

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Dehghan v. Dhillon*,
2024 BCSC 1874

Date: 20241010
Docket: M193685
Registry: New Westminster

Between:

Feyzollah Dehghan also known as Frank Dehghan

Plaintiff

And

Amndeeep Kaur Dhillon

Defendant

- and -

Docket: M194129
Registry: New Westminster

Between:

Feyzollah Dehghan also known as Frank Dehghan

Plaintiff

And

**MD Salim Husen, Jim Pattison Industries Ltd.,
UNFI Canada Inc. and David Michael Daniels**

Defendants

Before: The Honourable Justice Lamb

Reasons for Judgment

Counsel for the Plaintiff:

J. Craig Moulton

Counsel for the Defendants:

Kelsey Croft
S. Borowska

Place and Dates of Trial:

New Westminster, B.C.
March 4-7, 2024
May 10, 2024

Place and Date of Judgment:

New Westminster, B.C.
October 10, 2024

Introduction

[1] Frank Dehghan suffered soft-tissue injuries and some psychological sequelae in a motor vehicle accident on February 1, 2016 (“MVA #1”). His injuries were aggravated by a second motor vehicle accident on November 15, 2018 (“MVA #2”). Liability for both accidents has been admitted by the defendants. The only issue at trial was quantum of damages.

[2] Mr. Dehghan was 70 years old and retired as of MVA #1. He had a pre-accident history of right heel pain, intermittent low back pain and mental health issues, but he lived independently and helped others. As a result of MVA #1, Mr. Dehghan suffered injuries to his neck, shoulders and upper back and headaches, all of which were aggravated by MVA #2. Mr. Dehghan claims \$130,000 for non-pecuniary loss, \$40,000 for loss of housekeeping capacity and (most contentiously) \$192,000 for future cost of care. The parties agree that he is entitled to special damages of \$9671.19.

[3] The defendants argue Mr. Dehghan’s post-accident condition was not much different than his pre-accident condition, despite the fact he had no history of pre-accident neck, shoulder or upper back pain or headaches. The defendants say Mr. Dehghan would have required most of the future care he claims even if the accidents had not happened. They submit that an award of \$85,000 for non-pecuniary damages, \$6540 for future cost of care and special damages is reasonable.

[4] At trial, the plaintiff’s case included evidence from Mr. Dehghan, three lay witnesses and factual evidence from Mr. Dehghan’s treating psychiatrist. The court had the benefit of expert reports from Mr. Dehghan’s family physician, his treating neurologist, a physiatrist retained for litigation purposes, an occupational therapist who tested Mr. Dehghan’s functional capacity and an economist.

[5] The defendants called no evidence.

[6] I will start by providing a few comments on credibility and reliability. I will then provide a brief background before setting out my findings with respect to his injuries and proven losses.

Credibility and reliability

[7] Given the nature of Mr. Dehghan’s injuries, his testimony was key.

[8] The defendants say Mr. Dehghan was an unreliable historian because he under-reported his pre-accident complaints and any post-accident medical issues that were unrelated to MVA #1 or MVA #2. In support of this submission, the defendants rely upon inferences they draw about Mr. Dehghan’s medical condition based on entries in medical records without expert evidence to confirm the significance of such entries or other evidence to establish the entries in the medical records corresponded to an impact on Mr. Dehghan’s function.

[9] For example, the defendants are critical because, when he gave evidence in March 2024, Mr. Dehghan did not recall complaints of right knee pain in the six months before MVA #1 (i.e., August 2015 to February 2016) that resulted in a consultation with an orthopaedic surgeon in April 2016, with one follow-up visit in June 2016. Mr. Dehghan was not taken to any entries in his medical records that suggest he complained of knee pain to his family doctor or anyone else after June 2016. He did not suffer any injury to his knees in either accident. In my view, it is not surprising that Mr. Dehghan may not remember receiving treatment eight years earlier for a complaint that apparently ended shortly after consulting the orthopaedic surgeon.

