

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Singh v. Liske*,  
2023 BCSC 2016

Date: 20231122  
Docket: M35707  
Registry: Chilliwack

Between:

**Roshniel Singh**

Plaintiff

And

**Jordon Aaron Liske, Kuldip Kainth, Aldergrove-Langley Taxi Ltd. and  
Insurance Corporation of British Columbia**

Defendants

Before: The Honourable Mr. Justice Thomas

## Reasons for Judgment

Counsel for the Plaintiff:

T.R. O'Mahony  
R. Mannering

Counsel for the Defendant, Jordan Liske:

R.S. Watts

Counsel for the Defendant, Insurance  
Corporation of British Columbia:

P. Wingenbach

Place and Date of Trial:

Chilliwack, B.C.  
October 3–6 and 10–13, 2023

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[1] This action involves an assessment of the injuries and associated damages arising from car accidents that occurred on March 29, 2017 and May 2, 2017 in Abbotsford, British Columbia.

**Pre-Accident Issues**

[2] Ms. Singh immigrated to Canada from Fiji in February of 2016 with her elderly mother.

[3] She moved into her brother's house in a basement suite with her mother.

[4] She had no physical issues or complaints prior to March 2017, but she did have some psychological issues.

[5] Her mother was emotionally abusive and overprotective when she grew up in Fiji. These issues continued after they immigrated to Canada.

[6] She had some difficulties adjusting to Canada. The climate was different. She had not established any significant personal relationships. She did not get along with her stepsister and argued frequently with both her mother and her stepsister.

[7] In September 2016, Ms. Singh had a heated argument with her mother and stepsister. She went into her room and drank what was left in the bottle of her sleep/cold medication. She does not recall how much was in the bottle, but it was in excess of the recommended dosage.

[8] Her brother took her to the hospital the next day as he feared she had attempted suicide. I accept the information recorded on the hospital admission form was accurate and was provided by Ms. Singh and her brother. Specifically, I find the following facts:

- a) Ms. Singh suffered from disturbed sleep, lack of energy and weight loss for a period of time;
- b) Ms. Singh had previously threatened to kill herself on several occasions;

- c) Ms. Singh could not handle the stress of the argument and purposefully took an excessive dosage of the medication because she was upset; and
- d) Ms. Singh was diagnosed with depression, prescribed anti-depressant medication and discharged.

[9] In the fall of 2016 and winter of 2017, prior to the March accident, Ms. Singh worked at the Royal Bank of Canada (“RBC”). During this time, Ms. Singh’s performance at work deteriorated from high performance to developing, the lowest possible score. Ms. Singh had been advised of the concerns in her performance. The next step to be taken, prior to the March accident, would be to place her on a formal training action plan. If this was not successful, she could be removed from her current position and placed in another position.

[10] I find that her psychological problems played a role in the deterioration of her performance at work during the fall of 2016 and winter of 2017. I say this because:

- a) She had a previous experience in banking and initially excelled;
- b) Her arguments with her mother and sister law and associated stress continued throughout this period of time;
- c) She did not take her prescribed anti-depressant medication;
- d) She used up her absences for the entire year in the 6 months prior to the March accident; and
- e) She continued to have problems adjusting to the cold weather and establishing relationships with people outside of her family.

[11] I agree with Dr. Okorie that Ms. Singh suffered from an adjustment and depressive disorder due to family conflict and immigration to Canada prior to the March accident. I disagree that her symptoms had remitted prior to the March accident. Dr. Okorie’s conclusion with respect to a remission in her symptoms was based on Ms. Singh’s self-report. To the contrary, I have found that Ms. Singh’s

symptoms persisted up to the time of the accident such that they impaired her performance at work. I find her depression remained active and untreated prior to the March accident.

**The Accidents**

**March 29, 2017**

[12] Ms. Singh was driving to work when she slowed down to yield to a black van. She heard a loud bang, and things went blank for a second or two. She believes she hit her head on the steering wheel and blacked out for a second or two. A person knocked on her car window asking her to roll it down. She did not know she had been in an accident until she got out of her car and saw that the back of her car had been damaged.

[13] An ambulance attended, but she refused to go to the hospital and got a ride home with the tow truck driver. A few hours later, she began to feel tightness, stiffness and soreness and developed a headache, so she went to a walk-in clinic. She developed anxiety about driving and suffered from nightmares about car accidents and body parts on the road.

**May 2, 2017**

[14] Ms. Singh was in the backseat of a taxi going to a medical appointment. The taxi was stopped at a red light. A big truck in front of the taxi put on his reverse lights. She told the driver to move but he did not back up in time. There was a “slight impact”. She testified that the accident was so slow-moving that the impact did not move her body.

