

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Reaume v. Rossetto*,
2024 BCSC 61

Date: 20240116
Docket: M180241
Registry: Victoria

Between:

Alyssa Corina Reaume

Plaintiff

And

Andrea Rossetto and Global Pro Systems Inc.

Defendants

Before: The Honourable Justice Mayer

Reasons for Judgment

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Place and Date of Trial:

Victoria, B.C.
December 4-8 and 11-12, 2023

Place and Date of Judgment:

Victoria, B.C.
January 16, 2024

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Introduction

[1] In this action the plaintiff, Alyssa Reaume seeks damages from the defendants Andrew Rossetto and Global Pro Systems Inc. arising from injuries sustained in a motor vehicle collision which occurred on August 11, 2016 in Sooke, British Columbia (the “Collision”).

[2] Ms. Reaume claims that the injuries and related symptoms caused by the Collision include injury to her right shoulder, migraine headaches, a short-duration right hip and right knee injury, post-traumatic stress disorder (“PTSD”), adjustment disorder with anxiety and depression and somatic symptom disorder (“SSD”). She seeks non-pecuniary damages, damages for past and future loss of income earning capacity, cost of future care and special damages.

[3] The defendants have admitted liability for the accident. As well, the defendants admit to the injuries and symptoms which Ms. Reaume claims she sustained or suffers from as a result of the Collision, although they do not agree to the severity of all of her symptoms.

[4] The defendants consent to an award of \$35,000 for past loss of income earning capacity and \$4,453.39 for special damages, which are the amounts Ms. Reaume seeks under these heads. They disagree with respect to quantum of damages to be awarded to Ms. Reaume for non-pecuniary damages, future loss of income earning capacity and costs of future care.

Issues

[5] Given the significant admissions made by the defendants the remaining decisions required from this Court include the following:

- a) The quantum of Ms. Reaume’s non-pecuniary damages;
- b) The quantum of her damages for cost of future care; and
- c) The quantum of her damages for future loss of income earning capacity.

[6] In order to assess these damages this Court must make findings about the severity of the injuries and the resulting losses sustained by Ms. Reaume as a result of the Collision, including the nature of her ongoing symptoms and limitations and the impacts these will have on her personal and working life.

Background

[7] Ms. Reaume is currently 30 years old. She has been married to Jonathan Reaume since July 2014. The couple have four young children, aged 7, 4, 3 and four months. They currently live on a hobby farm in the Highlands area close to Victoria.

[8] At the time of the Collision in 2016 Ms. Reaume was 23 years old and was 4.5 months pregnant with her first child. She had just obtained a Visual Arts diploma from Camosun College and was working approximately 32 hours per week at Starbucks as a shift supervisor. She had worked at Starbucks since 2011. Mr. Reaume is a mechanical engineer employed with the Canadian government.

[9] The week before the Collision Ms. and Mr. Reaume moved into a newly purchased home in Sooke, which had a dedicated basement space which Ms. Reaume intended to turn into an art studio and gallery space.

[10] Prior to the Collision Ms. Reaume led an active, adventurous, “outdoorsy” lifestyle. Her activities included sports like surfing, snowboarding, kayaking, hiking, hunting, and camping. She had no pre-existing health problems, injuries, or limitations. She testified that she looked forward to sharing the outdoors with her own children, and to being as physically active and engaged with them as she had been with her younger half-sisters.

[11] The Collision occurred on August 11, 2016 when Ms. Reaume was driving home from work at Starbucks. Her vehicle was struck from behind by the Ford F550 truck driven by Ms. Rossetto, after Ms. Reaume stopped behind a line of cars that had stopped ahead of her. Ms. Reaume recalls her vehicle being pushed forward, her knees hitting the dashboard, and then her body recoiling back into her seat. Her

vehicle was pushed into the vehicle ahead of hers, which in turn was pushed into the vehicle ahead of it.

[12] Ms. Reaume says that after the Collision her immediate concern was for the safety of her fetus. She says that after she drove to the shoulder of the road and got out of her vehicle her legs felt “like jelly”, her knees hurt, and she found it hard to walk.

[13] There is no dispute that the Collision was a significant four-car pile-up. Ms. Reaume’s vehicle, a Volkswagen Passat station wagon, sustained approximately \$16,000 in damage.