[10] A second example involves a two-week hospital stay in December 2020 for severe headache. According to an entry in his family doctor’s records, Mr. Dehghan had a CT scan of his head that showed a mass on his pituitary gland. Neither the CT scan report nor the hospital records were in evidence. In cross-examination, the family doctor said he would not be able to say whether the pituitary gland was causing Mr. Dehghan’s headache at that time and noted Mr. Dehghan had a severe headache before the CT scan was done. Mr. Dehghan’s neurologist testified that an

MRI in 2022 revealed no mass in Mr. Dehghan's head, and it would be unusual for a lesion to disappear. The neurologist was not cross-examined regarding the significance of a mass on the pituitary gland. In short, the defence asks the court to draw an inference that the CT scan results in December 2019 are significant in respect of Mr. Dehghan's headaches, but there is a lack of evidence to support such an inference.

[11] As a third example, the defence refers to Mr. Dehghan's evidence about an accident that occurred in February 2023 in which his vehicle's airbags deployed and his vehicle was subsequently written-off. The defence urges the court to rely upon "common sense" to conclude that Mr. Dehghan must be understating the effects of the February 2023 accident when he testified that he was injured "a little bit" in that accident. However, there is no evidence to contradict Mr. Dehghan's testimony. In particular, there was only one clinical entry in his family doctor's records that seemed to relate to the February 2023 accident. There was no evidence from the physiotherapist who was treating Mr. Dehghan before and after February 2023, which I might have expected if the February 2023 accident had aggravated his injuries from MVA #1 or MVA #2 or caused any new injuries. Mr. Dehghan's friend did not notice any difference in his condition after the February 2023 accident. Given the evidence at trial, I am not able to conclude that Mr. Dehghan understated the effects of the February 2023 accident.

[12] That said, Mr. Dehghan was not a perfect witness. The physiatrist retained by the plaintiff described him as a vague historian at best. Mr. Dehghan had difficulty remembering some dates, and he was incorrect about when he first had Botox injections. However, Mr. Dehghan acknowledged he was not good with dates. He reasonably suggested the records would provide a more accurate timeline of treatment than he could provide.

[13] Most significantly for the assessment of damages, I find Mr. Dehghan's complaints of pain in his neck, shoulder and upper back and headaches and his lower mood post-accident to be credible and reliable:

- a) his complaints of pain have been generally consistent since MVA #1;
- b) Dr. Joshua Muhlstock, the physiatrist who performed the medical legal assessment on November 6, 2023, found objective findings consistent with Mr. Dehghan's complaints of neck, shoulder and upper back pain;
- c) the limitations Mr. Dehghan demonstrated on functional capacity testing were consistent with his accident-related injuries and his pre-existing condition; and
- d) lay evidence corroborated Mr. Dehghan's presentation has changed from a positive, friendly personality to a flatter affect.

[14] In summary, I found Mr. Dehghan to be a credible witness who was generally reliable regarding the nature of his accident-related symptoms and the change in function from before to after MVA #1. He was less reliable regarding dates of treatment.

Background

[15] Mr. Dehghan immigrated to Canada in 1970, when he was 25 years old. He attended college for two years and obtained journeyman certification as an electrician and gasfitter. He worked for approximately 10 years in Manitoba before moving to British Columbia. In 1992, not long after moving to BC, Mr. Dehghan injured his left heel while working as an electrician. He was off work for two or three years and had a series of operations. When his efforts to return to work failed, Mr. Dehghan became depressed and started seeing Dr. Chakrabarty Pole (psychiatrist) in the early 1990's. Dr. Pole prescribed anti-depressants. Mr. Dehghan continued to receive treatment from Dr. Pole as of the trial date.

[16] In the mid-1990's, Mr. Dehghan returned to work as an industrial electrician repairing tools. He was retired when MVA #1 happened, though he could not remember how old he was when he retired.

