

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Simpson v. Cyr*,
2026 BCSC 993

Date: 20260601
Docket: M36515
Registry: Chilliwack

Between:

Lila Jewel Simpson

Plaintiff

And

Philippe Cyr

Defendant

Before: The Honourable Justice Caldwell

Reasons for Judgment

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(December 9–13, 2024)
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(October 15–17, 2025)

Place and Dates of Trial:

Abbotsford, B.C.
December 9–13, 2024
October 15–17, 2025

Place and Date of Judgment:

Chilliwack, B.C.
June 1, 2026

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[1] The plaintiff, Lila Simpson (“Simpson”), brings claims for damages against the defendant arising from a motor vehicle collision which occurred on July 3, 2017 (the “2017 Collision”). Both liability and quantum of damage are contested.

The 2017 Collision

[2] Simpson was a passenger in a car owned by her but being driven by her daughter. Their car was stopped at a traffic light waiting to turn left onto a highway entrance ramp. It was struck from behind by a pickup truck driven by the defendant.

[3] Simpson’s car lurched forward and Simpson’s seatbelt tightened, restraining her.

[4] She got out of the car and exchanged information with the defendant. She felt dizzy and disoriented and has no recollection of the details of the rest of the evening.

The Issues

[5] Liability remains denied on the pleadings, however:

- the defendant failed to appear at two scheduled examinations for discovery;
- the defendant did not testify at the trial;
- the evidence presented at trial was clear and uncontradicted that Simpson was a passenger in a vehicle, stopped at a light controlled intersection, when it was rear-ended by a vehicle owned and driven by the defendant; and
- the defence led no evidence contesting liability.

[6] On the basis of those facts, I find that the defendant is 100% liable for the 2017 Collision, and for the injuries sustained and damages suffered by Simpson in that collision.

[7] The issues which remain to be decided are:

- the extent of Simpson's injuries suffered in the 2017 collision;
- the quantum and type of damages which flow from those injuries; and
- the extent, if any, to which Simpson's injuries and damages are actually caused by or related to a prior collision in 2012 (the "2012 Collision") and a subsequent collision in 2019 (the "2019 Collision").

Background Facts

[8] Simpson was 44 at the time of the 2017 Collision and is currently 53. She is married, has two adult children and lives in Agassiz, BC. She and her husband previously operated one or more technology businesses until 2012. She provided bookkeeping and administrative services for those businesses.

[9] In 2011, Simpson overlapped her employment by adding part-time bookkeeping work with Fred's Custom Tackle ("Fred's"), at their Abbotsford location. When the family businesses ended, she began working full-time with Fred's and, by 2013, had become the Comptroller for that business. She was a highly valued employee.

[10] In 2012, Simpson was involved in a motor vehicle collision which resulted in upper body pain and headaches. This was the 2012 Collision. She attended chiropractic and massage treatment and testified that, but for some minor ongoing stiffness in her neck and back, her symptoms resolved over two to three years. She testified that her symptoms had not had an impact on her ability to work, nor on her personal life. She was continuing chiropractic sessions every month or so at the time of the 2017 Collision. She had also consulted Dr. Weatherston about those mild symptoms in April 2017, prior to the 2017 Collision. Simpson was definitive that she was fully functional prior to the 2017 Collision despite her ongoing chiropractic attendance. Her evidence on this point went unchallenged.

[11] By that time, her duties at Fred's included financial management, employee training and other administrative tasks. She was also doing relatively minor book-keeping type work for a small number of local businesses.

[12] Simpson's husband was in a serious motorcycle incident in 2015 and has been unable to work since that time. He receives Workers' Compensation benefits and CPP disability payments.

[13] Prior to the 2017 Collision, Simpson enjoyed walking, cooking, baking and travel. She was deeply involved in her church, including as part of the leadership and music teams. She and her husband had taken steps towards building their dream home in Hope, BC, and had spent considerable time and money preparing for that project.

Immediate Complaints Following the 2017 Collision

[14] Simpson and her daughter, Alyssa, testified about the 2017 Collision.

[15] The impact was significant. Simpson testified that she did not lose consciousness but felt disoriented and has limited recall of the rest of the evening.

[16] The day following the collision she developed pain in her shoulders, neck and back. She reported the accident to ICBC. She did not go to work that day or the next.

[17] Simpson went to her chiropractor on July 14 for a regular pre-scheduled appointment but does not appear to have mentioned the accident, her increased pain or other symptoms to him at that time.

[18] She returned to her chiropractor on August 11 and, during that visit, she did mention to him the accident and her symptoms and complaints.

[19] Beginning shortly after the 2017 Collision, she testified that she was experiencing constant neck, back and shoulder pain, as well as headaches, including migraines. She increased her chiropractic attendances, from once per

month to twice per month, to address these issues. However, these complaints continued as of the date of the trial.

[20] She first consulted her family doctor, Dr. Krueger, about the accident and her complaints on February 3, 2018, several months after the 2017 Collision. She testified that she had expected the ongoing chiropractic treatment to solve the problems, as it had done following the 2012 Collision, but that had not turned out to be the case. I believe her evidence in this regard.

