

KING'S BENCH FOR SASKATCHEWAN

Citation: **2026 SKKB 93**

Date: **2026 04 29**
Docket: QBG-SA-00913-2017
Judicial Centre: Saskatoon

BETWEEN:

GAGANDEEP BRAR

Plaintiff

- and -

THE HUTTERITE BRETHERN CHURCH OF RIVERVIEW
LIMITED and WESLEY STAHL

Defendants

Counsel:

Jonathan S. Abrametz and Spencer Edwards
Chantelle C. Eisner and Elise T. von Holwede

for the plaintiff
for the defendants

JUDGMENT
May 1, 2026

BARDAI J.A.
ex officio

Introduction

[1] This lawsuit arises out of an accident on June 26, 2015, in which the plaintiff, Gagandeep Singh Brar [Mr. Brar], then 24 years of age, suffered serious injuries. It is not in dispute that bales of hay being unloaded from Mr. Brar's truck by the defendant, Wesley Stahl [Mr. Stahl], on behalf of the defendant, The Hutterian Brethren Church of Riverview Limited [Riverview], fell on Mr. Brar. At issue are

whether Mr. Stahl was negligent in his operation of a telehandler [Telehandler] used to unload the hay bales, whether Riverview is or can be held liable, whether Mr. Brar was contributorily negligent in causing the accident, and what damages (if any) Mr. Brar is entitled to.

[2] Mr. Brar alleges in the Amended Statement of Claim [Claim] that Mr. Stahl began unloading the bales of hay before it was safe to do so, which resulted in a bale falling from the trailer and striking him. The Claim contends Riverview, by virtue of being Mr. Stahl's employer, is vicariously liable for the negligence of Mr. Stahl. In addition, it is alleged that Riverview was "responsible for the unloading of a bale in a careless manner...". This is, in effect, a claim of negligence made against Riverview.

[3] Mr. Brar says that as a result of the injuries he sustained in the accident, he is no longer able to work as a truck driver. His Claim seeks unspecified damages, including general damages, health and travel expenses, and damages related to an alleged loss of earning capacity.

[4] In their Statement of Defence [Defence], the defendants say that Mr. Brar caused or contributed to the accident and that it was his own negligence that caused his injuries. The Defence also alleges that Mr. Brar has no right of action pursuant to the *Workers Compensation Act*, RSBC 1996, c 492 (since rep), though that particular defence is no longer being advanced and I have been asked to ignore that issue.

[5] At trial, Mr. Brar, Harwynder Gill [Ms. Gill], Harpreet Gill [Mr. Gill], and experts Sean Crittenden [Mr. Crittenden], Russel Marcoux [Mr. Marcoux] and Kelly Rathje [Ms. Rathje], testified on behalf of Mr. Brar. The defence meanwhile called Joel Tschetter [Mr. Tschetter], Wesley Stahl [Mr. Stahl] and expert Mark Alexander Gosling [Mr. Gosling]. In addition, reports from Dr. Rick Zabrodski [Dr. Zabrodski] and medical records of Mr. Brar were admitted into evidence on consent.

Summary of Findings

[6] For the reasons that follow, I find:

- (a) The defendant, Mr. Stahl, was negligent in the operation of the Telehandler used to unload bales of hay. His negligence was the primary, but not the only, cause of the accident. It was Mr. Stahl's decision to operate the Telehandler at a time when he couldn't see Mr. Brar but knew Mr. Brar was on the far side of the truck unstrapping the load.
- (b) Riverview, as Mr. Stahl's employer, is vicariously liable for the negligence of Mr. Stahl which occurred while Mr. Stahl was carrying out his assigned duties for Riverview. Riverview was also negligent in its own right because the Telehandler was equipped with a forklift attachment rather than a bale spear, which is more suitable for the job they were asking Mr. Stahl to do. Further, Mr. Tschetter, who was supervising the unloading process on behalf of Riverview, was on the phone in his truck and distracted when the accident occurred.
- (c) Mr. Brar was contributorily negligent. Mr. Brar was, at the time of the accident, an inexperienced truck operator. He arrived after midnight at Riverview and was in a rush to unload his truck because the load was not tarped, rain was in the forecast and he had a long drive ahead of him the next day. Mr. Brar made the decision to unstrap the bales of hay out of view of the Telehandler operator, knowing that the Telehandler was operating. Further, he parked the Truck on uneven ground, which meant the trailers on which the hay

were loaded were less stable and more likely to move during the unloading process.

- (d) Considering the respective negligence of each of the parties, I find Mr. Brar to be 15% at fault, Riverview to be 15% at fault and Mr. Stahl to be 70% at fault. Riverview, as Mr. Stahl's employer, is vicariously liable for Mr. Stahl's negligence.
- (e) I assess general damages of \$90,000.00, together with \$9,257.30 for the loss of homemaking capacity. Mr. Brar's loss of income claim I limit to \$201,471.50. I simply do not accept the evidence of Mr. Brar that he is incapable of ever driving a truck. The reality is that in 2021 he drove a truck, and his evidence that he stopped driving after six or seven weeks in 2021 because it was too painful is not accepted because in 2022, he was stopped and issued a citation while operating a truck. I am satisfied that Mr. Brar was capable of driving a truck by the later part of 2017 given the medical evidence, and the fact that he and his spouse purchased a home and largely renovated it themselves in 2017.
- (f) The expert evidence indicates that an owner/operator of a truck can make \$128,000 per year but that a portion of this amount, \$66,000, is allocated to the driver of the truck, with the balance representing the truck owner's profit. Nothing prevents Mr. Brar from continuing to own a truck and hiring a driver to operate it for a fee, even if he is not able to drive personally anymore. As of 2018, Mr. Brar was earning more than \$60,000 a year working in a variety of jobs, most notably, as a truck dispatcher. The lifetime earnings of a truck dispatcher exceed those of a truck driver according to the evidence.

- (g) Reducing the damages of \$300,728.80 by 15% on account of contributory negligence means that Mr. Brar is entitled to an award of \$255,619.48 from the defendants. Mr. Stahl and Riverview are jointly and severally liable for 70% of the total loss, being \$210,510.16, while Riverview is liable on its own for \$45,109.32 of the loss on account of its own negligence.
- (h) On the issue of costs, the Local Registrar shall fix a call with the parties to determine how this question might be dealt with, including whether a hearing is required.

Summary of the Evidence

1. Fact Witnesses

(a) Mr. Gagandeep Singh Brar

[7] Mr. Brar trained in computer science in India. He came to Canada in 2013 and settled in Langley, British Columbia, pursuing post-graduate studies at the University of Fraser Valley. While attending school in British Columbia, he met his future wife, Ms. Gill.

[8] Unable to find work in his field upon graduating, Mr. Brar decided to pursue a future in trucking. He obtained a Class 1 licence in the summer of 2014 and, ultimately, started work as a long-haul truck driver. Both Ms. Gill's family and Mr. Brar's extended family are involved in the trucking business.

[9] Mr. Brar's first job in trucking was with IGS Trucking with whom he worked only briefly before starting with Reliance Logistics. In January 2015, he stopped working altogether so that he could travel to India where he and Ms. Gill were married. The couple returned in April 2015, and Mr. Brar took a job with Dgarcha Trucking Limited but only worked with the company for a couple months before buying

his own truck on June 21, 2015. The truck Mr. Brar purchased was a 2006 silver Peterbilt 378 bought for \$33,000 [Truck].

[10] The Truck was put in the name of Vancoast Freightways [Vancoast], a company operated by Ms. Gill's brother, Mr. Gill, but Mr. Brar was at all times the owner/operator of the Truck. Mr. Brar was to pay 10% of his overall earnings to Vancoast. He kept the remaining 90% of the income from which insurance, fuel and other expenses were paid. As an owner/operator, Mr. Brar retained any profit.

[11] As of the date of the accident, Mr. Brar had owned the Truck for only a few days, making three deliveries before driving to a Hutterite colony in Fort Macleod [Fort Macleod Colony], leaving on the morning of June 25, 2015, from Lethbridge to pick up a two-trailer load of hay bales. Attached to Mr. Brar's Truck that morning were two trailers: one 32 feet in length, and the other 28 feet in length.