[15] The taxi was undamaged and she continued to her medical appointment. She testified that her anxiety went quite high and she was very scared. Her emotional symptoms increased. She has had nightmares about big trucks since this accident.

### August 2017

[16] Ms. Singh was backing out of her driveway when she miscalculated and hit a post next to her car. She caused around five thousand dollars of damage to her car. She did not notice any new symptoms or any increase in her anxiety or emotional symptoms as a result of this accident. She was at fault for this accident.

### July 2021

[17] In July of 2021, Ms. Singh was pulling out of a parking lot to make a left turn in her car when another car T-boned her car on the driver's side.

[18] Both cars were damaged in the accident. Ms. Singh did not notice any change in her emotional symptoms due to the accident. In fact, her anxiety symptoms began to slowly decrease after this accident. She was at fault for this accident.

### Reliability Concerns

[19] Justice Dillon summarized the factors to be considered when assessing credibility in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013) as follows:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[20] The plaintiff was not a reliable witness. I say this for the following reasons:

- a) She portrayed her pre-accident mental health in a more beneficial light compared to what I have found to be the case;
- b) She attempted to downplay her personal conflicts with her family and the psychological impact that these conflicts had on her compared to what I have found to be the case;
- c) She overstated the social relationships that she had with her co-workers. I prefer the evidence of her co-worker Jessica Rybij to her evidence on this issue;
- d) She understated the difficulties that she was having at work prior to the March accident. I prefer the evidence of Sarah Tremblay to her evidence on this issue;
- e) She overstated the severity of her headaches and understated the benefit she received from the Botox injections compared to what she told her doctor at the time; and
- f) Her lack of emotional response to the August 2017 and July 2021 accidents is inconsistent with the degree of anxiety she claims to suffer when driving.

[21] I am cognizant that a person suffering from a somatoform disorder would be expected to overstate the impact of pain and be more debilitated than one would otherwise expect. However, I have found that when compared to impartial witnesses, clinical records and the evidence she provided on direct examination compared to cross-examination that Ms. Singh was not a reliable witness. Her evidence was shaded in a manner designed to advance her interests.

[22] This makes it difficult to assess the extent of the injuries that she suffered, given that many of her symptoms are more subjective and are less ascertainable through objective inquiry.

## **Injuries**

### **Soft tissue injuries**

[23] As a result of the March 2017 accident, Ms. Singh suffered a cervical spine sprain and ongoing soft tissue injury; a left mid trapezius sprain and ongoing soft tissue injury; a lumbar spine sprain and ongoing soft tissue injury and mechanical back pain injury.

### **Tail bone pain**

[24] Ms. Singh developed a lump in the area of her lower back. Although she identified the lump and associated of pain as a tailbone injury, I accept Dr. Hosseini's evidence on cross-examination that what Ms. Singh called a tailbone injury referred to her injury in her lumbar spine. This is also consistent with Ms. Singh's testimony that she was told the lump was on her tailbone, when it was actually on her lower back.

### **Headaches**

[25] As a result of the March 2017 accident, Ms. Singh developed a post-traumatic headache disorder. Her headaches are cervicogenic in nature but have some migraineous features once triggered. The importance of the cervicogenic nature of the headaches is that it is likely they would improve as her cervical soft tissue injuries heal.

[26] Initially, she suffered from approximately four headaches a week which would last for up to eight hours. Currently, she says that she suffers from one to three headaches a week which last for four to five hours.

### **Post-traumatic stress disorder**

[27] Dr. Muir diagnosed Ms. Singh with post-traumatic stress disorder as a result of the March 2017 accident, and her symptoms were aggravated by the May 2017 accident.

[28] I do not accept that Ms. Singh suffers from post-traumatic stress disorder. I accept Dr. Okorie's opinion that Ms. Singh suffers from anxiety due to the March 2017 accident but does not meet the criteria for post-traumatic stress disorder. I say this for the following reasons:

- a) The March 2017 accident does not meet the criteria for post-traumatic stress disorder, as Ms. Singh did not appreciate that she was under the threat of serious injury at the time of the accident. I do not accept Dr. Muir's opinion that Ms. Singh was very scared at the time of the accident and was dissociative. I say this because Ms. Singh did not realize that she had been in an accident until she saw the damage to her vehicle, and declined the medical attention and hospital transportation that paramedics offered her at the scene of the accident.
- b) I find her lack of increase in emotional symptoms following the third and fourth accidents to be inconsistent reactions for a person suffering from post-traumatic stress disorder with symptoms as significant as those claimed by Ms. Singh.