[21] Her doctor prescribed various pain medications along with chiropractic treatments and massage therapy. She has followed his advice and has amassed a very large number of attendances for such treatments and finds at least temporary relief from them. She has also undergone an MRI, a CT scan, and ultrasound and x-ray imaging.

[22] She found, and continues to find, that light and things such as computer screens aggravate her pain, particularly her headaches and migraines.

[23] Her symptoms have also had a negative effect on her mental health in that she feels frustrated and depressed about her life situation following the 2017 Collision. She spoke to Dr. Krueger about these issues and was directed to seek counselling, which she did. She had attended 39 counselling sessions as of the date of trial, and these were expected to be ongoing.

Continuation of Symptoms and Treatments

[24] Simpson testified that her symptoms have continued to the date of trial. While the pain in her neck, shoulders and back is continuing, it is clear that the main area of complaint involves her ongoing headaches, particularly the migraines, which present themselves several times each week.

[25] She continues to receive treatment, including chiropractic treatment from Dr. Kilgannon and massage treatment with Restorative Health, as well as using a prescribed pain medication regime. The medications included gabapentin,

trazodone, duloxetine and venlafaxine, as well as over the counter medications such as Tylenol and Advil. She has added a program of self-directed stretching. Some or all of these provide her at least temporary relief, but some have caused side effects such as nausea and constipation.

[26] She attempted to add physiotherapy to her regime, on medical advice, but found that it aggravated her symptoms.

[27] She has also undergone various injection therapies, including steroid therapy, some of which provided temporary relief for some of her symptoms.

[28] She has also had two sessions of nerve block treatment with Dr. Chan, which proved unhelpful.

[29] She sees Dr. Butterfield, a pain specialist at the University of British Columbia, approximately every three to four months. She saw him a total of 16 times between the 2017 Collision and the first date of the trial.

Effect of Symptoms on Life

Employment

[30] Simpson returned to full-time work at Fred's two days after the 2017 Collision. Her symptoms affected her ability to concentrate and necessitated shortening her workday. By 2018, she had reduced her work week to about 30 hours and was working from home part of that time. Her employer accommodated her with certain ergonomics, facilitation of work from home and, finally, by hiring an assistant to reduce the workload on Simpson.

[31] The value of Simpson as an employee was reinforced by the evidence of Fred Helmer, the owner of Fred's. He was glowing in his praise of Simpson, lauding her performance as an employee and her work ethic. He testified to his observations of her working in apparent pain, his willingness to do almost anything to accommodate her in order to keep her as an employee and her overall value to the business as a whole.

[32] In July 2021, Simpson resigned her position at Fred's. Her symptoms rendered continued employment of that type unmanageable. She was unable to keep up with the workload and was concerned about reduced concentration and the risk of errors. She did retain some very minor side work for a few personal clients, assisting them with their taxes.

[33] Simpson's tax returns for the years 2015 through 2023 were filed as part of an Agreed Statement of Facts.

Personal Life

[34] Following the 2017 Collision, Simpson's personal life has been significantly compromised:

- Her ability to concentrate has been diminished.
- She requires assistance or accommodation to complete personal tasks such as bathing, dressing and hair care.
- She has a reduced ability to tend to household tasks such as general cleaning, laundry and cooking. She has hired help to assist with some of these tasks.
- She has discontinued almost all involvement with her church, and certainly all of her church leadership involvement.
- Her ability to walk for enjoyment has been significantly reduced.
- Her entertainment level cooking and baking have been significantly curtailed, including for family related events which she regularly hosted prior to the 2017 Collision.
- Her sleep has been negatively affected.
- Since the collision she has become a grandmother but her physical ability to interact with her grandchildren has been limited by her symptoms.

- Her physical and emotional relationship with her husband has suffered a noticeable decline, even considering the injuries which he suffered in his 2015 motorcycle accident.
- Her involvement in hobbies such as scrapbooking, sewing and photography is now virtually non-existent.

[35] Simpson and her husband do continue to travel quite extensively. Since the 2017 Collision they have been to the Caribbean, Las Vegas, Italy and twice to Hawaii. She testified that the travel and crowds have been difficult and that the overall activity which she can undertake at their destinations has been significantly reduced from that which she enjoyed before the 2017 Collision.

[36] Simpson's evidence was supported by the observational evidence of Kimberly Arbeau, a friend; Alyssa Simpson, her daughter; Sean Simpson, her husband; and Fred Helmer, her previous employer.

Accounting Pursuits

[37] Simpson testified that she had always intended to continue her education and ultimately obtain a designation as a Certified Professional Accountant, as well as subsequent employment as a professional accountant.

[38] She provided her transcript from Thompson Rivers University. From the Winter 2015 semester through the Summer 2018 semester, she had accumulated 12 "GPA" course credits with a combined grade point average of 2.91. The courses she has taken include Literature and Composition, Introductory Astronomy, Introduction to the Canadian Legal System and A Survey of Western Art. Her best mark was obtained in the Winter 2017 semester - after the 2017 Collision.

[39] She never took more than one course per semester. The last course she took was in the summer semester of 2018. She indicated that, due to her injuries and symptoms, she was unable to concentrate sufficiently to continue in her studies.