[12] Upon arriving at the Fort Macleod Colony, the trailers were loaded with two rows of hay bales, each row stacked three bales high. The size of each hay bale was three feet by four feet by eight feet, and each bale was loaded individually by the Fort Macleod Colony using a loader to which a bale spear with four prongs was attached. Each hay bale was stabbed with the prongs and then loaded onto the trailers. The loading process took between thirty and forty minutes.

[13] After the two trailers were loaded, Mr. Brar secured the load with tie down straps (it being the responsibility of the driver to both strap and unstrap a load) which took between fifteen and thirty minutes before embarking on the seven-and-a-half hour journey to Saskatoon. Mr. Brar made brief stops on the road to Saskatoon to check the load and Truck, with each stop taking between five and fifteen minutes. He arrived in Saskatoon just before midnight, at which point he called a representative of Riverview (the individual he spoke with is identified in the evidence of others as Mr. Tschetter) who met him in Saskatoon and guided him to Riverview's

farm. Mr. Brar says that he could smell alcohol on Mr. Tschetter's breath and that Mr. Tschetter was using foul language and said he was in a rush that night.

[14] Mr. Brar's plan was to drop off the load of hay bales at Riverview just outside of Saskatoon and then head to the pulp mill in Meadow Lake the next morning to pick up a load before heading back to British Columbia.

[15] Mr. Brar arrived at Riverview's farm after midnight, parked the Truck where instructed and exited the vehicle. There was another man (identified in the evidence of others as Mr. Stahl) who was operating a Telehandler, which was running with its lights on, when Mr. Brar arrived. The Telehandler was parked on the driver's side of the Truck. Mr. Brar told Mr. Stahl to wait while he unhooked the load. The Telehandler had a different attachment than the machine used by the Fort Macleod Colony to load the truck. The Telehandler attachment had two forks on it, not four, and the forks were not being used to spear each bale of hay.

[16] Mr. Brar was on the passenger side of the Truck, unstrapping the load when the trailer shook and bales began to fall off. Mr. Brar tried to run but couldn't. He was struck by the falling bales. Mr. Brar denies that any bales were safely removed from the Truck before the accident occurred.

[17] Mr. Brar was left crushed under a bale of hay. He started screaming for help. Mr. Stahl and Mr. Tschetter together picked up the bale that was on him, which allowed Mr. Brar to use his elbows to pull himself out from under the bale of hay. He thought he might die. He had never experienced that level of pain before, and he asked to call his wife. The two men on scene tried calling Ms. Gill but were unable to reach her. An ambulance was called, and Mr. Brar was taken to hospital with scrapes and bruises to his head, broken ribs, a dislocation and multiple pelvic fractures to the right side of his pelvis and pubic bone. After a number of days in hospital (he could not remember how many), he was given crutches and returned home to British Columbia

by plane.

[18] Mr. Brar met with his family doctor in British Columbia and learned that the right side of his pelvis had been badly injured with multiple fractures which may require surgery. Mr. Brar says he has been left with a permanent dislocation, leaving him in pain and affecting his mobility. He has a limp and now avoids sitting on hard surfaces for extended periods. He also avoids sleeping on his right side to minimize pain.

[19] Mr. Brar's road to recovery has been a slow one. In Saskatoon, he received physiotherapy treatments and learned how to use crutches, struggling initially because of the broken ribs he sustained. Upon arriving in British Columbia, he started with therapy in a pool. Four or five months after the accident, he was using crutches and beginning to walk, albeit with a limp. He says he has been left with a permanent limp, though at trial, no visible limp was noted as Mr. Brar walked to and from the witness box.

[20] The accident has affected all aspects of Mr. Brar's life: emotional, physical and financial. His wife had to bathe him for several months. He lived with his in-laws who took on an added financial burden. His wife took on a second job in late 2015, working at Canada Post in addition to her job at the Canada Revenue Agency. In March or April 2016, Mr. Brar tried working, initially at Amazon in its warehouse, but the job was too taxing and he couldn't meet the physical demands of the job due to pain. He then began applying for jobs that were less physically demanding, working briefly at a call centre before finding work as a dispatcher at a transportation company, J&G Transportation. Mr. Brar left this position to start a job as an input coordinator and, ultimately, as a dispatcher for Harbour Link Container Services. When he started at Harbour Link, he earned \$39,000 a year in salary, eventually moving up to \$50,000 a year.

[21] In the spring of 2016, Mr. Brar and Ms. Gill were able to move out of his in-laws' home and get a basement apartment. In 2017, with the help of friends and family, Mr. Brar and Ms. Gill bought a modest home, and Mr. Brar found work as a dispatcher with Indian River Transport, a company that was closer to his new home. The couple welcomed a child into their family in 2019. Mr. Brar stayed with Indian River Transport until 2021 when he bought a truck on his line of credit and started hauling loads for Hawk Hauling (a company owned by his extended family). Hawk Hauling used Mr. Brar and Ms. Gill's home address as its business address. Mr. Brar tried driving with a pillow under his seat in 2021 but had to quit after six or seven weeks on account of pain, pain which he suggests is permanent. Mr. Brar has no connection to Hawk Hauling other than as someone who drove a truck for them in 2021. He was paid \$16,011.77 by Hawk Hauling in 2021.

[22] In the year of Mr. Brar's injury, being 2015, he reported modest income of \$4,810. Mr. Brar says the information on his 2015 tax return is inaccurate and does not capture income from Vancoast, but Mr. Brar has never corrected that tax return. In the years following the accident, Mr. Brar's income was as follows:

2016	\$25,638
2017	\$58,401
2018	\$65,100
2019	\$68,657
2020	\$70,227
2021	(information incomplete)
2022	\$60,395

[23] In addition to having a familial connection with Hawk Hauling, Mr. Brar also has a connection to a company by the name of Deck SX. Deck SX is a company in which Mr. Brar and his brother are shareholders and directors. Mr. Brar says that this is a trucking company that is controlled by his brother in which he has minimal

involvement beyond being a shareholder and providing dispatch services.

[24] Mr. Brar acknowledged on cross-examination that on October 26, 2022, he was stopped and issued a ticket in British Columbia for operating a truck and trailer with dimensions and load that do not conform. Mr. Brar further acknowledged that in 2022, he was driving a truck from time to time for Tri-link Transportation and that he continues to hold a Class 1 licence.

(b) Ms. Harwynder Gill

[25] Ms. Gill and Mr. Brar were married in early 2015. The couple's plan was for Mr. Brar to work in trucking as an owner/operator to allow Ms. Gill to go back to school and to help save money for a house. Ms. Gill's brothers were making between \$8,000 and \$9,000 a month as truck owner/operators, while Mr. Brar was making between \$3,000 and \$4,000 a month working as a driver.

[26] Ms. Gill remembers talking to Mr. Brar on June 25, 2015, before he delivered his load of hay bales to Saskatoon. In this call, Mr. Brar told her he was going to ask the company whether they wanted him to deliver the load that night or the next day.

[27] On the morning of June 26, 2015, Ms. Gill got a call that Mr. Brar had been in a bad accident. Mr. Brar was unconscious, and Ms. Gill rushed to Saskatoon. Upon her arrival, she was told that Mr. Brar likely would not need surgery, that he was lucky that his spinal cord had not been injured but that he had suffered multiple rib fractures and fractures to his pelvis. For the next eight nights, Ms. Gill slept in a hospital chair. Upon returning to British Columbia, the couple had to change their plans. Ms. Gill began picking up extra shifts at the Canada Revenue Agency and took on a second job as a letter carrier with Canada Post. Her plans to return to school had to be put on hold indefinitely.

[28] After the accident, the couple lived with Ms. Gill's parents, who helped bathe Mr. Brar and helped him with common day-to-day tasks, including going to the washroom. Ms. Gill took Mr. Brar to his appointments and aqua therapy, but even with help, they could not pay for physiotherapy.

[29] It took a couple months before Mr. Brar's food intake improved. Ms. Gill had to take on increased responsibility at home as Mr. Brar's bones healed, a process that doctors said would take a year. They learned that Mr. Brar should have had screws put into his bones after the accident. Without this surgery, Mr. Brar has been left with a permanent displacement of the pelvis.

[30] In 2017, the couple bought their first home, doing many of the renovations themselves.

[31] Mr. Brar, while now functional, still suffers from the after-effects of the accident. For example, if Mr. Brar shovels snow, he is left feeling stiff.