[29] I find that Ms. Singh suffers from an adjustment disorder caused by the first motor vehicle accident and aggravated by the second. In this case, the difference between an adjustment disorder and post-traumatic stress disorder is that an adjustment disorder is more susceptible to treatment, and the avoidance and anxiety symptoms are not as severe as those associated with post-traumatic stress disorder.

[30] Ms. Singh was unable to drive a car immediately after the March 2017 accident due to anxiety. By June 2017, she was able to drive up to 45 minutes to attend physician appointments. She avoids driving on the highway and tries to limit her trips to 30 to 45 minutes without a break.

[31] Currently, outside of avoidance with driving, her anxiety symptoms are mild and in remission. I base this finding on the testing performed during Dr. Okorie's independent medical examination.

### **Somatic symptom disorder**

[32] I agree with Dr. Muir that Ms. Singh suffers from a somatic symptom disorder resulting in a persistent and excessive pre-occupation with pain. However, I am of the view that her somatic symptom disorder is at the mild end of the scale. I say this for the following reasons:

- a) Ms. Singh does not suffer from post-traumatic stress disorder, thus the interplay between the psychiatric effects of trauma are less than that diagnosed by Dr. Muir; and
- b) I accept Dr. Okorie's opinion that one would expect there to be more significant psychological symptoms associated with her self-reported levels of anxiety, depression and pain catastrophizing. I do not accept that her psychological symptoms were mild because they were subsumed into a more serious presentation of somatic symptom disorder as suggested by Dr. Muir.

### **Depression**

[33] I find that Ms. Singh had pre-existing depression which was symptomatic and untreated prior to the March 2017 accident. Her depression was aggravated by injuries she suffered in the March and May 2017 accidents. Her depression waxes and wanes over time.

[34] Her depression significantly increased in May 2017 when she was forced to leave her brother's house and live in a basement apartment on her own. However, I find that the injuries she suffered in the May 2017 accident contributed to this increase in her depressive symptoms at this time—that is, her increased symptomatology was not solely caused by family conflict and increased social isolation but was related to the accident as well. She had significant depression in the fall of 2017 and into 2018.

[35] She had mild depression in 2021. Currently her depression is in remission.

**Mild traumatic brain injury**

[36] It is possible that Ms. Singh suffered a concussion in the March 2017 accident. However, the symptoms associated with concussion are also associated with her other injuries. The symptoms I am referring to are mild memory problems, dizziness and nausea. The evidence indicates that any symptoms associated with a concussion would have resolved shortly after the March 2017 accident.

[37] Ms. Singh's dizziness resolved, and she has very mild balance and memory problems that in my view pose no functional limitations. Since the symptoms associated with a concussion are also attributable to her other injuries, I find that it makes no difference to the assessment of damages whether she suffered a concussion or not.

**Sleep difficulties**

[38] Ms. Singh experiences ongoing sleep difficulties which have arisen due to the symptoms caused by the injuries she sustained in the March 2017 accident.

**Prognosis****Soft tissue injuries**

[39] Ms. Singh has undergone considerable amounts of physiotherapy and massage therapy. The focus of her physiotherapy has been on passive treatment. She has been given stretching exercises and uses a TheraBand to assist her with stretching. She has tried to do more active rehabilitation by riding a stationary bike, but has only built her endurance up to seven minutes, after which she has to take a break for three minutes.

[40] She attends an online chronic pain program which focuses on pain management. It offers online classes. The participants choose the classes they wish to take. In my view, this is not active rehabilitation.

[41] I find that Ms. Singh does not appreciate the hurt versus harm principle, and further improvements in her soft tissue injuries could be achieved with additional

counselling, active rehabilitation and injections. However, given the chronicity of these injuries, it is unlikely they will resolve completely even with further treatment.

### **Headaches**

[42] On May 28, 2019, Ms. Singh was referred to Dr. Dhawan for Botox injections to treat her headaches. At the time she was getting four headaches a week which lasted for approximately eight hours. She found the injections helpful and returned for scheduled repeat injections on September 3rd and again on December 3rd. On September 3rd, she stated she “benefited greatly” from the injections and on December 3rd that they were “very helpful” for her cervical and lumbar spine but were wearing off.

[43] Despite the efficacy of the injections, Ms. Singh testified that she stopped pursuing them because she found them to be painful and did not feel the benefit was sufficient to undergo the treatment. In my view, this is further evidence that Ms. Singh overstates the frequency and severity of her headaches. I do not find her headaches to be as debilitating or as frequent as she claims.