[14] Ms. Reaume was transported to the Victoria General Hospital (“VGH”) by ambulance. In the ambulance she experienced pain in her knees, emergent pain in her lower back and her ears were ringing. While at VGH she began to experience shooting pains into her hips and lower back, started to have a headache and neck pain, and her ears were still ringing.

[15] Ms. Reaume testified that at VGH she spoke to an emergency room physician and she was left with the understanding (which appears to have been mistaken) that there was a chance the trauma of the Collision could induce early labour. She was afraid that she would lose her baby. Ms. Reaume was given a prescription for physiotherapy and discharged. She attended at a fetal ultrasound the following Monday which revealed no abnormalities.

Causation

[16] A plaintiff must establish on a balance of probabilities that the defendant’s negligence caused or materially contributed to an injury: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras. 13–17, 1996 CanLII 183; *Farrant v. Laktin*, 2011 BCCA 336 at para. 9.

[17] Causation is not an issue in this case. As outlined earlier in these reasons, the defendants admit that the Collision caused soft tissue injuries to Ms. Reaume’s

right shoulder, which has resulted in chronic pain, a short-term soft tissue injury to her right hip and right knee, PTSD, adjustment disorder with anxiety, depression and SSD.

Non-Pecuniary Damages

[18] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities. 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.

[19] The factors to be considered in an assessment of non-pecuniary damages are those set out at para. 46 of *Stapley v. Hejslet*, 2006 BCCA 34, and they include: the age of the plaintiff; the nature of the injury; severity and duration of pain; disability; emotional suffering; and loss or impairment of life.

Age

[20] Ms. Reaume was a relatively young 23 year old at the time of the Collision. She had just finished a diploma in visual arts and was about to embark on a new career as an artist and become a new mother.

Nature of Injuries

[21] Ms. Reaume called expert evidence from two medical practitioners, which was not challenged by the defendants at trial.

[22] Dr. Filbey, a physiatrist, assessed Ms. Reaume on June 2, 2023, and was qualified to provide opinion evidence at trial. Dr. Filbey's opinion is that the Collision caused right shoulder pain, which has become chronic and contributed to right hip pain which resolved after Ms. Reaume's first pregnancy was completed, and knee pain which has also substantially resolved.

[23] Dr. O'Neill, a psychiatrist, assessed Ms. Reaume on August 2, 2023, and was qualified to provide opinion evidence at trial. Dr. O'Neill's opinion is that the Collision caused PTSD which is now largely in remission. In his opinion the PTSD occurred because, for a few days after the Collision, Ms. Reaume was afraid she might lose her baby.

[24] In addition, it is Dr. O'Neill's opinion that after the Collision Ms. Reaume became depressed, primarily as a result of her chronic pain symptoms and the corresponding impact on her ability to care for her newborn child. Although he acknowledged that after the Collision Ms. Reaume may also have experienced unrelated post-partum depression, it is his opinion that absent the accident she was unlikely to have developed depression.

[25] As well Dr. O'Neill diagnosed Ms. Reaume with SSD, involving a preoccupation with her physical symptoms, creating a sense of her life revolving around her pain.

Severity and Duration

[26] Ms. Reaume testified that her right hip pain affected her ability to walk up and down stairs for approximately three weeks and her ability to take part in recreational activities, or to go for walks with her new baby for approximately six months. This pain resolved approximately six months after the birth of her first child. She also experienced right knee pain which has also substantially resolved.

[27] Ms. Reaume testified that she continues to have persistent pain in her right arm and shoulder, which is aggravated by repetitive activity, lifting above her head and reaching, and induces migraines. She experienced serious migraines three to four times a week after the Collision, which have now reduced in frequency to approximately once per month.

[28] Mr. Reaume and some of Ms. Reaume's ex-coworkers at Starbucks were called to testify at trial. They described Ms. Reaume as full of energy before the Collision and as having significantly lower energy afterwards. With respect to her

work capacity Mr. Reaume testified that when she went back to work after the Collision, by the time of her fourth shift she was often crying in the morning as a result of shoulder pain.

[29] In Dr. O'Neill's opinion. Ms. Reaume's more serious PTSD symptoms lasted for approximately one year after the Collision and have persisted since then at a lower level. He believes that the Collision likely resulted in a major depressive episode at the time. Finally, he believes that as a result of ongoing right shoulder pain and its impact on her function, that Ms. Reaume will continue to suffer from anxiety, depression and symptoms related to SSD, at variable levels.

