IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tale Ramazan v. Hilderbrand,*
2024 BCSC 638

Date: 20240419
Docket: M200525
Registry: Vancouver

Between:

Pegah Tale Ramazan

Plaintiff

And

Leanna Joyce Hilderbrand and
Paul Raymond Koshowski

Defendants

- and -

Docket: M200526
Registry: Vancouver

Between:

Pegah Tale Ramazan

Plaintiff

And

Tajdin Hassanali Sidi, Honda Canada Finance Inc. and
Shirinkhanu Tajdin Sidi

Defendants

Before: The Honourable Justice Mayer

Reasons for Judgment

Counsel for the Plaintiff in both actions:	T.R. O'Mahony C.S. Perry, Articled Student
Counsel for the Defendants in both actions:	T.L.W. Wong N. Hopewell
Place and Date of Trial:	Vancouver, B.C. March 4–8 and 11–13, 2024
Place and Date of Judgment:	Vancouver, B.C. April 19, 2024

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Introduction

[1] In two separate actions, which came on for trial at the same time, the plaintiff Pegah Tale Ramazan seeks damages from the defendants for the injuries, conditions and related symptoms caused by two motor vehicle accidents.

[2] The first accident occurred on July 30, 2018, when Ms. Tale Ramazan's vehicle collided with a vehicle driven by Paul Koshowski as he was attempting to make a mid-block left hand turn across three eastbound lanes on East Hastings Street in Vancouver (the "First Accident").

[3] The second accident occurred on February 1, 2019, when Ms. Tale Ramazan's vehicle was rear-ended by the vehicle driven by Tajdin Sidi near the intersection of East Broadway Street and Clark Drive in Vancouver (the "Second Accident").

[4] Liability for the First Accident is disputed. In particular, Mr. Koshowski contends that he and Ms. Tale Ramazan are equally responsible for this accident. Liability for the Second Accident is admitted.

[5] Ms. Tale Ramazan alleges that she sustained injuries in the First Accident that have resulted in lasting physical and psychological symptoms, and that these symptoms were exacerbated by the Second Accident. She alleges that her housekeeping, recreational and professional capabilities have been significantly impacted. She seeks non-pecuniary damages, damages for loss of past and future income capacity, loss of housekeeping capacity, cost of future care, and special damages.

[6] The defendants accept that Ms. Tale Ramazan sustained soft tissue injuries in the First Accident that were exacerbated by the Second Accident. They contend that both accidents exacerbated her pre-existing depression and mood issues. The defendants also accept that the First Accident resulted in a mild traumatic brain injury, which has resolved, and triggered post traumatic stress disorder ("PTSD"). However, they say her PTSD would likely have manifested absent the accidents

given Ms. Tale Ramazan's mental health history. Finally, the defendants contend that Ms. Tale Ramazan has not shown that the significant symptoms, namely light and screen sensitivity, were caused by either accident.

[7] The defendants agree that Ms. Tale Ramazan is entitled to non-pecuniary damages, damages for loss of past and future earning capacity, and damages for the cost of future care arising from the accidents. However, they dispute the amounts sought and contend that she is not entitled to damages for loss of housekeeping capacity. The parties agree on the amount of special damages.

Issues

[8] The issues to be decided in this case are as follows:

a) Who was responsible for the First Accident?

b) What injuries and related symptoms or conditions were caused by the accidents?

c) What non-pecuniary damages should be awarded to Ms. Tale Ramazan?

d) What damages should be awarded to Ms. Tale Ramazan for past loss of earning capacity?

e) What damages should be awarded to Ms. Tale Ramazan for future loss of earning capacity?

f) What damages should be awarded to Ms. Tale Ramazan for cost of future care?

g) Is Ms. Tale Ramazan entitled to damages for loss of housekeeping capacity?

h) How should damages be apportioned between the parties responsible for the first and second accidents?

Liability for the First Accident

[9] For the reasons that follow, I find that Ms. Tale Ramazan and Mr. Koshowski are equally responsible for the First Accident.

Evidence of Ms. Tale Ramazan

[10] The First Accident occurred on East Hastings Street at approximately 4:00 pm on July 30, 2018.

[11] Ms. Tale Ramazan testified that she was driving her vehicle eastbound in the middle lane of East Hastings Street on the way to pick her daughter up at daycare. She testified that she was not late and was not in a hurry. As she approached the intersection at Skeena Street, traffic on East Hastings Street was backed up ahead of her. She stopped briefly on the west side of the intersection before crossing when traffic moved forward and space across the intersection became available. After she crossed the intersection, she changed from the middle lane into the righthand HOV lane as she intended to turn right at the next block. She testified that she completed the lane change when she was close to the first entry to the gas station to her right—at a point where she could have turned into the gas station if she wished—and then proceeded forward in the HOV lane. She testified that she was travelling at a speed of between 10 and 15 kilometres per hour when she moved into the HOV lane and does not remember accelerating.

[12] Ms. Tale Ramazan testified that she was looking straight ahead as she travelled east in the HOV lane. Although she was aware of traffic in the lanes to her left, she said she was not looking left and did not recall seeing that the cars to her left had stopped before the second entrance to the gas station, creating a gap in traffic. She did not see Mr. Koshowski's vehicle cross the first two eastbound lanes of East Hastings Street and enter the HOV lane before his vehicle collided with hers.

[13] Ms. Tale Ramazan was unable to say precisely how the collision with Mr. Koshowski's vehicle occurred. She described the accident as occurring very quickly, taking perhaps one second. She felt Mr. Koshowski's car hit hers and she

blacked out. She said that she was shocked and confused, and that her vehicle airbags deployed.

Evidence of Mr. Koshowski

[14] Mr. Koshowski testified that on the afternoon of the First Accident he was travelling home from work in Port Moody, westbound on East Hastings Street. He testified that he stopped in the center westbound lane as he approached the intersection at Skeena Street as he intended to turn left and enter the second, easternmost entrance to the gas station to buy a coffee. He estimated that the second entrance to the gas station was six car lengths away from the easternmost portion of the intersection of East Hastings Street and Skeena Street.

[15] Mr. Koshowski testified that he stopped, put his left turn signal on and waited for an opportunity to turn. He testified that eastbound traffic in the center and middle lanes of East Hastings Street had backed up from a red light at the intersection at Kootenay Street, which is farther to the east. He said that the vehicles just ahead of him, in the center and middle eastbound lanes of East Hastings Street, stopped, creating a gap in traffic and the drivers waved him through. He said that when he started to make his left turn, there were no vehicles in the eastbound HOV lane and when his vehicle was approximately half way through this lane, his vehicle was struck on the front right quarter panel by Ms. Tale Ramazan's vehicle.

[16] During his cross-examination, Mr. Koshowski testified that he could see the lanes of oncoming traffic when he was waiting to make his left hand turn across the eastbound lanes of East Hastings Street and into the gas station. He said that he first saw Ms. Tale Ramazan's vehicle approximately four to six seconds before the collision, in my understanding, when he was able to see between the lanes of oncoming traffic. He said that he had seen her vehicle change lanes after she had crossed Skeena Street, first from the center eastbound lane of East Hastings Street to the middle lane. He said that he was already in the process of crossing into the eastbound HOV lane when he saw Ms. Tale Ramazan change from the middle lane to the HOV lane and did not have time to stop before the collision.

[17] During his examination for discovery, Mr. Koshowski testified that he saw Ms. Tale Ramazan's vehicle change into the HOV lane and then come up that lane and collide with his vehicle. He testified, in summary, that as he was releasing his brake and continuing to turn to the left in a fluid motion that he noticed Ms. Tale Ramazan's vehicle. He also testified that approximately two or three seconds elapsed between the time that he first started to make his left had turn and the time of the impact with Ms. Tale Ramazan's vehicle.

Findings of Fact

[18] Generally, I find that Mr. Koshowski and Ms. Tale Ramzan were credible witnesses.

[19] I accept Mr. Koshowski's evidence that before he commenced his left hand turn across the eastbound lanes of East Hastings Street he stopped, applied his signal light and proceeded forward at a slow rate of speed after he was waived forward by the drivers in the center and middle eastbound lanes. Further, I accept his evidence that as he began turning he did not see Ms. Tale Ramazan's vehicle approaching in the HOV lane. This evidence was not challenged at trial.

[20] Mr. Koshowski's evidence at trial was arguably inconsistent with respect to how far into the HOV lane he had travelled before the collision. Nonetheless, I find that the evidence, when considered as a whole, indicates that his vehicle had likely travelled part way into this lane—perhaps approximately half of the way across or less and on an angle—when the collision occurred. I come to this conclusion based on the evidence with respect to the location of damage to his and Ms. Tale Ramazan's vehicles.

[21] Mr. Koshowski testified that his vehicle was impacted on the front right corner. Although during his cross-examination Ms. Tale Ramazan challenged his evidence concerning the location of damage to his vehicle and submits that his discovery and trial evidence were inconsistent, I do not find that his evidence was significantly inconsistent.

[22] The photographic evidence indicates that Ms. Tale Ramazan's vehicle was impacted on the front left corner. In my view, if Mr. Koshowski was farther into the HOV lane and Ms. Tale Ramazan's vehicle was roughly in the center of the HOV lane, the damage to his vehicle would likely be on the side of his vehicle, closer to the passenger side door, rather than on the front left bumper, unless Ms. Tale Ramazan had veered to the right before impact. There is no evidence that she did so.

[23] I accept Ms. Tale Ramazan's evidence that she changed lanes from the eastbound center lane of East Hastings Street into the HOV lane after she crossed Skeena Street. I find Ms. Tale Ramazan's evidence that she completed her lane change and was established in the HOV lane when her vehicle was close to the first entrance of the gas station, at a location where she could have turned into the first entrance if she wished, to be implausible. I find it more likely than not that Ms. Tale Ramazan completed her lane change into the HOV lane and became established in that lane farther to east, closer to the second entrance of the gas station. I make this finding for several reasons.