(c) Mr. Harpreet Gill

[32] Mr. Gill is Ms. Gill's brother and operates Vancoast Freightways. Vancoast handles dispatch for a number of drivers and charges a fee of 12% for dispatching services and 10% for the use of their trailers, but as Mr. Brar is family, he was charged a flat rate of 10%. Mr. Gill has been in the trucking business since 2007. Vancoast bought out Hawk Hauling in 2018 or 2019. The address for Hawk Hauling is Mr. Brar and Ms. Gill's home address.

[33] Mr. Gill's evidence is that based on his experience, a truck driver will make between \$6,000 and \$8,000 a month, while an owner/operator can take home \$22,000 a month in gross pay. Mr. Gill was not qualified as an expert witness; he is a relative of the plaintiff and, to the extent that he offered opinion evidence, I have placed minimal weight on his evidence where such evidence conflicts with the expert, Mr.

Marcoux, called by Mr. Brar at trial.

[34] After the accident, the Truck was sold. The sale was made by Vancoast but the proceeds went to Mr. Brar. To the extent Vancoast made payments in relation to the Truck, for example, insurance, these costs were ultimately passed on to Mr. Brar. An owner/operator is responsible for all operating costs such as fuel, maintenance, insurance, parking and similar costs.

[35] Mr. Gill's evidence is that when unloading a truck, the driver will take off all the straps and then let the unloader know. The driver will then stand away from the truck, or sit in the truck, as the trailer is unloaded. In terms of safety gear, the driver wears a safety vest and steel toe boots.

[36] Mr. Gill acknowledged that there is an obligation to maintain a logbook. In this case, Mr. Brar's logbook was turned over to Vancoast, but unfortunately, it has been lost.

(d) Mr. Joel Tschetter

[37] Mr. Tschetter was the general manager of dairy operations for Riverview as of June 2015. His assistant manager at the time was Wesley Stahl. Mr. Tschetter was responsible for logistics, including purchase orders and overseeing operations. This included ordering bales of hay and feed.

[38] On June 25, 2015, Mr. Tschetter received a call from the Fort Macleod Colony between 11:15 and 11:30 a.m., telling him that a load of hay bales was ready for pickup and that Mr. Brar would be delivering the load to Riverview later that day.

[39] At 3:00 p.m., the Telehandler with a multi-use attachment was moved to the hay shed. At 5:30 p.m., Mr. Brar called to confirm he was still coming. Mr. Brar was told to arrange delivery and unloading with Mr. Stahl. The delivery was initially

expected at 8:30 p.m., but an amended time of 9:30 p.m. was given by Mr. Brar. At that time of year, there is still light until around 9:30 or 10:00 p.m.

[40] At 11:00 p.m., Mr. Tschetter received a call from Mr. Brar who asked that he meet him in Saskatoon to guide him to the farm. Mr. Tschetter told Mr. Brar to park and come in the morning at 8:00 a.m. to unload as daylight was gone. Mr. Brar did not want to wait till 8:00 a.m. and wanted to be on the road at first light. From Mr. Tschetter's perspective, there was no need to unload the Truck that night as this was hay for the winter and it could wait a day. However, Mr. Brar wanted to unload that night because there was rain in the forecast and the hay was not tarped. If the hay had shown up wet, it would have been rejected. Mr. Brar told him that he had to make a 300-km detour to avoid weather, which is why he was three hours late. Mr. Tschetter understood Mr. Brar's predicament, having previously spent six years hauling bales during harvest. Mr. Brar explained he had just moved to Canada, this was his first load to Saskatchewan, and he didn't want to risk the load getting wet. Mr. Tschetter began to wonder about Mr. Brar's experience and learned Mr. Brar had never unloaded at night. He told Mr. Brar that a normal loading procedure might not be followed given the time of night.

[41] Although Mr. Tschetter gave Mr. Brar directions, Mr. Brar missed the Highway 5 turnoff, and so finally, Mr. Tschetter agreed to meet Mr. Brar just south of Brighton and guide him to the farm. Mr. Brar got out of his truck wearing jeans and sandals, with no visibility vest or gloves. He told Mr. Brar to change while Mr. Tschetter went to get Mr. Stahl.

[42] Upon looking at the load, Mr. Tschetter noted there was no dunnage (4x4 blocks under the bales to give them clearance for the Telehandler, which had a pallet fork attachment on it to slide under). The bales were flat on the trailer. The pallet fork attachment had been used in the past to spear bales, so he decided with Mr. Stahl

to spear the bales using the pallet fork attachment. At the time, Riverview did not have a quick connect bale-spear attachment.

[43] While Mr. Tschetter was talking to Mr. Stahl, Mr. Brar unstrapped the driver's side of the trailer. He had not put on a vest or safety gloves and was still in sandals. Mr. Tschetter did not want to unload where the Truck had stopped because of a slight slope in the ground. Mr. Brar said he did not have clothes to change into and that he did not want to resecure the load for the purposes of moving the Truck. It was agreed that the Truck would be unloaded where it had been parked.

[44] Mr. Stahl, in Mr. Brar's presence, was told to unload the hay bales starting with the front trailer on the driver's side. The first bales were removed without incident. Mr. Tschetter told Mr. Brar to get in his Truck because he was not wearing appropriate safety gear. Mr. Brar said there might be gear under the sleeper. He was told to go check and that he could not be walking around during the unloading process.

[45] A second bale was removed without incident. Mr. Tschetter went to his pickup truck to call his wife, and that is when things went sideways. He heard the Telehandler go quiet and thought it had run out of gas. He came to investigate and found Mr. Brar lying on the ground with a bale beside him. Mr. Brar was incoherent and covered in dust and straw. Water from a water bottle was used to rinse Mr. Brar's face and, remembering his first aid training from his time in the oilfield, Mr. Tschetter squeezed below Mr. Brar's calf muscle. Mr. Brar flinched. He did not want to move Mr. Brar. Mr. Tschetter is the one who called for an ambulance. Mr. Brar did not want an ambulance because he did not have insurance. After calming down, Mr. Brar asked to call his wife, and then later, his boss. Mr. Tschetter spoke with Mr. Brar's boss but hung up as he was being yelled at and there was considerable profanity being directed at him.

[46] Paramedics arrived, loaded Mr. Brar on a stretcher and took some photos.

[47] In looking at the photographs, Mr. Tschetter notes that the airbags on the Truck suspension were not down. This creates some unevenness.

[48] The next day, the bales were unloaded, and someone came to pick up the Truck.

[49] Mr. Tschetter acknowledged that Mr. Stahl is not a certified operator for the Telehandler and does not have a Class 1A licence. Mr. Stahl had operated the Telehandler for between two to three months as of the date of the accident. Mr. Tschetter admitted that it is the responsibility of the operator to make sure the machine is being operated safely and it is the decision of the operator on how and when to operate.

[50] Mr. Tschetter acknowledged having had two beers on the night of the accident and further admitted that he was annoyed with Mr. Brar. He further accepted that unloading should occur once the straps have been removed but maintains that not all straps have to be off as you can unload one section at a time.

(e) Mr. Wesley Stahl

[51] In 2015, Mr. Stahl was working in the Riverview dairy barn. His day-to-day responsibilities included feeding calves, loading feed and operating the feed truck. He is the one who inspects Riverview's machines, and checks their oil, tires and air filters. His job in 2015 included dealing with hay bales, and he was involved with unloading approximately 5,000 bales a year for Riverview.

[52] The Telehandler involved in this accident had been in use by Riverview for six months, and Mr. Stahl had used it to unload bales of hay in the past. The Telehandler is not particularly loud but does make a beeping noise as it backs up. Mr. Stahl had not, as of the date of the accident, read the full manual for the Telehandler, was not a certified operator for the Telehandler and did not have a Class 1A licence.

[53] Mr. Stahl's evidence is that a bale-spear attachment is preferable to a pallet fork attachment when unloading hay but both can work.

[54] On the morning of June 25, 2015, Mr. Stahl checked with the mechanics to see if the Telehandler was good to go and he was told yes. He went to bed at 11:00 p.m. At midnight, he got a call from Mr. Tschetter and was told that he (Mr. Tschetter) was going to meet the driver of the Truck, who was lost. He asked if it was too dark to unload and was told that the unloading needed to happen that night because the Truck driver (Mr. Brar) needed to be in Meadow Lake, and because the load was not tarped and rain was in the forecast.