Disability

[30] Ms. Reaume's right shoulder pain and related migraines have resulted in a longer-term disability.

[31] Ms. Reaume testified that, as a result of her shoulder injury, she is no longer able to participate in the same recreational activities she once did including surfing, kayaking, snowboarding and hiking, because she was and remains unable to carry her kids in a backpack.

[32] With respect to her ability to perform household chores Ms. Reaume testified that she has difficulty performing chores which involve a lot of repetitive motion, such as folding laundry. She says that she is unable to perform household tasks which require her to reach overhead or to reach down and extend her right arm, and is unable to perform aggressive cleaning, such as scrubbing floors or the shower. She says she now mainly performs "surface cleaning" and makes simple meals.

[33] Ms. Reaume continued to work at Starbucks as a shift supervisor after the Collision, after her first child was born and in between the birth of her second, third and fourth children. She is not currently working as she is on maternity leave following the birth of her fourth child.

[34] Ms. Reaume testified that when she was at work her shoulder pain caused her to struggle to perform various functions at work. For example, she had difficulty lifting jugs, reaching above shoulder height and moving tills or food. She says that repetitive motion triggers right neck, shoulder, arm and hand pain – which gets worse each day that she works. She had to be accommodated in terms of the duties she performed and reduced her hours.

[35] Significantly, Ms. Reaume testified that as a result of her shoulder pain, she is unable to work on art projects, including pottery and print making, which she enjoyed doing before the Collision. For example, she testified that on one occasion when on a trip to Nigeria, she was given an opportunity to turn a clay pot with a local artisan, but was unable to do so.

[36] Both Ms. Reaume and Mr. Reaume testified that Ms. Reaume is only able to do low intensity work caring for the animals on their hobby farm such as feeding and watering. Mr. Reaume does heavier work like cleaning pens, moving feed bags, fencing and repairs.

[37] Aman Rangi, an occupational therapist, completed a functional capacity evaluation of Ms. Reaume on September 26, 2023 and was qualified to provide opinion evidence at trial. In Mr. Rangi's opinion as a result of her right shoulder injury and symptoms, Ms. Reaume is physically capable of working as a barista with pain and difficulty, on a part time basis. As such she is partially disabled from working in this profession.

[38] Mr. Rangi's opinion is that Ms. Reaume's condition is such that she is not well suited to durable work as an artist due to a reduced ability for sustained and repetitive forward reaching and static neck postures.

[39] Dr. Filbey's opinion is that Ms. Reaume's shoulder injury will continue to limit her ability to perform tasks with her right arm overhead, lifting or with sustained and more forceful use. He does not consider that this injury will resolve, but with treatment her tolerance for pain may improve over time.

Emotional Suffering/Impairment of Life

[40] With respect to the impact to her family life Ms. Reaume testified that after her first child was born her shoulder pain made it difficult for her to hold or carry her. She testified that her associated neck pain worsened as her first child got older causing shooting pain, numb hands and migraines. She says that these limitations continued with the birth of the next three children and that although she can lift her children this causes pain and at times, causes her arm to go numb.

[41] During her testimony Ms. Reaume expressed sadness and frustration about the impact of her physical limitations on her relationship with her children and husband, and the loss of the ability to pursue a career as an artist.

[42] Ms. Reaume's mother in-law Wendy Reaume testified that before the Collision Ms. Reaume was bubbly and full of energy, but is now often in pain and isolates herself at family events. She testified that Ms. Reaume is unable to perform the same household and childcare tasks she once did. She now helps care for Ms. Reaume's children approximately two days per week and when she is at Ms. Reaume's home, helps with household tasks.

[43] Mr. Reaume testified that before the Collision Ms. Reaume loved being outdoors and in particular adventure sports and had a passion for art. He says that she is no longer confident doing outdoor activities like kayaking and surfing as a result of her shoulder injury and is not able to perform certain types of art activities including pottery and print making.

[44] Mr. Reaume testified that Ms. Reaume is not able to engage physically with their children, for example by wrestling and playing with them, as he observed her doing with her younger twin sisters before the Collision.

[45] In Mr. Reaume's view Ms. Reaume's physical limitations have had an emotional impact on her which has impacted their marriage. He testified that there is more conflict in their relationship than before the Collision and that they are not intimate as often as they once were.