[24] The photographic evidence introduced at trial indicates that there was very little space between the east side of the intersection of East Hastings Street and Skeena Street and the start of the first entrance to the gas station—perhaps just one or two car lengths. Ms. Tale Ramazan testified that she waited for the cars ahead of her in the middle eastbound lane to clear the intersection ahead of her before crossing and changing into the HOV lane. I assume that she made a typical, gradual turn into the HOV lane as she proceeded forward, following the traffic ahead of her. Assuming that a typical lane change takes two or more car lengths to complete, as vehicles can not make 90-degree lane changes, this would place Ms. Tale Ramazan's vehicle approximately three or more car lengths past the intersection and likely past the first entrance to the gas station.

[25] I note Mr. Koshowski's evidence that the total distance between the intersection and the second entrance to the gas station, where the First Accident

occurred, was approximately six car lengths. That evidence was not challenged at trial and is consistent with the photographic evidence.

[26] As well, Ms. Tale Ramazan testified that when she entered the HOV lane, she was looking straight ahead. If she had been farther west on East Hastings Street, was established in the HOV lane closer to the first entrance to the gas station and had proceeded a number of car lengths forward prior to the collision, she should have had time to observe that the two lanes of traffic to her left had stopped to allow Mr. Koshowski's vehicle to turn left in front of her. Ms. Tale Ramazan did not see a gap in traffic. In my view, it is likely that she would have seen the gap if she had been driving in the HOV lane for several car lengths and was scanning the roadway ahead adjacent to the second entrance to the gas station.

[27] Based on the photographic and testimonial evidence, I find it more likely than not that Mr. Koshowski began his left turn at approximately the same that Ms. Tale Ramazan began her lane change into the eastbound HOV lane. This is consistent with Mr. Koshowski's evidence that he did not see her vehicle in the HOV lane when he started his turn and that approximately two or three seconds passed between the time that he started his turn and the collision.

Analysis and Conclusion

[28] There is no question that Mr. Koshowski had a duty to ensure that it was safe for him to turn left across East Hastings Street. Section 166(c) of the *Motor Vehicle Act,* R.S.B.C. 1996, c. 318 [*MVA*], requires drivers to ascertain that such a movement can be made safely "having regard to the nature, condition and use of the highway and the traffic that actually is at the time or might reasonably be expected to be on the highway."

[29] Mr. Koshowski took some steps to ensure that he could make a left turn safely, such as stopping, signalling and proceeding forward slowly. He acknowledges that he did not, as he could have done, inch forward as he passed the first two oncoming lanes of eastbound traffic. Rather, he proceeded forward in a

continuous motion into the eastbound HOV lane of East Hastings Street. He submits that he should be found 50% responsible for the First Accident.

[30] Ms. Tale Ramazan submits, in effect, that she was entitled to be in the HOV lane, was established in that lane and had no duty to watch out for vehicles turning from her left to cross this lane. She submits that Mr. Koshowski should therefore be found 100% liable for the First Accident. As set out earlier I find it unlikely that Ms. Tale Ramazan was established in the HOV lane before the collision but find it more likely that she made her lane change and Mr. Koshowski commenced his left hand turn at around the same time.

[31] Ms. Tale Ramazan was executing a lane change passing the vehicles in the middle eastbound lane of East Hastings Street on the right. Section 158(2) of the *MVA* requires that a driver not overtake and pass a vehicle on the right unless they can do so safely.

[32] Ms. Tale Ramazan testified, in effect, that she was not paying attention to the vehicles on her left as she was passing them and was only looking straight ahead. As a result, she failed to see that the center and middle lanes of eastbound traffic to her left had stopped and that a gap was created ahead of these vehicles. In my view, Ms. Tale Ramazan should have observed these circumstances. She was in the process of completing a lane change adjacent to one or more entrances to a gas station—an area where she should have known that vehicles may be entering or exiting.

[33] Although I find it more likely than not that she started her lane change closer to the second entrance to the gas station, the precise location is not determinative. In my view, Ms. Tale Ramazan's liability rests primarily on her failure to note that traffic to her left had stopped at around the time she started to pass those vehicles on the right.

[34] The Court of Appeal ruled on liability in a similar left turn case - *Smeltzer v. Merrison*, 2012 BCCA 13. Ms. Smeltzer was travelling south and was attempting a

left hand turn across a northbound lane to enter into a parkade. A truck driving north stopped and motioned for Ms. Smeltzer to turn in front of it. As Ms. Merrison was travelling north and attempted to pass the truck and two to three cars behind it on the right and collided with Ms. Smeltzer's left turning vehicle: para. 2. The trial judge dismissed Ms. Smeltzer's action for damages, finding that she was solely at fault.

[35] The Court of Appeal found that the accident occurred as both parties proceeded in a manner that contravened the provisions of the *MVA*: para. 23. The Court found that Ms. Merrison breached s. 158 by wrongfully passing the cars and the truck ahead of hers on the right and not looking where she should have been. and that Ms. Smeltzer breached s. 166 by not taking steps to ascertain that her left turn could be made safely. The Court apportioned liability equally in accordance with s. 1 of the *Negligence Act,* R.S.B.C. 1996, c. 333.

[36] The Court of Appeal's reasoning in *Smeltzer* is directly applicable to the case before me.

[37] Drivers have a common law duty to recognize that vehicles around theirs have either stopped or are slowing down as they approach an intersection, and to approach the intersection with caution at a reduced speed in order to determine why the other vehicles have stopped. This is part of their general duty to keep a proper look out and take reasonable precautions in respect of potential hazards: *Coffey v. Sabbaghan*, 2020 BCCA 335 at para. 36, citing *Julian v. Joyce*, 2016 BCSC 1417 at para. 13, aff'd 2017 BCCA 217.

[38] Although *Coffey* involved a collision between a left turning vehicle and an oncoming vehicle at an intersection in my view, the duty of a driver to be aware of traffic coming to a stop beside them also applies to situations involving potential left turns completed mid-block, in areas where such turns should reasonably be expected.

[39] Ms. Tale Ramazan was at fault for not recognizing that the vehicles to her left had stopped and for not proceeding with caution at a reduced speed in order to

determine why the other vehicles had done so. If she had proceeded more cautiously as she made her lane change, she would have seen the gap in traffic in the lanes to her left and Mr. Koshowski starting to make his turn. The same reasoning applies even if Ms. Tale Ramazan became established in the HOV lane earlier and then proceeded forward to the east for several car lengths before the collision.

[40] Ms. Tale Ramazan's actions constitute a breach of the common law duty that all drivers have to operate their vehicles with the care and attention required in all the circumstances.

[41] Section 1(1) of the *Negligence Act* provides that:

> If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.

[42] Fault is "a gauge of the amount by which each proximate and effective causative agent fell short of the standard of care that was required of that person in all the circumstances": *Coffey,* at para. 42, referring to *Cempel v. Harrison Hot Springs Hotel Ltd.* (1997), 43 B.C.L.R. (3d) 219 at para. 19, 1997 CanLII 2374 (C.A.).

[43] I find both Ms. Tale Ramazan and Mr. Koshowski contributed to the First Accident by paying inadequate attention to the circumstances and to the risk of proceeding without a clear view of potential dangers. I do not find that either were speeding excessively or engaged in any conduct that could be characterized as reckless or indifferent to the safety of others.

[44] I am unable to conclude that the conduct of either party falls so far below the standard of care expected such that a meaningful distinction can be made as to their respective fault. I am satisfied that both Ms. Tale Ramazan and Mr. Koshowski are at fault and the fault of each equally contributed to the accident. I therefore find them each 50% liable for the First Accident.

Apportionment of Liability

[45] The defendants concede that if Ms. Tale Ramazan and Mr. Koshowski were equally at fault for the First Accident and Mr. Sidi was (by his own admission) entirely at fault for the Second Accident, then liability should be apportioned 25% to Ms. Tale Ramazan, 25% to Mr. Koshowski and 50% to Mr. Sidi. Both parties refer to and rely upon the decision of *Alragheb v. Francis*, 2021 BCCA 457 at paras. 76 and 82 as authority for this approach. In *Alragheb*, Justice Wilcock held that when a court concludes that an indivisible injury has been caused by the fault of two or more persons, engaging s. 1 of the *Negligence Act*, liability is apportioned between those at fault in proportion to their blameworthiness.

[46] There is no dispute that Ms. Tale Ramazan's injuries from the First and Second Accidents are indivisible. As a result, I apportion liability in the manner proposed by the defendants.

Causation

[47] A plaintiff must establish on a balance of probabilities that the defendant's negligence caused or materially contributed to an injury. The defendant's negligence does not need to be the sole cause of the injury, so long as it is part of the cause beyond the *de minimus* range. Causation need not be determined by scientific precision: *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.

[48] 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 there is a substantial connection between the injury and the defendant's conduct: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras. 21–23.

Impacts of the Accidents

[49] Ms. Tale Ramazan testified that she lost consciousness during the First Accident. She testified that the day after, she felt pain everywhere, her body was

throbbing, she could not put weight on her right foot and she felt like her head was "exploding". She had bruising and a cut on her right leg, pain below her knee and could not move her neck.

[50] Ms. Tale Ramazan testified that in the weeks following the First Accident, she was in a lot of pain and was experiencing headaches, and began to experience light and noise sensitivity. She continued to feel pain in her right knee and hip, as well as in her lower back. She testified that she felt guilty about not being able to care for her daughter and became depressed. She began to experience post-apocalyptic themed nightmares that disturbed her sleep.

[51] Ms. Tale Ramazan testified that at the time of the Second Accident in February 2019, she was still experiencing the pain, migraines and other physical and psychological symptoms that manifested after the First Accident. She said that her ability to walk had improved slightly, although she was still struggling. She said that she tried to return to work at her previous job—as a server at a casino restaurant—but was making uncharacteristic mistakes and was feeling anxious.

[52] Ms. Tale Ramazan testified that during the Second Accident, she heard noises coming from her back or neck. After she exchanged identification with Mr. Sidi, she went back to her car and started driving, but she began to feel significant pain and went to a clinic. Over the next few days, she experienced headaches and neck pain, and was eventually unable to move her neck. She said that she felt depressed.

[53] Expert evidence concerning the cause of Ms. Tale Ramazan's injuries, symptoms and conditions was admitted at trial. None of the experts' opinions on the issue of causation was seriously challenged by the defendants.

