IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dhingra v. Hayer,*
2024 BCSC 160

Date: 20240201
Docket: M188713
Registry: New Westminster

Between:

Gurpreet Kaur Dhingra

Plaintiff

And

Sukhjinder Kaur Kang and Manjot Kang

Defendants

- and -

Docket: M188747
Registry: New Westminster

Between:

Gurpreet Kaur Dhingra

Plaintiff

And

Amit Pant

Defendant

- and -

Docket: M212166
Registry: New Westminster

Between:

Gurpreet Kaur Dhingra

Plaintiff

And

Sukhwant Hayer and Mohinder Hayer

Defendants

- and -

Docket: M217316
Registry: New Westminster

Between:

Sukhwant Kaur Hayer

Plaintiff

And

Gurpreet Kaur Dhingra

Defendant

Before: The Honourable Justice Ahmad

Reasons for Judgment

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Place and Date of Trial:	New Westminster, B.C. November 28-30, 2022 December 1-2 and 5-8, 2022 May 31, 2023 June 1-2, 2023
Place and Date of Judgment:	New Westminster, B.C. February 1, 2024

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I. Introduction

[1] These four actions arise out of three separate motor vehicle accidents that occurred on May 1, 2015, May 17, 2015, and October 13, 2017. Gurpreet Kaur Dhingra was involved in all three accidents. She is the plaintiff in three actions. Sukhwant Kaur Hayer was involved in the October 13, 2017 accident. She is the plaintiff in the fourth action.

[2] Liability is not in dispute in respect of the first two accidents in which Ms. Dhingra was involved. Liability is at issue for the third accident involving both Ms. Dhingra and Ms. Hayer.

[3] The parties agreed that all four actions would be heard at the same time for a determination of liability for the third accident, followed by the determination of Ms. Dhingra's damages in the three actions in which she seeks damages.

[4] Accordingly, these reasons consider liability for the third accident as well as Ms. Dhingra's claims for damages in respect of all three accidents.

II. Liability

A. Evidence

1. *The undisputed evidence*

[5] The third accident occurred on October 13, 2017, at approximately 8:30 am at the intersection of 124th Street and 66th Avenue in Surrey, B.C. That intersection is controlled by stop signs on all four sides.

[6] Just prior to the accident, Ms. Dhingra was driving two of her children to school in a grey 2014 Toyota Camry (the "Dhingra Vehicle"), travelling northbound on 124th Street in Surrey. Her three children, who were then 12, 8, and 6 months old, were in the vehicle with her. Ms. Hayer, who was also driving her children to school, was travelling eastbound on 66th Avenue in a black 2008 Toyota Prius (the "Hayer Vehicle"). Her children, Tanjodh and Gurdeep, were in the vehicle with her. Given

their common last name, for these reasons, I refer to Ms. Hayer's children as "Gurdeep" and "Tanjodh".

[7] The accident occurred on the eastern side of the intersection when the Dhingra Vehicle struck the Hayer Vehicle near the right front door. Four witnesses who were present at the time of the accident gave evidence regarding the accident: Ms. Dhingra, Ms. Hayer, Tanjodh, and Gurpreet.

[8] In addition, Ms. Hayer relies on the report of Dr. Amrit Toor, an accident reconstruction expert who also provided oral evidence at the trial.

2. *Ms. Dhingra*

[9] Ms. Dhingra testified that she had a clear view of the intersection and saw children crossing the crosswalk as she approached the intersection. She said she stopped at her stop sign and the children crossed in front of her vehicle.

[10] After the children crossed, she saw a green car travelling eastbound across the intersection, from her left to right. She also observed a car to her right, heading westbound, and an SUV in the oncoming lane heading south. She said both vehicles were stopped at their stop signs. After the green car cleared the intersection, the car to her right proceeded westbound, after which the SUV in the oncoming lane travelled southbound. They did so before she continued into the intersection.

[11] When it was her turn to enter the intersection, she scanned the intersection to her left, right, and front. She did not see a vehicle at the stop sign to her left (i.e., the direction from which Ms. Hayer was travelling), but she did see the Hayer Vehicle approaching the intersection. She assumed that it would stop at the stop sign.

[12] Having determined that it was her turn to proceed, Ms. Dhingra accelerated "normally". As she entered the intersection, out of the corner of her eye, she saw that the Hayer Vehicle did not stop as she anticipated it would. However, she was not able to brake and did not swerve before the impact.

3. Ms. Hayer

[13] Ms. Hayer testified that their vehicles were travelling in the same direction ahead of her as she approached the intersection. Although she was not sure how many cars were ahead of her, she testified that the one directly in front of her turned left and cleared the intersection.

[14] Her evidence at discovery was different. At discovery, she said that she did not notice or had forgotten if the car ahead of her had turned or gone straight. She also could not remember if the vehicle had cleared the intersection. When that evidence was put to her at trial, she said she could not remember giving that answer, noting that if the vehicle had not cleared the intersection, she would not have been able to move forward.

[15] Ms. Hayer also saw two other vehicles as she approached the intersection: a vehicle in the oncoming lane that was in the process of crossing the intersection and an SUV that was stopped at the stop sign to her left. When her discovery transcript was put to her, she clarified that the SUV had come to a stop only after she had come to a full stop first. Accordingly, after the oncoming vehicle cleared the intersection, she proceeded through before the SUV. At discovery, she said that the SUV entered the intersection first.

[16] While stopped, Ms. Hayer saw children crossing the crosswalk to her right (i.e. the direction from which Ms. Dhingra was travelling). Ms. Hayer saw the Dhingra Vehicle approaching the stop sign, but it had not stopped. She was not able to estimate the speed of the Dhingra Vehicle at discovery. At trial, she described Ms. Dhingra's speed as "normal". She assumed Ms. Dhingra would stop. On that assumption, Ms. Hayer said she gradually proceeded across the intersection once it was her turn to do so. She did not know if Ms. Dhingra stopped at her stop sign.

[17] She testified that her vehicle was struck after she had travelled over halfway across the intersection. At the time, she was travelling "very slowly". She did not anticipate the collision and could not swerve to avoid it.

4. Gurdeep Hayer

[18] Gurdeep was 17 years old at the time of the accident and 22 years old when she testified at trial. She was seated directly behind the driver's seat when the accident occurred.

[19] Gurdeep conceded that she was looking at her phone "most of the time" while in the vehicle and was not paying attention to her mother's driving. As such, she did not have a clear view of the intersection. However, she testified that she "felt the [Hayer Vehicle] stop" at the stop line, but conceded the vehicle could have stopped anywhere. She could not say how long her mother had stopped but thought it was "maybe a few seconds".

[20] When asked if her mother could have stopped before she reached the stop sign, Gurdeep said she felt "only one stop". She did not know if another vehicle had stopped at the stop sign in front of the Hayer Vehicle, she said because "[she] was not paying attention".

[21] In addition to her oral evidence at trial, Gurdeep had also prepared a written witness statement prior to the trial. In that statement, she wrote:

> At the intersection of 124 Street, I observed my mother brought our car to a full stop at the stop sign. She checked around the intersection then started to proceed into the intersection.

[22] At the trial, she clarified that she did not see her mother check the intersection but "just assumed" she had done so.

[23] She did not know how many seconds had passed from when her mother started moving after stopping to when the accident occurred. She did recall however that Ms. Hayer was not travelling at an angle, but rather drove straight across the intersection. She did not see the Dhingra's vehicle prior to the accident. She did not see or feel her mother swerve or apply her brakes to avoid the impact.

5. Tanjodh Hayer

[24] Tanjodh was 15 years old at the time of the accident and 20 years old when he testified at the trial. He was the front seat passenger in the Hayer Vehicle at the time of the accident.

[25] Like Gurdeep, Tanjodh was on his phone while in the car but would look up when the car slowed down or stopped.

[26] Tanjodh remembers seeing one car ahead of his mother's vehicle at the stop sign but says there could have been more. While stopped, he did not see the Dhingra Vehicle stopped on the right. He did see pedestrians to the right, but he was not sure if they were crossing the road. He noted that children were on the sidewalk.

[27] Tanjodh also saw a vehicle in the oncoming lane as well as an SUV to the left. At trial, he testified that both vehicles were approaching the intersection when the Hayer Vehicle stopped. On his pre-trial examination, he stated that both vehicles were stopped before his mother's vehicle stopped at the intersection. When the inconsistency was put to him, he conceded that he did not currently remember and adopted his response at the pre-trial examination, i.e., that both vehicles were stopped prior to the Hayer Vehicle coming to a stop. He could not recall which of those vehicles proceeded through the intersection, what sequence they proceeded, or if they passed through the intersection prior to his mother.

[28] Although he was not certain, he estimated that his mother had been stopped for a "few seconds" before proceeding through the intersection. When she did so, he looked back down at his phone but saw the Dhingra Vehicle in his peripheral vision just before the impact. He could not tell if it had stopped at the stop sign.

[29] He testified that his mother was travelling straight through the intersection at the time of the impact and did not brake before the impact. He did not know how fast she was travelling and was not certain that she swerved to avoid the collision.

6. Dr. Amrit Toor

[30] Dr. Toor prepared a report in which he was asked to consider which of the two following scenarios was more likely:

a) The Hayer Vehicle stopped at her stop sign and then proceeded into the intersection and the Dhingra Vehicle may or may not have stopped ("Scenario A"); and

b) The Dhingra stopped at her stop sign and the Hayer Vehicle did not stop ("Scenario B").

[31] He did not consider any other alternatives.

[32] Dr. Toor concluded:

a) the impact speed of the Hayer Vehicle was approximately 11 km/h, with a range of about 8 to 14 km/h; and

b) the impact speed of the Dhingra Vehicle was about 26 km/h, was a range of about 22 to 30 km/h.

[33] Having calculated those speeds, Dr. Toor then concluded:

a) Scenario A is consistent with the evidence and the assumption that Ms. Hayer's foot was on the brake pedal at the moment of impact.

b) Scenario B indicates that the Dhingra Vehicle needed to accelerate at a rate slightly greater than rapid acceleration to attain the calculated impact speed;

c) If Ms. Dhingra did not accelerate rapidly, then scenario B is unlikely and scenario A is more likely; and

d) If Ms. Dhingra did accelerate at a rate slightly greater than the rapid rate of acceleration, then both Scenario A and B are possible.

B. Legal Framework

[34] Section 144 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [*MVA*] generally provides:

> Careless Driving Prohibited
>
> 144(1) A person must not drive a motor vehicle on a highway
>
> (a) without due care and attention,
>
> (b) without reasonable consideration for other persons using the highway, or
>
> (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

[35] In addition to the general guidance provided in s. 144, ss. 173, 175, and 186 of the *MVA* set out the more specific statutory obligations of drivers at a four-way stop. Referring to the decision in *Demarinis* v. Skowronek, 2012 BCSC 1281, this Court summarized those sections in *Kim* v. *Dresser*, 2021 BCSC 1032 as follows:

> [18] Sections 173, 175 and 186 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [*MVA*] were considered by the court in *Demarinis* v. *Skowronek*, 2012 BCSC 1281. Section 186 requires drivers to stop at a marked stop line where there is a stop sign. Section 173 requires drivers to yield to the driver on the right, if two cars enter an intersection at approximately the same time and there are no yield signs. Section 175 requires a driver stopped at a stop sign to yield to any traffic that has entered the intersection before them. The court in *Demarinis* confirmed at paras. 48-49 that, "the well settled proposition that drivers are entitled to assume that other drivers will obey and observe the law unless there is reason to believe otherwise," remains accurate. However, a driver must comply not only with statutory provisions, but also with their common law duty of care.

[36] Accordingly, in assessing liability, one or more of the following questions must be determined: (a) did either Ms. Hayer or Ms. Dhingra fail to stop at their stop sign; (b) who came to a stop first; or (c) which vehicle was in the intersection first?

C. Discussion and Analysis

[37] Ms. Dhingra and Ms. Hayer say that they stopped at their stop lines and were in the intersection before the other. They say that the other was 100% liable for the accident.

[38] In support of her position, Ms. Hayer relies on Dr. Toor's conclusions. She says that the evidence is consistent with her and her children's recollection of the accident. Ms. Dhingra rejects Dr. Toor's conclusions, arguing that it is based on facts and assumptions that were either incorrect or not proven at trial. Both parties reject the others' version of events, each alleging that the others' versions were neither credible nor reliable.

1. Dr. Toor's report

[39] In reaching his conclusions regarding the likelihood of Scenarios A and B, Dr. Toor relied on four express assumptions, including that there were two passengers in the Dhingra Vehicle and that Ms. Hayer's foot was on the brake at impact. He also appears to have relied on other assumptions including that the roads were wet at the time of the accident, the vehicles were travelling at or near the middle of their respective lanes, and where the vehicles may have stopped relative to the stop line.