[40] I accept that pursuit of a professional accounting certification may have been a dream long held by Simpson. Based on the evidence, I do not accept that it is a pursuit which she was actively engaged in at the time of the 2017 Collision. Further, I find that Simpson has not met the burden of establishing that her becoming a certified accountant was a real and substantial possibility given her age, her ongoing financial responsibilities and her academic performance.

The 2019 Collision

[41] Simpson was involved in a later collision in 2019 wherein she rear-ended another vehicle. It was a low velocity collision with little, if any, damage to the vehicles. There was no evidence of litigation arising from that event.

[42] Simpson testified that she experienced minor and temporary symptoms from the 2019 Collision – essentially a temporary worsening of her then current symptoms. She did consult with at least some of her medical advisors following the 2019 Collision. The worsening of symptoms resolved completely within one to two months – certainly after less than six months - and she returned to her previous pain levels.

Expert Evidence – Plaintiff

[43] Simpson called Dr. Harpreet Sangha, a physiatrist; Dr. Hiram Mok, a psychiatrist; Dr. Donald Cameron, a neurologist; Mr. Russell McNeil, an occupational therapist; and Mr. Darren Benning, an economist, to provide evidence. Each of those experts prepared one or more reports in this matter and all of those reports were filed and received in evidence at the trial.

Dr. Sangha

[44] Dr. Sangha, a physiatrist, provided two reports: one from January 2020 and one from September 2024.

[45] In his first report, he diagnosed Simpson with myofascial impairment in her neck and upper back areas, strains of the right shoulder and lumbosacral areas, cervicogenic headaches and disordered sleep. He opined that the injuries were

caused by the 2017 Collision. He found that she presented with no signs of exaggeration and that her complaints were consistent with the types of injuries suffered. He stated that such injuries generally see the most recovery in the first year and that the maximum amount of recovery is normally reached by two-years post-event.

[46] In his second report, Dr. Sangha confirmed his previous diagnoses but added that Simpson had developed Chronic Pain Syndrome as a result of her injuries and symptoms. He noted that there had been a significant decline in Simpson's condition between the first and second reports. He opined that she had, by that time, reached maximum medical recovery. He noted that, as a result of the profound impact of her injuries and symptoms on her ability to function, she spends the majority of her time dealing with pain and seeking treatment.

[47] In cross-examination he confirmed that the injuries are of a soft-tissue nature, the effects of multiple injuries of this type can be cumulative, and that he was basing his opinion on the assumption that Simpson was being truthful in the information which she gave him. He was of the opinion that the effects of the 2012 Collision were largely, if not entirely, resolved by 2017 and that, if the 2019 Collision had any effect on the symptoms, it was very minor and temporary.

Dr. Mok

[48] Dr. Mok, a psychiatrist, provided a single report in August 2024. He diagnosed Simpson with Somatic Symptom Disorder/Chronic Pain Syndrome (he appeared to use the two interchangeably) and Major Depressive Disorder. He opined that these disorders arise from, and are a direct result of, the 2017 Collision. He concluded that, "[g]iven the clinical history, treatment progress to date, and the nature of physical and psycho-emotional co-morbidities, I would rate her prognosis for a full recovery as poor."

Dr. Cameron

[49] Dr. Cameron, a neurologist, provided a single report in August 2024. He diagnosed Simpson with soft tissue musculoskeletal injuries, which he characterized as a Type 2 whiplash injury. He opined that she may have suffered a mild traumatic brain injury but that she did not develop symptoms of Post-traumatic Brain Injury Syndrome. He found that she has “probably” developed cervicogenic headaches and post-traumatic common migraine headaches associated with chronic pain. He discussed her having developed anxiety. He also discussed a variety of prophylactic headache medications but concluded that such medications are unlikely to result in significant improvement or resolution of the post-traumatic headaches.

[50] I found Dr. Cameron, at least at times, to be argumentative, evasive and to be acting as an advocate for Simpson’s position.

Mr. McNeil

[51] Mr. McNeil, an occupational therapist, performed a variety of functional capacity tests and assessments of Simpson in late July 2024 and provided his report the following month. Overall, he determined that she performed the various tasks with full effort and that the results were an accurate depiction of her abilities, strengths and weaknesses. He found that Simpson was capable of short periods of sedentary work, but nothing beyond that. He also detailed the types of services and equipment which he feels she requires, along with the associated cost.

Mr. Benning

[52] Mr. Benning provided economic calculations related to past and future income loss. He provided figures based on Simpson’s continuing employment at Fred’s and also based on the possibility of her becoming a certified accountant and consequently earning a significantly increased income after 2020.

Expert Evidence – Defence

[53] The defence called Dr. Dhineskumar Sivananthan, a physiatrist, at trial. They also presented the deposition evidence of Dr. Steven Dommann, a neurologist.

Dr. Sivananthan

[54] Dr. Sivananthan provided a report in September 2024 and, after reviewing additional documents, provided an additional report in October 2024 indicating that his opinion was unchanged by his review of those documents. He opined that Simpson's injuries related to the 2017 Collision include:

- cervical strain/sprain with chronic cervical myofascial impairment;
- thoracic strain/sprain with chronic thoracic myofascial impairment;
- lumbar strain/sprain with chronic lumbar myofascial impairment;
- cervicogenic/migraine headaches; and
- soft tissue injuries to the right shoulder.