[54] Dr. Khan, a physiatrist, provided opinion evidence that Ms. Tale Ramazan sustained soft tissue injuries to her neck, right shoulder, lower back, right side hip and knee in the First Accident resulting in chronic myofascial pain. Dr. Khan's opinion is that Ms. Tale Ramazan's pain symptoms were aggravated by the Second Accident.

[55] Dr. Cameron, a neurologist, gave opinion evidence that as a result of the First Accident, Ms. Tale Ramazan sustained a mild traumatic brain injury that resolved. In his report, Dr. Cameron noted that Ms. Tale Ramazan suffered from ongoing headaches after the First Accident, which were present at the time of the Second Accident, and had become chronic at the time he examined her in August 2023. He stated that her chronic headaches were caused by the soft tissue, musculoskeletal and orthopedic injuries she sustained in the First Accident. In his opinion, her injuries were exacerbated by the Second Accident.

[56] Dr. Muir, a psychiatrist, opined that Ms. Tale Ramazan developed PTSD as a result of the First Accident, a condition that is now chronic. In his opinion, while she was predisposed to developing this disorder due to her previous psychiatric history, that absent the accidents, she would likely have been able to manage and would not have developed PTSD. In addition, in his opinion, Ms. Tale Ramazan had pre-existing major depressive disorder of moderate severity with anxious features, recurrent with postpartum onset. Dr. Muir's opinion is that her depressive disorder had not fully resolved and was likely exacerbated by both accidents.

Findings on Causation

[57] I accept the opinions of the medical experts, outlined above, that the accidents caused Ms. Tale Ramazan's injuries and the resulting symptoms and conditions.

[58] The defendants submit that there is no expert medical evidence linking Ms. Tale Ramazan's post-accident complaints of light and screen sensitivity to either accident. On this basis, they say she has not shown a causal link between these symptoms and either of the accidents.

[59] It is true that Dr. Cameron did not specifically say in his report whether Ms. Tale Ramazan's complaints of light sensitivity were caused by either accident. He explained that he believed she was suffering from post-traumatic headaches with intermixed post-traumatic migraines, "as she does describe suffering with photophobia with some of these headaches". This suggests a causal link between the accidents and light sensitivity.

[60] There is no evidence that Ms. Tale Ramazan suffered from light or screen sensitivity before the First Accident. At trial, she testified that her headaches are

exacerbated by light, noise and viewing screens. I find that the First Accident caused these symptoms to manifest.

Non-Pecuniary Damages

[61] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life and loss of amenities. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. Such cases, though helpful, serve only as a rough guide. Each case depends on its own unique facts: *Trites v. Penner*, 2010 BCSC 882 at paras. 188–189.

[62] I will address relevant factors to be considered in an assessment of non-pecuniary damages set out at para. 46 of *Stapley v. Hejslet*, 2006 BCCA 34.

Age at the Time of the Accidents

[63] Ms. Tale Ramazan was relatively young—30 years old—at the time of the accidents. The accidents have resulted in symptoms and psychological conditions which have had an impact on her life.

Nature of Injury

[64] I have described the nature of Ms. Tale Ramazan's injuries and psychiatric conditions and their related symptoms above.

Severity and Duration of Pain

[65] Although Ms. Tale Ramazan's pain symptoms were more severe after the accidents, there has been some improvement.

[66] Ms. Tale Ramazan testified that she still experiences headache pain—which sometimes manifests as migraines—between one and four times per week. She said that when bad headaches occur, she finds a quiet room to rest, wears an eyepatch and sometimes takes over the counter medication. She said that she can only view screens for up to three hours at a time, after which she starts to feel anxious and her heart beats fast.

[67] Ms. Tale Ramazan testified that she still experiences right knee pain when walking for more than 10 or 15 minutes. She experiences shooting lower back pain on her right side that refers down her right thigh, along with mid back pain. She testified that this pain occurs when she sits or walks too long, for periods of approximately 20 minutes. She testified that she experiences right neck pain and tension that was initially more frequent after the accidents, as often as twice a month, but the frequency has reduced to once a month.

[68] I conclude that as a result of the accidents, Ms. Tale Ramazan sustained injuries resulting in chronic pain of moderate severity. Though her pain is chronic, it is not constant.

Disability

[69] I accept that as a result of the accidents, Ms. Tale Ramazan is partially disabled in her recreational, social, homecare and employment pursuits.

[70] With respect to the extent of Ms. Tale Ramazan's accident related physical disability, Dr. Cameron and Dr. Khan opined that as a result of the accidents, she has been rendered permanently partially disabled. Her partial disability arises as a result of, in summary, the cumulative adverse physical and pain related impacts of the accidents.

[71] In his expert report, Dr. Khan suggested that Ms. Tale Ramazan's disability results in limitations on her housekeeping, recreational and employment activities. He noted that she now performs housekeeping tasks on a paced and modified basis, and has not returned to her pre-accident frequency, duration and intensity of recreational activities due to her pain symptoms.

[72] Dr. Khan's evidence on the impact of the accidents on Ms. Tale Ramazan's housekeeping capacity was corroborated by the evidence of lay witnesses called at trial. Her friends testified that her home was generally tidy before the accidents, but is now untidy on a regular basis. Her friend Donna testified that she regularly visits Ms. Tale Ramazan and cleans her home, including doing her dishes and laundry.

Ms. Tale Ramazan testified that Donna comes to see her approximately once every two to three weeks.

[73] At trial, Ms. Tale Ramazan called opinion evidence on her functional capacity from Mr. Raph Kowalik, a kinesiologist. Mr. Kowalik testified that when Ms. Tale Ramazan attended at his clinic to undergo a functional capacity evaluation in October 2023, she appeared to be experiencing pain and other symptoms and he stopped physical testing fairly shortly after it commenced. Mr. Kowalik conceded at trial that as a result of his inability to functionally test Ms. Tale Ramazan, he had little confidence in his opinions with respect to her functional limitations. Consequently, I give his opinion on her functional capacity no weight.

[74] Dr. Muir stated in his report that from a psychiatric standpoint, Ms. Tale Ramazan is “quite disabled”. He considered that the chances of her recovering from PTSD and depression were poor given the persistence of her symptoms. Dr. Muir was not asked to define “quite disabled” at trial. However, I take his words to mean that Ms. Tale Ramazan is very disabled from her accident-related psychiatric conditions.

[75] Video surveillance evidence (which I will describe later in these reasons) and other evidence demonstrates that Ms. Tale Ramazan is able to regularly engage within her community by walking her dog, taking her daughter to school and talking to friends and neighbours. In addition, in or about 2018 or 2019, Ms. Tale Ramazan participated in a student film project and in 2021, she obtained a part in a television series, participating in a one-day shoot. Since approximately 2022, and not in any particular order, she has written song lyrics, planned and recorded a music video, sought grants for grants for film projects, performed in local concerts and events, and recorded promotional videos. She has taken or plans to take a screenwriting course.

[76] Although I accept Dr. Muir’s diagnosis of PTSD, based on all of the evidence, I am not satisfied that Ms. Tale Ramazan is very disabled, but rather is partially disabled as a result of her mental health issues.

Emotional Suffering

[77] I am satisfied that as a result of her injuries, symptoms and conditions arising from or that were exacerbated by the accidents, Ms. Tale Ramazan experiences a moderate degree of emotional suffering.

[78] Ms. Tale Ramazan testified that she suffered emotionally after the First Accident. She felt guilty that others had to take care of her daughter, and she was criticized by her boyfriend for her appearance and diminished ability to work. She testified that she had no money and felt like a failure. After the Second Accident, her relationship with her boyfriend deteriorated. She moved into a woman's shelter and then into transitional housing. She moved into subsidized government housing at the end of 2021.

[79] Ms. Tale Ramazan testified that she continues to suffer from depression, which includes feelings of hopelessness. She said that her nightmares occur two or three times per week and that she experiences anxiety in public places. Both she and the witnesses called on her behalf testified that she experiences anxiety driving in cars, especially as a passenger.

[80] Ms. Tale Ramazan did not provide evidence supporting her testimony that her chronic pain and depression has significantly impacted her ability to care for her daughter. I am satisfied that her symptoms have impacted, but not eliminated, her ability to participate in recreational, social and employment pursuits. I am not satisfied, as was suggested by her counsel, that Ms. Tale Ramazan is a shadow of her former self, although it is clear that her emotional wellbeing has been negatively impacted by the accidents.

Loss or Impairment of Life

[81] I am satisfied that as a result of injuries, symptoms and conditions arising from or that were exacerbated by the accidents, Ms. Tale Ramazan has suffered a moderate impairment to her life in her recreational, social and employment pursuits.

[82] As I have said already, Ms. Tale Ramazan testified that the injuries, symptoms and conditions arising from the accidents have had a significant impact on her life. Before the First Accident, she was physically active, regularly hiking, camping and dancing. She is now less active, physically and socially, as a result of her ongoing physical and psychological symptoms. She testified that her current recreational activities include going to the local recreation center, participating in a yoga class and exercising at a local gym when she feels better. She says she occasionally goes out with friends.

[83] Ms. Tale Ramazan's friends testified that before the First Accident, she was active and high energy and enjoyed camping, playing beach volleyball, going to picnics and going out—including going dancing. They testified that she is now much more sedate and prefers to stay at home or go to the local recreation center to use the hot tub and sauna. Some of these witnesses also testified that she is now occasionally forgetful.

[84] The defendants played video surveillance evidence at trial, including videos showing Ms. Tale Ramazan walking her daughter to school and taking her dog to the park or running errands in her neighbourhood. The videos, taken over three days in October 2023, show Ms. Tale Ramazan walking for periods of over fifteen minutes or longer, as well as standing and speaking with acquaintances for periods of between fifteen minutes and up to one hour. When in the dog park, she is seen repeatedly bending over or squatting down and picking up a ball to throw for her dog. Ms. Tale Ramazan's evidence at trial was, in summary, that she tried to get out of her home on good days, and felt like she needed to give her recently adopted dog a good life.

[85] In my view, these surveillance videos generally show Ms. Tale Ramazan participating in low impact, relatively passive activities. I would not describe any of the activities shown on the surveillance videos as high intensity activity that strongly contradicts her evidence concerning her pain symptoms and the impact of these symptoms on her recreational pursuits. Ms. Tale Ramazan did not testify at trial that

she could not participate in these types of activities, but rather that doing so for longer periods of time resulted in pain.