[40] None of those assumptions were proven. The first two assumptions were incorrect.

[41] On cross-examination, Dr. Toor conceded that if his assumptions were "radically" different, his report would have to be changed. Although he did not define "radical", I am satisfied that any one of the unproven assumptions makes Dr. Toor's conclusions regarding the likelihood of Scenario A or B less reliable. Collectively, those assumptions make it very difficult, if not impossible, to rely on those conclusions.

[42] Of the assumptions, in my view, the most significant is the assumption that Ms. Hayer applied her brakes prior to impact. His conclusion that Scenario A (i.e., that Ms. Hayer stopped at her stop sign) is consistent with the evidence expressly includes the assumption that her foot was on the brake at impact.

[43] However, no witness testified that Ms. Hayer applied the brakes. Ms. Hayer said that she did not anticipate the collision. That being the case, there would have been no reason for her to brake before impact. Neither Gurdeep nor Tanjodh felt the

vehicle break before impact. The assumption was not proven and taints Dr. Toor's conclusion regarding the likelihood that the Hayer Vehicle stopped.

[44] Dr. Toor maintains nonetheless that his calculation of the impact speeds was not affected by his assumption. He testified that those calculations were based on objective evidence including photographs of damage to the vehicles and photographs of the post-impact position of the vehicles. Ms. Hayer argues that those calculations of impact speed support her position that she was in the intersection before Ms. Dhingra.

[45] Indeed, if Dr. Toor's speed calculations are accurate, it would appear that was the case. However, his calculations of impact speed, if accurate, would mean that the Hayer Vehicle was not travelling straight in her lane before impact but rather was travelling at a "slight angle" toward the oncoming lane. The evidence does not support that she was.

[46] On the contrary, Ms. Hayer, Gurdeep, and Tanjodh all confirmed that they were travelling in a straight path. The fact that Ms. Hayer did not anticipate the collision makes it unlikely that she swerved prior to impact. Ms. Hayer said she did not. The evidence is inconsistent with Dr. Toor's calculation of impact speed.

[47] Finally, it is notable that Dr. Toor was only asked to consider the "likelihood" of two unproven scenarios, both of which assume one of the parties stopped the intersection. Dr. Toor does not consider other possible scenarios including, for example, the possibility that neither party stopped. In my view, restricting the analysis, and the possible conclusions, to two pre-determined scenarios renders the report less helpful than otherwise may have been the case.

[48] For the foregoing reasons, in my view, Dr. Toor's report is of little assistance in determining how the accident happened.

2. Credibility

[49] Having concluded that I cannot rely on Dr. Toor's report, I turn now to consider the parties' evidence. That evidence is diametrically opposed: Ms. Dhingra argues that having come to a full stop, she entered the intersection before Ms. Hayer. Ms. Hayer argues that she entered the intersection before Ms. Dhingra. Given that inconsistency, I must consider the credibility and reliability of the parties' and the witnesses' evidence.

[50] The well-established test for assessing credibility is set out in the decisions of *Faryna* v. *Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.) and *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186 – 187. The decision in *Gichuru* v. *Smith*, 2013 BCSC 895 at para. 130 also provides guidance.

[51] Related to, but distinct from, credibility is reliability. Credibility concerns the veracity of a witness; reliability involves the accuracy of the witness's testimony. Accuracy engages consideration of the ability of the witness to observe, recall and recount what occurred: *R.* v. *Khan*, 2015 BCCA 320 at para. 44.

[52] Using the three step methodology for assessing credibility endorsed in *Bradshaw*, I will consider: (1) whether the testimony of each witness is inherently believable on a 'stand alone' basis: (2) if so, whether the evidence is consistent with other witnesses, and documentary evidence; and finally (3) which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions".

[53] As a starting point on that analysis, there is nothing about the evidence of either Ms. Dhingra or Ms. Hayer on its face that makes either version of events unbelievable. Both versions, on a stand-alone basis, are inherently believable. Accordingly, I will assess Ms. Dhingra's and Ms. Hayer's evidence in light of other evidence and on what can be recognized as reasonable.

[54] Other than the two drivers, Ms. Hayer's children, Gurdeep and Tanjodh, were also present at the time of the accident. However, by their admission, both Gurdeep and Tanjodh were focused on their phones during the drive and neither paid too much attention to their surroundings.

[55] Gurdeep, in particular, was not able to say if any cars were ahead of her mother's vehicle at the stop sign. She did not give any evidence at all about the vehicles that may have been at the other three stop signs. In that light, her evidence that she did not see any vehicles to her right (i.e., the direction from which the Dhingra Vehicle entered the intersection) is of limited assistance as a yardstick by which to measure the credibility of Ms. Hayer's evidence.

[56] Although Tanjodh testified that he did observe his surroundings by looking up from time to time, as summarized above, his evidence between his pre-trial examination and trial concerning those observations was directly contradictory. Neither Gurdeep nor Tanjodh are reliable witnesses.

[57] Despite the inconsistencies and discrepancies in the evidence, the evidence as a whole is consistent in three general ways:

a) Ms. Dhingra observed a green car travelling eastbound in the same direction as Ms. Hayer. Both Ms. Hayer and Tanjodh also recall that at least one vehicle, and perhaps more, had stopped in front of Ms. Hayer at the stop sign;

b) Ms. Hayer, Ms. Dhingra, and Tanjodh agree that in addition to that eastbound vehicle, two other vehicles were at the intersection: a vehicle travelling westbound in the opposite direction of Ms. Hayer and an SUV travelling southbound in the opposite direction of Ms. Dhingra; and

c) Ms. Hayer, Ms. Dhingra, and Tanjodh all observed children in the crosswalk or at the side of the road in front of the crosswalk at the stop sign from which Ms. Dhingra travelled.

[58] Despite the concordance of that evidence, there is an inconsistency among the witnesses regarding the order in which the westbound vehicle and the southbound vehicle approached and entered the intersection. On that point, not only is Ms. Hayer's and Tanjodh's evidence inconsistent with each other's, but it was inconsistent with the evidence each had given prior to trial. Between them, they testified variously that when Ms. Hayer stopped at her stop sign:

a) The westbound vehicle was crossing the intersection and the southbound SUV was stopped at the stop sign (Ms. Hayer's trial evidence);

b) The southbound SUV had not yet come to a stop (Ms. Hayer's discovery evidence);

c) Both the westbound vehicle and the southbound SUV were approaching the intersection (Tanjodh's trial evidence); and

d) Both the westbound vehicle and the southbound SUV were stopped at their stop signs (Tanjodh pre-trial examination evidence).

[59] The order in which the vehicles came to a stop and entered the intersection relative to the other vehicles determines which vehicle had the right of way to proceed. Ms. Hayer's and Tanjodh's inconsistent and contradictory evidence on that important point is significant.

[60] By contrast, Ms. Dhingra's evidence on the point is clear: she said both of the other vehicles were stopped at the intersection when she arrived at the stop sign, and before Ms. Hayer stopped. She proceeded after both the westbound vehicle and the southbound SUV had crossed the intersection. She was not impeached on that point.

[61] Notably, Tanjodh's pre-trial examination evidence, which he adopted at trial, is consistent with that of Ms. Dhingra. Both say that both the southbound SUV and the westbound vehicle were stopped before Ms. Hayer arrived at her stop sign. Assuming that to be the case, both of those vehicles had the right to proceed before

Ms. Hayer. Ms. Hayer testified that she proceeded through the intersection before the southbound SUV.

[62] Ms. Hayer's inconsistent evidence regarding the eastbound vehicle immediately ahead of her is also significant. At trial, she said that it had turned left and cleared the intersection. At discovery, she did not know its direction of travel or whether it had cleared the intersection. Given the proximity of that vehicle, Ms. Hayer's inability to consistently recall the direction of its travel also serves to undermine the reliability of her evidence.

[63] Ms. Dhingra was also challenged on her evidence and, indeed, admitted to having had previous memory problems. However, in my view, none of those challenges, including what time school started that day or whether she checked to the left as she approached the intersection or after she stopped (she was consistent in that she checked), went to the issue in dispute, that is whose turn it was to proceed at the intersection. On those matters, her evidence is consistent.

[64] In assessing credibility, I have also considered that the collision occurred in the eastern portion of the intersection. I have also reviewed the photographs of the damage to the vehicles. Ms. Hayer argues that both the location of the collision and the photographs strongly suggest that Ms. Hayer entered the intersection first. I do not agree.

[65] Without information about the speed at which the vehicles travelled through the intersection, the location of the collision does not provide any assistance in determining who entered the intersection first. Having rejected Dr. Toor's report, and with only general information from the lay witnesses, there is no reliable evidence to accurately assess the speed. As such, I am not able to conclude that the location of the collision supports Ms. Hayer's version of events.

[66] The location of damage on the vehicles is indicative of the fact that a collision occurred and perhaps that Ms. Dhingra collided with Ms. Hayer's vehicle. It does not reveal who entered the intersection first.

[67] In my view, Ms. Dhingra's evidence was the most credible and reliable of the witnesses. I accept her version of the events as being the most credible.

[68] As the final step in assessing the parties' evidence, I have also considered which version of events is most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions". In my view, two facts are most pertinent.

[69] The fact that children and other pedestrians were crossing in the crosswalk in front of Ms. Dhingra's stop sign makes Ms. Dhingra's assertion that she came to a stop at the intersection reasonable. In the circumstances, it is difficult to consider that she did not stop as Ms. Hayer suggests. In my view, it is reasonable to conclude that Ms. Dhingra did stop at the stop sign.

[70] By contrast, although children were around the intersection, there was no evidence that anyone was in the crosswalk in front of Ms. Hayer's vehicle. That she did not stop is more plausible. Moreover, the evidence that more than one vehicle had stopped in front of Ms. Hayer suggests that she, too, must have stopped and started more than once before reaching the stop line. However, no one in her vehicle suggested that she did.

[71] In my view, the "preponderance of probabilities" favours Ms. Dhingra's version of the accident. I accept that version of events. In particular, I find that:

a) Ms. Dhingra came to a complete stop at her stop line;

b) After she stopped, the westbound vehicle and the southbound SUV crossed the intersection in that order;

c) While at the intersection, Ms. Dhingra looked in all directions, including to the left, the direction from which Ms. Hayer was travelling. She saw Ms. Hayer approaching her stop line, but she (Ms. Hayer) had not yet come to a stop at the stop line;

d) Having seen Ms. Hayer's vehicle approach the stop line, Ms. Dhingra entered the intersection.

[72] In my view, Ms. Hayer has failed to prove that she stopped at the stop line or that she entered the intersection before Ms. Dhingra.

D. Conclusion

[73] I find that Ms. Dhingra complied with her obligation to stop at the stop line at the intersection as required by s. 186 of the *MVA* and could safely enter the intersection before Ms. Hayer reached her stop line. Accordingly, once in the intersection, the Dhingra Vehicle became an immediate hazard to Ms. Hayer to which Ms. Hayer was required to yield: *Kim* at para. 20, citing *Demarinis* at para. 45 -46; *Rothenbusch v. Van Boeyen*, 2010 BCSC 1518 at para. 139 and 146.

[74] That being the case, not only did Ms. Hayer fail to prove that she stopped at the stop line as required by s. 186, but she also breached her obligation to fail to yield to Ms. Dhingra in the intersection as required by s. 175 of the *MVA*.

[75] However, the statutory requirements of the *MVA* are not the exclusive determiner of liability. The Court will also be informed by a consideration of the reasonableness of the actions of the parties, with the expectation that all drivers will exercise reasonable care even when others have failed to respect their right of way: *Kim at para 19*, citing *Demarinis* at para. 21. However, in this case, having noted that Ms. Hayer had not yet arrived at the stop line, Ms. Dhingra was entitled to proceed on the assumption that she should obey traffic regulations, in this case, to stop at the stop line: *Kim* at para. 18 citing *Demarinis* at paras. 48-49.

[76] There is no evidence to support a finding that Ms. Dhingra should have assumed otherwise or when she should have realized that was not the case.

[77] I find that Ms. Hayer is 100% liable for the accident.

[78] I now turn to the issue of Ms. Dhingra's claims for damages.

III. Background

A. Pre-Accident Background

i. Home and Social Life

[79] Ms. Dhingra was 45 years old at the time of the trial. She was 37 years old at the time of the first accident in May 2015.

[80] Having completed her grade 12 education in Punjab, India, Ms. Dhingra moved to Canada in 1997. She married Sukhwinder Singh Dhingra in 2001. Together, they have three children who, at the date of the trial were 17, 13, and 5 years old.