Conclusion on Non-Pecuniary Damages

[46] Ms. Reaume seeks non-pecuniary damages of \$140,000. She relies on a series of cases involving plaintiffs of a similar age with similar injuries and symptoms. These cases establish a range for this head of damages between \$140,000 and \$175,000.

[47] From the cases referred to by Ms. Reaume I find the circumstances in *Mattson v. Spady*, 2019 BCSC 1144, to be the most comparable to those in the case before me. In *Mattson* the 30-year-old plaintiff sustained injuries to her neck, upper trapezius, shoulder, scapula and experienced headaches. She was diagnosed with chronic pain and her prognosis for recovery was guarded. As a result, the plaintiff had to reduce her hours of work, and suffered a reduced ability to participate in extra-curricular activities, home-care work and care for her children. The Court awarded \$150,000, which is equivalent to \$174,000 in today's dollars.

[48] The defendants contend that Ms. Reaume should be awarded non-pecuniary damages of \$60,000 to \$70,000. They rely upon two dated authorities including *Li v. Lian*, 2012 BCSC 1892 and *Wilby v. Hyatt*, 2008 BCSC 1019, in which the court awarded non-pecuniary damages (adjusted for inflation) of \$58,404 and \$67,180, respectively.

[49] Neither of the cases relied upon by the defendants involved chronic pain which impacted the plaintiffs' personal and professional life to the extent experienced by Ms. Reaume. In addition, neither of these cases involved plaintiffs who had been diagnosed with PTSD and SSD.

[50] The evidence at trial establishes that circumstances and events which occurred after the Collision, and were not caused by it, probably contributed to Ms. Reaume's decreased physical capacities and emotional state. This includes the unrelated onset of hip pain after the birth of her second, third and fourth children and the physical and emotional strain of raising four young children. I infer that even without the Collision, Ms. Reaume would have experienced some of the symptoms

and related impacts that are outlined above. I take this into consideration in assessing Mr. Reaume's non-pecuniary damages.

[51] Given the facts of this case and in consideration of the factors set out in *Stapley* and in consideration of comparable cases, I award Ms. Reaume's non-pecuniary damages of \$120,000. This award includes an amount for loss of housekeeping capacity.

Future Loss of Income Earning Capacity

[52] In *Hartman v. MMS Homes Ltd.*, 2023 BCCA 400, the Court of Appeal for British Columbia confirmed the general principles to be considered in making an award for past and future loss of income earning capacity, stating as follows:

[35] In reasons for judgment given November 4, 2021, and indexed as 2021 BCSC 2165, the trial judge began her analysis of the claim for loss of earning capacity (past and present) with this overview:

[121] The purpose of an award for loss of earning capacity is to restore the plaintiff, as best as possible, to the position he would have been in had the accident not occurred. The plaintiff must establish an impairment in his earning capacity, and that there is a real and substantial possibility that the diminishment in earning capacity will result in a pecuniary loss: *Perren v. Lalari*, 2010 BCCA 140.

...

[123] Both past and future loss of earning capacity address the same loss. However, there are differences in how this loss is assessed before trial and after trial. To the extent past loss of capacity relies on facts which are capable of proof, those facts must be proven on the balance of probabilities. To the extent past loss of capacity relies on hypothetical facts, the court must be satisfied that there is a real and substantial possibility of such facts occurring. The court may assess the likelihood of such hypothetical facts occurring, and discount or increase an award to reflect such contingencies. Future losses are almost always based on hypothetical facts, and are assessed on the standard of real and substantial possibility with consideration of relevant contingencies: *Rousta v. MacKay*, 2018 BCCA 29 at para. 14.

[124] In determining loss of capacity, the court must first determine if there is a loss of capacity. If there is a loss of capacity, the court must determine whether the loss of capacity will result in a pecuniary loss. A likelihood of a pecuniary loss must be valued by the court, grounded in the

evidence, and the court must assess the relative likelihood of the possibility of such loss occurring: *Rab v. Prescott*, 2021 BCCA 345 at para. 47.

[53] There is no dispute in this case that as a result of the Collision Ms. Reaume sustained an impairment to her income earning capacity. As well I find that there is a real and substantial possibility that this impairment will result in a loss of income earning capacity. This is established through the evidence of Ms. Reaume including, in particular, the uncontradicted evidence of Drs. Filbey and O'Neill and Mr. Rangi.