[86] The defendants also showed a Tik Tok video made in late 2021, in which Ms. Tale Ramazan is shown performing a very short but active dance routine with a friend and her daughter. She testified that she pushed herself to participate because of pressure from her daughter and friend. She said that she felt poorly afterwards and experienced pain in her left back. I have no basis to disbelieve this evidence.

[87] Nonetheless, I find that the video evidence at trial does not display Ms. Tale Ramazan experiencing significant, disabling pain.

Positions of the Parties

[88] Ms. Tale Ramazan submits that an appropriate award for non-pecuniary damages in her case is $230,000. She refers to a number of cases involving chronic pain and ongoing psychological injuries but submits that the most analogous to hers is *Sebaa v. Ricci,* 2015 BCSC 1492. In this case, Justice Brown described Ms. Sebaa's condition after her accident as follows:

> … the plaintiff, now 38, 33 at the time of the accident, characterizes her life as one of constant daily pain and seriously debilitating anxiety and depression, which have not abated since the accident. She points to fluctuating but always presents daily pain in her neck, left shoulder, left hand, right knee and right foot; to excruciating headache, and pain-disturbed sleep. She grants she has good days and bad days, but finds pain always present. She has become socially isolated. Sometimes, she spends several days in pain. She identified her depression as a major contributing factor in the decision she and her husband made to leave Canada. The accident suspended the plans she and her husband had for having a family through IVF.

[89] Justice Brown awarded Ms. Sebaa $180,000 in non-pecuniary damages, which Ms. Tale Ramazan submits is equivalent to $229,000 in 2024 dollars. A separate award of $15,000 was made for loss of housekeeping capacity.

[90] The defendants submit that an appropriate award for non-pecuniary damages is between $120,000 and $135,000. They also refer to a number of cases involving soft tissue injuries and some similar psychiatric conditions. At the higher end of this

scale, they rely upon the decision in *McHollister v. Ma*, 2021 BCSC 1667. In that case, Mr. McHollister was a 25-year-old assistant manager in a tire shop who was involved in three motor vehicle accidents. The first accident resulted in minor injuries from which he recovered prior to the subsequent accidents. The second accident resulted in soft tissue injuries to his neck, upper back, middle back and lower back, along with post-traumatic headaches. He was also diagnosed with anxiety disorder with mixed features of depression, PTSD and pain syndrome. He was not capable of working at his pre-accident job and he had to stop training to become a firefighter. Justice McDonald awarded non-pecuniary damages of $135,000. A separate award for loss of housekeeping capacity was not made.

Non-Pecuniary Damages—Analysis and Conclusion

[91] In my view, the impacts of the accidents on Ms. Tale Ramazan are not as significant as those described in *Sebaa.* I consider that Ms. Tale Ramazan's symptoms, and their impacts on her life, are more similar to those of the plaintiff in *McHollister.*

[92] Drs. Khan and Cameron describe Ms. Tale Ramazan as partially disabled from her physical injuries and the resulting symptoms and, as stated above, I accept their opinions. I also made a finding that she is partially disabled as a result of her psychiatric conditions and symptoms.

[93] Although Ms. Tale Ramazan suffers from chronic pain, she did not describe her pain as constant. She now experiences headaches between one and four times per week, knee pain after walking more than 15 minutes, back pain after sitting or standing for periods of approximately 20 minutes and neck pain approximately once per month. She is able to tolerate viewing screens for approximately three hours at a time.

[94] With respect to the impacts of the accidents on her psychological condition, I note Dr. Muir's opinion that Ms. Tale Ramazan had a pre-existing major depressive disorder that was exacerbated by the accidents. Dr. Muir considered her pre-accident symptoms to be mild. He opined that Ms. Tale Ramazan's depression

was at its worst in 2019 and 2020, but has since improved such that she now has residual depressive symptoms of moderate severity. He also noted that relationship and other stressors also "certainly" contributed to the persistence of these symptoms.

[95] With respect to the impact of ongoing PTSD on Ms. Tale Ramazan, the evidence at trial suggests that the primary impact is anxiety when she is a passenger in a vehicle. Despite her anxiety, she is still able to drive. I do not find that Ms. Tale Ramazan's PTSD prevents her from being in public spaces.

[96] The defendants ask this Court to find that it is likely that Ms. Tale Ramazan would have suffered from PTSD if the accidents had not occurred due to previous trauma and her pre-disposition to suffer this condition. It is not necessary for me to review her previous history in these reasons, which would require an unnecessary recitation of her difficult personal history. I accept Dr. Muir's opinion that although she may have been predisposed to developing PTSD, absent the accidents, she would likely have been able to manage and would not have developed this condition.

[97] As outlined earlier in these reasons, other evidence suggests that Ms. Tale Ramazan remains able to participate in activities that she enjoyed doing before the accidents, including music performance and production.

[98] In all of the circumstances, and in consideration of the awards made in similar cases cited by the parties, I conclude that an appropriate award for non-pecuniary damages in this case is $135,000.

Loss of Earning Capacity

[99] The applicable principles to be considered in an assessment of damages resulting from a loss of earning capacity were summarized by Justice Giaschi in *Siu v. Regehr*, 2022 BCSC 1876, as follows:

> [162] The pecuniary loss suffered by a plaintiff as a consequence of a motor vehicle accident, sometimes referred to as a loss of income claim, is addressed with an award of damages for loss of earnings capacity. The award is divided into two parts: past loss of earning capacity and future loss

of earning capacity. The purpose of both awards is to restore an injured plaintiff to the position they would have been in if the accident had not occurred. *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106, at para. 185; *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53, at para. 49.

[163] In *Rab v. Prescott*, 2021 BCCA 345, at paras. 47-48 [*Rab*], it was clarified that there are three steps involved in the analysis of a loss of capacity claim: (1) Is there a potential future event that could lead to a loss of capacity; (2) Is there a real and substantial possibility that the future event in question will cause a pecuniary loss; and (3) What is the value of that loss, which must include an assessment of the likelihood of that event occurring. Steps 1 and 2 of the analysis go to entitlement to an award. Step 3 goes to the valuation of the award.

[164] An award for loss of earning capacity, whether past or future, is appropriate where the plaintiff establishes a real and substantial possibility that there has been a diminishment in earning capacity resulting in a pecuniary loss. The standard of proof, whether for past or future loss of earning capacity, is "a real and substantial possibility", not a balance of probabilities: *Smith v. Knudsen*, 2004 BCCA 613, para. 5; *Grewal v. Naumann*, 2017 BCCA 158, paras. 43-48.

[165] A real and substantial possibility is a measurable risk as opposed to mere speculation: *Dornan*, para. 63.

[166] The existence of a real and substantial possibility of an event giving rise to an income loss may be obvious, such as where the plaintiff is unable to work at the time of trial due to injuries suffered in the accident; however, in other cases the assessment is more difficult, such as where the plaintiff is employed at trial and is earning at or near his or her pre-accident income but has continuing deficits or is exposed to future problems: *Rab*, paras. 28-29.

[167] Loss of capacity can be the event that gives rise to a possibility of a future income loss but is not sufficient in and of itself: *Rab*, at paras. 47-48.

[168] Some of the factors that go to entitlement are: (i) whether the plaintiff has been rendered less capable overall of earning income from all types of employment; (ii) whether the plaintiff is less marketable or attractive as a potential employee; (iii) whether the plaintiff has lost the ability to take advantage of all job opportunities that might otherwise have been open; and (iv) whether the plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market: *Rab*, paras. 35-36; *Brown v. Golaiy*, (1985), 26 B.C.L.R. (3d) 353 [*Brown*].

[169] Once entitlement is established, which is to say once the plaintiff establishes a real and substantial possibility of a diminishment in earning capacity, the loss is quantified using either the earnings approach or the capital asset approach. The appropriate means of assessment will vary from case to case: *Brown*; *Pallos v. Insurance Co. of British Columbia* (1995), 100 B.C.L.R. (2d) 260 (C.A.); *Pett v. Pett*, 2009 BCCA 232. The earnings approach is more appropriate where the loss is measurable. The earnings approach involves a calculation of the present value of the plaintiff's annual loss of income over the remaining years of employment.

> [170] The capital asset approach is appropriate where the loss is not easily measurable: *Perren v. Lalari*, 2010 BCCA 140, at para. 32. Cases where the plaintiff is employed at trial and is earning at or near his or her pre-accident income but has continuing deficits, or is exposed to future problems because of accident caused injuries, lend themselves to the capital asset approach: *Rab*, para. 29. The amount of the award can be based on the plaintiff's annual income for one or more years. The income used in the assessment must be relevant to the plaintiff's pre and post accident circumstances.
>
> [171] Under either the earnings approach or the capital asset approach, damages are assessed, not calculated: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18. The assessment involves a consideration of hypothetical events and contingencies, both positive and negative. Hypothetical events need not be proven on a balance of probabilities but, provided they are not speculative, are given weight according to their relative likelihood: *Athey*, at para. 27; *Morlan v. Barrett*, 2012 BCCA 66 at para. 38. In *Rab*, the Court of Appeal has clarified that when utilizing the capital asset approach the Court must similarly provide a rational or principled basis for valuing the loss: *Rab*, paras. 72-75.
>
> [172] The final stage of the assessment involves a consideration of the overall fairness and reasonableness of the award: *Parypa v. Wickware*, 1999 BCCA 88.
>
> [173] Pursuant to s. 98 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, a plaintiff is entitled to recover damages for only his or her past net income loss. This means that for past loss of income, the amount of income tax payable must be deducted from the gross earnings lost: *Hudniuk v. Warkentin*, 2003 BCSC 62.

[100] In my view, the medical evidence and Ms. Tale Ramazan's evidence establish that the accidents caused her chronic pain symptoms, headaches (including light and screen sensitivity) and psychiatric conditions.

[101] Applying the factors as set out in *Rab v. Prescott,* 2021 BCCA 345 at paras. 35–36, noted above, I find that Ms. Tale Ramazan is less marketable or attractive as a potential employee, has lost the ability to take advantage of all job opportunities that might otherwise have been open and is less valuable to herself as a person capable of earning income in a competitive labour market.