[81] Prior to the accidents, Ms. Dhingra was the primary caregiver for her children and attended to all of their needs including getting them ready for school, taking care of their medical needs, and attending their extra-curricular events. In addition, she was also responsible for all household chores which included cooking, cleaning, laundry, washing, and buying groceries. As Mr. Dhingra worked long hours in his job, he did not assist with those chores.

[82] She attended her temple three times per week, engaged in regular exercise including at the gym and swimming, and had family get-togethers once per month.

ii. Health

[83] Prior to the first accident in May 2015, Ms. Dhingra suffered several health setbacks including two incidents regarding her psychiatric health: one in 2006 and one in 2011 for which she was hospitalized for a month. She attributed the 2011 incident, in part, to fatigue due to illness and medication, as well as to feeling neglected by her husband who was spending long hours at work.

[84] Other pre-accident health issues were physical. In 2013, Ms. Dhingra suffered from problems with low energy, weight gain, and fatigue. In April 2014, she was taken to the hospital feeling anxious and short of breath. At the time, she reported feeling tired all the time, even after a good night’s sleep. Those symptoms were

attributed to low iron levels which Ms. Dhingra says she was able to manage through iron injections and various iron supplements. She was also advised to lose weight. In December 2014, Ms. Dhingra complained of left heel pain and was diagnosed with plantar fasciitis, for which she took painkillers.

iii. Work

[85] Ms. Dhingra started working in Canada in May 1999 and worked at various jobs until October 2004. With the exception of a few months in 2007, Ms. Dhingra did not work outside of the home between 2004 and 2014. During that time she stayed at home to care for her children.

[86] In 2011 or 2012, Ms. Dhingra took a level one insurance course that allowed her to handle auto insurance and ICBC renewals. She was able to obtain employment in that field in 2014 and commenced employment with Allied Insurance on August 1, 2014, where she was working at the time of the first accident.

B. The Accidents

i. May 1, 2015 (the "first accident")

[87] On May 1, 2015, Ms. Dhingra was rear-ended without warning while stopped at an intersection. The force of the collision was strong enough to push her vehicle into the vehicle in front of her. Ms. Dhingra characterized the first accident as the worst of the three accidents.

[88] Ambulance personnel attended the scene and transported Ms. Dhingra to the hospital where she reported neck and back pain. Ms. Dhingra saw her family physician a couple of days later and continued to complain of neck pain, back pain, left arm pain and numbness, and said the entire left side of her body was hurting. She was nauseous, felt like vomiting, and had headaches. She attended emergency at the hospital a week after the first accident with severe neck pain.

ii. May 17, 2015 (the "second accident")

[89] In the second accident, Ms. Dhingra was a passenger in the vehicle driven by her husband. They were stopped at a red light when they were rear-ended.

[90] There was not much damage to the vehicle. Emergency personnel did not attend the scene and Ms. Dhingra characterized this accident as not very bad. She testified that this accident aggravated the neck pain, back pain and left-sided pain she had as a result of the first accident.

iii. The October 13, 2017 Accident (the "third accident")

[91] The details of the third accident are set out in the "Liability" section above.

[92] She was taken from the scene by ambulance and complained of neck, back and left side pain, and headaches. Her prior injuries were aggravated, especially her back and left leg pain. She also had knee pain arising from this accident, which she says substantially resolved, except when her leg pain flares up.

C. Post Accident Circumstances

i. Marital / Financial Issues

[93] Significant marital issues arose between Ms. Dhingra and Mr. Dhingra after the second accident, including an incident in July 2015 in which Mr. Dhingra assaulted Ms. Dhingra by "forcefully" pushing her toward a wall. Noting that her husband had been getting irritated and not communicating with her, Ms. Dhingra explained that "it was ongoing from before" and that his behaviour toward her was "not very good."

[94] On a separate occasion in 2020 when she was not employed, Mr. Dhingra demanded that Ms. Dhingra give him her child benefit money she received from the government. When she refused, he responded by refusing to pay for groceries for a couple of months. The incident had a tremendous emotional effect on Ms. Dhingra.

[95] Both Ms. Dhingra and Mr. Dhingra attribute the difficulties in their marriage to the stress and frustration arising from their financial difficulties due to Ms. Dhingra's

inability to work as well as to her inability to attend to the home chores and the children as she did before the accidents.

ii. Non-Accident Related Health Issues

[96] In the period after the third accident, Ms. Dhingra had several non-accident related health issues including severe abdominal pain in October 2018, two anal fissures, a case of shingles in July 2019, and a bout of COVID-19 in February 2021.

[97] In addition, she became pregnant in the fall of 2016 and had an emergency C-section in March 2017. The C-section left her with pain for several months. Other concerns included issues relating to her children's health and well-being.

iii. Home and Social Life

[98] Ms. Dhingra was not able to do household chores immediately after the first and second accidents. She had problems getting into the shower and getting dressed.

[99] Since the third accident, Ms. Dhingra has slowly regained some ability to do household chores, but not to the extent or to the standard she did before the accidents. For example, while before she used to make fresh "traditional" Indian meals, they now eat frozen pizzas and ready-to-eat meals and order take-out more often. When she does prepare a meal, she takes a long time to cook and the meals are often late. She is only able to attend to laundry two to three times a month.

[100] As the pain makes it difficult for her to sleep, she finds it hard to get up, often making the children late for school. The older children have had to discontinue their extracurricular activities as she is not able to take them. Her husband gave similar evidence with respect to Ms. Dhingra's capacity at home.

[101] With the exception of attending temple, Ms. Dhingra has curtailed almost all of the recreational activities she enjoyed prior to the first accident. Although she does attend temple, she only does so three to four times a year and has difficulty sitting cross-legged.

IV. Credibility and Reliability

[102] In *Wells* v. *Kolbe*, 2020 BCSC 1530 at paras. 81 – 84, Justice Wilson considered the leading jurisprudence regarding the assessment of injuries that rely almost exclusively on subjective pain reports. He succinctly summarized the law as follows:

> [83] When the plaintiff's complaints are entirely or primarily subjective, the court must exercise caution in determining whether those complaints are genuine. The absence of objective findings increases the opportunity for exaggeration or distortion, and even fabrication. However, the fact that symptoms cannot be objectively photographed or measured does not mean they are not genuine and real and deserving of compensation.

[103] As the Court of Appeal noted in *Butler* v. *Blaylock,* [1983] B.C.J. No. 1490 (C.A.):

> [13] …It is not the law that if a plaintiff cannot show objective evidence of continuing injury that he cannot recover. If the pain suffered by the plaintiff is real and continuing and resulted from the injuries suffered in the accident, the Plaintiff is entitled to recover damages. There is no suggestion in this case that the pain suffered by the plaintiff did not result from the accident. I would add that a plaintiff is entitled to be compensated for pain, even though the pain results in part from the plaintiff's emotional or psychological makeup and does not result directly from objective symptoms.

[104] In this case, the defendants assert that Ms. Dhingra's evidence is neither credible nor reliable. As such, they argue that her evidence must be approached with extreme caution and given very little weight.

[105] Their assertion is focussed on two general issues: what they say are inconsistencies in her evidence and her reports to various medical practitioners and surveillance video. While I accept that there appear to be inconsistencies in Ms. Dhingra's evidence, I do not accept that either those inconsistencies or the surveillance evidence support the conclusion that Ms. Dhingra is not a credible witness.

[106] In respect of the first issue, the defendants refer to inconsistencies between Ms. Dhingra's evidence at trial, discovery, and what she told the medical

practitioners. While I have considered all of the examples of inconsistencies offered by the defendants, I will provide just a few examples:

a) At trial, Ms. Dhingra testified that her knee pain resolved quite soon after the third accident. She then said that she was still having “a little bit” of knee pain in 2021 but that it was not continuous and that it created some difficulty in walking upstairs but “not too much, very little”. The physiotherapy notes record in late 2021 indicated that “bilateral knee pain, with difficulty walking upstairs, takes a lot of effort to do one step, difficulty walking and standing for long periods, about 5 to 20 minutes before the onset of low back and knee pain.” Ms. Dhingra did not dispute those records but added that she had a number of additional problems, but that the knee pain was intermittent;

b) In February 2020, she told Dr. Neufeld that she could not sit cross-legged for 5 minutes before having to stretch her legs, and said she still could not sit cross-legged for more than 5 to 10 minutes because of pain. At her July 2021 discovery, she said she could not sit in that position for longer than 20 minutes;

c) In August 2022, Ms. Dhingra reported to Dr. Neufeld that she was working 35+ hours per week prior to the first accident. She told Dr. Sawhney that she had been working 20 to 30 hours per week. Pursuant to the agreed statement of facts, in fact, she worked an average of 29 hours per week; and

d) There were various inconsistencies in her evidence regarding her reports of her weight, and her efforts to control her weight, as recorded by her doctors from 2013 to the trial date in 2022.

[107] In *Edmondson* v. *Payer*, 2011 BCSC 118, the Court outlined the weaknesses in the use of clinical records to impeach a witness. In addition to the frailties in relying on the absence of a record, it stated:

> [34] The difficulty with statements in clinical records is that, because they are only a brief summary or paraphrase, there is no record of anything else that may have been said and which might in some way explain, expand upon or qualify a particular doctor's note. The plaintiff will usually have no specific recollection of what was said and, when shown the record on cross-examination, can rarely do more than agree that he or she must have said what the doctor wrote.
>
> [35] Further difficulties arise when a number of clinical records made over a lengthy period are being considered. Inconsistencies are almost inevitable because few people, when asked to describe their condition on numerous occasions, will use exactly the same words or emphasis each time. As Parrett J. said in *Burke-Pietramala v. Samad*, 2004 BCSC 470, at paragraph 104:
>
> > ...the reports are those of a layperson going through a traumatic and difficult time and one for which she is seeing little, if any, hope for improvement. Secondly, the histories are those recorded by different doctors who may well have had different perspectives and different perceptions of what is important. ... I find little surprising in the variations of the plaintiff's history in this case, particularly given the human tendency to reconsider, review and summarize history in light of new information.

[108] In my view, those same considerations apply here. Ms. Dhingra's clinical records date back to 2013. In the period since then, she experienced several medical issues in addition to the complaints arising from the accidents. She reported to several different medical practitioners including treating physicians, specialists, physiotherapists, and specialists for the purposes of independent medical examinations. Seven and half years had elapsed between the first accident and the trial date. In those circumstances, it would be surprising if there were no inconsistencies. I am not satisfied that any of the inconsistencies were of such a magnitude to seriously question Ms. Dhingra's credibility.

[109] In coming to that conclusion, I have also considered Ms. Dhingra's response to a questionnaire that Ms. Dhingra completed at the request of Dr. Neufeld in August 2022. In it, Ms. Dhingra was asked to provide a schedule to "indicate how you currently spend your average day". The written response did not identify any of the issues she purported to have in her day-to-day activities at trial.

[110] At trial, she said it was "very rare" to have the day she described on the questionnaire. She explained that notwithstanding the express instructions, she

described a “good day” and that there was not enough room on the questionnaire to include the details of a “bad day”. She suggested that she simply may not have paid enough attention to the instructions. The defendants suggest that her explanation is implausible. They say that the description set out in the questionnaire is the best evidence of what she was capable of doing on a daily basis.

[111] I accept Ms. Dhingra’s explanation on this point. First, the space to provide a response allows for not more than approximately four to five handwritten words for each hour of the day. I accept her explanation that she was limited in what she could include. Second, Ms. Dhingra does not deny that there are days on which she is capable of performing the activities set out on the questionnaire. Her evidence is that she cannot do so every day. In fact, that she would include the details of a good day on the questionnaire, even knowing the purpose for which it was required, reinforces that she has made attempts to present her evidence in a truthful and forthright way.

[112] Finally, the defendants also rely on surveillance video taken over 17 days in a 2-year period in an attempt to discredit Ms. Dhingra’s credibility. While those videos disclose that Ms. Dhingra was not precluded from engaging in activities such as shopping, working, and engaging in her rehabilitation activities, I saw nothing in any of them to suggest that her injuries were not as she described.

[113] I am satisfied that notwithstanding the inconsistencies that did exist, Ms. Dhingra attempted to present her evidence in a truthful and forthright manner. I am satisfied that she did it to the best of her ability, especially given the time that has elapsed since the first accident. I am also satisfied that her evidence is consistent with the evidence of lay witnesses, including her husband and co-workers.

[114] I accept Ms. Dhingra’s evidence as credible.