[17] In terms of his pre-accident health, Mr. Dehghan was taking blood pressure and diabetes medication prior to MVA #1. The left heel pain from his 1992 work

accident was ongoing, and he regularly took pain medication and an anti-inflammatory to treat that condition. Mr. Dehghan also had intermittent right knee pain and intermittent low back pain. Mr. Dehghan had no pre-accident history of neck, shoulder or upper back pain.

[18] At the time of MVA #1, Mr. Dehghan lived with his second wife, Maxine Madison, in a three-bedroom house in Surrey, BC. They lived together from 2011 until she passed away in April 2022. Mr. Dehghan has three adult children from his first marriage. He sees them a few times per year.

[19] Prior to MVA #1, despite his pre-accident medical conditions, Mr. Dehghan was active around his house, doing housework and performing maintenance. Dr. Henry Ajaero, Mr. Dehghan's family physician, confirmed that prior to the accidents Mr. Dehghan had been managing the chronic pain related to his work injury.

[20] Prior to MVA #1, Mr. Dehghan volunteered to help others with small construction projects and other tasks that drew on his training as an electrician. Mr. Dehghan enjoyed travel. He was active in his church, and he socialized regularly with friends.

MVA #1 and its aftermath

[21] On February 1, 2016, Mr. Dehghan was driving a 1997 Ford van eastbound on 88th Avenue in Surrey, BC when he came to a complete stop before turning right to merge onto Fraser Highway. Mr. Dehghan was looking to his left waiting for traffic to clear when his vehicle was rear-ended. His van moved forward a few feet on impact. Mr. Dehghan's seatbelt broke, and he was thrown forward into the steering wheel and back into his seat. Mr. Dehghan described the impact as severe.

[22] Mr. Dehghan immediately felt pain in his head, neck, shoulder and upper back. He felt nauseous but did not lose consciousness. Mr. Dehghan was able to exit his van with help from the ambulance attendant. His wife drove him home from the scene.

[23] Mr. Dehghan initially had some pain in his chest from the impact with the steering wheel. His chest pain resolved within a month.

[24] After MVA #1, Mr. Dehghan had a headache on both sides of his forehead and pain down the back of his neck. He complains of daily, nearly constant headaches since MVA #1. He says his constant headaches have aggravated his depression.

MVA #2 and its aftermath

[25] On November 15, 2018, Mr. Dehghan was the front-seat passenger in his friend's car. They were driving southbound on King George boulevard when they stopped behind another vehicle for a red light. A semi-trailer truck struck the car stopped behind the Dehghan vehicle, pushing that car into the Dehghan vehicle. The Dehghan car was pushed forward 10 to 12 feet into the vehicle in front of it. Mr. Dehghan described the impact as very severe.

[26] With the impact of MVA #2, Mr. Dehghan moved forward and back in his seat, striking his head on the seat, despite wearing a seatbelt. He did not lose consciousness. Mr. Dehghan was able to exit the car on his own. He felt pain in his neck right away. He went home instead of going to lunch with his friend.

[27] Mr. Dehghan's head and neck pain worsened as a result of MVA #2. He finds his headaches continue to be worse than they were after MVA #1.

Treatment

[28] Mr. Dehghan saw Dr. Ajaero the day after MVA #1. Dr. Ajaero referred Mr. Dehghan to massage therapy and physiotherapy.

[29] Mr. Dehghan had massage therapy 18 times between February 17 and July 11, 2016.

[30] Mr. Dehghan's first round of physiotherapy started on June 27, 2016 and ended 42 sessions later on May 26, 2017 when insurance funding was terminated. Mr. Dehghan returned to physiotherapy on August 26, 2022 when insurance funding

was reinstated. As of the trial date, Mr. Dehghan continued to attend physiotherapy once or twice a week, for a total of 162 treatments as of February 2, 2024.

[31] In late 2016, Dr. Ajaero referred Mr. Dehghan to Dr. Mohammad Nagaria (neurologist) for headaches. Since 2018, Dr. Nagaria has given Mr. Dehghan Botox injections in his head and upper shoulders every three months. The Botox injections reduce Mr. Dehghan's neck pain and headaches temporarily. Dr. Nagaria also recommended a cream for his neck pain.