[54] In quantifying her loss of future income earning capacity losses, the hypothetical facts which must be determined by this Court include, first, absent the Collision what could Ms. Reaume have earned and second, given the impact of the Collision on her capacity to work, and in consideration of various contingencies going forward, what she will earn. The standard of “real and substantial possibility”, which is lower than the standard of “balance and probabilities”, is to be applied in making the relevant findings.

Ms. Reaume’s Without-Collision Earnings Potential

[55] Ms. Reaume testified that before the Collision she planned to work until she was 65. As well, she testified that it was her intention, after she had her last child, to continue to work at Starbucks, but to reduce her hours as she began to work and generate income as a production artist and by teaching art. She submits that that is a real and substantial possibility that this scenario would have played out – with a probability of 50%.

[56] With respect to her earnings potential as an artist, Ms. Reaume submits that absent the Collision there is a real and substantial possibility that she would have earned the average earnings for someone with a college diploma in visual and performing arts according to Statistics Canada, namely \$62,800 per year.

[57] Ms. Reaume testified that in the event that her art business turned out to be less lucrative than she hoped, her back-up plan was to remain at Starbucks working approximately 32 hours per week as a shift supervisor, in between her maternity

leaves. When her youngest child was in kindergarten, she would then attempt to become a full-time Starbucks store manager. She submits that there is a real and substantial possibility that this scenario would have played out – with a probability of 30%.

[58] With respect to her potential earnings in the alternative scenario, Ms. Reaume submits that there is a real and substantial possibility that she would have continued to work at Starbucks as a shift supervisor on a part time basis until all of her children were in school, relying on childcare support from Mr. Reaume and his mother Wendy Reaume, and then would work on a full-time basis as a Starbucks store manager.

[59] Ms. Reaume submits that her earnings history with Starbucks provides a basis for calculating her earnings as a shift supervisor and that the midpoint of the range of salaries for store managers, \$70,250, can be utilized for calculating her potential income assuming a promotion.

[60] Ms. Reaume submits that there is also a real and substantial possibility, albeit less likely, that she would have continued to work 32 hours per week as a shift supervisor at Starbucks – with a probability of 20%.

[61] None of the testimony underlying the real and substantial possibilities proposed by Ms. Reaume were challenged by the defendants at trial – with the exception that the defendants questioned whether Ms. Reaume had prepared a business plan for her art business. I do not consider the absence of a business plan to be dispositive in any way.

[62] The evidence establishes to my satisfaction that before the Collision, Ms. Reaume was motivated to become a professional artist and had taken steps to do so including completing an art diploma and making efforts to market and sell her art. In addition, she and Mr. Reaume had purchased a home with a space suitable for her to create and display art and to teach. I accept that there is a real and

substantial possibility that she would have done so and adopt the 50% probability proposed by Ms. Reaume.

[63] As well, the evidence establishes to my satisfaction that if Ms. Reaume's art career did not generate sufficient income, there is a real and substantial possibility that she may have continued to work part time as a shift supervisor at Starbucks and then been promoted to store manager. She was a hard worker, had always worked and was raising a young family with Mr. Reaume. I infer that the family benefited from her income.

[64] With respect to the likelihood of Ms. Reaume being promoted to store manager at Starbucks, I am satisfied that this is possible based on the evidence of Ms. Reaume and of her colleague Alana Duthie, that Ms. Reaume was good at her job, was well liked at Starbucks and had a good relationship with her managers. I accept that there is a real and substantial possibility that Ms. Reaume could have abandoned art and been promoted at Starbucks, but I do not accept that there is a 30% chance that this would have occurred. I would reduce the likelihood proposed by Ms. Reaume from 30% to 25%.

[65] There is also a possibility, which I consider can reasonably be set at 25%, that Ms. Reaume would have continued working part time as a shift supervisor, because of the requirements of raising a young family and her desire to work on the hobby farm she purchased with Mr. Reaume.

[66] Ms. Reaume provided a calculation of the net present value of her without-Collision earnings under each of the above scenarios over a 35-year period. She applied a notional 2% annual adjustment to salary to account for inflation.

[67] In summary, Ms. Reaume calculated potential earnings utilizing this method under each of the three scenarios, multiplied that by the relevant contingency percentage and then added the three products together. She submits that there is a real and substantial possibility that her without-Collision earnings (which counsel referred to as a "blended absent-Collision earnings stream") would be \$2,171,491.