V. Injuries, Causation, and Prognosis

A. Physical Injuries

1. Diagnosis

Medical Evidence

[115] Two experts provided evidence concerning Ms. Dhingra's physical injuries. Dr. William Neufeld, an occupational health physician, gave evidence on behalf of Ms. Dhingra. Dr. Neufeld assessed Ms. Dhingra on two occasions, February 10, 2020, and August 11, 2022. He prepared two reports dated March 4, 2020 and August 19, 2022. He also gave oral evidence at trial.

[116] Dr. Douglas Connell, a radiologist, was retained by the defendants to review radiological, CT, and MRI imaging and to provide his opinion regarding Ms. Dhingra's reported complaints and their possible causes. Dr. Connell prepared an expert report dated September 2, 2022. He was not required for cross-examination and did not provide any oral evidence

[117] As of the date of Dr. Neufeld's first assessment in February 2020, Ms. Dhingra reported persisting symptoms comprised of back, neck, and shoulder pain, headaches, and numbness and tingling in her left arm. She also suffered from sleep disturbances, reduced activity tolerance, and reduced emotional coping ability.

[118] Dr. Neufeld diagnosed Ms. Dhingra with chronic myofascial pain, affecting her lower back and, to a lesser extent, her neck.

[119] Ms. Dhingra continued to report the same symptoms at her next assessment with Dr. Neufeld in August 2022. However, by then, she reported the neck pain was not as painful, but that her sleep disturbances were worse. She also reported other symptoms including left leg pain, which had "increased since 2020"; right leg pain which "started hurting more since last seen in 2020"; and right foot pain, which had "gradually increased over the past 6 to 7 months" and which was described as "severe" upon first getting out of bed.

[120] Dr. Neufeld's second assessment resulted in an expanded diagnosis as follows:

> Ms. Dhingra has developed a chronic myofascial pain condition affecting her neck, mid and low back and her upper and lower extremities as a result of the injuries sustained in the motor vehicle collisions of May 1, 2015, May 17, 2015 and October 13, 2017. As a consequence of chronic pain, she is also suffering from moderately severe depressed mood. Her neck pain has improved since February 2020 but she is left for significantly reduced range of cervical motion. As a consequence of altered gate due to chronic pain she has also developed left lateral trochanteric bursitis and right planter fasciitis.

[121] Dr. Connell opined that the imaging of Ms. Dhingra's neck and lumbar spine did not demonstrate traumatic injury. He noted some mild degenerative change, with "disc space narrowing at the C5-6 level", which was present at the time of the first accident.

Findings on Diagnosis

[122] I accept that Ms. Dhingra has suffered the conditions as diagnosed by Dr. Neufeld and as set out in both of his reports. I come to that conclusion notwithstanding the fact that the diagnosis is based, in part, on Ms. Dhingra's subjective reports and notwithstanding Dr. Connell's review.

[123] As set out above, I accept that the pain reported by Ms. Dhingra is real. In any event, Dr. Neufeld did not base his diagnosis solely on Ms. Dhingra's subjective reports. Rather, his assessment is also based on the clinical records and his physical examination of Ms. Dhingra. It is consistent with her husband's and co-worker's evidence who observed Ms. Dhingra at home and at work.

[124] While I accept Dr. Connell's observation that the imaging did not disclose signs of "traumatic injury", it is unclear whether any such signs would necessarily be evident in the images he viewed. Without that evidence, I cannot conclude from his observations that Ms. Dhingra did not suffer neck or back pain which she complains or as diagnosed by Dr. Neufeld. Indeed, the defendants do not suggest she did not.

[125] I am satisfied that Ms. Dhingra has suffered the conditions as diagnosed by Dr. Neufeld and as set out in both of his reports. That is not to say, however, that all of those conditions were caused by one or more of the accidents.

2. Causation

a. Legal Framework

[126] The primary test for causation asks: but for the defendant's negligence, would the plaintiff have suffered the injury? The "but for" test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the defendant's conduct is present: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21–23.

[127] To establish causation, a plaintiff must establish on a balance of probabilities that the defendant's negligence caused or materially contributed to her injury. The defendant's negligence need not be the sole cause of the injury, so long as it is part of the cause beyond the *de minimis* range: *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.

[128] Where a defendant's conduct is found to be a contributing cause of an injury, the defendant is liable for the plaintiff's injury even if the injury is unexpectedly severe owing to a pre-existing condition: *Athey* at para. 34. This is known as the "thin skull" rule.

[129] The "thin skull" rule must be distinguished from the "crumbling skull" rule. Under the "crumbling skull" rule, a defendant need not compensate the plaintiff for any debilitating effects of a pre-existing condition which the plaintiff would have experienced anyway: *Athey* at paras. 32–35.

[130] Chief Justice McLachlin (as she then was) stated in *Blackwater* v. *Plint*, 2005 SCC 58 at para. 78:

> Even though there may be several tortious and non-tortious causes of injury, so long as the defendant's act is a cause of the plaintiff's damage, the defendant is fully liable for that damage. The rules of damages then consider what the original position of the plaintiff would have been. The governing

> principle is that the defendant need not put the plaintiff in a better position than his original position and should not compensate the plaintiff for any damages he would have suffered anyway: *Athey*.

[131] The “crumbling skull” factor may be addressed in a number of ways, including as a percentage reduction on damages awards, which reflects the likelihood that a pre-existing injury or condition would result in similar losses: see, for example, *Booth v. Gartner*, 2010 BCSC 471 and *Beardwood v. Sheppard*, 2016 BCSC 100.

b. Medical Evidence

[132] Dr. Neufeld opined Ms. Dhingra’s physical condition included pain in her neck, lower back, both legs, right foot, as well as pain and numbness to her left arm and shoulder, related headaches, sleep disturbances, reduced activity intolerances, and reduced emotional coping ability were the result of the injuries sustained in the first, second, and third accidents. He did not differentiate among the three accidents in either report.

c. Findings on Causation

Neck and Lower Back Pain

[133] Notwithstanding Dr. Connell’s review, the defendants do not strenuously suggest that Ms. Dhingra did not suffer the neck and lower back pain referred to in Dr. Neufeld’s reports or that those injuries were not causally linked to the first and second accidents. However, they argue that the neck pain was fully resolved by December 2015 and, accordingly, any neck pain after that date was caused solely by the third accident.

[134] I agree.

[135] As Dr. Neufeld notes in both reports, on August 7, 2015, three months after the second accident, Ms. Dhingra reported persistent neck, back, and shoulder pain. By December 3, 2015, Dr. Kaur (the family physician) had recorded that Ms. Dhingra was working part-time, attending massage therapy, and taking Tylenol as needed for back and neck pain.

[136] When the December 3, 2015 record was put to him on cross-examination, Dr. Neufeld agreed that Ms. Dhingra's neck pain had resolved by December 2015 and that she was doing fairly well by then. That being the case, he also agreed that the neck pain Ms. Dhingra reported after the third accident was a "new" complaint.

[137] That concession is consistent with Ms. Dhingra's report to her family physician on September 20, 2017, less than one month before the third accident, complaining of "ongoing back pain". No mention is made of neck pain.

[138] Indeed, back pain was the only complaint recorded in the clinical records on her last visit to her family physician on September 20, 2017, two weeks before the third accident. Dr. Neufeld agreed that the only symptom that was present with certainty before the third accident.

[139] I find that the first and second accidents caused neck pain and lower back pain. However, I find that the neck pain caused by those accidents had mainly resolved by December 2015, approximately seven months after the second accident. The neck pain she experienced after the third accident was caused solely by the third accident.

[140] However, the lower back pain was ongoing and continued after the third accident and is ongoing. The lower back pain was caused by all three of the accidents.

Knee, Leg, and Foot Pain

[141] In addition to the neck and back pain, Dr. Neufeld's second report included the added diagnoses of chronic myofascial pain affecting her "lower extremities", causing left and right leg pain, which he wrote had "increased" since his first assessment in 2020. He also diagnosed the left hip bursitis and right plantar fasciitis that he attributed to the altered gate due to chronic pain she had developed.

[142] Like the neck and back pain, he opined in his written report that “Ms. Dhingra would not have developed [those] symptoms and limitations had it not been for the [accidents].” He did not differentiate among the three accidents.

[143] Significantly, the diagnoses of pain to her lower extremities were not mentioned in Dr. Neufeld’s first report, even though Dr. Neufeld had completed a physical examination specific to, among other things, Ms. Dhingra’s hips, legs, knees, ankles and feet.

[144] The clinical records are also revealing in that none record any complaints of injuries below the waist in the immediate aftermath of the first or the second accidents. With the exception of the plantar fasciitis in her left foot (which was diagnosed in 2014), the clinical records disclose that the first complaints of pain or injuries to Ms. Dhingra’s legs and numbness and tingling in her foot were recorded after the third accident. That was also the first time that she reported that walking exacerbated her pain.

[145] Despite his written opinion causally linking those issues with all three accidents, when challenged on cross-examination, Dr. Neufeld accepted the timing of those reports. He conceded in particular that the knee and thigh pain were not caused by the first or second accident, but attributable to the third accident alone, even if only indirectly. I find the same is true with respect to the numbness and tingling in her foot.

[146] By December 2021, her knee pain appeared to be her primary functional limitation.

Planter Fasciitis and Hip Bursitis

[147] Dr. Neufeld attributed the hip bursitis and right planter fasciitis first noted in his second assessment to Ms. Dhingra’s “altered gate”, a condition that he suggested was caused by the accidents. He resiled from that position on cross-examination.

[148] Specifically, when it was put to him on cross-examination that neither the clinical records nor his first report referenced an “altered gait”, he conceded that he could not say that any of the accidents caused a gait problem that resulted in either condition. Indeed, the first report of right heel pain (indicative of plantar fasciitis) in the clinical records was made in February 2022, four and a half years after the third accident.

[149] I find that neither the hip bursitis nor the plantar fasciitis were caused by the accidents.

Left Arm and Shoulder Pain

[150] The clinical records reveal that Ms. Dhingra complained of pain and numbness to the left arm and shoulder in the immediate aftermath of both the first accident and the second accident. Although the records do not appear to include the same complaint immediately after the third accident, she continued to complain of left shoulder and arm pain in February 2019. At that time, she reported that, combined, her neck, back, and shoulder pain prevented her from lifting a bag or her then two-year-old. Those complaints continued.

[151] There were no reports of left arm or shoulder pain before the accidents.

[152] I am satisfied that the left arm and shoulder pain and numbness were caused by the first and second accidents. That pain is ongoing

Sleep Disturbance, Reduced Activity Tolerance, and Reduced Emotional Coping Ability

[153] Finally, in his second report, Dr. Neufeld attributes sleep disturbance, reduced activity tolerance, and reduced emotional coping ability to the accidents. Although he does not expressly make the connection, I accept that, logically, the physical injuries, including the neck, back, shoulder and left arm pain would affect both her sleep and her activity levels. In that way, I accept that those issues are related to the accidents.

[154] I cannot come to the same conclusion regarding what Dr. Neufeld refers to as "emotional coping ability". With no further explanation of that condition or the reasoning behind that condition, I do not accept that it is a condition caused by any of the accidents.

3. Prognosis

[155] Given the "duration of the condition and the lack of improvement with appropriate medical therapies with which [Ms. Dhingra] has been compliant", Dr. Neufeld opines that Ms. Dhingra's prognosis was "poor". That prognosis is the same in both the first and the second reports.

[156] However, the prognosis in the two reports differs in two ways. In the first report, the prognosis was made in respect of a "complete" resolution, leaving open the possibility of a partial resolution. The word "complete" was omitted from the second report. I take that omission to mean that the possibility of even a partial resolution is "poor".

[157] Also omitted from the second report was Dr. Neufeld's more optimistic view that:

> However, with further support as outlined in the recommendations below, there is a good chance that Ms. Dhingra's ability to cope with her condition can be improved, that her quality of life can be improved, and that her ability to continue to work ten hours per week in her sedentary job can be preserved.

[158] Dr. Neufeld did not provide any explanation for the deletion of the more optimistic prognosis nor was there any evidence of anything that may have changed between the two reports that would account for the change.

[159] Moreover, the second, more pessimistic prognosis is not consistent with Ms. Dhingra's actual recovery. For example, as set out above, the neck pain caused by the first and the second accident had been completely resolved by December 2015. Not only is that recovery inconsistent with a "poor" prognosis (certainly with respect to neck pain), but Dr. Neufeld fails to mention that recovery at all.

[160] Rather, he understates the clinical records that record that improvement. Specifically, a March 29, 2016, clinical note prepared by Dr. Kaur records that "ongoing pains better than before". [Emphasis added.] Corresponding CL-19 reports note: "Neck pain better, back pain better, shoulder pain better ….". [Emphasis added.] Notwithstanding those records, Dr. Neufeld records that the CL-19 report "documented ongoing neck-, back- and shoulder pain and that she had returned to work" and omits reference to the clinical note altogether.