[55] Rain is very bad for hay, so it was important that the hay either got unloaded or tarped that night.

[56] When he arrived at the barn, the Telehandler was warming up and Mr. Tschetter was telling Mr. Brar to move the Truck to avoid a small slope in the land but Mr. Brar had already started unstrapping the load, which meant the load would have to be re-strapped before the Truck could be moved. Mr. Stahl sat in the Telehandler and awaited instructions.

[57] The Truck was not moved, and Mr. Stahl asked if he could start unloading. Both Mr. Brar and Mr. Tschetter said yes. The first two bales came off the Truck without incident. The lights of the Telehandler were sufficient to allow him to see what he was doing. Upon removing the third hay bale, Mr. Stahl does not know if he nudged the hay bales or lifted them up, but he noticed the trailer sway, heard the bales hit the ground and heard Mr. Brar screaming.

[58] He rushed to see what had happened and was able to move a hay bale off Mr. Brar. Mr. Brar called his wife, and they waited for the ambulance. The remaining bales were unloaded the next morning.

[59] Mr. Stahl admits that as the operator of the Telehandler, he is responsible. He is the one running the machine, and so it was ultimately his decision to unload, though he was trying to help Mr. Brar out that night. He could not see Mr. Brar on the other side of the Truck, but he knew Mr. Brar was there unstrapping the load. Mr. Stahl regrets what happened, recognizes that unloading bales knowing the driver is on the other side of a truck is dangerous and says if placed in the same situation again, he would behave differently.

[60] The evidence of Mr. Stahl and Mr. Tschetter includes considerable evidence respecting information communicated to them by Mr. Brar in the early hours of June 26, 2015. This evidence, while hearsay, was not objected to at trial and includes statements by Mr. Brar against his interest. I find this evidence to be credible and reliable, and so I have considered it in terms of the findings of fact I have made.

2. Expert Witnesses

(a) Dr. Rick Zabrodski

[61] The medical evidence is largely uncontested and is detailed in the report of Dr. Zabrodski. Mr. Brar sustained multiple facial, chest and pelvic injuries, including three rib fractures and multiple displaced pelvic fractures as a result of the accident. The facial injuries and rib fractures healed relatively quickly (over a matter of months), but Mr. Brar was left with one displaced fracture. He transitioned from a walker to a cane, and it was approximately six months before he could comfortably walk unaided. The acute pain lasted ten months, but he is still left with some lower back and pelvic pain. As of January 27, 2016 (seven months after the accident), Dr. Trevor Stone, the orthopedic surgeon that saw Mr. Brar, notes that:

... The patient reports minimal symptoms regarding normal activities of daily living at that point. Therefore, no orthopedic restrictions regarding a return to work are assessed at that time. No further treatments are recommended.

[62] Dr. Zabrodski's report indicates that Mr. Brar continues to report an aching sensation in wet and colder months and pain after prolonged sitting, standing, walking, lifting or pulling. Mr. Brar is currently working in a self-paced sedentary position as a dispatcher for a trucking company.

(b) Mr. Sean Crittenden

[63] Mr. Crittenden was qualified as an expert in the standard of care and safe operation and procedures to be used when loading and using a telehandler.

[64] Mr. Crittenden has thirty years' experience and is a certified operator of forklifts, cranes, mobile elevated work platforms and telehandlers. In his view, a number of things went wrong which contributed to this accident. In particular:

- (a) the decision to unload in the dark without appropriate lighting that would illuminate the entire area;
- (b) there was no designated spotter; the accident occurred while Mr. Tschetter was in his truck making a phone call and Mr. Brar was on the other side of the Truck out of view from the Telehandler operator;
- (c) unloading the trailer before all straps were removed;
- (d) improper lifting of hay bales using a pallet fork (designed to support from the bottom) as opposed to a bale spike which is designed to pierce; and
- (e) failing to have proper operating procedures and training in place.

[65] Mr. Crittenden testified that the Telehandler would have been making an audible noise, and it is best practice for the truck driver to be wearing a safety vest for high visibility. All people involved in unloading should be part of a plan setting out

where people are to be situated and what role people are to play in the unloading process.

[66] Ultimately, Mr. Crittenden felt that the lifting technique employed by Mr. Stahl and his decision to unload without ensuring Mr. Brar was out of harm's way were among the most critical mistakes that caused or contributed to this accident. The operator of the Telehandler (Mr. Stahl) is responsible for unloading the Truck and any person that may be injured while completing the job. That said, Mr. Crittenden acknowledged that it is impossible to determine a single cause for this accident.

(c) Mr. Russell Marcoux

[67] Mr. Marcoux was qualified as an expert in the trucking industry, including the determination of incomes for drivers who work as owner/operators.

[68] Mr. Marcoux was the principal of the Yanke Group, a successful trucking business which, by 2013 (when he sold the business), included 450 units, 900 trailers and 450 containers. Mr. Marcoux started his trucking business in 1975 with one truck. He built this business despite doing very little driving himself.

[69] Mr. Marcoux provided information on owner/operators in general. An owner/operator has to manage their expenses, but assuming they are able to do so, a conservative gross income for an owner/operator would be \$183,480, or \$128,155 after expenses, which he details in the following chart.

Accounting Item	Dollar Amount
Annual Revenue	\$183,480
Truck Annual Payments	(\$15,118)
Trailer Annual Payments	(\$4,807)
Truck Maintenance Costs	(\$22,440)
Trailer Maintenance Costs	(\$6,600)
Accessorial Equipment	(\$1,560)

Personal Business Expenses	(\$4,800)
Driver Pay	(\$66,000)
Total Expenses	(\$121,325)
Net Profit (Annual Revenue – Total Expenses)	\$62,155
Net Income (Driver Pay + Net profit)	\$128,155

[70] A portion of the net income is allocated to the driver and a portion to the owner. In his calculations, Mr. Marcoux allocates \$66,000 of the gross income towards the driver's pay, but, according to Mr. Marcoux, it does not really matter how the profit is allocated because the owner/operator would receive all of the net income which comes from the same pot.

[71] Mr. Marcoux's calculation assumes Mr. Brar is an intelligent driver, driving 132,000 miles a year, and the average per mile income is \$1.39, but Mr. Marcoux cannot speak to Mr. Brar's capabilities and did not review Mr. Brar's logbook.

(d) Ms. Kelly Rathje

[72] Ms. Rathje was qualified as an expert to provide an opinion on the personal injury damages sustained by Mr. Brar. Ms. Rathje holds a Master of Economics degree and has previously been qualified as an expert in Saskatchewan.

[73] Ms. Rathje considered three scenarios in her report. The first was to look at Mr. Brar's income assuming there had been no accident, extrapolating from the data that existed. This results in annual income of \$108,751 per year, based on very limited data (43 days) as Mr. Brar drove a truck for only 43 days in the fall of 2021.

[74] The second scenario involved relying on Mr. Marcoux's report that an owner/operator can expect to earn \$128,155 per year.

[75] The third scenario involved an assumption that Mr. Brar would have earned above average income. This approach relies on census data to quantify Mr.

Brar's potential. Under this scenario, Mr. Brar is placed in the 90th percentile of trucking earners and would earn \$143,791 per year.

[76] All of Ms. Rathje's scenarios are based on 2024 dollars. She acknowledges that her report is predicated on a number of assumptions and that she did not consider certain facts, including Mr. Brar's ownership interest in Deck SX.

[77] Based on Ms. Rathje's scenarios, the loss suffered by Mr. Brar pre-trial would be between \$445,188, using the 43 days of data available, and \$613,348.00, based on the above average contractor scenario.

(e) Mr. Mark Gosling

[78] Mr. Gosling was qualified as an expert witness for the purposes of providing testimony on income loss and economic damages in personal injury cases. Mr. Gosling has a master's degree in economics.

[79] Mr. Gosling notes that an owner/operator's income is based on two things, the investment of capital and the investment of labour. If Mr. Brar is unable to work as a driver, his labour can be applied elsewhere as can the investment of capital. Mr. Gosling notes that the lifetime earnings of a dispatcher (being Mr. Brar's current work) would be \$1,855,727, while the lifetime earnings of a truck driver would be \$1,643,044. In effect, Mr. Gosling's evidence is that Mr. Brar can still invest the capital he invested in a truck and allow that money to grow while working as a dispatcher. This would place Mr. Brar in a better financial position at the end of the day, meaning that over the course of Mr. Brar's life, there would be no loss of income.