[102] I am satisfied that Ms. Tale Ramazan has demonstrated a real and substantial possibility of diminished earning capacity that has caused and will continue to cause income loss. The next step is to quantify Ms. Tale Ramazan's past and future income loss.

Loss of Past Earning Capacity

Background Facts

[103] Ms. Tale Ramazan commenced acting studies at New Image College in April 2015. While in school, she worked part-time as a server at a casino restaurant, working on average four evening shifts per week. She worked at the casino for nine months in 2015, declaring income of $13,363. She also worked nine to ten months in 2016, declaring income of $8,442. This income does not include tips, which Ms. Tale Ramazan testified averaged $250 per night.

[104] Assuming that Ms. Tale Ramazan earned $16 per hour in 2016, she must have worked approximately 15 hours per week during the nine months she worked that year, which is roughly equivalent to three five-hour shifts per week.

[105] Ms. Tale Ramazan stopped working in approximately September or October 2016 before the birth of her daughter in November 2016. She attempted to return work as a server approximately one year after her daughter was born when her maternity leave ended but became, in her words, completely stressed and only worked one or two months. She restarted her acting studies in January 2018 and did not work at the encouragement of her then boyfriend. After the First Accident in June 2018, she took two weeks off before returning to school to complete her acting program by the end of August 2018. She tried to go back to work at a casino restaurant in November 2018, but only worked for one month. In her evidence, she left the job because she was making uncharacteristic mistakes, feeling anxious and experiencing pain and migraines.

Positions of the Parties

[106] Ms. Tale Ramazan submits that her without accident earnings can be calculated based on an assumption that if the accidents had not occurred, she would have worked full-time as a server—working five eight hour shifts per week—starting in September 2018. She submits that she would have earned the average wage, which was approximately $16 per hour when she was last working as a server, as well as $250 per shift in tips. With various adjustments, she calculates that her

without accident earnings to the date of trial would have been approximately $605,000.

[107] Ms. Tale Ramazan submits that, aside from some small income from product promotion and entertainment industry work, she has been unable to work in any capacity since the First Accident. She has received disability benefits, CERB benefits and a small amount of employment income totalling approximately $105,000. She contends that that the $20,000 she received as CERB benefits in 2020 are not deductible, relying on *McLean v. Redenbach,* 2023 BCSC 8 at para. 144. She seeks an award for past loss of earning capacity of $499,316, subject to an adjustment downwards for income tax, with the required calculation to be completed after judgement is rendered.

[108] The defendants contend that Ms. Tale Ramazan's pre-accident earnings history was sporadic and dated, and therefore does not assist in determining her without accident earnings potential. They note that she last worked on a regular, part-time basis approximately 18 months before the First Accident.

[109] As well, the defendants say that Ms. Tale Ramazan was clear in her direct evidence that her plan before the accidents was to finish acting school, then audition and attempt to work as an actress while working part-time as a server at night. They submit that Ms. Tale Ramazan has had some success in the entertainment industry, having returned to singing, writing and performing. The defendants' position is that Ms. Tale Ramazan's without accident earnings potential, from what was likely to have been irregular acting employment, is difficult to determine and that she has provided no satisfactory evidence concerning these potential earnings.

[110] The defendants submit that the court should conclude that but for the accidents, Ms. Tale Ramazan would have worked part-time as a server for only three to four nights per week, and not for full shifts in part because of her requirement to juggle work and her duties as a single mother. They submit, without any supporting analysis, that the court should award damages for past loss of income earning capacity of $60,000 ($10,000 per year over six years).

Past Loss of Income Earning Capacity—Analysis and Conclusion

[111] In my view, Ms. Tale Ramazan's estimate of damages for past loss of income earning capacity is inflated and the defendants' submissions for this head of damages is inordinately low.

[112] There is no question that damages for past (and future) loss of earning capacity are to be assessed and not calculated: *Ibbitson v. Cooper,* 2012 BCCA 249 at para. 19.

[113] One way of assessing this head of damages is to apply an earnings approach. This requires estimating what Ms. Tale Ramazan would most likely have earned if the accidents had not occurred and deducting the amount she actually earned, or should have earned, after the accidents.

[114] I am not satisfied that Ms. Tale Ramazan was working to her functional capacity after the accidents, even in consideration of her accident related injuries, conditions and symptoms. Accordingly, in my view, it would not be fair to the defendants to assess her damages for loss of past income earning capacity based on what is, in essence, a lower income than she reasonably should have earned.

[115] I will first address whether after the accidents, starting in September 2018[1] and to trial, Ms. Tale Ramazan was completely disabled from working as her submissions suggest is the case. This involves consideration of causation and the question is: did the accidents prevent her from working and earning more than she did? For the reasons set out below, I am not satisfied that this is the case and find, on a balance of probabilities, that she should have been able to work more than she did during this period.

[116] As stated above, the medical experts opined that Ms. Tale Ramazan was partially disabled after the accidents. Neither Dr. Cameron nor Dr. Muir suggested

[1] September 2018 and forward to trial is the period proposed by Ms. Tale Ramazan for determining past loss of income earning capacity based on her evidence that she was in full time acting school from January until the end of August 2018, and not working.

that Ms. Tale Ramazan was completely unable to work after the accidents. Dr. Khan stated, in response to a question put to him about the length of time Ms. Tale Ramazan would be expected to be away from work as a result of her injuries, "[i]f she was working and chose to miss up to three months from work following the first accident, this would have been reasonable for the initial period post-injury".

[117] Ms. Tale Ramazan's evidence is that after the First Accident, in or about November 2018, she attempted to return to work as a food expeditor at a casino restaurant in Burnaby but was unable to perform this work. Although this occurred after the three-month reasonable work hiatus suggested by Dr. Khan, I accept Ms. Tale Ramazan's evidence concerning her symptoms when she tried to return to work in November 2018. I find that she was functionally impaired from working between September 2018 and the time of the Second Accident in February 2019.

[118] The expert evidence and Ms. Tale Ramazan's testimony establish that the Second Accident exacerbated some of her symptoms. I conclude that she remained functionally impaired from working for a time after this accident. The question is how long did Ms. Tale Ramazan's accident related symptoms and conditions prevent her from earning more than the small amounts she did?

[119] Ms. Tale Ramazan testified that she performed some paid work after the Second Accident. She said that she worked as a brand ambassador before the onset of the COVID-19 pandemic and afterwards, and performed this work approximately eighteen times, generally working three or four-hour shifts, but not on a regular basis. She said that she was able to complete full day shifts as a brand ambassador or host, but experienced pain flare ups afterwards. For example, after working as a host at a UFC event in June 2023, she experienced pain symptoms for five days.

[120] As outlined above, starting in approximately 2021, Ms. Tale Ramazan participated in paid and unpaid entertainment industry activities including directing a short play, acting, writing and performing songs, recording promotional videos and working on film projects.

[121] Ms. Tale Ramazan testified that she has been unable to work on a regular basis because her symptoms are unpredictable. She testified that she feels that anybody hiring her would want her to be available consistently, which is not possible right now. In her view, she lacks the experience to perform certain jobs and her symptoms prevent her from performing some forms of work, including for example, jobs requiring computer work.

[122] Ms. Tale Ramazan's testimony, which suggests that she has been almost completely disabled from working, is not consistent with the evidence at trial, including the evidence of Dr. Khan and Dr. Muir. In addition, although Ms. Tale Ramazan testified that she is looking for a job that she can do despite her accident-related limitations, she did not provide any evidence of her efforts to look for such employment.

[123] Ultimately, I do not find that Ms. Tale Ramazan's evidence with respect to the impact of her diminished functional capacity on her earnings potential to be credible. I conclude that she has exaggerated the impact of her accident related symptoms and conditions on her ability to work after the Second Accident.

[124] During her cross-examination, Ms. Tale Ramazan was taken to various clinical records suggesting that her functional capacity improved by 2022. Although not all the clinicians were called to testify, Ms. Tale Ramazan confirmed that the notes recording an improvement of her symptoms likely reflected what she told the writers, with some variation for good days and bad days. Some relevant extracts include the following:

a) In October 2021, she reported to her kinesiologist that she had seen improvements in terms of the frequency of headaches, was feeling better and had enough energy to clean her house.

b) In November 2021, she reported to her physiotherapist that she was feeling better, was in a better headspace, had been writing and reading a lot and was working on her own film.

c) In February 2022, she reported to her physiotherapist that she was doing well and increasing the frequency and duration of work—she was working three hours per day with breaks from screens required every fifteen minutes.

d) In May 2022, she reported to her doctor that she was interested in seeing if she could tolerate working one or two days a week as a server or in retail. This is consistent with her occupational therapist's report to her doctor the same month that she had made enough progress to start working part-time.

e) In May 2022, her occupational therapist reported that she was able to tolerate a maximum of 60 consecutive minutes of screen time, three times per day and for a maximum of three hours without her symptoms becoming severe.

f) In May 2022, she reported to her physiotherapist that she was doing well and that her headaches had improved.

g) In June 2022, she reported to her occupational therapist that she had applied for a server position. She testified that she dropped off a resume but did not follow up.

h) In June 2022, she reported to her occupational therapist that she had submitted a grant application for arts funding, had been recording a song demo and had an audition.

i) In September 2022, she reported to her physiotherapist that she was doing well but was tired after cleaning her entire house the day before. She also reported that she was going away for four days to work. Later that month, she reported that she was doing well and tolerated three days of work for five to six hours, although she experienced pain. At trial, she testified that the three days of work were not in sequence and she struggled afterwards.

[125] Ms. Tale Ramazan submits that after the accidents, she was unable to work in any capacity and certainly not on a durable basis. In my view, Ms. Tale Ramazan has not proven that this is the case. In particular, Ms. Tale Ramazan has not proven that after 2022, she was unable to work, for example, as a part time server or in retail as she had done previously, with reasonable accommodation from her employer.

[126] Based on all of the evidence and on a balance of probabilities, I find that Ms. Tale Ramazan was likely able to return to part-time work starting at the beginning of June 2022. With respect to the amount of work she was capable of performing, I conclude that it is more likely than not that she was able to work for a period of five hours up to three days per week. For the purposes of assessing her damages for past loss of earning capacity, it is necessary to calculate what she should reasonably have earned from June 2022 to trial.