[161] It is difficult to reconcile Ms. Dhingra's demonstrated improvement with Dr. Neufeld's opinion of a poor prognosis for a "resolution" as set out in the second report. On the other hand, I accept that the improvement in symptoms recorded in the clinical records does not amount to a "complete resolution". I accept the prognosis set out in the first report.

[162] I find that, while her prognosis for a complete resolution is poor, there is a good chance that Ms. Dhingra may recover from her injuries to an extent that will allow her to improve her quality of life.

B. Psychological Injuries

[163] Dr. Derryck H. Smith, a psychiatrist, gave evidence on behalf of the defendants with respect to the psychological impact of the accidents on Ms. Dhingra. He authored two reports, the first one dated August 9, 2022, and the second one dated September 22, 2022. Dr. Smith prepared the second report on the receipt of three additional medical records he had requested after he had prepared the first report.

[164] The defendants adduced only the second report as expert evidence for the trial. Dr. Smith was cross-examined on both reports.

1. Diagnosis

[165] In the second report, Dr. Smith diagnosed Ms. Dhingra with the following psychiatric conditions: somatic symptom disorder ("SSD") with predominant pain, adjustment disorder with mixed anxiety and depressed mood (mild symptoms);

insomnia disorder; and relationship distress with a spouse. The first report did not include the SSD diagnosis.

[166] While there is little dispute regarding the diagnosis *per se*, the parties are at odds regarding the overlap between the SSD and Ms. Dhingra's ongoing pain symptoms.

[167] In respect of that issue, Dr. Smith testified that the difference between chronic physical pain and psychological pain (i.e., in this case, caused by the SSD) was "technical". On that basis, the defendants suggest that the resolution of the psychological condition would resolve the physical pain symptoms.

[168] I do not accept that assessment of Ms. Dhingra's pain.

[169] First, that Dr. Smith gave any evidence at all regarding physical pain is notable. In his first report, he deferred the diagnosis of chronic pain to other experts. It is also notable that the SSD was only diagnosed in the second report – only six weeks after he prepared the first report.

[170] He provided two possible explanations for the change: either that he based the diagnosis on the additional clinical record that Ms. Dhingra was "nervous" about receiving a hip injection or, more simply, that having re-read his first report, he came to a different conclusion. I do not find either explanation to be compelling.

[171] I am left to question the reliability of the new opinion and the defendants' assertion regarding the source of Ms. Dhingra's pain.

[172] The defendants also refer to Ms. Dhingra's scores on pain catastrophizing and kinesiophobia tests conducted by other medical professionals for what they say of Ms. Dhingra's exaggerated pain reports. While the test results may be admissible, any conclusion based on those test results is not. More importantly, despite his review of previous test results, Dr. Smith did not diagnose Ms. Dhingra with pain catastrophizing or kinesiophobia in either his first or second reports.

[173] Ultimately, I accept Dr. Smith's diagnosis of psychological conditions as set out in his second report, including the diagnosis of SSD. I also accept that there is a certain degree of interplay between that psychological condition and Ms. Dhingra's physical pain symptoms. I do not accept that the difference is only "technical". I do not accept that the resolution of the psychological condition will wholly alleviate the physical pain.

2. Causation

[174] Of his four diagnoses, Dr. Smith is of the opinion that only the SSD was caused by the three accidents.

[175] He opined that:

a) the adjustment disorder (and its "mild" symptoms of anxiety and depression) is primarily related to marital dysfunction and her related concerns of the physical and mental health of her children;

b) the insomnia is caused by the ongoing pain, anxiety, and depression; and

c) the "relationship distress" is not due in any part to the accidents.

[176] Ms. Dhingra does not dispute that the issues in her marital relationship affected her anxiety and depression. She argues, however, that the marital difficulties were caused by the financial difficulties and her inability to do household chores brought on the effects of injuries sustained in the accidents. In that way, she argues that anxiety and depression are referable to the accidents.

[177] Dr. Smith conceded on cross-examination that if financial difficulties and household chores were the only source of marital discord, it was "possible" that the accidents contributed to the marital dysfunction. However, he was not willing to concede the point, noting that there was evidence of a pre-accident issues in the marriage. He also suggested that there was a "big leap" between accident related stress and the physical assault that occurred in July 2015.

[178] I accept that the marital dysfunction existed prior to the first accident. Even apart from reference to specific pre-accident incidents, Ms. Dhingra's evidence is that she did not feel supported by her husband prior to the first accident. She even suggested that his lack of support led to her hospitalization in 2011. In addition, it does not seem unreasonable to suggest that her husband's long work hours away from the home would also contribute to marital discord.

[179] However, in my view, the possibility that the accident-related injuries would have an impact on the marriage is realistic. Even if not the sole cause, I am unable to discount the possibility that the accident-related injuries, and the effect they had on Ms. Dhingra's ability to work and contribute to the home chores, heightened the already existing stressors in the relationship. In my view, Dr. Smith's rejection of that possibility is unwarranted.

[180] It follows that I find that the anxiety and depression were causally related to the accidents. It also follows insomnia disorder which was caused by the ongoing pain, anxiety, and depression, all of which I find were caused by the accidents, are also causally linked to the accidents.

[181] That is not to say that there were no other causes that contributed to Ms. Dhingra's psychological condition. I discuss those other possible contributors, and the effect, on Ms. Dhingra's claims in more detail below.

3. Prognosis

[182] For a variety of reasons, Dr. Smith conceded that issuing a prognosis in the circumstances is "fraught" with difficulties. With that proviso, he anticipated an improvement in Ms. Dhingra's symptoms and functioning within six months of the full implementation of his treatment recommendations.

[183] The positive prognosis is dependent on, among other things, the completion of a program of active rehabilitation and "vigorous exercise" and an improved relationship with her husband. Most notably, as Dr. Smith notes, "[i]t is likely that Ms. Dhingra's psychiatric symptoms are not going to improve until her pain has been

brought under better control". Without any assurance of a complete resolution of the physical injuries, I cannot conclude that there is any assurance that there will be a corresponding resolution of the psychological injuries. However, like the physical symptoms, there is a good chance of improvement.

VI. Mitigation

[184] The defendants argue that notwithstanding any causal link, Ms. Dhingra's continuing physical injuries are due in part to her failure to mitigate, primarily by her failure to engage in active rehabilitation sooner than she did.

[185] In *Chiu v. Chiu*, 2002 BCCA 618, the Court of Appeal confirmed at para. 57 that the onus is on a defendant to prove that a plaintiff could have avoided all or a portion of their loss. When a defendant alleges that a plaintiff has not pursued a recommended course of treatment, the following elements must be proved:

a) that the plaintiff acted unreasonably in eschewing the recommended treatment; and

b) the extent, if any, to which the plaintiff's damages would have been reduced had they undergone the recommended treatment.

[186] The first question is subjectively assessed; the second is assessed objectively: *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para. 56.

[187] In this case, Dr. Kaur's records indicate that she referred Ms. Dhingra to active rehabilitation in August 2016. Ms. Dhingra did not start active rehabilitation until April 2018, after the third accident and almost a year and 8 months after the referral was made.

[188] The first question is whether, in Ms. Dhingra's subjective circumstances, the delay in starting rehabilitation was unreasonable. I do not conclude that it was.

[189] Within a month of receiving the referral, Ms. Dhingra learned that she was pregnant with her third child. She claimed that Dr. Kaur told her to postpone active rehabilitation until after her pregnancy. Dr. Kaur testified that there is no reason for an active person to refrain from active rehabilitation during pregnancy. I accept that she did not make that recommendation.

[190] However, I accept that the pregnancy, together with the subsequent birth of her child, were factors in Ms. Dhingra's reluctance to start rehabilitation when the recommendation was made. The fact that Ms. Dhingra started rehabilitation after the baby was born is consistent with that concern and the reality of having a new baby at home.

[191] In addition, the pregnancy increased the back lower pain that Ms. Dhingra was already experiencing. That increased pain, by itself, may not have been sufficient reason to forego rehabilitation. However, I accept that when combined with the pregnancy related nausea, it provides a subjectively reasonable reason for doing so. That is true even if objectively there was nothing to prevent Ms. Dhingra's participation in active rehabilitation at the time.

[192] Moreover, the Court of Appeal has clarified that the defendant bears the burden of proving that the foregone treatment would have reduced the plaintiff's injuries to some degree on a balance of probabilities: *Haug v. Funk*, 2023 BCCA 110 at paras. 61, and 75. The mere fact that various recommendations have been made and not always completely followed is not sufficient to satisfy this requirement: *Forghani-Esfahani* v. *Lester*, 2019 BCSC 332 at para. 74.

[193] In this case, while Dr. Neufeld conceded that active rehabilitation would be beneficial, neither he nor any other medical practitioner provided any assessment regarding the extent to which it would have improved Ms. Dhingra's condition. In my view, the evidence in this case does not support a finding that the defendants have met the onus of proving the second element of the *Chui* test.

[194] No reduction in damages is warranted for the alleged failure to mitigate.

VII. Damages

A. Non-Pecuniary Damages

[195] As outlined in *Stapley v. Hejslet*, 2006 BCCA 34 at paras. 45–46, leave to appeal ref'd [2006] S.C.C.A. No. 100, in assessing non-pecuniary damages, courts must consider the effect of the injuries on the plaintiff's particular circumstances, using factors such as the plaintiff's age, the nature of the injury, the severity and duration of the plaintiff's pain, the extent of any disability, the effect on family and social relationships, impairment of the plaintiff's mental and physical abilities, and the impact on the plaintiff's lifestyle.

[196] In this case, I have found that Ms. Dhingra, who was 37 years old at the time of the first accident, has suffered from the injuries described above, including neck, lower back, shoulder, arm, leg, and knee pain and numbness and tingling in her foot. In addition, she had suffered psychological and other conditions including SSD, mild symptoms of anxiety and depression, reduced activity tolerance and associated weight gain, and sleep disturbances.

[197] Fortunately, Ms. Dhingra has largely recovered from the neck and leg pain, both of which were caused solely by the third accident. The knee pain is the only remaining injury related to the third accident. Although the back, arm, and shoulder injuries have continued since the first accident, with treatment, there is a good chance that her ability to cope with those conditions and her quality of life can be improved. However, they are unlikely to be completely resolved. Given the relationship to her physical pain, the prognosis for her psychological and other symptoms mirror that prognosis.

[198] In addition to her work, the injuries have affected Ms. Dhingra in all other aspects of her life. She does not participate in recreational activities, she is unable to attend temple as frequently as she once did, and she was even unable to enjoy the one 3-day vacation she has had since the first accident. The issues caused by the accident have also exacerbated the existing issues she had in her marriage.

Significantly, the injuries have affected her ability to attend to her children in the way she was able to prior to the accidents.

[199] For the most part, the cases referred to by the parties to guide the assessment of non-pecuniary damages involve plaintiffs who have suffered from chronic pain to the neck, back, and various other regions. All plaintiffs also suffered from some degree of psychological and other issues including low mood and sleep disturbances, with varying degrees of possible recovery, and various impacts on work, recreational activities, and home.

[200] Ms. Dhingra refers to decisions in which the Court awarded non-pecuniary damages ranging from approximately $200,000 to $255,000 (adjusted to today's dollars). However, none of the plaintiffs in those cases were able to continue with work (although some had more physically demanding jobs than Ms. Dhingra), even with modifications. Some of those cases involve more serious injuries or more dire prognoses. For example, in *Felix v. Hearne*, 2011 BCSC 1236, the Court concluded that the plaintiff's headaches and pain would remain unchanged for the years to come. The psychological symptoms in *Culver v. Skrypnyk*, 2019 BCSC 807 and *Domil v. Cheung*, 2017 BCSC 65 were significantly more pronounced: in *Culver*, the plaintiff was diagnosed with major depressive disorder and in *Domil*, the psychological symptoms were considered severe. Those plaintiffs were awarded non-pecuniary damages of approximately $200,000 and $205,000, respectively (both adjusted to today's dollars).

[201] The defendants refer to decisions in which the awards range from approximately $63,000 to $95,000 (adjusted to today's dollars). Of those cases, *Zaluski v. Verth,* 2015 BCSC 1902 and *Barron v. Wine,* 2021 BCSC 711 are most similar to the case at bar. The plaintiffs in those cases were awarded non-pecuniary damages of approximately $62,000 and $95,000, respectively (both adjusted to today's dollars).