Credibility Assessment and Findings of Fact

[80] I largely accept the evidence of Mr. Stahl and Ms. Gill. Both came across as credible and reliable witnesses. In terms of the balance of the fact witnesses, I have

concerns with the evidence of Mr. Gill, Mr. Tschetter and Mr. Brar.

[81] Mr. Gill sought to offer opinion evidence on questions related to how much Mr. Brar might have earned. Mr. Gill is not an impartial witness. His company, Vancoast, lost the logbook for the Truck, and Hawk Hauling, which Vancoast acquired in 2018 or 2019, uses Mr. Brar's home address. He was not qualified as an expert, and I give his opinion evidence minimal weight especially where it conflicts with the evidence of Mr. Marcoux, who was properly qualified as an expert witness on behalf of the plaintiff.

[82] Mr. Tschetter was at times evasive in the witness box and took considerable time on cross-examination to answer even the most basic of questions. I do not find Mr. Tschetter's evidence to have been fabricated, but he certainly chose his words carefully. That said, I did find his evidence of discussions he had with Mr. Brar to be compelling, credible and reliable. I also note that many of the conversations that he had with Mr. Brar on June 25, 2015, and into the morning of June 26, 2015, were discussions relayed to Mr. Stahl or which were heard by Mr. Stahl.

[83] Finally, as for Mr. Brar's evidence. I have concerns as to the credibility and reliability of certain aspects of Mr. Brar's account. Certainly, there is no question that Mr. Brar, in the early hours of June 26, 2015, was involved in a serious accident and sustained significant injuries as a result. His memory of that night is understandably less than complete. He had no answer to questions about why he was so late in arriving in Saskatoon and could not provide details of discussions between himself and Mr. Tschetter upon arriving at Riverview. I accept the evidence of Mr. Tschetter and Mr. Stahl respecting the discussions they had with Mr. Brar that evening. I also find that Mr. Brar's evidence as to the effect his injuries have had on his life to be exaggerated. Mr. Brar said he now has a permanent limp, but none was observed at trial. I did note that Mr. Brar would, from time to time, stand and stretch during the course of the trial.

I accept that when Mr. Brar is completing certain chores and tasks, he must stretch more frequently than someone who has not sustained these injuries. However, I do not accept any suggestion that Mr. Brar is unable to drive a truck now or in the future. I note that by 2017, Mr. Brar was earning an income of almost \$60,000. He and Ms. Gill were able to buy a home, which they renovated together with help from others. Mr. Brar says he tried driving a truck in 2021 but had to stop after six or seven weeks. He did not mention until it was raised in cross-examination that he was also driving a truck in 2022 and that in October 2022, he received a ticket for operating a truck and trailer with dimensions and load that did not conform. Mr. Brar continues to hold a Class 1 licence. Finally, at times during his evidence, Mr. Brar avoided answering questions, claiming questions were ambiguous, even with regard to relatively straightforward inquiries. I also found him to be evasive when answering questions about his relationship with Deck SX and with Hawk Hauling. Mr. Brar no longer has the logbook for the Truck, underreported his 2015 income to the CRA (an error he has never corrected), and there are questions about the income he reported in subsequent years. Finally, his trial evidence respecting income does not match the information relied on by his own expert, Ms. Rathje.

[84] I do not find that Mr. Brar was intentionally trying to mislead the court, but I do find that there are concerns over the accuracy and reliability of his account.

[85] In terms of the expert witnesses, I accept the evidence of Mr. Crittenden which establishes that Mr. Stahl, as the operator of the Telehandler, is ultimately responsible for the safety of all persons working on the job who may become injured, something which Mr. Stahl admitted. I also accept that there is no single cause of this accident. Mr. Crittenden's evidence also speaks to the need for all those involved in the unloading process to meet to come up with a plan to ensure unloading happens in a safe manner. It is evident that no plan was followed in this case.

[86] I do not find the evidence of Ms. Rathje to be persuasive or particularly

helpful. She provided three scenarios. The first scenario is based on 43 days of work done by Mr. Brar in 2021. There are two problems with this scenario. First, the numbers used by Ms. Rathje do not accord with Mr. Brar's evidence at trial. Mr. Brar said he was paid \$16,011.77 by Hawk Hauling in 2021, whereas Ms. Rathje's calculation is based on a number of \$12,811.77. Obviously, the income would be higher using the trial number. The second problem is that Ms. Rathje seeks to extrapolate a lifetime of earnings based on 43 days of data, which is speculative at best. The second scenario she provides is nothing more than a repetition of the figures presented by Mr. Marcoux, and the third scenario assumes that Mr. Brar will earn far in excess of the average owner/operator without a factual foundation to support such conclusion. Accordingly, I find her report and evidence to be of minimal utility.

[87] I accept Mr. Marcoux's evidence that he was able to build a trucking empire doing very little driving himself. I further accept his evidence that an owner/operator can expect to earn \$128,155 per year, with \$66,000 allocated to the driver while the balance is profit to the owner for having made the investment in the truck and taken the risks associated with operating a business. Mr. Marcoux testified that while the functions of an owner and driver are closely aligned, this does not mean that the owner of a truck must also be a driver in order to succeed. Mr. Marcoux's personal life experience demonstrates that a large trucking empire can be built by an owner who does very little driving themselves.

[88] I also accept the evidence of Mr. Gosling that a dispatcher's annual and lifetime income will be slightly higher than that of a truck driver.

[89] In light of my credibility assessment and the evidence, I make the following findings:

1. As of June 2015, Mr. Brar was a relatively inexperienced truck driver. He had been driving a truck for less than a year and had owned his Truck for only a matter of days.
2. Mr. Brar did not have with him, on the night of the accident, appropriate safety gear, work gloves, steel toe boots or a safety vest.
3. Mr. Brar, Mr. Stahl and Mr. Tschetter did not follow an agreed-upon unloading plan.
4. Mr. Brar did not tarp the load to avoid the load being damaged by rain. As a result, he had to drive around inclement weather which resulted in his late arrival into Saskatoon.
5. Mr. Brar was in a rush and wanted to unload that night to prevent the untarped load from getting rejected due to rain damage as rain was in the forecast. He started unstrapping the load even before it was determined where unloading should take place.
6. Mr. Brar did not pay adequate attention to his surroundings, including failing to listen for the Telehandler as unloading was taking place. Instead, he went about his work in the dead of night on the passenger side of the Truck where Mr. Stahl could not see him.
7. Mr. Stahl was not appropriately trained on the use of the Telehandler, and he was not adequately supervised that night.
8. Mr. Stahl, as the operator of the Telehandler, was ultimately responsible for its safe operation. As he admitted, it was his decision on whether to unload or not.

9. Mr. Tschetter was in his truck talking to his wife and was distracted from watching the unloading process when the accident occurred.
10. Mr. Stahl knew that Mr. Brar was on the other side of the Truck unstrapping the load but decided to start unloading anyway.
11. The first couple bales of hay came off the Truck without incident, and Mr. Brar did not object to the unloading occurring while he was unstrapping hay bales out of view of the Telehandler operator.
12. Mr. Stahl knocked the hay bales off the Truck during the unloading process, this occurred in part because the Telehandler did not have a bale spear attachment on that night but, rather, had a pallet fork which is less suitable for piercing hay bales.
13. The hay bales fell, striking Mr. Brar and causing serious injuries.
14. Mr. Brar suffered scrapes, bruises and bumps to the head and face, fractured ribs and multiple displaced pelvic fractures.
15. Mr. Brar's orthopedic surgeon found that as of January 27, 2016, Mr. Brar was in a position to resume normal activities of daily living, though I accept there remained issues of pain and that it would take more than a year beyond January 27, 2016, for Mr. Brar to fully re-engage in the work force.
16. In 2017, Mr. Brar and Ms. Gill were able to buy a home and to renovate it, doing much of the work themselves.
17. In 2021, Mr. Brar bought another truck and started driving. I do not accept that Mr. Brar gave up trucking after six or seven weeks in 2021 on account of pain because he was driving a truck in 2022 and

received a ticket in October of that year while driving a truck. In fact, Mr. Brar continues to hold a Class 1 licence.