### **Psychiatric conditions**

[44] Ms. Singh stopped counselling in 2021 to focus on managing her pain symptoms. I agree with Dr. Muir that Ms. Singh would benefit from a referral to a psychiatrist who could manage and increase her anti-depressant medication. I agree that ART therapy would be of assistance for her anxiety issues and agree with Dr. Okorie that additional CBT therapy would also be of assistance.

[45] I agree with Dr. Okorie that it is likely Ms. Singh’s adjustment disorder will improve or go into remission with these treatments and her somatoform disorder may improve. In large part, this is due to the fact that I have determined that Ms. Singh’s psychiatric issues are not as severe as those opined by Dr. Muir.

### **Treatment synergies**

[46] Ms. Singh stopped the majority of her treatments in 2021 to focus on one therapy at a time. I agree with Drs. Chow and Hosseini that Ms. Singh requires a

multidisciplinary approach to treat her conditions and that she should resume treating all aspects of her injuries. If she were to do so, it is likely there would be a further improvement in her symptoms.

### **Failure to Mitigate**

[47] Our Court of Appeal set out the law on failure to mitigate in *Haug v. Funk*, 2023 BCCA 110. This requires a defendant to prove, on a balance of probabilities, that failure, in this case, to follow medical recommendations would have reduced Ms. Singh's damages or symptoms.

[48] The defendants say that Ms. Singh should have pursued more treatment modalities; and if she did so, given the positive prognosis for improvement, her symptoms would have been lessened.

[49] Ms. Singh does not have a general practitioner. She relies upon the physicians at her clinic to provide her with medical advice and relies upon their opinions. She consulted with her treating physician at the medical clinic about all of her treatment choices. I agree with defence counsel that Ms. Singh advocated for the treatment choices and her physician agreed with her choices. In these circumstances, though, I am of the view that it was reasonable for her to follow their medical advice.

[50] However, I do find the fact that Ms. Singh did not pursue further Botox injections for her headaches to be evidence that her headaches were not as debilitating as she claimed.

### **Attempts to Return to Work**

#### **Graduated return to work**

[51] Prior to the March 2017 accident, Ms. Singh worked in the bank advisor training program at RBC. RBC is very accommodating to their employees and would provide numerous physical modifications such as ergonomic work stations, sit and stand flexibility and elimination of physical job demands. RBC does, however, require an ability to interact with people.

[52] In the fall of 2017, Ms. Singh attempted a gradual return to work at RBC. Her care practitioner recommended that she try three hours a day. She attended at RBC on a few occasions prior to her return to work and appeared to be frightened. On one occasion, she appeared to suffer a panic attack.

[53] During the first day of her return to work, she looked tired and scared and did not want to talk to clients or employees. Ms. Tremblay, her supervisor, did not believe she was ready to come back because of these concerns. Partway through her second day of her return to work, Ms. Singh was advised of these concerns and told that she was welcome to return when she was ready to come back.

[54] Ms. Singh felt that she was physically capable of doing the tasks that she was asked to do and was surprised that her return to work was terminated. She had some difficulty standing but was accommodated at a sit-down wicket and developed a headache after her first day of work.

[55] After being sent home from work, Ms. Singh locked herself in her basement suite and did not answer any calls. Her occupational therapist was concerned about her and called the police to do a safety check on her. Ms. Singh was safe but emotionally upset.

[56] Given her anxiety and increase in her depressive symptoms after she had to leave her brother's house and live on her own, in my view the reason for her failure to return to work was due to her psychological symptoms as opposed to her physical symptoms.

### **Work simulation**

[57] In 2018, Ms. Singh began a work simulation. This involved counting cards to mimic counting cash for clients. She did that for a year, but had several breaks in the simulation. Her reported tolerance for sitting increased from 30 minutes to up to three and a half hours. She had to stop the simulation because of back pain, headaches and wrist pain. She stopped and restarted the work simulation several times through 2020. The main reason for her stopping was her wrist pain.

[58] Her wrist pain increased through 2019. Her wrist became swollen and got to the point where she could not scroll on her phone or lift a cup of water. The wrist pain was not related to the accident. It appeared to improve with injections provided by Dr. Dhawan, but she did not continue with injections for her wrist after December 2019.

**Volunteer work**

[59] From 2021 to 2023, Ms. Singh did some volunteer work for several organizations. She felt she could only tolerate three to four hours a week due to her symptoms. Her wrist would swell and cause pain if she used a computer. She would tape her wrist but could not do more than an hour of work due to her wrist pain. She also had some difficulties with her AC joint in her shoulder, which caused her to stop volunteering for a period of time in the spring of 2022.

[60] Ms. Singh stopped volunteering in the summer of 2023 with the hope of seeing Dr. Negaria for assistance with her headaches.