[202] However, in *Zaluski*, the plaintiff's credibility was an issue. In addition, that decision was decided in 2015. While only nine years ago, I bear in mind that more

recent cases may be of more persuasive value in determining an appropriate range for non-pecuniary damages: *Callow v. Van Hoek-Patterson*, 2023 BCCA 92 at paras. 16–18.

[203] Taking into account all of the decisions, I assess non-pecuniary damages at $95,000.

[204] However, that does not end the analysis. The defendants argue that given her other health conditions and circumstances, Ms. Dhingra would have suffered pain and some of the psychological conditions she did regardless of the accidents. They argue that non-pecuniary damages should be reduced to account for the damages that she would have suffered anyway: *Dornan* v. *Silva*, 2021 BCCA 228 at para. 39, citing *Blackwater* at para. 78.

[205] As the defendants assert, Ms. Dhingra had a number of non-accident related health issues including an episode of shingles, two anal fissures, pain following the C-section, hip bursitis, and plantar fasciitis, all of which caused her pain independent of her accident-related injuries. They also assert that the fatigue referable to her low iron was part of her original condition and would have affected her even without the accidents.

[206] I accept that Ms. Dhingra would have suffered pain had the accidents not occurred. However, the pain referable to the specific non-accident related conditions is distinct from the pain caused by the accidents. The assessment of non-pecuniary damages is limited to the effect of the accident-related pain.

[207] Furthermore, even accepting that her low iron had resulted in fatigue in the past, there is no evidence to suggest that the fatigue affected her in the ways it did after the accidents. Both Mr. Dhingra and Ms. Dhingra testified that it did not.

[208] I do accept however that the non-accident related pain would have caused sleep disturbances, and perhaps mild depression, regardless of the accidents. Dr. Neufeld agreed that the symptoms relating to her C-section specifically would have had that effect.

[209] In addition, I accept that a significant level of discord with her husband pre-existed the accidents and that she would have had the “relationship distress” diagnosed by Dr. Smith in any event, even if not to the degree she did after the accidents. That distress, together with her non-accident related concerns over her children’s health, likely would have also resulted in the “anxiety and depressed mood (mild symptoms)” also attributed to the accidents.

[210] In my view, it is appropriate to reduce non-pecuniary damages by 15% to account for Ms. Dhingra’s “original condition”. I award $80,750 ($95,000 x 85%) for this head of damages.

[211] Finally, as noted, the leg and knee pain, some neck pain as well as the tingling and numbness in the right foot, are solely attributable to the third accident. However, without any submissions on the allocation of non-pecuniary damages among the accidents, I decline to allocate the award under this head of damage. The parties are at liberty to make further submissions on that issue.

B. Past Loss of Earning Capacity

1. Facts and Evidence

Pre-accident earnings and certifications

[212] After completing the fundamentals of insurance course (level 1) in 2012, Ms. Dhingra worked for three months in 2014 before obtaining employment selling insurance at Allied. She was working at Allied at the time of the first accident. She had been employed there for nine months and earned $12 per hour.

[213] On average, Ms. Dhingra worked 29 hours per week at Allied. In her first four months, she worked approximately 35.5 hours per week. However, based on the wage summary prepared by the employer, in the five months prior to the first accident, she worked approximately 29 hours (January), 27 hours (February), 16 hours (March), and 12 hours (April) per week.

[214] As I set out in more detail below, Ms. Dhingra says that the summary is inaccurate.

[215] In March 2015, Ms. Dhingra enrolled and paid tuition to take the level 2 / 3 fundamentals of insurance course which would allow her to sell commercial and home insurance and would result in a pay increase. Ms. Dhingra had not started that course at the time of the first accident in May 2015.

May 1, 2015 (first accident) to November 24, 2015

[216] After the first and second accidents, Ms. Dhingra was off work from her employment at Allied until November 24, 2015, a period of approximately 7 months. She did not return to work at Allied.

November 24, 2015 to November 14, 2016

[217] On November 24, 2015, Ms. Dhingra commenced employment at Westland Insurance where she was hired to work 15 hours per week at $15.50 an hour. However, she was able to obtain some overtime hours and worked on average 19 hours per week.

[218] Ms. Dhingra testified that the 40 – 45 commute aggravated her neck and back pain, but that she was able to get shifts at other locations closer to her home which was easier for her. She testified that, due to her injuries, 19 hours per week was all she could handle.

[219] In August 2016, Ms. Dhingra discovered she was pregnant with her third child. She testified that she had intended to work until she was 6 or 7 months pregnant (i.e., until the beginning of January 2017) but because of the increased pain in her back due to the pregnancy, she stopped working on November 25, 2016, instead.

November 25, 2016 to April 24, 2018 (maternity leave and third accident)

[220] In March 2017, Ms. Dhingra fell while pregnant and was taken to the hospital where she delivered her third child by way of emergency c-section.

[221] On October 13, 2017, Ms. Dhingra was involved in the third accident.

[222] She returned to work at Westland on April 25, 2018. Although she said she had intended to return from maternity leave some 5 months earlier, she was unable to due to her insurance certification lapsing and Westland being unable to find a shift to accommodate her.

April 25, 2018 (return to work) to trial

[223] On her return to work, Ms. Dhingra was scheduled to work 10 hours per week, split up over two days, but at times did not work that many hours. She attributes the decrease from the 19 hours she had been working prior to her maternity leave to the significant increase in pain after the third accident.

[224] Ms. Dhingra testified that when she returned to work, she had difficulty sitting, getting up after sitting, concentrating, and generally functioning due to her pain and lack of sleep. All of those issues made it difficult to serve her customers. Driving to work was also difficult.

[225] After returning to work in April 2018, Ms. Dhingra had other setbacks which resulted in her taking time off work.

[226] In September 2020, Ms. Dhingra obtained a position at a Westland Insurance location closer to her home, which made travel to work easier. However, she reduced her hours to 7 hours per week, she said because working 10 hours resulted in severe back pain, and pain in her left arm and made walking and concentrating difficult. At 10 hours, she was depleted when she got home, could not pay attention to her children or do household chores and could not sleep properly. She worked 7 hours on one day – Sunday – for which she is paid 1.5 times her regular salary.

[227] In October 2022, her hours were further reduced to 5 hours per week, to coincide with a change in her employer's Sunday business hours. She believes she can work 7 hours per week if she pushes herself.

2. Legal Framework

[228] Compensation for past loss of income, or more accurately past loss of earning capacity, is based on what the plaintiff would—not could—have earned had the injury not occurred: *Rowe v. Bobell Express Ltd.* 2005 (BCCA) 141, at para. 30; *M.B. v. British Columbia* 2003 SCC 53, at para. 49.

[229] With respect to hypothetical events, both past and future, the plaintiff must show a real and substantial possibility of loss, not mere speculation. This means that the loss must be shown to be realistic, having regard to what the plaintiff's circumstances would have been absent the injury. The standard of "real and substantial possibility" is a lower threshold than a balance of probabilities but a higher threshold than that of something that is only possible and speculative: *Gao v. Dietrich*, at paras. 34–36.

3. Discussion and Analysis

[230] The first step in assessing a possible past income loss claim is assessing what the plaintiff would have, not could have, earned but for the accident. Her loss is the difference between those "without accident" earnings and the amount that the plaintiff did earn, i.e. her "with accident" earnings.

1. Without accident earnings/hours

[231] The defendants assert that given the downward trajectory in the pre-accident hours and earnings in the four months prior to the first accident, Ms. Dhingra's without accident earnings should be based on the 14 hours she worked per week in the two months prior to the first accident.

[232] Ms. Dhingra disputes that calculation. She argues that neither the wage summary nor her actual hours in the two months prior to the first accident accurately reflect her pre-accident earnings or capacity. She argues that her without accident earnings should be based on 40 hours per week, the number of hours that she would have worked.

[233] In addition, she submits that, had not been for the accident: (a) She would have completed the level 2 / 3 insurance course by the end of 2015 and would have earned more than she was at the time of the accident; and (b) In addition to salary, she would have earned annual commissions of $12,500.

[234] I address each of those arguments below.

Do Ms. Dhingra's hours in the 2 months prior to the accident accurately reflect her possible without accident hours?

[235] Ms. Dhingra explained that the decrease in recorded pay from January to April 2015 was due to factors other than her desire or ability to work less than full time hours. Specifically, she testified that her employer was not paying her for the hours she worked, limited hours were available to her, and that she had to take time off to attend to a sick child in March and April. In my view, Ms. Dhingra has not proven the first two factors. I accept that the last factor did skew her hours downward for reasons that did not reflect her intention to work more hours than recorded in those months.

[236] Sarbjit Sidhu was responsible for payroll at Allied during the relevant period. He prepared the wage summary that recorded the employee's pay. Although he conceded that Ms. Dhingra might have complained to his co-owner that her pay did not reflect her hours, he was not aware of any such dispute. While his evidence does not disprove Ms. Dhingra's assertion, the burden is on Ms. Dhingra to prove this allegation on a balance of probabilities. She did not do so.

[237] The same is true regarding the second assertion that more hours were not available to her. Mr. Sidhu agreed that a new employee would likely be limited to working between 20 to 30 hours, or even up to 35 hours per week. Ms. Dhingra worked at the high end of that range as a new employee in the first 4 months of her employment. I cannot conclude that her increased seniority would result in fewer hours being made available to her.

[238] I do accept, however that, the decreased hours in March and April 2015 are attributable, at least in part, to Ms. Dhingra's decision to work less to care for her sick child. It is consistent with the children's health issues throughout their lives and Ms. Dhingra's consistent dedication to attending to their health needs. In my view, that temporary situation should not serve as the basis for Ms. Dhingra's pre-accident hours.

Would Ms. Dhingra have worked 40 hours a week but for the accidents?

[239] At no time in the nine months prior to the accident did Ms. Dhingra work 40 hours a week. In the highest four months, she worked an average of approximately 35 hours per week; in the lowest four months, she worked an average of approximately 21 hours per week.

[240] In fact, Mr. Sidhu testified that because Allied was a small business, it did not have enough full time hours to allow any of its employees to work 40 hours a week.

[241] There is no evidentiary basis on which to conclude that Ms. Dhingra would have worked 40 hours a week but for the accident.

Would Ms. Dhingra have obtained the level 2 / 3 of the insurance course?

[242] As I discuss below, I accept that the accident-related injuries affected Ms. Dhingra's capacity to work. However, as she concedes, she does have residual capacity to perform sedentary work. There is no evidence that her injuries would prevent her from completing the insurance course.

[243] Harpreet Sital took the level 1 insurance course with Ms. Dhingra and subsequently went on to complete the level 2 course. She testified that the course is completed online at the participants' own pace. Given her work schedule, Ms. Sital took 6 months to complete the course that she said others did in one month. In other words, there is no requirement to complete the course on specific days or times or in any set period. Given Ms. Dhingra's residual capacity, I am not satisfied that there is

any medical reason that she could not complete the course, even if it takes her longer than others.

Would Ms. Dhingra have earned annual commissions of $12,500?

[244] Although Ms. Dhingra testified that she earned commissions, she was not able to say how much she earned. Mr. Sidhu confirmed that he did not record commissions on the wage summary nor does it appear that Ms. Dhingra reported those commissions on her income tax return. Mr. Sidhu did not confirm either the amount of commissions Ms. Dhingra earned, or even that she earned commissions.

[245] With that gap in the evidence, Ms. Dhingra relies on the $10,000 to $15,000 annual commissions that her former colleague, Ms. Sital currently earns.

[246] Without any documentary record to support the amount of commissions that Ms. Dhingra may have earned, there is no evidentiary basis on which to conclude that she earned any commissions. That she was required to report commissions on her income tax return, but did not, does not assist her position.

[247] Moreover, even if I were to accept her evidence without that documentary evidence (and I do not), I do not accept that Ms. Sital's commissions are an adequate basis on which to assess Ms. Dhingra's potential past wage loss. Ms. Sital earns the level of commissions she does based on her "good book [of business]" and on the sales she is able to make as a level 2 agent. There is no evidence regarding the number of clients that constitute a "good book [of business] or that are required to earn the commissions she earns or whether Ms. Dhingra has, or has the potential to obtain, a correspondingly "good book", even assuming that she obtained her level 2 licence.

[248] In my view, that Ms. Dhingra would have earned annual commissions of $12,500, or at all, is speculative.

Conclusion and findings on without accident income

[249] Given the consistent downward trend, it is appropriate that the hours worked in the months immediately preceding the first accident should be weighted more heavily than the hours worked when Ms. Dhingra first returned to the workforce in August 2018. However, for the above reasons, I do not agree that her entire work history at Allied should be entirely discounted as the defendants suggest.