18. I accept that Mr. Brar continues to suffer from discomfort and stiffness when fulfilling certain tasks, like snow shoveling.
19. I find that Mr. Brar, in addition to working as a dispatcher, has, since the accident, replaced the Truck, maintains a Class 1 licence and is a shareholder of a trucking business, Deck SX. Further, his home address is the address for yet another trucking business, Hawk Hauling. In other words, he remains very much engaged in the trucking business even though he may not be actively driving full time.

Issues

[90] The Court is asked to decide three questions, namely:

1. Were the defendants, being Mr. Stahl and Riverview, negligent?
2. If the defendants were negligent, was Mr. Brar contributorily negligent and, if so, to what extent?
3. What, if any, damages is Mr. Brar entitled to?

1. Were the defendants, being Mr. Stahl and Riverview, negligent?

[91] In a negligence action, the plaintiff must demonstrate that the defendant owed it a duty of care, that the defendant's conduct breached the standard of care, that the plaintiff sustained loss or damage and that the damage was caused in fact and in law by the defendant's breach. See: *1688782 Ontario Inc. v Maple Leaf Foods Inc.*, 2020 SCC 35 at para 18.

[92] Mr. Brar's claim against Mr. Stahl is that Mr. Stahl failed to wait until the bales of hay were unstrapped, that he began to unload the hay bales while Mr. Brar was out of view on the other side of the Truck, that the wrong attachment was on the Telehandler (a pallet fork attachment instead of a bale spear) and that the forklift pushed over the bales of hay which toppled onto Mr. Brar.

[93] It is not in dispute that Mr. Stahl owed Mr. Brar a duty of care as the operator of the Telehandler. The defence argues that the unloading of the Truck occurred at night at Mr. Brar's insistence and this is the reason for the accident.

[94] In determining whether the standard of care was breached, it is necessary to understand what would be expected of an ordinary, reasonable and prudent person in similar circumstances. See: *Ryan v Victoria (City)*, 1999 CanLII 706 at para 28, [1999] 1 SCR 201 (SCC) [*Ryan*]. As noted in *Ryan*:

[28] Conduct is negligent if it creates an objectively unreasonable risk of harm. To avoid liability, a person must exercise the standard of care that would be expected of an ordinary, reasonable and prudent person in the same circumstances. The measure of what is reasonable depends on the facts of each case, including the likelihood of a known or foreseeable harm, the gravity of that harm, and the burden or cost which would be incurred to prevent the injury. In addition, one may look to external indicators of reasonable conduct, such as custom, industry practice, and statutory or regulatory standards.

[95] It is not in dispute that proper care must be taken by the operator when using heavy equipment to avoid injury to persons and property. As noted in *Manitoba Hydro v Minsky*, 1998 CanLII 28037 at para 11, [1999] 3 WWR 663 (MBQB):

[11] Common sense would dictate that in using heavy equipment particular care must be taken by the operator to avoid damage to persons or property. ...

[96] The best evidence at trial as to the standard of care and whether it was

breached came from Mr. Crittenden and Mr. Stahl himself. I accept that there was some pressure on Mr. Stahl to unload in the dark but, ultimately, it was Mr. Stahl's decision as the operator of the Telehandler to unload. He started to unload, knowing Mr. Brar was out of view, unstrapping the load on the other side of the Truck. He knew this was dangerous.

[97] Mr. Stahl owed a duty of care to Mr. Brar to ensure that the Telehandler was being operated safely. He fell below the standard of care expected of him. This is abundantly clear in the evidence, including his own evidence. Using the Telehandler to unload when someone is unstrapping the load out of view of the Telehandler operator on the other side of the Truck is dangerous and falls below the standard of care expected of a reasonable Telehandler operator.

[98] In respect of the negligence of Riverview, the claim is that Riverview, as the owner of the Telehandler, is responsible for unloading the bales of hay and, in any event, is vicariously liable for the conduct of Mr. Stahl.

[99] Riverview, as Mr. Stahl's employer, may be liable in one of two ways. The first is by way of vicarious liability. In *Canada (Attorney General) v. H. L.*, 2002 SKCA 131 (appealed at 2005 SCC 25 but the comments of the Court of Appeal on liability were not disturbed), the Court notes:

[106] The common law has long recognized that employers, while not at fault, may nonetheless be liable for the torts of their employees: If a tortious act of an employee falls within the scope of his or her employment—in accordance with a test known as the *Salmond* test [J.W. Salmond & R.F.V. Heuston, *Law of Torts*, 19th ed (Sweet & Maxwell, 1987) at pp 521-22]—the employer will be vicariously liable. The test, adopted in *Canadian Pacific Railway Company v. Lockhart*, [1942] A.C. 591, may be summed up thus:

An employee's wrongful conduct is said to fall within the course and scope of his or her employment where it consists of either (1) acts authorized by the employer or

(2) unauthorized acts that are so connected with acts the employer has authorized that they may rightly be regarded as modes—although improper modes—of doing what has been authorized.

[100] There are three requirements to be met before vicarious liability will be imposed:

- (a) negligence or an intentional tort by the employee;
- (b) an employer-employee relationship; and
- (c) the employee committed the tort in the course and scope of employment, with the wrongful act being connected to conduct authorized by the employer or sufficiently related to such conduct.

See: *Hope v The RM of Parkdale* #498, 2014 SKQB 9 at para 18.

[101] In this case, Mr. Stahl was directed to unload the hay bales. The unloading of the hay bales is connected to the scope of his responsibilities for his employer Riverview and so Riverview is vicariously liable for his conduct carried out in the course of that employment.

[102] In addition, Mr. Brar has made allegations of negligence against Riverview. The relationship between direct and vicarious liability for an employer was considered in *Sickel v Gordy*, 2008 SKCA 100:

[25] As McLachlin J. (as she then was) pointed out at the outset of the judgment, vicarious liability of an employer is strict, or no-fault liability, because it is imposed in the absence of fault of the employer. Thus, if the employer was in a position to prevent the harm caused by the act of the employee, and negligently failed to do so, it is unnecessary to look to the principles of vicarious liability, for the employer would be directly liable to the victim...

[103] As a starting point, Riverview concedes that as owner of the Telehandler, it owed a duty to take reasonable care to ensure the Telehandler was fit for operation. See: *Morrison v Leyenhorst*, 1968 CanLII 283, 70 DLR (2d) 469 (ONSC); and *Rintoul v X-Ray and Radium Industries Ltd.*, 1956 CanLII 16, [1956] SCR 674 (SCC). Riverview, in its brief, suggests the obligation ends there. See: Defendants' Brief at paras 231-233. In my view, the duty went beyond simply making sure there was no defect in the Telehandler.

[104] In *King v Sussex Ambulance Trust*, [2002] EWCA Civ 953 at para 21, the Court describes the duty of an employer:

[21] ... An employer owes his employees a duty to take reasonable care to provide safe equipment and a safe system of work, which includes assessing the tasks to be undertaken, training in how to perform those tasks as safely as possible, and supervision in performing them.

See also: *Sheoran v Interior Health Authority*, 2023 BCCA 318.

[105] In *Casbohm v Winacott Spring Western Star Trucks*, 2021 SKCA 21, leave to appeal to SCC dismissed 2021 CanLII 66409, [2021] SCCA No 110 (Lexis) (SCC), in the context of a personal injury claim in which an employee fell from a ladder, the Court described the employer's duty of care as follows:

[79] Ultimately, while Winacott's duty to Mr. Casbohm did not take the form of an absolute warranty that the ladder was safe, I am satisfied that Winacott had an obligation to adopt a reasonable system of inspection of the ladder. Winacott's admission that it had no system at all in place leads to the further conclusion that Winacott thus breached the duty of care it owed to Mr. Casbohm. However, it is not enough that Winacott breached its duty of care. Its breach must also have been the cause of Mr. Casbohm's injuries.