[32] After MVA #1, Mr. Dehghan continued to see Dr. Pole for talk therapy and prescriptions for anti-depressants, though the frequency of therapy sessions and the dosage of his medication have increased since before MVA #1.

Post-accident health-related incidents

[33] In July 2018, Mr. Dehghan fell and struck his head after becoming dizzy while coughing.

[34] In December 2020, Mr. Dehghan was in hospital for two to three weeks for severe headaches. Evidence that his treating physician had concluded the cause of Mr. Dehghan's head pain was a suprasellar mass, potentially hemorrhaging and impinging on his pituitary gland was admitted to show that this finding was reported to Dr. Ajaero; however, there was no expert opinion at trial to establish that diagnosis. Further, there was no expert evidence to explain the significance of the treating physician's conclusion. As noted above, Dr. Nagaria found no evidence of a mass when he ordered an MRI in 2022 and testified it would be unusual for a lesion to disappear. I am not able to conclude based on the available evidence that Mr. Dehghan had a lesion on his pituitary gland or that such a lesion caused Mr. Dehghan's headaches in 2020 or subsequently.

[35] In 2021 or 2022, Mr. Dehghan was driving his car in a parking lot when another car backed into his passenger-side door. He did not suffer any injuries in that accident.

[36] In February 2023, Mr. Dehghan was in a car accident when he changed lanes. He admits the accident was his fault: he was not able to shoulder check properly due to neck stiffness. As a result of the impact, Mr. Dehghan’s airbags went off, and he was injured “a little bit”. He had rib pain for three months, but he had no treatment for injuries from the February 2023 accident.

Findings regarding injuries

[37] I accept Mr. Dehghan suffered a soft-tissue injury to his neck, upper back and shoulders as a result of MVA #1. These injuries were exacerbated by MVA #2. Dr. Muhlstock, physiatrist, confirmed these injuries were caused by the accidents.

[38] Mr. Dehghan has constant pain on both sides of his neck and down the back of his neck into his upper back. Neck stiffness limits how much he is able to turn his head from side to side. As a result of the injury to his upper back and shoulders, Mr. Dehghan is not able to lift as much weight as he could before the accidents. Mr. Dehghan has difficulty sleeping more often than prior to the accidents. His current sleep issues are caused by neck, shoulder and head pain. Mr. Dehghan continues to do the exercises recommended by the physiotherapist. Botox injections reduce but do not eliminate the pain in his neck, upper back and shoulders.

[39] Mr. Dehghan has chronic pain in his neck, upper back and shoulders. Dr. Muhlstock opined that Mr. Dehghan’s condition is “consistent with chronic pain complicated by central sensitization”, which means that “stimuli that do not normally elicit pain can be perceived as painful” due to rewiring of the central nervous system as a result of repeated painful inputs. The overall prognosis for Mr. Dehghan’s chronic pain condition is guarded, and he will continue to require treatment, which may provide temporary improvement of his symptoms and quality of life but will not likely change the overall course or long-term prognosis.

[40] I find Mr. Dehghan suffers headaches caused by MVA #1 that were exacerbated by MVA #2. He continues to suffer daily headaches that interfere with his ability to do housework for himself. He takes medication for his headaches when

they are particularly severe. Botox temporarily reduces the severity of his headaches.

[41] I accept that Mr. Dehghan has had intermittent brief episodes of dizziness after MVA #1 and MVA #2. However, I do not accept that the fall in July 2018 was the result of accident-related dizziness. Instead, Mr. Dehghan's contemporaneous report to Dr. Ajaero that "he was coughing a lot and he felt dizzy and fell" is more reliable than his current recollection of that event.