[250] For the purposes of calculating past wage loss, I find that Ms. Dhingra's "without accident" earnings are reasonably based on her working 22 hours per week.

2. Past Wage Loss Calculations

May 1, 2015 to November 24, 2015

[251] The defendants concede that the 29.5 weeks that Ms. Dhingra did not work immediately after the first accident (May 1, 2015, to November 24, 2015) was reasonable and related to the first and second accidents.

[252] Based on 22 hours per week, her gross without accident earnings would have been $7,788 ($12 x 22 hours x 29.5 weeks). As she did not earn any income, that amount is her gross past wage loss for the period.

November 25, 2015 (return to work after the first and second accidents) to November 28, 2022 (trial date)

[253] The defendants argue that no further wage loss claim is warranted after Ms. Dhingra's return to work on November 24, 2015. Relying on the average of 14 hours per week that Ms. Dhingra worked in the two months prior to the accident, they say that her hours of work increased after she returned to work. On that basis, together with what they say is a lack of any credible evidence regarding her ability (or inability) to work, the defendants argue that she has not established that she has suffered any loss of capacity to work.

[254] In any event, they say that, if the plaintiff did not work the hours she otherwise would have worked, that was due to reasons other than the accident.

[255] I have found that 22 hours per week accurately represents Ms. Dhingra's pre-accident capacity. She exceeded those hours in only 4 of the 27 bi-weekly periods in the one year period after returning to work after the first and the second accidents in which she averaged 19 hours per week. Her work hours were reduced further after her maternity leave and the third accident at which time she averaged 10 hours per week. Her hours were reduced even more still after September 2020, after which she worked an average of 7 hours a week.

[256] I do not accept, as the defendants submit, that Ms. Dhingra worked more hours after the accidents than she did before the accidents. The question is whether her decreased hours were due to the pain symptoms caused by the accident-related injuries.

[257] In that regard, Dr. Neufeld opines that 7 hours a week of sedentary work is the maximum that Ms. Dhingra can tolerate. He states:

> In my opinion, Ms. Dhingra has permanent limitations for prolonged sitting, prolonged standing, prolonged walking, stooping, bending, crouching, and kneeling, and she is permanently limited to sedentary strength activities. As a consequence of her chronic myofascial pain condition Ms. Dhingra does not have the stamina required for full-time work even in a sedentary position. Her maximum tolerance for sedentary work is approximately seven hours per week. She manages only a bare minimum in her activities of daily living as a result of her condition.

[258] He opines that she will continue to be limited to that degree for the foreseeable future because of her chronic pain. That opinion largely mirrors the opinion in his first report. However, in the first report, Dr. Neufeld opined that Ms. Dhingra would be limited to working 10 hours per week.

[259] Dr. Neufeld's opinions of work tolerance reflect the hours of work that Ms. Dhingra was, in fact, working at the date of each report. I infer that the opinions were based, at least in part, on her self-reports. However, I do not conclude that reliance is sufficient to reject his opinion as the defendants assert.

[260] In Dr. Neufeld's view, a person's work tolerance or capacity is personal to each individual. Accordingly, he acknowledged that he does consider an individual's

description of their work capacity in his assessment, however in conjunction with records that are consistent with their subjective descriptions. In this case, I have accepted that Ms. Dhingra's subjective reports are credible. Dr. Neufeld also relied on her longitudinal history as documented in the clinical records.

[261] Moreover, Dr. Neufeld was of the view that there was an increase in the lack of conditioning and the degree of pain between the two reports that explained the decrease in hours. In any event, in his view, there was not much difference between a work capacity of 7 hours per week and 10 hours per week. In either case, her work tolerance was greatly reduced. He was of the view that her reduced hours were consistent with her presentation and someone who is managing a chronic pain disorder. There is no evidence to the contrary.

[262] I accept Dr. Neufeld's evidence in that regard.

[263] Accordingly, I am satisfied that Ms. Dhingra is entitled to an award for past loss of earning capacity for the period November 24, 2015 (when she was able to return to work after the first and second accidents) to November 28, 2022 (the date of trial), a period of 7 years or 364 weeks.

[264] However, Ms. Dhingra was not in the paid workforce for the entire 7 years. Specifically:

a) Ms. Dhingra commenced maternity leave on November 25, 2016, almost four months before her baby was born. She did not return to work until April 24, 2018, a period of 74 weeks. Ms. Dhingra says that she intended to work until approximately January 2017, but because the pregnancy increased the elevated accident-related back pain, she went off work approximately one month sooner.

   In addition to the increased back pain, Ms. Dhingra also had gestational diabetes and nausea, both of which were associated solely with the pregnancy and both of which likely contributed to her decision to leave the work force when she did in late November 2016.

b) In May 2019, her daughter required surgery. Ms. Dhingra took from May 15, 2019, to July 5, 2019 (7 weeks) off work to attend to her daughter's medical needs.

c) Due to concerns for her children's health, Ms. Dhingra was fearful of exposing them to the COVID-19 virus. She took 26 weeks off work from March 2020 to September 2020.

d) On February 21, 2021, Ms. Dhingra contracted COVID-19 and approximately 4 weeks off work.

[265] Her total time out of the paid work force was 111 weeks. I am satisfied that she would have taken all of that time off even if the accidents had not occurred. Accordingly, of the 364 weeks that comprise this portion of past wage loss calculation, she was available to work for 253 weeks (364 – 111 = 253 weeks). Based on the average of $17.31 per hour she earned during that period, her possible without accident earnings were $96,347 ($17.31 x 22 hours/ week x 253 weeks.)

[266] By contrast, her with-accident earnings during that same period were:

Year	Actual Earnings
2015	$687.63[1]
2016	$17,228.00
2017	nil
2018	$2,908.00
2019	$6,562.00

[1] Based on Ms. Dhingra's annual earnings in 2015, she earned $687.63 in December 2015 ($5,501 / 8 months worked).

2020	$5,876.00
2021	$9,965.99
2022	$10,170.71
Total:	$53,398.33

[267] Subtracting gross with accident earnings ($53,398) from her possible without accident earnings ($96,347) results in a gross past wage loss of $42,949 for the period November 24, 2015 to November 28, 2022.

Summary of Gross Past Wage Loss

[268] I find that Ms. Dhingra has suffered a total gross past income loss of $50,737 ($7,788 + $42,949), rounded to $50,000.

[269] Counsel have advised that they will calculate the effect of tax to ensure that the award is made on a net basis as required by s. 98 of the *Insurance (Vehicle) Act,* R.S.B.C. 1996, c. 231. I leave it to them to do so. If they are unable to agree on that calculation, they have leave to address the matter before me at a later date.

C. Future Loss of Earning Capacity

[270] It has long been established that to prove entitlement for a loss of earning capacity, a plaintiff must demonstrate both (a) an impairment to their earning capacity, and (b) that there is a "real and substantial possibility", and not "mere speculation", that the diminishment in earning capacity will result in a pecuniary loss: *Perren* v. *Lalari*, 2010 BCCA 140 at paras. 11, 31–32.

[271] In the trilogy of *Dornan v. Silva*, 2021 BCCA 228, *Rab v. Prescott*, 2021 BCCA 345, and *Lo v. Vos*, 2021 BCCA 421, the Court of Appeal clarified the approach to assessing claims for loss of future earning capacity by setting out a three-step analysis. In *Rattan v. Li*, 2022 BCSC 648 at para. 148, Justice Horsman, then of this Court, summarized that analysis as follows:

> (1) Does the evidence disclose a potential future event that could give rise to a loss of capacity?;
>
> (2) Is there a real and substantial possibility that the future event in question will cause a pecuniary loss to the plaintiff?; and,
>
> (3) What is the value of that possible future loss, having regard to the relative likelihood of the possibility occurring?

[272] As the final step of the analysis, the court must consider whether the award of damages is "reasonable and fair": *Lo* at para. 117.

[273] Regarding the first step, the Court in *Rab* stated:

> [29] Some claims for loss of future earning capacity are less challenging than others. In cases where, for instance, the evidence establishes that the accident caused significant and lasting injury that left the plaintiff unable to work at the time of the trial and for the foreseeable future, the existence of a real and substantial possibility of an event giving rise to future loss may be obvious and the assessment of its relative likelihood superfluous. Yet it may still be necessary to assess the possibility and likelihood of future hypothetical events occurring that may affect the quantification of the loss, such as potential positive or negative contingencies. *Dornan* was such a case.

[274] In my view, this is such a case. While Ms. Dhingra is not wholly unable to work, I am satisfied that the injuries she sustained have resulted in a significant decrease in her capacity to work. That decreased capacity has extended to the date of trial.

[275] I am also satisfied that her decreased work capacity creates a real and substantial possibility of a pecuniary loss. I have found that had it not been for the accidents, Ms. Dhingra would have worked 22 hours per week. Her capacity to work only 7 hours, or even 10 hours, per week results in a pecuniary loss. Even if her physical condition improves with treatment, Dr. Neufeld's uncontradicted prognosis for a complete recovery is poor.

[276] The only remaining issue is the value of that possible future loss.

[277] Had it not been for the accident, Ms. Dhingra would have been able to work 22 hours per week; she is currently limited to working 7 hours per week. Her

potential loss is what she would have earned in the 15 hours that she is not able to work.

[278] At the date of trial, Ms. Dhingra earned $19.57 per hour. Since starting at Westland in November 2015, she had received a raise of approximately $.50 a year. At that rate, her hourly wage would have increased by $10 an hour, or to $29.57, by her 65th birthday, 20 years from the trial. Her average wage in that period would be $24.57 per hour.

[279] Based on that average wage, her annual pecuniary loss from the trial date to a presumed retirement age of 65 years is $18,720 ($24.57 / hour x 15 hours x 52 weeks/year). Applying a present value discount factor of 17.1686, the present value of that loss over 20 years is $321,396. [2]

[280] However, since the course of future events is unknown, 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* at para. 29.

[281] In my view, there are three significant contingencies, all of which require a net downward adjustment to that potential loss.

[282] First, the potential future loss is based on the assumption that Ms. Dhingra will work until 65. However, that assumption is not borne out by her pre and post-accident work history. Her pre-accident work history is limited to nine months. Although I acknowledge that she chose to stay home to care for her children and that her children are older, in my view, it is appropriate that some account be made for that history. Indeed, her work history, even once she entered the paid work force, is sprinkled with significant periods of absences that are not related to the accidents.

[283] Second, I cannot discount the possibility that Ms. Dhingra's condition might improve. Dr. Neufeld opines that it might. By contrast, there is no suggestion that her condition will get worse. Although Dr. Neufeld also opines that any improvement

[2] I have used the prescribed discount rate of 1.5% *pursuant to s. 56 of the Law and Equity Act, R.S.B.C. 1996, c. 253* and the Present Value Tables in CIVJI.

would only serve to preserve her work capacity, I am satisfied that the prognosis requires a net downward adjustment to her potential future loss.

[284] Third, as I have found, there is no evidence to suggest that Ms. Dhingra is not able to complete the level 2 / 3 licensing examination, even if over time. By doing so, she will be able to increase her earnings, thereby decreasing her potential losses.

[285] Weighing the above contingencies, in my view, the possible future wage loss should be discounted by 35%, resulting in a possible future loss of capacity of $208,907 ($321,396 x 65%), rounded to $210,000.

[286] Having considered both possible positive and negative contingencies, in my view, the outcome is reasonable and fair.

[287] I award a future loss of earning capacity of $210,000.

D. Loss of Housekeeping Capacity

1. Evidence

[288] Ms. Dhingra did not work outside of the home between 2004 and 2014, choosing instead to care for her children and take care of the home. She continued to be responsible for all of the household chores, including cooking, cleaning, laundry, washing, and groceries, even after commencing employment in the insurance industry in the nine months prior to the first accident.

[289] Ms. Dhingra testified, and I accept, that she was unable to do household chores for some time after the first and second accidents. While she has regained some capacity to attend to the household chores, she is unable to do any to the extent she was able to prior to the accidents. For example, she only cooks on occasion and when she does, dinners often are pre-packaged frozen foods rather than “traditional Indian meals”.

[290] It is also more difficult for her to do laundry. In the one to two times a month that she does do the laundry, she takes pain medication to do so. The negative effect of her injuries on her sleep makes it difficult for her to prepare breakfast for her

children or get them to school on time. Mr. Dhingra's work schedule makes it difficult for him to do so.

[291] Although Ms. Dhingra's mother had previously helped with the chores, given her advancing age and her health issues, she is unable to continue to do so.