[68] In my view, the methodology applied by Ms. Reaume provides some assistance in determining her potential without-Collision earnings. It contemplates various contingencies and seeks to adjust her highest potential earnings to reflect those contingencies. I am not satisfied though, that Ms. Reaume's calculation is reasonable with respect to her potential earnings under each scenario. For example, her calculation does not account for any lead-in time before she started to earn the relevant amount. As well, none of the scenarios contemplate labour market contingencies, such as an inability to work due to health, or lay-off.

Ms. Reaume's With-Collision Earnings Potential

[69] As I mentioned earlier it is the opinion of Mr. Rangi that as a result of her injuries, Ms. Reaume is only capable of working part time as a barista, between 20 and 25 hours, and is unable to durably work as an artist.

[70] Despite their concession that Ms. Reaume has suffered a loss of income earning capacity, the defendants contend that Mr. Rangi's opinion should be given little weight. The defendants take this position because Mr. Rangi performed his functional capacity evaluation of Ms. Reaume less than six months after she had given birth to her fourth child, which they say makes his assessment results unreliable. I do not find this to be the case.

[71] Mr. Rangi confirmed, and the parties admit, that Ms. Reaume was medically cleared for the evaluation completed by him. There is no evidence provided by the defendants on which this Court can conclude that Mr. Rangi's testing of Mr. Reaume, and therefore his opinion with respect to her functional capacity, is unreliable. I accept his opinion with respect to Ms. Reaume's work capacity.

[72] I also note that the opinions of Dr. Filbey and Dr. O'Neill support the conclusion that Ms. Reaume is partially disabled as a result of her physical and psychological symptoms. Dr. Filbey's opinion supports the notion that a restricted work schedule of two shifts per week will continue to be medically reasonable into the future.

[73] The question is, what are Ms. Reaume's probable earnings given her reduced capacity.

[74] Ms. Reaume has provided two calculations of her earnings working as a shift supervisor at Starbucks until she is 65 years old based on the possibility of her working 20 hours per week and 25 hours per week. They ascribe a 50% likelihood to each of these possibilities.

[75] Using the same method applied in calculating possible without-Collision future earnings, Ms. Reaume submits that there is a real and substantial possibility that she will earn \$1,082,229 over the next 35 years.

Summary of the Parties' Positions on Damages for Future Loss of Income Earning Capacity

[76] Ms. Reaume calculates the net present value of her future loss of income earning capacity to be \$1,089,261, which is the difference between her estimated without-Collision earnings (\$2,171,491) minus her estimated with-Collision earnings (\$1,082,229). She submits that a fair award for future loss of income earning capacity is \$850,000 to account for various negative contingencies.

[77] The defendants submit that, applying a capital asset approach to the determination of Ms. Reaume's damages for loss of future income earning capacity, an award of \$70,000 to \$75,000 is appropriate. In my view, the defendants' submission does not reflect the proven hypotheticals in this case.

Conclusion on Damages for Future Loss of Income Earning Capacity

[78] The assessment of future loss of earning capacity is not intended to be a strictly mathematical exercise. I disagree that a capital asset approach, as proposed by the Defendants, is appropriate. Ms. Reaume had a sufficient earnings history with Starbucks and this, combined with the unchallenged evidence with respect to her potential earnings, is sufficient to allow me to determine her future loss of earning capacity losses using an income approach.

[79] I conclude that an award for future loss of income earning capacity of \$850,000 is fair and reasonable. This is approximately 22% less than the amount yielded by Ms. Reaume’s calculation, and in my view adequately incorporates possible negative contingencies in respect of Ms. Reaume’s estimated without-Collision earnings, and positive contingencies, including that her condition may improve, in respect of her estimated with-Collision earnings.

Cost of Future Care

[80] Ms. Reaume seeks an award for costs of future care, with some costs extending until Ms. Reaume is 75 years old, of \$75,000. This is a reduction from Ms. Reaume’s calculation of the net present value of various costs which total \$235,349.91.

[81] Ms. Reaume relies upon the recommendations concerning the types of care and suggested accommodations of Mr. Rangj, who in some cases repeated recommendations made by medical practitioners.