[55] He states that Simpson's prognosis is guarded and that complete resolution is unlikely. He notes that most of the possible recovery from these types of accidents occurs within the first year, with the maximum level of recovery reached by the end of the second year. He recommends continuation and expansion of various pain medications, further trigger point injections, physical conditioning and various other similar pursuits. Many of these recommendations are treatments that have been undertaken by Simpson in the years following the 2017 Collision with limited or no success.

[56] I found Dr. Sivananthan, at least at times, to be argumentative, evasive and to be acting as an advocate for the defence position.

Dr. Steven Dommann

[57] Dr. Dommann's evidence was presented as a video deposition.

[58] He produced reports dated June 2024 and October 2024. The first involved an in-person meeting with Simpson; the second involved his review of further documents to determine if his initial opinion was altered by such review.

[59] In his first report, he opined that the forces in the 2017 Collision were enough to result in a mild traumatic brain injury, which likely triggered a migraine headache disorder.

[60] He reviewed the various treatments and medications which Simpson has tried over the years and suggested other possible avenues of treatment and medication.

[61] He concluded that it would be difficult to work with chronic, daily, low grade headaches, with severe periods of intensifying pain four times a week caused by work-related stressors. I would not think that it requires an expert to reach such a conclusion.

[62] However, Dr. Dommann ultimately concluded that it was the arm pain which caused Simpson to stop working and, therefore, the headaches caused only partial disability.

[63] He deferred to orthopedics and physiatry regarding the arm, shoulder, neck and back issues.

[64] His later report refers to the 2019 Collision and states that it is difficult to know how much that collision contributed to the migraine headache disorder or cervicogenic headache disorder. He reviews the medications which she has taken at the direction of Dr. Butterfield and suggests other possibilities but concludes that:

There is little more to offer in the way of medication and considering what she has already tried the prognosis for significant improvement is guarded.

Credibility and Reliability

[65] The factors to be considered when assessing credibility were summarized by Madam Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186–187, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013).

[66] I have considered the factors discussed in *Bradshaw* and have applied them to the evidence of Simpson as well as other lay witnesses, particularly Fred Helmer.

I have also considered Simpson's evidence in the light of the diagnoses and prognoses of the medical experts, both for Simpson and for the defence.

[67] On the whole, I find Simpson to be a credible and reliable witness. I believe her accounts of the pain which she has suffered and the effects it has had on her personal and work life.

[68] I do not find significant disagreements among the experts as to Simpson's injuries regarding diagnosis and prognosis. Such disagreements, as do exist, relate to particular possible treatments and medications and speculation regarding their potential effect on her.

[69] I do not find that Simpson lacks credibility or reliability regarding the issue of her wish to become a professional accountant, but I find that such a wish, in the circumstances and on the evidence presented, was very unlikely to have been realized.

Causation

[70] The defence points to the 2012 Collision and the 2019 Collision and says that each played, and continues to play, a significant role in Simpson's ongoing symptoms and disability.

[71] Except in the special circumstances discussed below, the plaintiff must establish on a balance of probabilities that the defendant's negligence caused an injury. The defendant's negligence does not have to be the sole cause of the injury so long as it is a necessary cause: *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at para. 130. Causation need not be determined by scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458, 1996 CanLII 183 at paras. 13–17. The primary test for causation asks: but for the defendant's negligence, would the plaintiff have suffered the injury? The "but for" test recognizes that compensation for negligent conduct should only be made where a substantial connection between the injury and the defendant's conduct is present: *Resurfice*

Corp. v. Hanke, 2007 SCC 7 at paras. 21–23; *Zenone v. Knight*, 2024 BCCA 200 at para. 55.

[72] The “thin skull” rule establishes that a defendant will be liable for a plaintiff’s injuries caused by the defendant’s negligence even if the injuries are unexpectedly severe owing to a pre-existing condition: *Athey* at para. 34. However, the “crumbling skull” rule establishes that any pre-existing condition is part of the plaintiff’s original position and a defendant is not obliged to put a plaintiff back into a better position than their original one: *Athey* at para. 35. Therefore, if there was a measurable risk that a pre-existing condition would have caused damage to the plaintiff in future, it made be appropriate to reduce the damages to account for that negative contingency.

[73] In the present case, the evidence establishes that Simpson was carrying on an active social and work life throughout the years following the 2012 Collision. There was no evidence of debilitating or lifestyle limiting injuries or symptoms prior to the 2017 Collision.

[74] There was evidence that Simpson experienced some discomfort and sought treatment prior to the 2017 Collision, such as infrequent, but regularly scheduled, chiropractic treatments. The defence led no evidence directly relating any of that to the 2012 Collision or to anything other than the normal human condition in middle age. Such connection to the earlier collision is not established on a balance of probabilities. Quite simply, the defendant took Simpson as he found her and left her in a significantly lessened and damaged state. His negligence caused Simpson’s injuries and continuing symptoms and disabilities.

[75] The evidence regarding the 2019 Collision does establish that Simpson’s symptoms were somewhat aggravated by that collision for a very short period – probably a month or two, but certainly less than six months. The evidence also establishes that the aggravation was minor enough that it did not impair Simpson’s work performance significantly, if at all.