[127] Neither party called evidence as to Ms. Tale Ramazan's residual earnings potential starting in June 2022. In my view, it is reasonable to apply, as the best available evidence, Ms. Tale Ramazan's most recent pre-accident earnings history as a server as a basis for estimating what she should have earned.

[128] I estimated above that in 2016, while she was in acting school, Ms. Tale Ramazan worked approximately 15 hours per week, equivalent to three five-hour shifts. I find that, starting in June 2022, she could have worked the same amount, earning an hourly wage of $19.43 in 2022, and $23.31 in 2023 and 2024—the applicable average wages for servers according to statistical data that the parties admitted into evidence. Adjusting tip income of $250 per shift in 2016 for inflation results in per shift tip income of $275 for 2022, $292 in 2023 and $300 in 2024. In total, I estimate that she could have earned approximately $105,000 from part-time work as a server from June 2022 to trial, not including deductions for holidays or vacation (for ease of calculation, calculated to the end of February 2024).

[129] With respect to the inclusion of income from tips, I note that this Court has accepted a plaintiff's evidence as to their tips earning history as sufficient evidence

to ground part of an award for loss earnings: see *Tougas v. Mostat,* 2020 BCSC 1281 at paras. 173–177. Although Ms. Tale Ramazan did not provide corroborating evidence of the tips she says she typically earned in a shift, the defendants did not challenge her evidence concerning tips at trial.

[130] Ms. Tale Ramazan's declared income is as follows:

a) in September 2018, Ms. Tale Ramazan did not earn any income;

b) in 2019, she earned a total of $11,248 from professional income and social assistance;

c) in 2020, she earned $22,360 from professional income and CERB benefits[2];

d) in 2021, she earned $22,659 from professional income and social assistance; and

e) in 2022 she earned $22,524 from professional income and social assistance, which for the period until the end of May 2022 equals $9,397.50[3].

[131] In total, adding the amounts Ms. Tale Ramazan earned between September 2018 and the end of May 2022 and the amount she should have earned working part time from June 2022 to the date of trial ($105,000), I find that Ms. Tale Ramazan should have earned approximately $170,000.

[132] I will next address what income Ms. Tale Ramazan, hypothetically, might have earned from September 1, 2018 to the date of trial if the accidents had not occurred.

[2] Ms. Tale Ramazan submits that CERB benefits should not be included in Ms. Tale Ramazan's with accident earnings, in assessing damages for loss of past earning capacity. I disagree with this position.

[3] I consider that Ms. Tale Ramazan could have worked part time starting in June 2022 and have already included an estimate of what she could have earned from that time forward.

[133] Ms. Tale Ramazan's evidence at trial was that if the accidents had not occurred, she would have pursued a career in acting, but would have likely continued to work full-time as a server at night in order to pay her bills. Her evidence is consistent with the evidence that she worked for a TV station in Dubai before she moved to Canada in 2014, and the fact that she stopped working part time in January 2018 to pursue full time studies at acting school.

[134] The defendants dispute that Ms. Tale Ramazan would have worked full-time as a server if the accidents had not occurred. Their position is that it is likely she would not have worked more than three or four nights per week, consistent with her work schedule before the birth of her daughter in November 2016. This submission has merit.

[135] Ms. Tale Ramazan's evidence is that before her daughter was born, the combined time she spent in school and working part-time as a server constituted "full-time" and she remembers being exhausted. Despite this testimony, Ms. Tale Ramazan submits that a calculation of her without accident earnings should be based on working full-time hours as a server at night, while looking for work and working as an actress and caring for her seven-year old daughter during the day. I do not find this submission to be reasonable, given her likely childcare duties and the fact that she never worked this much before the accidents.

[136] I find it highly probable that but for the accidents, after she finished acting school in August 2018, Ms. Tale Ramazan would have spent her days looking for work as an actress and would have sought to work part-time as a server during the evenings. I consider it unlikely that absent the accidents she would have focused only on acting given the likely uncertainty around her acting income and the evidence that she required a stable income to support herself and her daughter.

[137] Given her daytime activities and childcare responsibilities, I find it highly probable that absent the accidents, starting in September 2018, Ms. Tale Ramazan would have worked up to three eight hour night shifts per week as a server. I assign

a 90% likelihood to this without accident scenario occurring. Under this hypothetical scenario, Ms. Tale Ramazan would have earned approximately $363,000[4].

[138] I have not included any amount for acting income in this calculation. Ms. Tale Ramazan has not provided any evidence with respect to what her without accident earnings potential from acting would have been. She provided average earnings data for actors, which I do not consider helpful given that she would have been just starting out in this field.

[139] It is possible, although I consider it unlikely, that Ms. Tale Ramazan would have sought work as an actress during the day and would have worked full-time—five nights per week—as a server. I consider this unlikely. There is no evidence that she ever worked five shifts as a server or that this number of shifts would have been available to her. As well, I do not find it likely that that Ms. Tale Ramazan would have entirely abandoned her acting pursuits, meaning it would have been challenging for her to have time to act and work full-time as a server. I assign a 10% likelihood to this without accident scenario. Ms. Tale Ramazan has calculated that under this hypothetical scenario she would have earned $605,000 and I adopt this calculation for the purposes of this assessment.

[140] Blending the above hypothetical scenarios results in a calculation of potential without accident earnings of $387,200[5]. Deducting the earnings that I found Ms. Tale Ramazan should reasonably have earned during the relevant period ($170,000) results in $217,200 of past income loss before deductions for income tax.

[141] With respect to Ms. Tale Ramazan's without accident earnings potential, I have considered positive and negative contingencies. For example, it is possible that she may have been successful in getting some acting work had the accidents not occurred. Securing acting work could have increased or decreased her total earnings, depending on whether she was able to maintain the number of shifts she

[4]Utilizing Ms. Tale Ramazan's calculation reduced from five to three shifts per week: $19,641 for 2018, $64,022 for 2019, $53,715 for 2020, $66,830 for 2021, $70,980 for 2022, $74,630 for 2023 and $13,289 for 2024 – to trial.
[5] (.9 x $363,000) + (.1 x $605,000) = $387,200.

worked as a server. In my view, these positive and negative contingencies cancel each other out.

[142] Ultimately, I am satisfied that a fair and reasonable award to Ms. Tale Ramazan for past loss of income earning capacity is $217,200 before deductions for income tax.

Loss of Future Earning Capacity

[143] The legal framework for an assessment of damages for loss of future earning capacity was set out by Justice Gomery in *Omerovic v. Merced,* 2023 BCSC 727 as follows:

> [97] An award for future economic loss requires the plaintiff to prove that there is a real and substantial possibility of a future event causing an income loss; *Rab v. Prescott*, 2021 BCCA 345 at paras. 47-49. The underlying question is whether, in the oft-quoted words of Justice Finch (as he then was) in *Brown v. Golaiy*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (S.C.), Mr. Gray's injuries make him "less valuable to himself as a person capable of earning income in a competitive labour market".
>
> [98] A three-part test emerges from the recent appellate authorities; *Rab* at para. 47. First, the evidence must disclose a potential future event that could lead to a loss of capacity. Second, the court must be satisfied that there is a real and substantial possibility that the future event in question will cause a pecuniary loss. Third, if that possibility exists, the court must assess the value of that possibility, taking into account the likelihood that it will come to pass and the financial consequence if it does.
>
> [99] As with past economic loss, the assessment is a matter of judgment, not mathematical calculation; *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18.
>
> [100] In some cases, such as *Brown*, *Letourneau v. Min*, 2003 BCCA 79, and *Kralik v. Mount Seymour Resorts Ltd.*, 2008 BCCA 97, courts have awarded damages for loss of future earning capacity in an amount equal to one or two years' earnings. In other cases, such as *Westbroek v. Brizuela*, 2014 BCCA 48, courts have adopted an earnings approach, forecasting potential earnings with allowances for contingencies.
>
> [101] Under an earnings approach, future economic loss must be assessed based on a comparison of hypothesized events. There are hypotheses on both sides of the comparison. The court must evaluate the likely future for the plaintiff but for the accident, and compare it to the likely future taking the injuries suffered in the accident into account, allowing for real and substantial positive and negative contingencies in both cases.

[144] There is no dispute in this case that as a result of the accidents, Ms. Tale Ramazan suffered a loss of capacity which will negatively impact her income going forward.

[145] The parties diverge on how to estimate her without accident earnings from the date of trial onwards. As well, they disagree with respect to her with accident earnings potential, in consideration of the impact of her accident related injuries, conditions and symptoms.

[146] Ms. Tale Ramazan applies an income approach in determining her damages for future loss of earning potential. She submits that her estimate of without accident earnings for 2023 ($124,384) should be used to estimate her without accident earnings going forward. This is based on her working five, eight-hour shifts per week as a server and earning tips. She submits that given that she is now almost 36, assuming she retires at age 65 and applying the present value multiplier from the Civil Jury Instructions, the present value of her post-trial without accident earnings potential is $2.885 million. After deductions for general contingencies, which she contends should be set at 15%, she submits that her without accident earnings should be calculated to be $2.45 million. She does not appear to consider that she has any residual earning capacity and does not propose any deduction for such earnings.

[147] The defendants submit that this is not an appropriate case to apply an income approach to assess Ms. Tale Ramazan's damages for future loss of earning capacity. In their view, there is no established past income that assists in determining what Ms. Tale Ramazan's without accident future income might have been. They submit that, for lack of a better comparison, using statistical earnings data for full-time actors ($37,541 per year) and applying a multiplier of two to four years, an appropriate award for future loss of income earning capacity is between $75,082 and $150,164.

Analysis

[148] The capital asset approach is used appropriately in cases where a plaintiff is employed at trial and is earning at or near their pre-accident income, but has continuing income deficits or may be exposed to future problems because of their accident-caused injuries: *Rab* at para. 29. This is not Ms. Tale Ramazan's current situation. She is currently unemployed and is not earning anything close to her pre-accident income.

[149] Although Ms. Tale Ramazan's pre-accident earnings history as a server is dated and was of relatively short duration, it provides some guidance with respect to her potential future without accident earnings. The fact that she did not work during her maternity leave or while she was in full-time studies does not mean that she lacked the capacity to earn during those times. In the future, given that Ms. Tale Ramazan is a single mother and does not have family support in Vancouver, it is very likely that absent the accident, she would have sought to maintain a regular income. In my view, it is therefore appropriate to apply an income approach to calculate Ms. Tale Ramazan's without accident earnings based on her most recent income as a server, including consideration of any positive and negative contingencies. I will first address the potential without accident earnings scenarios.