[42] I find Mr. Dehghan's pre-accident depression symptoms became worse post-MVA #1 as a result of the pain and limitations he suffered as a result of his other injuries. Dr. Pole did not provide expert evidence, but I am satisfied based on Mr. Dehghan's evidence, Dr. Pole's observations, and the observations of other lay witnesses that Mr. Dehghan's mood was lower after the accidents. I accept Mr. Dehghan took a higher dose anti-depressant after MVA #1 than he had been taking prior to MVA #1, despite no change in his prescription. I accept his evidence (corroborated by Dr. Pole) that Mr. Dehghan continued to fill his prescription for anti-depressants prior to MVA #1 (paid for through his WorkSafe BC benefits), but Mr. Dehghan routinely gave his medication to Dr. Pole for redistribution to Dr. Pole's other patients. Mr. Dehghan used the prescribed anti-depressants after MVA #1.

[43] Even with anti-depressants, Mr. Dehghan's mood is lower since the accidents as compared to prior to the accidents. He is less inclined to socialize, and his demeanour is less friendly and less positive.

[44] Mr. Dehghan had chest pain as a result of MVA #1 that resolved within a month.

[45] I am not satisfied Mr. Dehghan has proven he suffers from post-traumatic stress disorder as a result of MVA #1 or MVA #2. There is no expert evidence to support a finding of post-traumatic stress disorder. Dr. Pole was called as a lay witness, not an expert. Dr. Pole's evidence regarding the diagnostic criteria for post-traumatic stress disorder does not allow me to conclude that Mr. Dehghan suffered from post-traumatic stress disorder as a result of MVA #1 or MVA #2.

Loss of housekeeping capacity

[46] Mr. Dehghan seeks an award of \$40,000 for loss of housekeeping capacity.

[47] A loss of housekeeping capacity may be compensated by a pecuniary or non-pecuniary award: *McTavish v. MacGillivray*, 2000 BCCA 164 at para. 2; *Liu v. Bains*, 2016 BCCA 374 at para. 26. While not seeking to create an inflexible rule in answer “to the somewhat vexing issue of valuing loss of housekeeping capacity” (at para. 27), the Court of Appeal in *Kim v. Lin*, 2018 BCCA 77 endorsed the following approach:

[33] ... [W]here a plaintiff suffers an injury which would make a reasonable person in the plaintiff’s circumstances unable to perform usual and necessary household work — i.e., where the plaintiff has suffered a true loss of capacity — that loss may be compensated by a pecuniary damages award. Where the plaintiff suffers a loss that is more in keeping with a loss of amenities, or increased pain and suffering, that loss may instead be compensated by a non-pecuniary damages award. ...

[48] If a plaintiff is paying for services or if family members are providing equivalent services gratuitously, a pecuniary award is generally more appropriate: *Riley v. Ritsco*, 2018 BCCA 366 at para. 101.

[49] As noted by Justice Verhoeven in *Firman v. Asadi*, 2019 BCSC 270, the plaintiff must not be compensated twice for the same loss:

[236] Duplication in the award must be avoided. Where potential costs for housekeeping assistance are awarded, in the context of costs of future care, then the case for a separate pecuniary award for loss of housekeeping capacity is lessened and perhaps eliminated, depending on the specific facts of the case. In this case a minor award for housekeeping assistance has been made.

[50] In this case, I accept that Mr. Dehghan suffered a loss of housekeeping capacity as a result of his injuries from MVA #1 and MVA #2.

[51] Prior to MVA #1, Mr. Dehghan did most of the housework because his wife was physically incapacitated. He also did outside home maintenance, including yard work. Despite his pre-existing physical condition, Mr. Dehghan was able to perform these household tasks by working for two hours at a time.

[52] Since MVA #1, Mr. Dehghan requires help with housework and outside maintenance. A few weeks after MVA #1, Mr. Dehghan hired a woman from his church to do housekeeping for two hours per week. The same woman still does housekeeping for Mr. Dehghan for two hours per week. He hired someone to care for his lawn starting in April 2016. He has hired labourers to do gutter cleaning, pressure washing and auto repairs, tasks he used to perform himself but is no longer able to do due to his chronic neck and upper back pain.