**Functional Limitations**

[61] Ms. Singh underwent a functional capacity evaluation by Mr. Kowalik on May 16, 2023. He determined that she is capable of performing light and sedentary jobs with additional capability for partial medium-strength demands. He noted that she would benefit from ergonomic accommodations as well as increased breaks or time off.

[62] Ms. Singh can sit for one and a half to two hours before needing to stand up and stretch; she can sustain standing for an hour. She has no limitations with walking. She can undertake tasks that require occasional lifting of 20 pounds and can push and pull 20 pounds without limitation. She has limitations with stooping and reaching at shoulder level and above.

[63] He opined that her limitations make her less competitively employable. I agree with these conclusions.

[64] The demands of Ms. Singh's position at RBC and that of a bank advisor fall within a job that she is capable of performing according to her functional capacity evaluation. I note that Mr. Kowalik's opinion is based on the assumption that Ms. Singh would be required to lift, push and pull about ten to 15 pounds on an occasional basis. This is not the case, as RBC would accommodate a reduction in the physical demands of her employment.

[65] Ms. Singh's functional testing results were not consistent with her self-reported limitations in respect of her volunteer work. I am aware that Ms. Singh testified that her symptoms would increase over time with work; however, I am satisfied that her true vocational limitations are characterized in Mr. Kowalik's functional capacity evaluation and that she is capable of more than she has been doing as a volunteer.

[66] I did not find the evidence called by the defendants from Ms. Branscombe to be helpful. She did not conduct an assessment of Ms. Singh and did not provide an opinion on Ms. Singh's capacity or necessary care items. I agree with the comments of the Court in *Marcon v. Lacasse*, 2022 BCSC 1133 at para. 93; her report may have been of assistance to defence counsel in preparing for cross-examination, but it had little utility to the Court offered as opinion evidence.

### **Loss of Earning Capacity**

#### **Legal principles**

[67] In *Bolgar v. Fraser*, 2023 BCSC 468 [*Bolgar*], Justice Hughes summarized the proper approach to assessing damages for loss of earning capacity, including the three-part test, following the recent trilogy of decisions on this issue from our Court of Appeal:

[106] The proper approach to assessing damages for loss of future earning capacity was clarified by the Court of Appeal in the trilogy of *Dornan; Rab v. Prescott*, 2021 BCCA 345; and *Lo v. Vos*, 2021 BCCA 421. The approach to this assessment post-trilogy was aptly summarized in *Rattan* as follows:

[146] The assessment of a claim for loss of future earning capacity involves consideration of hypothetical events. Hypothetical events need not be proved on balance of

probabilities. A hypothetical possibility will be accounted for as long as it is a real and substantial possibility and not mere speculation. If the plaintiff establishes a real and substantial possibility of a future income loss, then the court must measure damages by assessing the likelihood of the event. Allowance must be made for the contingency that the assumptions upon which the award is based may prove to be wrong: *Reilly v. Lynn*, 2003 BCCA 49 at para. 101; *Rab v. Prescott*, 2021 BCCA 345 at para. 28 [*Rab*], citing Goepel J.A., in dissent, in *Grewal* at para. 48. The assumptions may prove too conservative or too generous; that is, the contingencies may be positive or negative.

[147] Contingencies may be general or specific. A general contingency is an event, such as a promotion or illness, that, as a matter of human experience, is likely to be a common future for everyone. A specific contingency is something peculiar to the plaintiff. If a plaintiff or defendant relies on a specific contingency, positive or negative, they must be able to point to evidence that supports an allowance for that contingency. General contingencies are less susceptible to proof. The court may adjust an award to give effect to general contingencies, even in the absence of evidence specific to the plaintiff, but such an adjustment should be modest: *Steinlauf v. Deol*, 2022 BCCA 96 at para. 91, citing *Graham v. Rourke* (1990), 1990 CanLII 7005 (ON CA), 74 D.L.R. (4th) 1 (Ont. C.A.).

[107] The three-step process for considering claims for loss of future earning capacity is as follows:

- a) Does the evidence disclose a potential future event that could give rise to a loss of capacity;
- b) Is there a real and substantial possibility that the future event in question will cause a pecuniary loss to the plaintiff; and
- c) What is the value of that possible future loss, having regard to the relative likelihood of the possibility occurring?

See *Rattan* at para. 148, citing *Rab* at para. 47.

## Past loss of earnings

### 1. *Is there a loss of capacity?*

[68] I have found that Ms. Singh has a functional impairment from the time of March 2017 accident. This satisfies the first part of the *Rab* test.