[82] The cost of future care items for which Ms. Reaume seeks an award include the following:

Treatment/Support	Quantity	Cost
Kinesiology	12 sessions	\$1,140 (one time)
Bosu Ball	\$250 every 3 years	\$83 / year
Resistance Bands	\$26 every 2 years	\$13 / year
TriggerPoint Grid Roller Massage, Recovery, Muscle Release	\$50 every 5 years	\$10 / year
Physiotherapy / Chiropractic / RMT	18 sessions / year	\$1,800 / year
High Back (Obusforme) Back Support	\$90 every 3-5 years (4 years used to quantify)	\$22.50 / year
Orthopedic Pillow	\$150 every 3 years	\$50 / year
Home maintenance and repair	\$1,380 / year	\$1,380 / year
Housecleaning support	\$2,600 / year	\$2,600 / year
Lawn mowing	\$500 / year	\$500 / year
Seasonal Yard Maintenance	\$1,280 / year	\$1,280 / year

Psychotherapy	30 sessions at \$200 per session	\$6,000 (one time)
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[83] A plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her to her pre-Accident condition, in so far as that is possible. When full restoration is not achievable, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.) [*Milina*]; *Williams v. Low*, 2000 BCSC 345; *Spehar v. Beazley*, 2002 BCSC 1104; *Gignac v. Insurance Corporation of British Columbia*, 2012 BCCA 351 at paras. 29–30.

[84] The test for determining the appropriate award under the heading of cost of future care is an objective one based on medical evidence. For an award of future care: (1) there must be a medical justification for claims for cost of future care and (2) the claims must be reasonable: *Milina* at 84; *Tsalamandris v. McLeod*, 2012 BCCA 239 at paras. 62–63.

[85] The expenses listed in the table above for therapy, excluding physiotherapy costs, and therapeutic equipment are in my view reasonable and medically justified and consistent with recommendations of Dr. Filbey and Dr. O'Neill. I am satisfied that an award for those items is appropriate.

[86] With respect to physiotherapy, Dr. Filbey's opinion is that there is no requirement for ongoing regular maintenance therapy with a physiotherapist. He recommended 12 sessions with a physiotherapist over an 18-month period. At estimated cost per session of \$120 this would result in physiotherapy costs of \$1,440.

[87] With respect to home maintenance and repair costs, lawn mowing and seasonal yard maintenance, there is no evidence concerning the extent to which Ms. Reaume performed these functions prior to the Collision. As well, there is no

evidence that she will incur the cost of having this work performed by third parties. In a family with four young children, it can be expected that there will be a division of labour between the parents.

[88] The evidence at trial indicates that Mr. Reaume performs heavier yard maintenance on the couple's hobby farm, including heavier work involved with caring for animals. There is no evidence that Mr. Reaume will not continue to do this work going forward. As well, there is evidence that Ms. Reaume will be able to contribute to some of this work, to the extent she is not limited by her shoulder related symptoms. She reported to Mr. Rangi that she is able to perform maintenance and repair work on the hobby farm by taking extra time to perform these tasks. I decline to award any amount under these categories.

[89] With respect to housecleaning support, the evidence establishes that Ms. Reaume reported to Mr. Rangi that she was able to perform housekeeping with pacing strategies. Dr. Filbey's opinion is similar. He considers that she will be able to manage most daily and routine tasks with pacing and self-accommodation. I decline to award any amount for housecleaning support.

[90] In summary I find that \$8,580 is appropriate for the one-time cost of kinesiology, psychotherapy and physiotherapy treatments and accept \$178.50 per year for the cost of obtaining therapeutic equipment, until age 75. I calculate the net present value of therapeutic equipment cost to be \$5,264, applying a multiplier of 29.49. This results in a total award for costs of future care before deduction for contingencies of approximately \$13,844. To this amount I apply a contingency deduction of 10%, to reflect the possibility that Ms. Reaume may not take advantage of all treatments or purchase replacements for therapeutic equipment until she turns 75. I award Ms. Reaume damages for costs of future care of \$12,500.

Conclusion

[91] In accordance with the foregoing, Ms. Reaume's damages are assessed as follows:

Non-pecuniary damages:	\$ 120,000
Loss of past earning capacity (as agreed):	\$ 35,000
Loss of future earning capacity:	\$ 850,000
Cost of future care:	\$ 12,500
Special damages (as agreed):	<u>\$ 4,453</u>
Total:	\$ 1,021,953

[92] If the parties wish to make further submissions with respect to costs, they must arrange to do so within 30 days of the date of these reasons.

“Mayer J.”