[53] Mr. Dehghan has not sought to recover the cost of housekeeping, yard work and household maintenance as part of his claim for special damages, but he has advanced a claim for such out of pocket expenses as part of his claim for future care. I am satisfied that it is appropriate to make an award for past loss of housekeeping capacity, but the award for future care will fund services that will largely replace Mr. Dehghan's lost capacity.

[54] The authorities are clear that the loss of housekeeping capacity should be assessed as opposed to calculated and that a cautionary approach to this type of award is appropriate. Using the mathematical anchors provided by the annual cost of household services of approximately \$2000 per year for housekeeping, \$1000 per year for yard work, and additional costs for car maintenance and household maintenance, I am satisfied that \$25,000 is a reasonable award for past loss of housekeeping capacity.

Cost of Future care

[55] An award for future care costs is based on “what is reasonably necessary on the medical evidence to promote the mental and physical health of the plaintiff”: *Milina v. Bartsch* (1985), 49 B.C.L.R. (2d) 33 at 78, 1985 CanLII 179 (S.C), aff'd (1987), 49 B.C.L.R. (2d) 99, [1987] B.C.J. No. 1833 (C.A.).

[56] The defendants accept that Mr. Dehghan “may need additional sessions of kinesiology and Botox”. Ms. Stacey recommends an active rehabilitation program with a kinesiologist with a present value cost of \$1977. I am satisfied this is a reasonable expense for treatment of Mr. Dehghan's accident-related injuries.

[57] The defendants submit that the cost of one more year of Botox treatments should be awarded on the basis that Mr. Dehghan will turn 80 years old next year. However, there is no expert evidence to support a termination of Botox. Instead, I accept Dr. Muhlstock's and Dr. Nagaria's recommendation that Botox treatments should continue. Based on this expert evidence and Mr. Dehghan's guarded prognosis, I accept Botox is reasonably necessary to reduce his headaches and chronic neck, upper back and shoulder pain on an ongoing basis. The annual cost of Botox treatments is \$4600. I award the present value for continuing Botox treatments, which is \$41,233.

[58] Based on the evidence of Dr. Muhlstock and Ms. Stacey, I find that continuing physiotherapy is reasonable for symptom management. I accept Ms. Stacey's recommendation to reduce the frequency of such treatments to every other week after a brief transition period. I award the present value of continuing physiotherapy treatments, which is \$21,237.

[59] I accept Ms. Stacey's recommendation for occupational therapy to help with symptom management and monitoring of functional limitations related to his accident-related injuries. I award the present value of the initial services and limited ongoing case management in the amount of \$5135.

[60] Ms. Stacey recommends regular foot care based on Mr. Dehghan's inability to flex his head forward on a sustained basis to allow him to care for his own feet. I accept this a reasonable cost of care arising from his accident-related injuries. I award the present value of foot care in the amount of \$3219.

[61] The defendants take issue with the plaintiff's claims for future housekeeping and yard work. They argue that it is "highly common that seniors who live alone require assistance with house cleaning and maintenance of the home and yard". Ms. Stacey testified that studies show that only 31% of men aged 75 – 79 require help with heavy housework and only 48% of men aged 80 – 94 require such assistance. Ms. Stacey was unable to predict what type of assistance Mr. Dehghan would have needed absent the accidents. Despite his pre-existing conditions, it is

undisputed that Mr. Dehghan was capable of doing his own housework and yard work before MVA #1. Since the accidents, he has hired outside help, and the level of cleanliness in his home has declined because he is no longer able to do housework or yard work due to his chronic neck, upper back and shoulder pain. I accept Mr. Dehghan's evidence that he plans to stay in his current residence. Based on the studies cited by Ms. Stacey, I am prepared to award Mr. Dehghan \$32,000 for housekeeping, yard work and home maintenance, which is approximately 50% of the present value of the cost of such services.