**2. Is there a real and substantial possibility that the loss of capacity will cause a pecuniary loss?**

[69] Ms. Singh was unable to return to work in the fall of 2017 due to injuries suffered in the March 2017 accident. I accept that she continued to be unable to work due to her symptoms while she received treatment for her physical and psychiatric injuries up to 2021.

[70] In 2021, Ms. Singh stopped many of her treatments and was volunteering. I do not accept that her symptoms were as debilitating as she claimed after 2021. I accept that she continued to have some depressive symptoms at this time and that she suffered from accident-related symptoms. However, RBC is willing and able to accommodate her return to work.

[71] I find Ms. Singh could have undergone a gradual return to work at this time with accommodations, extra breaks and additional time off. Had she done so, she would have been able to gradually increase her hours of work up to the time of trial. However, given Mr. Kowalik's opinion, I am of the view that she would not have been able to return to full-time work, she would have required more time off.

[72] Ms. Singh has satisfied the second part of the *Rab* test.

**3. What is the value of that possible future loss, having regard to the relative likelihood of the possibility occurring?**

[73] Ms. Singh worked at a bank for eight years before moving to Canada and then obtained a job in the banking industry despite her depression and the difficulties she was having adjusting to Canada.

[74] I agree with the plaintiff's assertion that but for the accident, the plaintiff would have remained at RBC and received her training income until the end of 2017 and then moved on to become a bank advisor in 2018 and that the base income of a bank advisor should be used, adjusted for yearly inflation up to the time of trial.

[75] Given the problems that she was having in the training course prior to the March 2017 accident, her pre-existing depression and her non-accident-related

issues that debilitated her prior to the accident, it is necessary to use a larger contingency than the 10% proposed by Ms. Singh's counsel. I will apply a 20% contingency to these numbers. In my view, the 20% contingency discussed and rejected in *Gray v. Lanz*, 2022 BCSC 2218 is appropriate in these circumstances.

[76] This yields the following "but for accident" income:

<b>Year</b>	<b>But for full-time income</b>	<b>20% contingency modification</b>
2017	\$18,887 (\$42,000 salary - \$23,113 earned income)	\$15,109.60
2018	\$46,234	\$36,987.20
2019	\$47,134.89	\$37,707.91
2020	\$47,517.19	\$38,013.75
2021	\$49,410.58	\$39,528.46
2022	\$52,875.56	\$42,300.45
2023	\$54,989.20	\$43,991.36

[77] I have determined that Ms. Singh was capable of returning to accommodated work in 2021. In my view, she would have had to take a graduated return to work. How she would return is somewhat arbitrary. However, her very gradual increase in hours as she increased her tolerance to work during her work simulation indicates that the increase must be gradual and extend over several years. In my view, the following return to work schedule is reasonable:

<b>Year</b>	<b>January to July</b>	<b>August to December</b>	<b>% of full-time income</b>

2021	1 equivalent day a week	2 equivalent days a week	30%
2022	2 equivalent days a week	3 equivalent days a week	50%
2023	3 equivalent days a week	4 equivalent days a week	70%

[78] Although in my view this forms an appropriate baseline for Ms. Singh's return to work, given the lack of appropriate treatment she received during this time, there is a real possibility that she would have had to deviate from this schedule to account for a flare-up in her symptoms. There is also a small possibility that she would lose her employment with RBC and have to compete for jobs on the competitive job market, which would place her at a disadvantage to other unimpaired candidates. I say a small possibility because RBC is an accommodating employer that values Ms. Singh as an employee and does their best to accommodate their employees' needs. In my view, a 20% negative contingency is appropriate to address these concerns.

[79] This yields an adjusted percentage for full-time employment income after the accident of 0% up to the end of 2020; (30% \* 0.8) 0.24% for 2021; (50% \* 0.8) 40% for 2022; and (70% \* 0.8) 56% for 2023.

[80] This yields the following gross loss of past earning capacity:

<b>Year</b>	<b>Contingency adjusted but for accident income</b>	<b>Contingency adjusted with accident income</b>	<b>Gross loss of past earning capacity</b>
2017	\$15,109.60	-	\$18,887.00
2018	\$36,987.20	-	\$36,987.20

2019	\$37,707.91	-	\$37,707.91
2020	\$38,013.75	-	\$38,013.75
2021	\$39,528.46	\$9,486.73	\$30,041.63
2022	\$42,300.45	\$16,920.18	\$25,380.27
2023	\$43,991.36	\$24,635.16	\$19,356.20

[81] This table calculates Ms. Singh's gross amount of past loss of earning capacity. She is only entitled to recover the net loss. Counsel have advised that they expect they will be able to come to an agreement over the appropriate amount of income tax deductions to make to these numbers. Income tax should be calculated on a past annual basis as opposed to one lump sum. Ms. Singh is entitled to pre-judgement interest on this amount.