[106] In this case, the Telehandler did not have a bale spear attachment on it. Further, at the critical moment when the bales fell on Mr. Brar, Mr. Tschetter was in

his truck talking on the phone rather than outside making sure the unloading was taking place safely. I accept Mr. Tschetter's evidence that Mr. Brar was not wearing appropriate safety gear and appeared inexperienced, but this should have emphasized the need for supervision. This means that Mr. Tschetter was negligent in the supervision of Mr. Stahl that night and the equipment, being the Telehandler, was ill-suited for the job Riverview gave Mr. Stahl to perform because it was missing the bale spear attachment needed. These failures contributed to the accident as the forklift attachment pushed the bales and did not spear them cleanly and the work was not properly supervised. Riverview also failed to require that Mr. Stahl have a Class 1 licence or that he read the manual for the Telehandler, but I do not find that these failures caused or contributed to the accident.

[107] In the end result, I find Riverview vicariously liable for the actions of Mr. Stahl, and I also find that Riverview was negligent.

2. If the defendants were negligent, was Mr. Brar contributorily negligent and, if so, to what extent?

[108] In *Roper v Gosling*, 2002 ABCA 71 [*Roper*], the Court succinctly set out the purpose of Alberta's *Contributory Negligence Act*, RSA 2000, c C-27, legislation which is similar to the statute in this province.

[17] The purpose and intent of the ***Contributory Negligence Act*** is to apportion responsibility for conduct which does not meet the reasonable standard of care. The Act is concerned with determining "the degree in which each person was at fault." In every action the degrees of fault are questions of fact.

[109] Individuals are responsible for preventing injury to themselves. In *Herbert v Auto Connection (1993) Ltd.*, 2017 SKQB 110, the Court notes:

[198] The concept of contributory negligence is based on the principle that one has a duty not only to take reasonable care to

prevent injury to others, but to oneself as well. Contributory negligence is a person's carelessness in looking after his own safety.

See also: *Enviro West Inc. v Copper Mountain Mining Corporation*, 2012 BCCA 23 at para 1.

[110] *The Contributory Negligence Act*, RSS 1978, c C-31, provides:

Apportionment of damage or loss

2(1) Where by the fault of two 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 in which each person was at fault, but if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

(2) Nothing in subsection (1) operates so as to render any person liable for any damage or loss to which his fault has not contributed.

Degree of fault

3(1) Where damage or loss has been caused by the fault of two or more persons, the court shall determine the degree in which each person was at fault.

...

[111] Contributory negligence on the part of a plaintiff occurs where a plaintiff fails to meet the standard of care “required to conform for his own protection and which is a legally contributing cause, together with the defendant’s default, in bringing about his injury.” See: *Roper* at para 19; *Direct General Partner Corporation v Canadian Pacific Railway Company*, 2025 SKCA 29 at paras 167-168; and *Prince Albert Co-operative Association Ltd. v Petro Tag Technologies Inc.*, 2009 SKQB 228 at paras 56-57, appeal dismissed 2010 SKCA 51.

[112] The critical question to ask when assessing the issue of contributory negligence is: what is the comparative blameworthiness of the parties in causing the injury. In assessing this question, the entire context must be considered, including the

timing of the various negligent acts, the nature of the conduct, the likelihood of injury, the gravity of such injury, the availability of safety equipment, the urgency of the task, control over the location, the knowledge of the parties and other options or alternatives that may have been available. See: *Chae v Min*, 2005 ABCA 174 at para 8; *Heller v Martens*, 2002 ABCA 122; and *Roper*.

[113] Mr. Brar contends that on these facts there should be no finding of contributory negligence. He relies on a case where lumber fell off a forklift at a lumber yard and onto a truck driver. See: *Walsh v Marwood Ltd.*, 2009 NSSC 15 [*Walsh*]. In that case, the truck driver was asked to park on slanted ground, it was daylight, the driver had made multiple trips to the yard, the load had been fully unstrapped and the driver was rolling up the straps on the driver's side of the truck when the forklift operator (without making contact with the truck driver) started unloading. The judge declined to make any finding of contributory negligence because the plaintiff was not aware that loading was underway. The facts in *Walsh* differ dramatically with the facts in this case as I am satisfied that Mr. Brar was aware that the Telehandler was operating and that he chose to work out of view of the Telehandler operator. I am also satisfied that the first bales of hay were removed without incident.

[114] In *Paquette v Last Mountain Co-operative Ltd.*, 1993 CanLII 9006, 115 Sask R 161 (SKQB), relied on by the defendants, the plaintiff was found to be 50% at fault when drywall fell off a tractor on him. In that case, unlike here, the plaintiff was standing in front of the tractor, had used the tractor several times and was aware of its deficiency in raising and lowering loads. Those facts distinguish that case from this one.

[115] In this case, there are a number of things that went wrong, starting with Mr. Brar's arrival at Riverview well after dark. I am satisfied that he was in a rush and wanted his Truck unloaded, even if it meant doing so in the dead of night. He chose the spot where the unloading would occur by starting to unstrap the load. He could have

chosen better as the land was uneven. Mr. Brar was inexperienced and had only owned the Truck for a few days. He was not wearing a safety vest, work gloves or even boots. He was unstrapping the load at a time when he knew or certainly ought to have known that the Telehandler was operating. A Telehandler is not a loud machine, but it is not silent either. In the dead of night, Mr. Brar should have been able to hear it. Mr. Brar was working out of sight of the Telehandler operator and in a place where Mr. Stahl could not see him. There was no spotter that night at the time of the accident as Mr. Tschetter was in his truck on the phone as opposed to outside watching the unloading. The Telehandler did not have a bale spear and was using a pallet fork attachment instead. All three men were rushing to get the job done given the late hour.

[116] Mr. Stahl had experience with the Telehandler but had not read the owner's manual. Mr. Stahl made the decision to go ahead with the work at a time when it was not safe to do so. He made the decision to unload and continued unloading even though he could not see Mr. Brar. Of all these facts, there are a couple which did not cause or contribute to this accident. The fact that Mr. Stahl had not read the Telehandler manual did not cause this accident. Similarly, while I find Mr. Brar was not wearing appropriate safety gear, that failure did not cause this accident or contribute to Mr. Brar's injuries either. Even with a vest, gloves and boots, Mr. Stahl would not have been able to see Mr. Brar at the time of the accident because his sight line to Mr. Brar was obstructed by the bales of hay. Further, a safety vest, gloves and boots would not have reduced Mr. Brar's injuries in this case.

[117] Of course, not all of these facts contributed equally to this accident. The critical decision was that of Mr. Stahl to operate the Telehandler when he could not see Mr. Brar. That said, Mr. Brar's inexperience, his insistence on unloading the Truck after dark, his decision not to ask where the unloading should occur before starting to unstrap the load, such that it occurred on slightly uneven ground, were mistakes, as was the decision to continue to unstrap the load out of view from the Telehandler operator while

the machine was in operation.

[118] These decisions by Mr. Brar fell below the standard of a reasonable truck driver, such that I find that Mr. Brar was contributorily negligent. The question therefore becomes to what extent did Mr. Brar's actions cause or contribute to this accident and his injuries.

[119] The case law suggests that where someone puts themselves in harm's way by walking where they should not or failing to pay attention to where they are going, the range of contributory negligence will be between 10% and 60%. See: *Curtis v Farlinger*, 2015 BCSC 1320 at para 61; *Mahe v Boulianne*, 2010 ABCA 32 at para 28 [Mahe]; *Lovely v Kamloops (City)*, 2009 BCSC 1359 at para 197 [Lovely], appeal dismissed 2010 BCCA 261; and *Driscoll v Crombie Developments Ltd.*, 2006 NSSC 79 at para 63 [Driscoll].

[120] In *Mahe*, an electrician who fell from a rotting pole was found 60% liable for his injuries. In that case, the electrician was hired by a farm owner to transfer wiring from an old, rotting power pole to a newly installed pole. The plaintiff utilized the method suggested by the farm owner but should have known how to practise his occupation. While conducting the work, the pole shifted and the plaintiff was thrown to the ground, causing him to suffer very serious injuries. The Alberta Court of Appeal held that the respondent unreasonably failed to use safety devices and, as the tradesman in charge, ought to have apprehended the risk.

[121] In *Driscoll*, the plaintiff was found to be 25% at fault when she was struck on the head by the arm of an exit gate while leaving a parkade on foot. In that case, the plaintiff was trying to follow a vehicle leaving the parkade. The Court found that the plaintiff had failed to take adequate care to pay attention to her surroundings when stepping off the sidewalk, finding her 25% at fault for the accident and the defendant 75% at fault for failing to warn.

