

[74] Mr. Benning, the economist, noted that in circumstances where Ms. Hull, the functional capacity evaluator, provided a range of costs for a particular item, Mr. Benning has used the midpoint range, he has included an allowance for GST/PST where assumed applicable, and he also assumed medications and supplements will be lifetime expenses.

[75] Given the above assumptions, Mr. Benning estimated the present value of Ms. Craig's future cost of care as $84,818.

[76] Of the Recommended Treatments in the chart above, the only ones I do not allow are the second and third ones under Rehabilitation Treatment Services (occupational therapy for driving, and occupational therapy and ergonomic assessment); and Housekeeping Services under Miscellaneous.

[77] The items I have disallowed either I do not find to be medically justified, or, I do not find that Ms. Craig is likely to accept, given her history, her disposition and

her needs. The remaining claims, which I do allow, are to be compensated in damages as calculated by the Plaintiff's expert witnesses.

Special Damages

[78] Counsel advised that special damages will be agreed to by the parties.

Summary

[79] I award damages as follows:

Nonpecuniary damages:	$120,000;
Past income loss:	as agreed, $20,816;
Future lost earning capacity:	$140,000;
Cost of future care:	as adjusted above, at paras. 70-77;
Special damages:	as will be agreed by the parties;
Costs:	can be spoken to as necessary.

“Macintosh J.”