[76] I do not make any allowance for deduction from the non-pecuniary or pecuniary award for the 2012 Collision as I find that there is no evidence to suggest that any injuries from that event do not form part of the present complaint.

[77] I make a five percent deduction or allowance for the 2019 Collision but only as to the award for non-pecuniary loss. I do not find that it had an impact on her income loss as she continued to work during the period after the 2019 Collision. I find that any and all symptoms related to and caused by that collision resolved within less than six months and form no part of the ongoing complaints or disabilities.

Mitigation

[78] A plaintiff has a duty to mitigate the effect of their injuries and the damages they accrue by all reasonable measures including undergoing reasonable medical treatment: *Danicek v. Alexander Holburn Beaudin & Lang*, 2010 BCSC 1111 at para. 234

[79] I find that Simpson has done everything which could be reasonably expected to pursue medical treatment to address her injuries and symptoms related to the 2017 Collision. Her pursuits aimed at resolution of her symptoms have been legion. While they may not have been completely exhaustive, they have been extensive, thorough and based on appropriate medical advice.

Non-Pecuniary Damages

[80] Non-pecuniary damages are awarded to compensate the plaintiff for pain, suffering, loss of enjoyment of life, and loss of amenities they incur as a consequence of their injuries: *Langford (City) v. Matthews*, 2024 BCCA 214 at para. 44. The compensation awarded should be fair to all parties, and fairness is measured against awards made in comparable cases. However, such cases, though helpful, serve only as a rough guide and damage awards in each case will vary to meet the specific circumstances of that case: *Howes v. Liu*, 2023 BCCA 316 at para. 26.

[81] In *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46, the Court of Appeal outlined an inexhaustive list of the factors to be considered when assessing non-pecuniary damages. Those factors include the age of the plaintiff, the nature of the injury, the severity and duration of pain, the disability suffered, the emotional suffering incurred, the loss or impairment of life, the impairment of family, marital and social relationships, the impairment of physical and mental abilities, the loss of lifestyle and the plaintiff's stoicism.

[82] An award for non-pecuniary damages is determined by a functional approach that depends, not only on the gravity of an injury, but also on the plaintiff's circumstances: *McCliggot v. Elliott*, 2022 BCCA 315 at para. 44; *Langford (City)* at para. 44. An assessment of non-pecuniary damages is necessarily influenced by the individual plaintiff's personal experiences in dealing with his or her injury or injuries and their consequences, as well as the plaintiff's ability to articulate that experience: *Dilello v. Montgomery*, 2005 BCCA 56 at para. 25.

[83] The correct approach to assessing injuries that depend on subjective reports of pain was discussed in *Price v. Kostyba*, 70 B.C.L.R. 397, 1982 CanLII 36 (B.C. S.C.), recently referred to with approval in *McGlue v. Girvan*, 2024 BCCA 208 at para. 48. In referring to an earlier decision, Chief Justice McEachern said:

In *Butler v. Blaylock*, [[1981] B.C.J. No. 31] decided 7th October 1981, Vancouver No. B781505, I referred to counsel's argument that a defendant is often at the mercy of a plaintiff in actions for damages for personal injuries because complaints of pain cannot easily be disproved. I then said:

"I am not stating any new principle when I say that the court should be exceedingly careful when there is little or no objective evidence of continuing injury and when complaints of pain persist for long periods extending beyond the normal or usual recovery.

"An injured person is entitled to be fully and properly compensated for any injury or disability caused by a wrongdoer. But no one can expect his fellow citizen or citizens to compensate him in the absence of convincing evidence - which could be just his own evidence if the surrounding circumstances are consistent - that his complaints of pain are true reflections of a continuing injury."

[84] The effects of the 2017 Collision have altered Simpson's life in a significant, if not devastating, fashion. Her social life is a shadow of its former self. Her

relationship with family members – her husband, her children and now her grandchildren – has been completely redefined by her injuries and limitations. Her previously extensive relationship with her church family is essentially gone. Her travel has been reduced and is now experienced in pain and with significant limitations. She lives with pain – most significantly headache and migraine pain – as her constant companion. Given the opinions of all of the medical experts, it is unlikely that there will be any significant improvement in her situation. Her pain is chronic and severe.

[85] I find that the cases cited by Simpson’s counsel are similar to this case, particularly the cases of *Thiessen v. Kepfer*, 2023 BCSC 1593; *Gundarah v. Teves*, 2023 BCSC 1540; and *Matwijec v. Goodridge*, 2024 BCSC 2030.

[86] In *Thiessen*, the plaintiff was involved in a minor motor vehicle rear-ending collision caused by the defendant. While initially returning to work she immediately dealt with headaches and pain that increased through the following year such that she eventually was unable to continue working and her life activities were significantly curtailed by “episodes” (throbbing headaches accompanied by neck spasms) occurring 2 to 3 times a week. The plaintiff had occasional migraine headaches before the accident but was fully functional. The judge found that the headache condition was caused by the accident and that her condition was very unlikely to improve and she was very unlikely to be able to return to work. The judge awarded \$200,000 in non-pecuniary damages (reduced from \$225,000 (5%) as a contingency deduction for the possibility of future improvement of her condition).