### **Future loss of earning capacity**

#### **1. Is there a loss of capacity?**

[82] I have found that Ms. Singh has a functional impairment that extends past the trial date. This satisfies the first part of the *Rab* test.

#### **2. Is there a real and substantial possibility that the loss of capacity will cause a pecuniary loss?**

[83] I have determined that Ms. Singh is currently capable of working the equivalent of three days a week as a bank advisor at RBC, which will accommodate her needs. This satisfies the second part of the *Rab* test.

#### **3. What is the value of that possible future loss, having regard to the relative likelihood of the possibility occurring?**

[84] The parties agree that the appropriate method in assessing this loss is the lifetime earning approach. They further agree that the appropriate income to use is

that of a bank advisor. I agree with Ms. Singh's counsel that an annual salary of \$55,000 is an appropriate starting point for these calculations.

[85] Ms. Singh's counsel suggests a retirement age of 67; the defendants' counsels suggest a retirement age of 64. The parties agree on the appropriate multipliers. In my view, 65 is an appropriate age to use for retirement. This requires a multiplier for 26 years, which is 21.2986.

[86] This yields a but for accident income of \$1,171,423.

[87] Given the plaintiff's age, pre-accident difficulties and post-accident unrelated health issues, I am of the view that a 20% general contingency remains appropriate for the but for accident future loss of capacity calculation. This yields a but for accident income inclusive of contingencies of \$937,138.

[88] Ms. Singh has not yet reached maximum recovery. In my view, should she follow the treatment recommendations, it is likely that she will achieve an improvement in her symptoms. Although it is unlikely that she would make a full recovery, there is a substantial likelihood that she would be able to return to full-time employment, especially since there has already been an allowance made for additional time off for any flare-ups in symptoms.

[89] As of the time of trial, I determined that Ms. Singh could work at 80% of full-time capacity, subject to appropriate negative contingencies. In my view, given the likelihood for improvement in her symptoms and work capacity with treatment, I assess her work capacity at 95% of full-time capacity.

[90] In my view, the 20% contingency for flare-ups and to account for the possibility that she might lose her job with RBC and have to compete against fully functional individuals for a job I assessed for the past lost of earning capacity remains an appropriate negative contingency.

[91] This negative contingency reduces her "with accident" future earning capacity to  $(95\% * 0.8)$  76% of full-time equivalency. This results in a calculated loss of future

earning capacity of  $(\$937,138 * 0.24) \$224,913.12$ ; or approximately 4 times her annual earnings of \$55,000.

[92] In my view, this overestimates the amount of Ms. Singh's loss of future earning capacity. Using these calculations as a guide, I find \$200,000 is an appropriate amount for Ms. Singh's loss of future earning capacity.

### **Special Damages**

[93] The parties are essentially in agreement over special damages. Ms. Singh has used \$0.60 per kilometer for compensation for travelling to treatments. In my view, this is excessively high. I have replaced this with \$0.30 per kilometer. Using this rate to calculate compensation for travel, the plaintiff is entitled to \$17,213.88 in special damages.

### **Housekeeping Services**

[94] Housekeeping services are appropriately awarded in situations where a plaintiff suffers an injury which would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work: *Kim v. Lin*, 2018 BCCA 77, at paras. 33–34.

[95] This is to be distinguished from circumstances where a plaintiff is able to perform housekeeping tasks with some difficulty or decides they need not be done because performing the work causes discomfort. This type of loss is more properly compensated as part of non-pecuniary damages.

[96] The plaintiff has lived on her own in a basement suite and currently lives with her mother in a two-bedroom separated apartment in the basement of her brother's house. Her mother is 78 years old and performs the tasks around the apartment that the plaintiff says she cannot, such as laundry, cleaning and cooking.

[97] Mr. Kowalik has recommended four hours of heavy house cleaning assistance a week. He based this recommendation on Ms. Singh's self-report of tasks around the home which pose difficulty, his functional assessment and

statistical evidence indicating the amount of heavy housework a person typically performs. This recommendation is not appropriate for Ms. Singh's situation.

[98] In my view, the housekeeping demands of Ms. Singh's living arrangement are not significant and are not characterized as heavy. The activities that she has difficulty with, and which are performed by her elderly mother, fall within the type of loss more properly compensated as part of non-pecuniary damages.

### **Cost of Future Care**

[99] The "test" for future care awards is essentially that there must be a medical justification for an item and the award must be reasonable in the circumstances: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33, 1985 CanLII 179 (S.C.), aff'd (1987) 49 B.C.L.R. (2d) 99, 1985 CarswellBC 13 at paras. 210–211.