Estimate of Without Accident Post-Trial Earnings

[150] As I found earlier, absent the accidents, for the period between September 2018 and trial, Ms. Tale Ramazan would likely have worked three eight-hour night shifts per week as a server and looked for work as an actress during the day. Although I did not apply any income from acting in my assessment of her without accident pre-trial earnings, in my view, there is a greater likelihood that Ms. Tale Ramazan would have been successful in obtaining some acting work by the time of trial. The evidence establishes that she was motivated to do so.

[151] One possible scenario is that absent the accident, by the time of trial, Ms. Tale Ramazan would have been working five days a week—three shifts as a server and two full days as an actress. In my view, assuming she would only work a

total of five days a week is appropriate. This is based on Ms. Tale Ramazan's evidence that she was essentially at full capacity in 2016 when she was attending at school during the day and working part-time at night. Again, in my view, the evidence establishes that Ms. Tale Ramazan was motivated to become an actress, but was also concerned about earning enough money to support herself and her daughter. I find that there is a 50% likelihood that this scenario would have occurred but for the accidents.

[152] I turn to estimating her potential earnings under this first scenario. I calculated that in 2023, Ms. Tale Ramazan's earnings from working as a server could have been $74,630. Ms. Tale Ramazan provided limited evidence on her earnings potential but the parties admitted statistical data showing that the median hourly wage for actors in British Columbia is $22 per hour. At this hourly wage, assuming working as an actor eight hours a day two days a week, Ms. Tale Ramazan could have earned an additional $18,000 from acting. Adding this amount to her potential earnings as a server results in an estimate of Ms. Tale Ramazan's without accident earnings of approximately $93,000 per year.

[153] I accept Ms. Tale Ramazan's submission that she would have worked until age 65. Therefore, under this scenario—applying present value multipliers to earnings of $93,000 per year to age 65—her without accident post-trial earnings would total approximately $2.158 million.

[154] Another potential scenario is that, absent the accidents, Ms. Tale Ramazan would have started to obtain more work as an actress in September 2018 and would have been working full-time in this capacity by the time of trial. I find that there is a 50% likelihood that this scenario would have occurred.

[155] Applying the average annual earnings for actors of $37,541 as set out in the statistical data, assuming retirement at 65 and applying present value multipliers, Ms. Tale Ramazan's potential without accident post-trial earnings under this second scenario would be $840,500.

[156] Blending the valued derived from the above hypothetical scenarios results in a calculation of potential without accident post trial earnings to age 65 of $1,499,250[6], not including any deduction for general contingencies.

[157] At paras. 104–106 of *Omerovic,* Gomery J. considered what general contingency deduction is appropriate. He reviewed recent authorities, finding that "the most recent cases that have applied [a 20% adjustment] in this Court all involved a young plaintiff at or near the start of their working careers [where] the risks of future disability or early retirement may loom larger ...": para. 106. Justice Gomery applied a 10% contingency deduction for a plaintiff who was 28 at the time of the accident at issue.

[158] Ms. Tale Ramazan is a relatively young plaintiff. Although she is at the start of her acting career, she is not at the start of her working life. I consider a 15% general contingency deduction to be appropriate in this case. Accordingly, I conclude a reasonable estimate of Ms. Tale Ramazan's without accident post-trial earnings is $1,274,490.

Estimate of With Accident Post-Trial Earnings

[159] As set out above in my analysis for past loss of earning capacity, I found that Ms. Tale Ramazan should have been able to work three five-hour night shifts per week as a server beginning in June 2022. In my view, her circumstances have not significantly changed since that time. Although she has recently started to participate more regularly in the entertainment industry as a performer and songwriter she has made very little income from these activities.

[160] Based on Ms. Tale Ramazan working three five-hour shifts per week at $23.31 per hour and earning $300 per shift in tips, I estimate that she is currently able to earn $47,150 per year. Applying the relevant present value multipliers results in $1,094,235 in potential with accident post-trial earnings to age 65. After applying a

[6] (.5 x $2,158,000) + (.5 x $840,500) = $1,499,401.

15% general contingency deduction, a reasonable estimate of Ms. Tale Ramazan's with accident post-trial earnings is $930,099.61.

[161] I must also consider whether to apply any specific contingencies to this calculation. In this case the medical evidence does not establish a strong likelihood that Ms. Tale Ramazan's condition will improve much beyond her current status, if at all. With respect to her physical symptoms, Dr. Khan testified that any improvement may be slight and transient. With respect to her psychiatric symptoms, Dr. Muir considered it unlikely that there will be a marked improvement in symptoms related to her PTSD and depression. I therefore decline to make any adjustment for positive or negative health-related contingencies.

Future Loss of Income Earning Capacity—Conclusion

[162] Deducting the estimates of Ms. Tale Ramazan's potential with accident post-trial earnings ($930,099.61) from her potential without accident post-trial earnings ($1,274,490) results in a difference of $355,391.

[163] By way of comparison, I note the defendants' submission that an appropriate method of calculating this head of damages is to apply a multiplier of two to four times to the average annual earnings for actors ($37,541). In my view, there is no principled reason to apply the average earnings of actors as this understates her pre-accident earnings capacity. Arguably, the amount that Ms. Tale Ramazan could have earned working full-time as a server in 2016 should be applied as this is more reflective of her earning potential. Assuming that she was capable of working five eight-hour shifts in 2018, she had the capacity to earn (inclusive of tips) approximately $98,000 per year as a server. If I apply either a two- or four-times multiplier, this results in an award of between approximately $200,000 and $400,000. I mention this as a means of comparison, and in consideration of overall fairness, not because I consider this methodology to be preferable.

[164] In all of the circumstances, I find that a reasonable assessment of Ms. Tale Ramazan damages for future loss of earning capacity is $355,000 and I award this amount.

Cost of Future Care

[165] A plaintiff is entitled to compensation for the cost of future care based on what is reasonably necessary to restore her to her pre-accident condition, insofar as possible. When full restoration is not achievable, the court must strive to assure full compensation through the provision of adequate future care. The award is to be based on what is reasonably necessary on the medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 (S.C.) [*Milina*], adopted in *Aberdeen v. Zanatta,* 2008 BCCA 420 at para. 41.

[166] The test for determining the appropriate award for cost of future care is objective and based on medical evidence. For a court to award damages for the cost of future care, the costs claimed must be reasonable and medically justified: *Milina* at 84; *Tsalamandris v. McLeod,* 2012 BCCA 239 at paras. 62–63.

[167] Although there must be a medical justification for an expense, it is not necessary that a physician testify as to medical necessity: *Quigley v. Cymbalisty*, 2021 BCCA 33 at para. 44.

[168] A future cost award should only be made in respect of costs that may reasonably be expected to be incurred: *O'Connell v. Yung*, 2012 BCCA 57 at paras. 67–68. If a plaintiff has not used or sought out a service in the past, it will usually be difficult for them to justify a claim in respect of that service: *Warick v. Diwell*, 2018 BCCA 53 at para. 55.

[169] An assessment of damages for cost of future care is not a precise accounting exercise: *Krangle (Guardian ad litem of) v. Brisco*, 2002 SCC 9 at para. 21.

[170] Where there is doubt as to whether future costs will be incurred, the court should evaluate the possibility as it does all hypothetical events for the purpose of assessing damages. This requires first a determination of whether the event giving rise to costs is a real and substantial possibility and then, if it is, by assessing the likelihood of the event and discounting it accordingly: *Athey v. Leonati*, [1996] 3

S.C.R. 458 at para. 27, 1996 CanLII 183; *Grewal v. Naumann*, 2017 BCCA 158 at paras. 48–49.

Positions of the Parties

[171] Ms. Tale Ramazan seeks an award for the present value of the cost of various services, equipment and treatments until she is 75 years old. She claims $511,089 in future care costs, including: $298,351 for heavier home cleaning support, $8,341 for various therapeutic equipment, $19,164 for a gym and pool pass, $163,701 for various therapies, $9,445 for the cost of travel to and from treatments, and $12,087 for medications.

[172] The defendants contend that a number of the items for which Ms. Tale Ramazan seeks an award are not medically justified and that some of amounts are claimed for equipment and treatments at greater frequency or over a longer period of time than is required. They contend that an appropriate award for cost of future care is $50,000.

Heavier Home Cleaning Support

[173] Ms. Tale Ramazan's claim for the cost of heavier home cleaning support is based on Mr. Kowalik's report. Mr. Kowalik testified that he made his estimate for the annual cost of heavier home cleaning, including arduous tasks such as scrubbing floors, doing laundry and cleaning bathrooms, by relying on the 2010 Statistics Canada publication "Overview of the Time Use of Canadians". Mr. Kowalik used this statistical data as a basis for recommending that Ms. Tale Ramazan be provided with cleaning services four hours per week at a cost of $50 per hour.

[174] I decline to give any weight to Mr. Kowalik's recommendation with respect to heavy home cleaning. As I stated earlier, he was unable to complete a functional capacity evaluation of Ms. Tale Ramazan. He did not make inquiries into the size and layout of Ms. Tale Ramazan's residence and he relied on general statistical data that has questionable application to this case.

[175] None of the medical experts recommended that Ms. Tale Ramazan receive heavier home cleaning support. Dr. Khan noted in his report that Ms. Tale Ramazan reported that she performs housekeeping tasks on a paced and modified basis. Ms. Tale Ramazan reported to her kinesiologist and physiotherapist in 2021 and 2022, respectively, that she was able to clean her house. At trial, Ms. Tale Ramazan testified that the only task she could not perform was mopping and that she used a "Swiffer" to clean her floors.

[176] Further, there is no evidence that Ms. Tale Ramazan has sought out heavy cleaning support services in the past. There is some evidence that friends help her with home cleaning from time to time, but this evidence suggests that her friends help her only occasionally during visits. For example, her friend Donna visits every two to three weeks and helps her clean during these visits, but there was no evidence tendered as to how much time Donna spends providing this assistance.