[87] In *Gundarah*, the plaintiff suffered injuries as a result of two motor vehicle rear-ending collisions caused by the defendants. Her conditions as a result of the accidents included central sensitization syndrome, chronic fatigue, depression and anxiety. After the accidents she returned to work for a period of several months but eventually was unable to continue due to her injuries. Her active life before the accidents was severely curtailed, including her previously active involvement in the lives of her three sons and she spent much of her life in pain, at home, or else at

doctors' appointments. She relied on family to take care of her and her home. The judge awarded \$200,000 in non-pecuniary damages.

[88] In *Matwijec* the plaintiff was in a "T-bone" motor vehicle accident cause by the defendant. The plaintiff suffered injuries including soft tissue neck and back injuries, left and right shoulder injuries, headaches and psychological injuries. He returned to his job with modified duties for two years following the accident but ultimately was unable to continue his employment due to his injuries. His involvement in most physical and social activities was severely diminished and he spent much of his time in his room. At the time of trial, he lived with daily pain, low mood and significant difficulty sleeping. The judge awarded \$235,000 in non-pecuniary damages.

[89] Much like the plaintiffs in the above three cases, Simpson returned to work for some time after the 2017 Collision but eventually found herself unable to continue working. Much like the above plaintiffs, much of the life she once lived, including her family, social and recreational life, have been devastated. The accident in *Matwijec* was more serious in nature than in Simpson's case.

[90] I award \$220,000 in non-pecuniary damages, which I then reduce by 5% for effects of the 2019 Collision, to reach a net award of \$209,000.

Past Loss of Earning Capacity

[91] Compensation for past loss of earning capacity is to be based on what the plaintiff would have earned but for the injury that was sustained: *Hartman v. MMS Homes Ltd.*, 2023 BCCA 400 at para. 64, citing *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para. 30; *M.B. v. British Columbia*, 2003 SCC 53 at paras. 47 and 49. Pursuant to s. 98 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, that loss is limited to his or her past net income loss. The court must deduct the amount of income tax payable from lost gross earnings: *Hudniuk v. Warkentin*, 2003 BCSC 62.

[92] The burden of proof for actual past events is a balance of probabilities. However, an assessment of loss of both past and future earning capacity involves consideration of hypothetical events, both past and future. The plaintiff is not

required to prove these hypothetical events on a balance of probabilities. The hypothetical possibility of a past or future event will be taken into consideration as long as the event is found to be a real and substantial possibility and not mere speculation: *Athey* at para. 27; *Dornan v. Silva*, 2021 BCCA 228 at paras. 63–64; *Rousta v. MacKay*, 2018 BCCA 29 at paras. 16–17.

[93] I am completely satisfied, based on the evidence of Simpson and, at least as importantly, that of Fred Helmer, that Simpson was a key employee, who was highly regarded and valued, and would have been specifically targeted for pay increases and bonuses in order to retain her as an employee. I find this to be established far beyond even a balance of probabilities.

[94] I accept the calculations of Mr. Benning regarding net loss of past earning capacity and I award the sum of \$192,709.

Loss of Future Earning Capacity

[95] In considering damages for loss of future earning capacity the court must compare the likely future of the plaintiff's working life without the injury to their likely future working life with the injury: *Davies v. Penner*, 2023 BCCA 300 at para. 25; *Rab v. Prescott*, 2021 BCCA 345 at para. 65.

[96] A plaintiff is not entitled to an award for loss of earning capacity, over and above their earning capacity at the time of the intervening event, in the absence of any real and substantial possibility of a future event leading to an increase in earning capacity: *Ploskon-Ciesla v. Brophy*, 2022 BCCA 217 at para. 14. In this regard, I find that there is no evidence of a real and substantial possibility that Simpson would have obtained standing as a professional accountant and I decline to award income loss based on such speculation.

[97] The Court of Appeal issued a trilogy of decisions in 2021 regarding the proper approach to assessing a claim for damages for loss of future earning capacity: *Dornan*; *Rab*; and *Lo v. Vos*, 2021 BCCA 421. The Court identified a three-step process for assessing damages, described in *Rab* as follows:

[47] ... a three-step process emerges for considering claims for loss of future earning capacity, particularly where the evidence indicates no loss of income at the time of trial. The first is evidentiary: whether the evidence discloses a *potential* future event that could lead to a loss of capacity (e.g., chronic injury, future surgery or risk of arthritis, giving rise to the sort of considerations discussed in [*Brown v. Golaj*, 26 B.C.L.R. (3d) 353, 1985 CanLII 149 (BC SC)]). The second is whether, on the evidence, there is a real and substantial possibility that the future event in question will cause a pecuniary loss. If such a real and substantial possibility exists, the third step is to assess the value of that possible future loss, which step must include assessing the relative likelihood of the possibility occurring—see the discussion in [*Dornan v. Silva*, 2021 BCCA 228] at paras 93–95.

[Emphasis original.]

[98] When it comes to the first step from *Rab*, as outlined at paras. 29–30, there are, broadly, two types of cases involving the loss of future earning capacity:

- (1) more straightforward cases, for example, when an accident causes injuries that render a plaintiff unable to work at the time of trial and for the foreseeable future; and
- (2) less straightforward cases, for example, those in which a plaintiff's injuries have led to continuing deficits or exposed them to future problems, but the plaintiff's income at trial is similar to what it was at the time of the accident.