[292] Dr. Neufeld accepts that Ms. Dhingra is struggling to keep up with basic cleaning, laundry, grocery shopping, and food preparation, even with the help of her children. He opines that Ms. Dhingra requires 4 hours per week of home support to compensate for the reduced tolerance for home maintenance work. I accept that is a modest estimate for household chores.

2. Legal Framework

[293] It is well established that a plaintiff whose ability to perform housekeeping services is diminished in part or in whole ought to be compensated for that loss, regardless of whether they had to pay for household services or whether the services are gratuitously performed for them by family members: *Kim v. Lin*, 2018 BCCA 77 at paras. 33–34; *Riley v. Ritsco*, 2018 BCCA 366 at para. 101.

[294] In *McKee v. Hicks*, 2023 BCCA 109, the Court of Appeal considered the circumstances in which a discrete pecuniary award for loss of housekeeping capacity should be made, or whether the plaintiff's loss should be assessed as part of the plaintiff's loss in the award of non-pecuniary damages:

> [112] To sum up, pecuniary awards are typically made where a reasonable person in the plaintiff's circumstances would be unable to perform usual and necessary household work. In such cases, the trial judge retains the discretion to address the plaintiff's loss in the award of non-pecuniary damages. On the other hand, pecuniary awards are not appropriate where a plaintiff can perform usual and necessary household work, but with some difficulty or frustration in doing so. In such cases, non-pecuniary awards are typically augmented to properly and fully reflect the plaintiff's pain, suffering and loss of amenities.

[295] Whichever approach a court takes, the award must be reasonable and justified on the specifics of the case and the evidence regarding the plaintiff's incapacity: *Lin* at paras. 33–37.

3. The Parties' Positions

[296] Ms. Dhingra claims for both past and further loss of housekeeping capacity as a distinct pecuniary award.

[297] Relying on Dr. Neufeld's estimate that she requires 4 hours of home support services per week, and based on $25 per hour accepted by the Court in *Amini* v. *Mondragaon*, 2014 BCSC 1590 and *Broomfield* v. *Lof*, 2019 BCSC 1155, Ms. Dhingra submits that a reasonable award for past loss of housekeeping capacity is $39,000 ($25/hour x 4 hours/week x 52 weeks/year x 7.5 years).

[298] She claims future loss of housekeeping for the rest of her life expectancy to 82 years, or for the next 37 years: $25/hour x 4 hours/week x 52 weeks/year x 37 years = $192,400. Applying a present value multiplier of 2% results in a total claim for future loss of $135,041.

[299] The defendant submits that no award should be made for loss of housekeeping capacity. They argue that, in the alternative, if an award is made, it should be assessed as part of the non-pecuniary award.

4. Discussion and Analysis

[300] I accept that Ms. Dhingra has limited capacity to complete all of the household chores for which she was wholly responsible before the accidents. She has had to rely on her mother and even her young son to ensure that housework is done. Some of the chores go undone for periods of time. I am satisfied that a separate award for past loss of housekeeping capacity is appropriate.

[301] However, with the exception of the 30 weeks that Ms. Dhingra did not work immediately after the first and second accidents, in my view, the amount of her claim is excessive.

[302] First, it is reasonable to assume that her housekeeping capacity would diminish as she ages, regardless of the accidents. An award to age 82 ignores that

reality. The fact that she has health issues independent of the accident-related injuries significantly increases that possibility.

[303] Second, as set out above, the prognosis includes a good chance of improvement. In that case, Ms. Dhingra's ability to do household chores will increase.

[304] Based on the above, in my view, a downward adjustment to the amount claimed is warranted, more so for the future loss than for the loss in the 30 weeks that Ms. Dhingra did not work immediately after the first and second accidents.

[305] For past loss of housekeeping capacity (including the period immediately following the first and second accidents), a discount of 10% from the amount claimed is appropriate. I award past loss of housekeeping capacity of $35,100 ($39,000 x 90%), rounded to $35,000.

[306] For future losses, I have found that an award to age 65, that is for the next 20 years, not the 37 years claimed, is appropriate. On that basis alone, a deduction of almost 55% of the amount claimed is warranted. That amount must be further discounted to account for Ms. Dhingra's other health issues and the chance for improvement. In my view, a total discount of 70% of the amount claimed is appropriate. Based on Ms. Dhingra's present value claim for future losses, I award a future loss of housekeeping of $40,512 ($135,041 x 30%), rounded to $40,000.

[307] To summarize, damages for loss of housekeeping capacity are awarded as follows: $35,000 for past losses and $40,000 for future loss, for a total award for loss of housekeeping capacity of $75,000.

E. Cost of Future Care

[308] To be entitled to an award for the cost of future care: (1) there must be a medical justification for the claims for the cost of future care, and (2) the claims must be reasonable: *Milina v. Bartsch*, 49 B.C.L.R. (2d) 33 (S.C.) at 84, 1985 CanLII 179, aff'd 49 B.C.L.R. (2d) 99 (C.A.), 1987 CarswellBC 450.

[309] Future care costs are "justified" if they are both medically justified and likely to be incurred by the plaintiff: *O'Connell v. Yung*, 2012 BCCA 57 at paras. 55, 60, 68–70.

[310] In this case, Dr. Neufeld noted that despite her participation in a kinesiologist directed active rehabilitation program, Ms. Dhingra continued to be physically deconditioned. Noting that she had been adequately instructed in a home exercise program and the benefits of aerobic conditioning, he was of the view that she needs to continue indefinitely in a regular self-directed exercise program to maintain her current level of activity tolerance. He also opined that:

> She will likely benefit from ongoing monitoring of her home exercise program by a qualified kinesiologist at least 4 times per year on an indefinite basis.

[311] Noting that, in general, vigorous exercise is a "potent" treatment for mixed symptoms of anxiety, depression, insomnia, and pain. Dr, Smith shares the view that Ms. Dhingra would likely benefit from a "program of active rehabilitation and vigorous exercise".

[312] Unlike Dr. Neufeld, Dr. Smith does recommend certain medications to manage her psychiatric symptoms. Dr. Smith suggests that those medications could also be effective in managing some of the pain and sleep issues.

[313] On the basis of those recommendations, Ms. Dhingra seeks the following costs for future care:

a) To retain a kinesiologist 4 times per year for 37 years, i.e., until the age of 82. At a cost of $80 per session[3], she claims the present value of that amount being $8,310; and

[3] This amount is based on the $78 fee limit for standard kinesiology services allowed under Schedule 3.1 of the *Insurance (Vehicle) Regulation*, B.C. Reg. 447/83.

b) For various medications recommended by Dr. Smith. Although she had not provided any evidence regarding the costs of that medication, she claims $1,000 on a “rough and ready” basis.

[314] The defendants accept that maintaining an exercise regime is important for Ms. Dhingra. However, they argue that the 37 years (i.e., for the rest of her life) she suggests is unreasonable. The defendants are willing to pay for four active rehabilitation sessions per year for the next 5 years. After that, which they say Ms. Dhingra should be able to continue the exercise program on her own. On that basis, they agree to pay $1,600 for this cost of future care (4 sessions/year x 5 years x $80/session = $1,600).

[315] I agree that the payment suggested by Ms. Dhingra is excessive for the reason offered by the defendants. In addition, whether Ms. Dhingra continues to engage in an exercise program until the age of 82 is not certain. I must account for the realistic possibility that she may not. Finally, Dr. Neufeld’s recommendation is for an “indefinite” period of active rehabilitation; not even he suggests a life course for that treatment.

[316] Taking into account those considerations, I award an amount for future care that will allow Ms. Dhingra to retain a kinesiologist, at a cost of $80 per session, as follows:

a) 4 times a year for 5 years = $1,600 (4 sessions/year x 5 years x $80/session), the present value of which is $1,508[4], rounded to $1,500; and

[4] I have used the prescribed discount rate of 2.0% *pursuant to s. 56 of the Law and Equity Act, R.S.B.C. 1996, c. 253* and the Present Value Tables in CIVJI: $320/year x 4.7135 = $1,508.32.

b) 2 times a year for the following 10 years (i.e., to age 55) = $1,600 (2 sessions/ year x 10 years x $80/session), the present value of which is $1,302[5], rounded to $1,300.

[317] The total present value for future kinesiology costs is $2,800 ($1,500 + $1,300).

[318] The defendants are also willing to pay for some medication expenses. However, noting Ms. Dhingra's admission that she has challenged herself to not take medication, they question whether she is likely to trial new medications given. The defendants agree to pay $500 towards medication. In my view, given Ms. Dhingra's preference to avoid medication, that concession is more than reasonable. I award $500 for medication.

[319] To summarize, I award future care costs for kinesiology ($2,800) and medication ($500), for a total present value cost of $3,300.

F. Special Damages

[320] It is well established that an injured person is entitled to recover the reasonable out-of-pocket expenses they incurred as a result of an accident. This is grounded in the fundamental governing principle that an injured person is to be restored to the position he or she would have been in had the accident not occurred: *X. v. Y.*, 2011 BCSC 944 at para. 281; *Milina (S.C.)* at 78.

[321] In this case, Ms. Dhingra has claimed the following out-of-pocket expenses: un-refunded tuition paid to Advanced Learning Centre ($1,600), the cost of an MRI in respect of her neck pain ($1,231.07), orthotics ($549), Synergy Rehabilitation ($13,466.75), Legacies Health Centre ($1,548.18), and Newton Physiotherapy &

[5] I have used the prescribed discount rate of 2.0% *pursuant to s. 56 of the Law and Equity Act, R.S.B.C. 1996, c. 253* and the Present Value Tables in CIVJI: $160/year x (12.8493 - 4.7135) = $1,302.

Wellness ($1,030), as well as for mileage to and from the various health care professionals ($3,475.68).

[322] While maintaining their position on causation, with the exception of various "no show" fees, the defendants consent to pay special damages for Legacies Health Centre ($1,548.18), Newton Physiotherapy & Wellness ($1,030), and Synergy Rehabilitation Services ($17,892). I note that the $17,892 that the defendants have agreed to pay for Synergy Rehabilitation exceeds the $13,466.75 claimed by Ms. Dhingra. I am not able to discern the reason for the discrepancy.

[323] The defendants dispute the amounts claimed for tuition and orthotics. They do not make any submissions on the amounts claimed for mileage or the MRI.

[324] In my view, neither of the amounts claimed for tuition or orthotics are recoverable from the defendants.

[325] First, the tuition expense was paid prior to the first accident. It was not an expense that arose as a result of the accidents. As noted above, while I accept that Ms. Dhingra has difficulties with sedentary activities, I am not satisfied that the accident-related injuries have precluded Ms. Dhingra from completing the courses over time. In fact, she may complete them in the future.

[326] Second, I have concluded that Ms. Dhingra's foot issues, including the plantar fasciitis, were not caused by any of the accidents. The cost of the orthotics is not compensable by these defendants.

[327] Given the causal connection between the accidents and Ms. Dhingra's neck and ongoing back pain, I am satisfied that her attendance at the various health professionals, and the mileage costs for her to attend those professionals, are compensable. The exception is the mileage for Dr. Dhawan who administered the hip injection in relation to the hip bursitis ($374.76). I have found that the condition was not caused by the accidents.

[328] The total award for mileage is $3,100.90.

[329] I also find that the cost of the MRI for Ms. Dhingra's ongoing neck pain is referable to the accidents. I award $1,231.07 for that out-of-pocket cost.

[330] To summarize, I award special damages for out-of-pocket costs incurred by Ms. Dhingra as follows: Synergy Rehabilitation ($13,466.75), Legacies Health Centre ($1,548.18), Newton Physiotherapy & Wellness ($1,030), mileage to and from various health professionals ($3,100.90), and the MRI ($1,231.07), for a total special damages award of $20,376.90.

[331] As noted, there is a difference between the amount Ms. Dhingra claimed for Synergy Rehabilitation ($13,466.75) and the amount that the defendants have agreed to pay for that expense ($17,892). I have awarded the amount claimed. However, the parties are at liberty to appear before me for further clarification of that award.

[332] The award for special damages is subject to deductions for amounts that may have already been paid and for post-trial deductions pursuant to s. 83 of the *Insurance (Vehicle) Act*.

VIII. Summary of Damages

[333] To summarize, I award damages as follows:

Non-pecuniary damages	$80,750 *
Past loss of earning capacity	$50,000 **
Future loss of earning capacity	$210,000
Loss of housekeeping capacity	$75,000
Cost of future care	$3,300
Special damages	$20,377

* Subject to allocation among the accidents

** Subject to calculations to account for tax

IX. Costs

[334] If the parties wish to make submissions on costs, they may do so in writing within 30 days of these reasons.

[335] If I receive no submissions on costs, I award costs to Ms. Dhingra at Scale B.

"Ahmad J."