[177] I am not satisfied that heavy cleaning support is medically justified in this case or that the costs sought are reasonable. Further, to the limited extent that Ms. Tale Ramazan is unable to perform heavy cleaning without pacing and support, I am not satisfied that she will likely incur the cost of such services going forward.

[178] I decline to make any award for the future cost of heavier home cleaning.

Therapeutic Equipment and Gym/Pool Pass

[179] The defendants submit that Ms. Tale Ramazan should not be entitled to the cost of obtaining a TENS machine ($333). A TENS machine, in my understanding, is a machine which provides electrical nerve stimulation and is used in pain management. Dr. Khan referred to the TENS machine in his report, indicating that use of a TENS machine may occasionally be sought but was not strictly required. At trial, Ms. Tale Ramazan did not know what a TENS machine was. I am not satisfied that a TENS machine is medically justified or that Ms. Tale Ramazan would purchase and use such a machine.

[180] The defendants object to Ms. Tale Ramazan's claim for the cost of home exercise equipment on the basis that there is redundancy between use of this equipment at home and at the recreational center. In his report, Dr. Khan suggested that Ms. Tale Ramazan should progress from therapeutic treatment to self care. Having equipment at home will aid Ms. Tale Ramazan in her therapeutic treatment. In my view, the amount claimed for this equipment, $244, is medically justified and reasonable.

[181] The defendants object to the cost of the installation and eventual replacement of grab bars in Ms. Tale Ramazan's home. She had grab bars installed in her home in or about 2021 on the recommendation of her physiotherapist. There is no evidence that the existing grab bars are not sufficient or will require replacement. I am not satisfied that any additional cost for grab bars is medically justified or reasonable.

[182] The defendants also object to the cost of sleep aids recommended by Mr. Kowalik, including a memory foam pillow, buddy pillow and mattress topper. Dr. Khan did not recommend that any of these items be purchased. Other than a therapeutic pillow, which she already owns, Ms. Tale Ramazan did not provide any evidence with respect to items she uses or might use to help her sleep. Nonetheless, her evidence at trial indicates that she cannot sleep on her right side and still has occasional neck pain. I find that the cost of acquiring and eventually replacing a memory foam pillow and mattress topper is medically justified. For the purposes of this assessment, I consider that a reasonable lifetime cost of such items is $5,500.

[183] The defendants object to Ms. Tale Ramazan's claim for the annual cost of a gym pass on the basis that she had a gym pass prior to the birth of her daughter—that is, they say that she would have incurred this expense in any case. Dr. Khan opined that a gym/pool membership for a period of six months would be reasonable to aid Ms. Tale Ramazan in transitioning from supervised instruction into a self-directed program of physical activity. Mr. Kowalik estimated that the annual cost of a

fitness center is $720. I find that a gym/pool pass membership cost is medically justified and that $360 for a one-half year membership is a reasonable award for such cost.

[184] The defendants object to Ms. Tale Ramazan's claim for various therapies including physiotherapy, acupuncture and massage therapy. As he considered for a TENS machine, Dr. Khan's opinion was that these passive modalities were not strictly required but may occasionally be sought in cases of flare up. In his opinion, Ms. Tale Ramazan's focus should be on active rehabilitation. The defendants submit that a reasonable award for these therapies, to manage flare ups, would reflect twelve sessions per year for a period of five to ten years.

[185] Dr. Khan did not provide an opinion with respect to how often Ms. Tale Ramazan was likely to experience pain flare ups. The evidence at trial indicates that she experiences neck pain once every month, which suggests that she may require a form of passive modality treatment at this frequency. I find that an award for treatment either by acupuncture, physiotherapy or massage therapy once per month for life is medically justified. I consider it reasonable to make an award for one type of treatment once per month for this period, the cost of which is $20,560, reflecting the average of the lifetime cost of physiotherapy, acupuncture and massage therapy.

[186] The defendants object to Ms. Tale Ramazan's claim for the lifetime cost of occupational therapy. Dr. Khan recommended that she undergo two further sessions with an occupational therapist. Mr. Kowalik considered that because Ms. Tale Ramazan has had more occupational therapy treatments to date, it would be reasonable to award the cost of twelve sessions per year. I find that Mr. Kowalik's opinion is untethered to any medical justification. Therefore, I find that the cost of two additional sessions with an occupational therapist at a total cost of $230 is medically justified and reasonable.

[187] With respect to the cost of various injection therapies, the defendants accept that both Dr. Cameron and Dr. Khan recommended a course of Botox therapy to assist with pain management. They disagree that an award should be made for

other types of injection therapies listed in Dr. Khan's report because Ms. Tale Ramazan has not tried these other injection therapies in the past.

[188] Dr. Khan testified that the normal course is to trial a particular injection therapy two to three times and then move on to the next type until the most beneficial type is determined. Ms. Tale Ramazan submits that the cost of trialing an injection is $16,140 and the defendants did not challenge this estimate. There is no evidence concerning how frequently the most beneficial injection therapy will be required after the trial process is completed, but Dr. Khan's report suggests that injection therapy may be helpful in the long-term. Ms. Tale Ramazan submits that it would be reasonable to award her the lifetime cost of one therapy once per year, which is $35,799. I agree and find that such cost is both medically justified and reasonable.

[189] The defendants object to an award for travel cost contingency. Ms. Tale Ramazan submits that an award of $9,445—to reflect an average cost of $350 per year until age 75 to attend at various medical treatments—is appropriate. The defendants agree that Ms. Tale Ramazan incurred accident related travel costs as special damages in the amount of $2,174.04. I am not satisfied that it is appropriate to assume that Ms. Tale Ramazan will incur $350 in mileage costs per year until age 75. Ms. Tale Ramazan will not be required to attend for treatment as frequently in the future as she has before trial. However, in my view, in part given the defendants' admission, the costs incurred before trial are compensable. I consider that some award for travel cost contingencies is appropriate and an award of $2,000 is reasonable.

[190] The defendants do not object to the following future care costs that Ms. Tale Ramazan claims and I find them to be medically justified and reasonable:

a) an ice pack, heating pad and one replacement Theragun (a massage tool), which total $681;

b) five active rehabilitation sessions with a kinesiologist totalling $495;

c) 15 sessions of Eye Movement Desensitization and Reprocessing therapy (EMDR) totalling $3,118;

d) 24 sessions of cognitive behavioural therapy over two years totalling $5,316; and

e) medication costs of $12,087.

Cost of Future Care—Conclusion

[191] In summary, I assess Ms. Tale Ramazan's damages for cost of future care as follows:

Exercise Equipment:	$244
Sleep Aids:	$5,500
Gym/Pool Pass:	$360
Physiotherapy/Acupuncture/Massage Therapy:	$20,560
Occupational Therapy:	$230
Therapeutic Equipment:	$681
EMDR Therapy:	$3,118
Cognitive Behavioural Therapy:	$5,316
Active Rehabilitation:	$495
Injection Therapy	$35,799
Medications	$12,087
Travel Cost Contingency	$2,000
Total:	**$86,390.00**

Loss of Housekeeping Capacity

[192] Ms. Tale Ramazan makes a claim for loss of housekeeping capacity in addition to her claim for the cost of heavy housekeeping services as a cost of future care.

[193] The Court of Appeal recently affirmed the principles that apply to an award for loss of housekeeping capacity in *Steinlauf v. Deol*, 2022 BCCA 96 at para. 110, including:

a) loss of housekeeping capacity may be treated as pecuniary or non-pecuniary award;

b) a plaintiff who suffers an injury which would make a reasonable person in their circumstances unable to perform usual and necessary household work is entitled to compensation for that loss by way of pecuniary damages;

c) when the loss is in keeping with a loss of amenities or increased pain and suffering while performing household work, a non-pecuniary damages award may instead compensate for the loss;

d) a plaintiff is entitled to an award to reflect a loss of capacity, whether or not replacement services are actually purchased; and

e) evidence that work is performed by others, even if done gratuitously, supports an award for loss of housekeeping capacity.

[194] Any award for loss of housekeeping capacity must be considered in the context of a number of decisions, which have cautioned restraint so as to ensure the award is commensurate with the loss: *Kim v. Lin,* 2018 BCCA 77 at paras. 35–37, citing *Kroeker v. Jansen* (1995), 4 B.C.L.R. (3d) 178 at para. 9, 1995 CanLII 761 (C.A.), leave to appeal to SCC ref'd, 24763 (2 November 1995).

[195] Although there is no opinion or other evidence that Ms. Tale Ramazan entirely lacks the physical capacity to do housekeeping, with the exception of mopping, she provided evidence that doing this work requires pacing and results in pain. Further, there is evidence that her home is not as clean now as it was before the accidents and that she gets occasional help from friends or neighbours to clean her house or work in her garden.

[196] Ms. Tale Ramazan submits that an appropriate award for loss of housekeeping capacity is $69,202, based on the cost of her obtaining housekeeping support once per week at a cost of $50 per hour until she is 75. As set out in *Blackburn v. Latimore*, 2023 BCCA 224 at para. 30, it is appropriate to assess an award for loss of housekeeping capacity with reference to the cost of replacement services.

[197] I consider that Ms. Tale Ramazan has sustained a loss of housekeeping capacity that is not already reflected in my award for non-pecuniary damages. Based on the evidence of her friend Donna, I estimate that Ms. Tale Ramazan reasonably requires housekeeping assistance from friends or neighbours for two hours per month. Accordingly, I assess the damages for loss of housekeeping capacity to be $32,000.

Conclusion

[198] In conclusion, I assess Ms. Tale Ramazan's damages arising from both accidents as follows:

Non-pecuniary Damages	$135,000
Loss of Past Earning Capacity*	$217,200
Loss of Future Earning Capacity*	$355,000
Cost of Future Care	$ 86,390

Loss of Housekeeping Capacity	$ 32,000
Special Damages (admitted)	$ 11,640
Total:	**$837,230**

*subject to deduction for income tax—to be assessed by a Registrar

[199] Based on the parties' relative degrees of fault for the accidents and the resulting apportionment of liability set out earlier in these reasons, Ms. Tale Ramazan is entitled to 75% of the total amount remaining after deducting income tax from the awards for past and future loss of income earning capacity. The appropriate amount to be deducted for income tax is to be assessed by the Registrar.

"Mayer J."