[99] In the present case, I am dealing with the former kind of case. Simpson is, in my view, unable to work as of the date of trial and will remain so for the foreseeable future and indefinitely. On the basis of such a finding, the first and second step of the analysis are foregone conclusions: *Ploskon-Ciesla* at para. 11.

[100] It is, however, necessary to assess the probability of future hypothetical events occurring that may affect the quantification of the loss such as positive or negative contingencies: *Rab* at para. 29; *Ploskon-Ciesla* at para. 11.

[101] In my view, the reference to positive contingencies means that the court must consider whether there is a real and substantial possibility that a hypothetical future event will give rise to a pecuniary gain – is there a likelihood that, at some level,

Simpson will be able to return to the work force and earn income? The standard of proof “is a lower threshold than a balance of probabilities but a higher threshold than that of something that is only possible and speculative”: *Gao v. Dietrich*, 2018 BCCA 372 at para. 34; *Ploskon-Ciesla* at para. 15.

[102] Having reviewed the reports of the medical experts along with their testimony, I conclude that there is very little likelihood that Simpson will ever recover from her symptoms to the extent necessary for her to become employed on anything other than a part-time basis at a purely sedentary job. The remuneration for such a position would be modest at best.

[103] At the third step – the valuation stage – there are two possible approaches to assessing loss of future earning capacity: the earnings approach and the capital asset approach.

[104] The earnings approach will generally be more useful when, as in the present case, the loss is easily measurable: *Lamarque v. Rouse*, 2023 BCCA 392 at para. 38; *McKee v. Hicks*, 2023 BCCA 109 at para. 77; *Perren v. Lalari*, 2010 BCCA 140 at para. 32.

[105] The approach taken to the assessment of loss must be based on the evidence: *Rab* at para. 75. The ultimate award is a matter of judgment as opposed to purely mathematical calculation: *Rosvold v. Dunlop*, 2001 BCCA 1 at para. 18. To the extent possible, the plaintiff should be put in the position he or she would have been in but for the injuries caused by the defendant’s negligence: *Lines v. W & D Logging Co. Ltd.*, 2009 BCCA 106 at para. 185.

[106] While cases such as *Rosvold* make clear that awards for loss of future earning capacity are not strictly mathematical, there is certainly a mathematical approach or methodology in assessing such loss. In this case, such basic or starting point calculations have been done by Mr. Benning and are presented in his report. He provided a variety of scenarios and related mathematical loss calculations which

range from approximately \$560,000 to over \$2,000,000. The defence submits that Simpson's loss of future earning capacity falls between zero and about \$500,000.

[107] Based on the evidence and given that Simpson testified that she planned to retire at a typical age, I find that, but for the 2017 Collision and the injuries suffered in that collision, Simpson would have continued to work at Fred's, in some capacity, with at least some salary increases and bonuses, until somewhere between the age 65 and 70. I find that, on the evidence, Fred Helmer's desire to keep Simpson as an employee, and his willingness to accommodate her, could, and likely would, have led to a flexible schedule which would allow her to reduce and adjust her hours over time and with the progression of age. I find that, although unlikely, Simpson may find sedentary, limited work in the future.

[108] I award Simpson \$750,000 for loss of future earning capacity.

Loss of Housekeeping Capacity

[109] In some circumstances, it may be appropriate to augment a non-pecuniary award with an award for loss of housekeeping capacity. The Court of Appeal provided guidance on whether a discrete award should be made in *Kim v. Lin*, 2018 BCCA 77:

[33] Therefore, where a plaintiff suffers an injury which would make a reasonable person in the plaintiff's circumstances unable to perform usual and necessary household work — 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. However, I do not wish to create an inflexible rule for courts addressing these awards, and as this Court said in *Liu*, "it lies in the trial judge's discretion whether to address such a claim as part of the non-pecuniary loss or as a segregated pecuniary head of damage": at para. 26.

See also *McKee v. Hicks*, 2023 BCCA 109 at para. 112.

[110] In the present case, as is likely to be the case in many situations, Simpson finds herself in a middle ground. Some housekeeping tasks are beyond her while others she performs subject to limitations and discomfort.

[111] Some of the tasks which she lists, such as gardening, are elective and recreational as opposed to necessary.

[112] Her overall housing situation has changed since the 2017 Collision – from a small trailer to a small cabin to a reasonably large house with a yard. Each step up has lead to increased demands but the benefits accruing to Simpson have also increased.

[113] Simpson does not live alone in the house. Her husband and her daughter share the residence along with the benefits and responsibilities of such an arrangement, including housekeeping.

[114] Simpson seeks provision of full housekeeping services through to age 80, without consideration of the likelihood that at least some housekeeping services would likely have been necessary had she continued her employment and as she aged, regardless of the 2017 Collision.

[115] As is the case with the loss of future earning capacity and cost of future care, consideration of the loss of housekeeping capacity, particularly as to the future, is not simply a mathematical calculation or precise accounting exercise. It requires the court to consider the evidence and arrive at an award which is reasonable and fair to the parties.