[62] I am not satisfied that Mr. Dehghan has proven the need for LifeLine Service is accident-related. At least one fall was not related to his accident-related injuries. Overall, I am not satisfied that any accident-related dizziness Mr. Dehghan may have is significant enough to make LifeLine Service a reasonable cost for the defendants to incur.

[63] I accept the cost of various exercise equipment is a reasonable expense to improve Mr. Dehghan's physical health. I accept the cost of blind spot mirrors is a reasonable expense to enhance Mr. Dehghan's safety due to his limited neck range of motion. I accept the cost of replacing the hot water bottle, electric heating pad and neck pillow Mr. Dehghan uses to reduce his symptoms is a reasonable expense. The present value of these items totals \$731 and shall be included in the future care award.

[64] Mr. Dehghan claims the cost of various supplements, over the counter medications and prescription medications. Dr. Nagaria did not recommend supplements as part of the treatment protocol in his expert report, and neither did any other medical professional. Mr. Dehghan has failed to provide medical evidence that supplements are a reasonably necessary expense.

[65] Dr. Nagaria recommended ongoing use of various prescription medications and Tylenol for treatment of Mr. Dehghan's symptoms. I accept that the cost of such medication is a reasonable expense. Ms. Stacey provided an estimated annual cost based on Mr. Dehghan's reported usage. However, I find the cost incurred for

prescription medications other than Naproxen over the last two years is a more accurate estimate of the annual cost for such medications. Based on the receipts provided in support of the special damages claim, I find that the approximate annual cost of these prescription medications is as follows:

- a) Compound cream: \$752.76
- b) Baclofen: \$162.72
- c) Rizatriptan OTD: \$930.06
- d) Gabapentin: \$171.06

[66] The cost incurred for Naproxen is not easily discernible from the receipts submitted. I accept that \$1025 is a reasonable estimate of the annual cost of Naproxen. I accept that \$123 is a reasonable estimate of the annual cost of Tylenol required for treatment of Mr. Dehghan's accident-related complaints.

[67] As a result, Mr. Dehghan is awarded the present value of the recommended prescription medications and Tylenol, which is \$28,367.47.

[68] The total cost of these future care items is \$132,119.47. The award for future care shall be rounded to \$132,000.

Non-pecuniary damages

[69] An award for non-pecuniary loss is intended to compensate a plaintiff for his pain and suffering, his loss of enjoyment of life, and his loss of amenities, both to the date of trial and into the future. In assessing Mr. Dehghan's non-pecuniary loss, I have considered the factors set out in *Stapley v. Hejslet*, 2006 BCCA 34 at paras. 45-46, leave to appeal to SCC ref'd, 31373 (19 October 2006).

[70] As outlined above, Mr. Dehghan has suffered from chronic neck, upper back and shoulder pain, headaches, and more severe depressive symptoms for more than eight years. These symptoms have interfered with his sleep, reduced his function and impaired his ability to socialize. The prognosis is guarded. It is clear

that Mr. Dehghan's quality of life has suffered and will continue to suffer as a result of the injuries he suffered in MVA #1 and MVA #2.

[71] Mr. Dehghan seeks an award of \$130,000 for non-pecuniary loss. He relies upon the following cases (with their inflation-adjusted awards in brackets):

- a) *Smith v. Hsu*, 2020 BCSC 523 (\$140,000);
- b) *Gilbert v. Krist*, 2018 BCSC 2109 (\$192,000); and
- c) *Dyck v. Davies*, 2023 BCSC 771 (\$115,000).

[72] Mr. Dehghan also relies on paras. 94-96 of *Weaver v. Pollock*, 2018 BCSC 531 for the proposition that a plaintiff's advanced age should not serve to reduce an award for non-pecuniary loss. I note that the trial judge in *Dyck* applied the Golden Years doctrine at para. 81, citing para. 123 of *Dulay v. Lachance*, 2012 BCSC 258.