[100] Ms. Singh will require ongoing injections, pharmacological care and active rehabilitation. I accept Mr. Kowalik's recommendation for these items as well as for a gym pass and a kinesiologist to assist in motivating Ms. Singh and ensuring that she can perform exercises appropriately. She does not require home gym equipment.

[101] Mr. Kowalik has calculated the ongoing expenses as being necessary to the time of Ms. Singh's death. The medical evidence does not indicate an appropriate end date for the injections. In my view, providing these expenses for Ms. Singh's life expectancy is excessive. In calculating expenses for Botox injections, this Court has previously taken into account the contingency that a plaintiff would not avail herself of this therapy in the long term, given the limited relief it provides: *Parhar v. Clarke*, 2017 BCSC 550 at para. 279. In these circumstances, and given that Ms. Singh has already stopped pursuing such injections against medical repeated medical recommendations, I find that injection treatment until age 50 is appropriate.

[102] Ms. Singh will require additional psychological counselling and therapy. In my view, 20 sessions at \$200 a session is an appropriate amount.

[103] In my view, a sleep assessment would be helpful and an appropriate expense.

[104] Ms. Singh has undergone a significant number of passive modalities, such as massage and chiropractic treatment. In addition, the physiotherapy she receives is mainly passive. She states that she receives temporary benefit from these treatments. In my view, these treatments have not meaningfully improved her function or enable her to maintain function. Given the minimal benefit and failure to improve function, in my view these treatments are not reasonable on an ongoing basis. I do not accept Mr. Kowalik's recommendations for ice packs, sleep aids, taping and heat pads for the same reasons.

[105] Ms. Singh will continue to work in the banking sector where her employer will accommodate her. I do not see the need in these circumstances to provide a contingency award for ergonomic assessment, vocational assessments or ergonomic workplace equipment given my findings about her employer. To do so would not be reasonable in the circumstances.

[106] I calculate her future cost of future care award as follows:

Item	Cost	Multiplier	Amount
Injections	\$5,620	10.0	\$56,200
Pharmacological care	\$2,629.35	29.753	\$78,231
Gym pass	\$720	29.753	\$21,422
Kinesiologist			\$5,911
Counselling			\$4,000
Sleep assessment			\$2,250

Total			\$168,014
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### **Non-Pecuniary Damages**

[107] Both parties relied upon the factors and methodologies set out by the Court of Appeal in *Stapley v. Hejslet*, 2006 BCCA 34. I will not review counsel's submissions on the law. The principles are well-known.

[108] Ms. Singh is 38 years old. I have set out the injuries caused by the accident, her functional limitations and my concerns about her reliability with respect to the extent of her injuries and limitations. I will not repeat them.

[109] Ms. Singh's enjoyment of life has been significantly impaired due to her injuries. She is unable to do yoga and is a social recluse whom obtains little pleasure from life. Her ability to drive is impaired, although not to the degree that she claims. She had pre-existing depression and was having difficulty socializing in Canada prior to the accident.

[110] Ms. Singh's counsel referred me to a number of cases to provide a range of non-pecuniary damages. After reviewing the cases, I found the \$170,000 in *Thind v. Mole*, 2022 BCSC 1895 [*Thind*] to be the most helpful given Ms. Singh's theory of her case. However, *Thind*, like the rest of the cases provided, are of limited utility in assessing appropriate damages for Ms. Singh given her positive prognosis for further recovery and the fact that I have found her injuries to be less severe and debilitating.

[111] The defendants' counsels also referred me to a number of cases. These cases were more analogous to Ms. Singh's circumstances and provided greater assistance in my assessment. In my view, *Pan v. Lau and Tai*, 2020 BCSC 288 [*Pan*] provides a useful benchmark for assessing non-pecuniary damages in this case. In that case, \$92,671.53 in non-pecuniary damages were assessed, as adjusted for inflation. This award included compensation for loss of housekeeping services.

[112] Considering the impact of the injuries on Ms. Singh and the cases that I have been referred to, specifically *Pan*, I am of the view that \$110,000 is an appropriate assessment of Ms. Singh non-pecuniary loss.

**Summary of Award**

[113] I award the following damages to Ms. Singh:

- a) \$110,000 non-pecuniary loss;
- b) \$168,014 cost of future care;
- c) \$17,213.88 in special damages
- d) \$200,000 in loss of future earning capacity; and
- e) The amounts set out in paragraphs 80 and 81 form the basis for calculating the loss of past earning capacity.

**Costs**

[114] The parties may apply to appear before me if they are unable to resolve the issue of costs and/or deductibility of benefits within 30 days.

“Thomas J.”