[116] In all of the circumstances, I am of the view that a separate pecuniary award is appropriate, and I award \$85,000 for past and future loss of housekeeping capacity.

Cost of Future Care

[117] The plaintiff is entitled to compensation for the costs of future care based on what is medically necessary to restore the plaintiff to the position she would have been in had the accident not occurred.

[118] In my view, in this case, full restoration of Simpson to her position pre-collision cannot be achieved, and thus the court must strive to assure full compensation through the provision of adequate future care.

[119] The award is to be based on what is reasonably necessary on the available medical evidence to preserve and promote the plaintiff's mental and physical health: *Milina v. Bartsch*, 49 B.C.L.R. (2d) 33, 1985 CanLII 179 (B.C. S.C.); *Quigley v. Cymbalisty*, 2021 BCCA 33 at para. 43.

[120] The test for determining the appropriate award under the heading of cost of future care is an objective one based on medical evidence and must be what is fair to both parties: *Pang v. Nowakowski*, 2021 BCCA 478 at para. 58.

[121] For an award of future care:

- (1) there must be a medical justification for claims for cost of future care;
and
- (2) the claims must be reasonable.

See *Milina; Tsalamandris v. McLeod*, 2012 BCCA 239 at paras. 62–63; *McGuigan Estate v. Pevach*, 2024 BCCA 106 at para. 92, citing *Paur v. Providence Health Care*, 2017 BCCA 161 at para. 109.

[122] Future care costs are “justified” if they are both medically necessary and likely to be incurred by the plaintiff.

[123] An award of damages for costs of future care is partly prediction and prophecy: *Pang* at para. 58. In *Pang*, at para. 57, Mr. Justice Voith, writing for the Court, identified three additional considerations of which the court must be satisfied to make an award for future care:

1. that the plaintiff would, in fact, make use of the particular care item in question;

2. that the care item is one that was made necessary by the injury in question and that it is not an expense the plaintiff would, in any event, have incurred; and
3. that there is no significant overlap in the various care items sought.

[124] It is not necessary that a medical expert testify to the medical necessity of each and every item of care that is claimed: *Paur* at para. 109.

[125] Future care costs award should be adjusted for contingencies depending on the specific care needs of the plaintiff meaning the court should consider the chances of improvement or deterioration as regards the particular plaintiff. Each case falls to be determined on its particular facts: *Gilbert v. Bottle*, 2011 BCSC 1389 at para. 253.

[126] Finally, the 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; *Pang* at para. 58.

[127] Again, Mr. Benning was provided with the recommendations of the medical experts and provided his mathematical calculations of the associated costs of future care through to age 80 for Simpson, which he sets at just over \$194,000.

[128] The defence submits that there are no costs of future care.

[129] Simpson has been persistent and committed to undertaking most of the recommendations made by her doctors. She has undergone numerous medication regimes and trials. She has persisted in chiropractic treatment, botox treatment and other avenues seeking relief. She indicates a willingness to basically “try anything” however all attempts to date have proven ineffective.

[130] I do note that she has discontinued certain medications and physical/kinesiological regimes due to their having worsened her symptoms or resulted in other side effects. The defence experts in particular noted that she should have persisted in certain of these programs. Dr. Sivananthan, one of those defence

experts, recommended various medications and pursuits which have been included in the claim for future care.

[131] I have stated before that, overall, I believe Simpson. I am satisfied that she has attempted most of the suggestions of the medical authorities and will continue to do so in the future. Based on her evidence, I expect that she will undertake little in the area of active physical activity or therapy and exercise, as she has been very sensitive to the effects of those things in the past. For this reason, I discount her claims regarding gym memberships, exercise equipment and the like.

[132] I award \$140,000 for the cost of future care.

Special Damages

[133] It is well-established that an injured person is entitled to recover the reasonable out-of-pocket expenses he or she incurred as a result of an accident. Simpson submitted, as part of the agreed statement of facts, extremely extensive and comprehensive receipts for expenses incurred since the 2017 Collision.

[134] While the defence appears to take issue with some of them, no specific challenges were launched in cross-examination to any of the expenses. I therefore take all of those expenses as being admitted and as being related to Simpson's injuries and symptoms arising from the 2017 Collision.

[135] I award \$26,141.02 in special damages.

Summary of Damages

[136] The following is a summary of the amount of damages awarded:

Non-pecuniary damages:	\$209,000.00
Past loss of earning capacity:	\$192,709.00
Loss of future earning capacity:	\$750,000.00
Loss of housekeeping capacity:	\$85,000.00
Cost of future care:	\$140,000.00
Special damages:	\$26,141.02
Total:	\$1,402,850.02

Costs

[137] In my view, Simpson has been largely, if not completely, successful and is entitled to her costs on Scale B. However, if the parties are unable to agree on costs, or if there are other related issues of which I am unaware, they may, within 60 days, apply to speak to the issue or provide written submissions not to exceed five pages in length.

Leave to Apply

[138] As is often the case, there may be issues which have escaped the attention of counsel or of the court or about which further directions may be necessary. If such is the case, the parties have liberty to apply to speak to such matters prior to the entry of this order.

“Caldwell J.”