[73] Overall, I find the circumstances in *Dyck* to be most analogous to the case at bar in terms of type of injury, age of plaintiff and impact on function, although the plaintiff in *Dyck* was more active in sporting activities pre-accident than was Mr. Dehghan.

[74] The defendants emphasize that Mr. Dehghan's pre-existing conditions must be taken into account when assessing non-pecuniary loss: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at 473, 1996 CanLII 183 (S.C.C.). I recognize that Mr. Dehghan had pre-accident heel pain, intermittent low back pain, and depression and anxiety, which form part of his original position. Other than his psychological symptoms, Mr. Dehghan's pre-accident conditions were not aggravated by MVA #1 or MVA #2. The award of damages in this case is intended to compensate Mr. Dehghan for the change from his original position that would not have occurred but for MVA #1 or MVA #2, which in this case is chronic neck, upper back and shoulder pain, headaches, and an aggravation of his psychological symptoms.

[75] The defendants argue that Mr. Dehghan would have experienced lower mood and more social isolation than normal after his wife died even if the accidents had

not happened. However, Mr. Dehghan's friend did not notice a change in his demeanour or more social withdrawal after his wife died, other than the usual grieving process. There is no evidence to support the defendants' submission that there was a significant risk that Mr. Dehghan's psychological function would continue to decline in the absence of either accident based on his pre-existing condition.

[76] Dr. Muhlstock acknowledged that it would be reasonable to assume that Mr. Dehghan's function would be expected to decline over time as a result of the low back degenerative disc disease evident on pre-accident X-rays. However, it is not clear when Mr. Dehghan's ability to do his own housework or yard work might have been affected by degenerative disc disease had the accidents not happened.

[77] The defendants say that an award of \$85,000 for non-pecuniary loss would be reasonable in this case. They rely upon the following cases (with their inflation-adjusted awards in brackets):

- a) *Chaudry v. Henville*, 2021 BCSC 2318 (\$91,575);
- b) *Singer v. Guidi*, 2023 BCSC 837 (\$75,000); and
- c) *Kassam v. Wong*, 2020 BCSC 764 (\$93,587).

[78] The first two cases cited by the defendants are not helpful comparators. In *Chaudry*, the plaintiff was less functional pre-accident than was Mr. Dehghan, and the trial judge found that she was not always a credible and reliable witness. In *Singer*, the plaintiff suffered an aggravation of pre-existing neck and back pain and migraine headaches; in this case, Mr. Dehghan had no pre-accident history of neck, upper back and shoulder pain or headaches. *Kassam* is the most useful comparator, though the trial judge in that case found the plaintiff was capable of improving her function with treatment; in this case, Mr. Dehghan can anticipate treatment may reduce his symptoms temporarily, but it is not clear that his function will improve. In *Kassam*, the trial judge found that some deterioration in the plaintiff's mobility and her physical functioning over time would not only have been possible but probable; it is not clear how Mr. Dehghan's level of function might have naturally declined absent

the accidents, but I am satisfied based on the statistics cited by the occupational therapist that there was a real and substantial possibility that Mr. Dehghan would have required help with housework (for example) as he aged even if the accidents had not occurred.

[79] Based on Mr. Dehghan’s accident-related chronic pain in his neck, shoulders and upper back, his ongoing headaches, the *Stapley* factors, the Golden Years doctrine, and the real risk his function would have deteriorated as he aged even absent the accidents, I award \$105,000 in non-pecuniary damages.

Conclusion

[80] To summarize, the defendants are liable to pay the following damages to the plaintiff:

Head of Damage	Award
Non-pecuniary damages	\$105,000
Loss of housekeeping capacity	\$25,000
Future costs of care	\$132,000
Special Damages	\$9671.19
TOTAL	\$271,671.19

[81] Mr. Dehghan is also entitled to his costs, subject to any offers or other matters that may require an adjustment to his costs entitlement. If the parties wish to address costs, they must contact Supreme Court Scheduling within the next 30 days to schedule a hearing date for submissions before me for this purpose.

“Lamb J.”