[122] In *Lovely*, the plaintiff who fell from a platform (from which users throw their refuse into a bin below) was found 10% liable for his injuries. The plaintiff had attended a waste transfer station to dispose of household refuse. While throwing the trash into a waste bin, he lost his balance and fell approximately 2.55 metres (8 feet 4 inches) to the ground, sustaining bilateral compound fractures of his tibia and fibula. The trial judge attributed 10% contributory negligence to the plaintiff, given that the plaintiff knew there was no guardrail or chain across the front of the bin, knew that he needed to be careful when stepping, and knew the debris plate was a different colour than the platform and that it was sloped downward into the bin.

[123] On the facts of this case, I am satisfied that an appropriate reduction in the plaintiff's damages for contributory negligence would be 15%. In this case, Mr. Brar was not only in the wrong place and not paying attention to his surroundings, but he contributed to the unsafe environment, which elevates his level of contribution from that seen in *Lovely*. I do not find that Mr. Brar's contribution, however, rises to the level seen in *Mahe* or *Driscoll*. In this case, Mr. Stahl was operating the Telehandler knowing Mr. Brar was out of view. He bears the bulk of the responsibility for this accident, which I apportion as being 70%, with Riverview's negligence for failing to provide adequate supervision and a bale spear attachment for the Telehandler accounting for 15%, though Riverview is also vicariously liable for the conduct of Mr. Stahl.

3. What, if any, damages is Mr. Brar entitled to?

[124] The damages to which Mr. Brar may be entitled are determined based on the severity of the injuries and the impact such injuries have had on his life.

[125] The accident occurred on June 26, 2015. Mr. Brar sustained multiple facial, chest and pelvic injuries, including three rib fractures and multiple displaced pelvic fractures. The facial injuries and rib fractures healed relatively quickly (over a

matter of months), but Mr. Brar was left with a displaced fracture of the pelvis, which continues to impact his day-to-day life.

[126] The evidence is that it took two months for Mr. Brar's food intake to improve and six months before Mr. Brar could walk unaided. For a period of time after the accident, Mr. Brar was completely housebound and needed help bathing and going to the washroom.

[127] Approximately six months after the incident, Mr. Brar reported to his orthopedic surgeon that:

...The patient reports minimal symptoms regarding normal activities of daily living at that point. Therefore, no orthopedic restrictions regarding a return to work are assessed at that time. No further treatments are recommended.

[128] It is evident that Mr. Brar had additional expenses in the aftermath of this accident and that he needed to rely on family for support and care. It is also clear that Ms. Gill carried an added burden after the accident.

[129] I accept that Mr. Brar has been left with some residual pain and that tasks such as shovelling snow or sitting for long periods can leave him feeling stiff.

[130] At the same time, I am satisfied that some of the evidence respecting impairment has been exaggerated. The evidence is that by 2017, Mr. Brar was able to earn annual income of \$58,401, which rose to \$70,227 by 2020. It is also of note that in 2017, Mr. Brar and Ms. Gill were able to buy a home together, which they largely renovated themselves.

[131] The couple had a child in 2019, and Mr. Brar bought a truck in 2021. I do not accept the suggestion that Mr. Brar tried driving in 2021 but stopped after approximately six weeks due to pain. If that were the case, he would not have received

a ticket while driving a truck in 2022 and he would not continue to hold a Class 1 licence.

[132] The evidence of Mr. Marcoux is that being an owner/operator of a truck can be quite profitable. Owner/operators earn approximately \$128,155 in a given year. Mr. Marcoux testified that in owner/operator situations, the profitability and success of the owner is often tied to their work as an operator. That said, Mr. Marcoux built a trucking empire doing very little driving himself. The average trucker earns \$66,000 a year with the balance going to the owner as profit according to Mr. Marcoux. One of the difficulties in a case such as this is that Mr. Brar does not have a track record, having owned the Truck for only a matter of days before the accident.

[133] The evidence of Mr. Gosling, which I accept in part, is that a dispatcher (being the job Mr. Brar has) will, over their life, earn more than a truck driver would. Mr. Gosling says the difference in the income of an owner/operator from that of a dispatcher is really a result of taking the risk of investing in a truck.

[134] Mr. Gosling identifies a pre-trial loss of income of \$46,949. I do not accept this aspect of his evidence because it ignores the fact that capital was lost and there was a period of time (during the recovery) where Mr. Brar's focus would have been on recovering, as opposed to accumulating and investing capital. Further, during the two years following the accident, Mr. Brar faced additional costs and was not in a position to invest in a truck.

[135] I am satisfied that for a period of two years following the accident, Mr. Brar would have needed support and was not in a position to assist in normal housekeeping functions. I am satisfied that until the end of 2016, his income was dramatically impaired by this injury and that the impairment continued, albeit at a lesser level, for part of 2017. I am also satisfied that by the end of 2017, Mr. Brar would have been able to at least purchase a truck to be operated by someone else and that he could

have been an owner if that is what he chose to do. At the time though, his focus was on buying and renovating a new home. I find that Mr. Brar has been left with some lingering injuries from the accident such as stiffness after certain activities, but I do not accept that he has suffered any significant lasting impairment or any permanent injury that has or will affect his earning potential long term.

[136] The plaintiff's position on damages is set out in his brief (at para. 107) as follows:

Head of Damage	Amount
Pre-trial lost income	\$445,118.00 – \$613,348.00
Pre-trial expenses	\$14,242.90
Pain and suffering	\$250,000.00 – \$300,000.00
Past lost housekeeping capacity	\$26,382.45
Prospective lost earning capacity	\$482,014.00 – \$2,335,201.00
Future lost housekeep [sic] capacity	\$106,089.61
Future cost of care	\$5,000.00
Total	[\$1,328,846.96] – [\$3,400,236.96]

[137] The defendants' position on damages is set out in their brief (at para. 314) as follows:

Head of Damage	Amount
General Damages	\$25,000.00
Past Income Loss	\$0 (or at most, \$46,949)
Future Income Loss	\$0 (or at most, \$185,573)
Loss of Homemaking Capacity	\$3,000
Special Damages	\$0
BC Medical Services Subro	\$2,180.57

PJI (calculated from Accident date to May 26, 2025 for general damages)	\$7,994.78 = PJI (if an award is made) for past income loss and PJI for general damages (if an award is made) = \$4,257.16
Total Damages Range	[\$34,437.73] – [\$270,697.35]

(a) General Damages/Pain and Suffering

[138] The basic purpose of general damages is to compensate for and, to the extent possible, help alleviate loss of amenities and pain and suffering. See: *Wilcott (Litigation Guardian of) v Ellis*, 2001 SKQB 219 at para 55. General damages address issues of pain and suffering and loss of enjoyment. See: *Afework v Correa*, 2019 BCSC 1672 at para 86.

[139] The parties’ positions vary from a low of \$25,000 to a high of \$300,000 in general damages. The case law suggests a broad range of damages in personal injury cases, but that range is highly dependent on the facts of each case:

Case Name	Description of Injury	Award
<i>Russell v Russell</i> , 2024 ABKB 182 at paras 109, 278.	Right wrist injury (severe and permanent); right ankle injury (serious and debilitating with no significant improvement until surgery in 2022); ongoing injury and pain in lumbar spine; cervical spine predominantly resolved as a discrete injury in July 2017; ongoing chronic pain; ongoing depression and anxiety; mild traumatic brain injury which has resolved; and headaches	\$167,500
<i>Harestad v Harestad</i> , 2023 BCSC 2329 at paras 15, 79.	Multiple mid to lower back fractures, a right ankle fracture, and a tailbone (sacral) fracture.	\$210,000
<i>Burr v Sharma</i> , 2023 BCSC 1559 at paras 54, 93, 101	54-year-old suffered multiple debilitating and ongoing physical injuries, as well as PTSD, major depression, cognitive impairments, and chronic pain.	\$215,000
<i>Somers v MacLellan</i> , 2023 BCSC 1449 at paras 5, 389	Suffered extreme injuries, including severe spinal cord injury resulting in paraplegia.	\$439,000

<i>Rickards v Turre</i> , 2023 BCSC 439 at paras 99, 122	12-year-old suffered lateral tibial plateau fracture of the left leg, early osteoarthritis and patellofemoral pain syndrome (real and substantial possibility of worsening osteoarthritis).	\$110,000
<i>Camacho v Lacroix</i> , 2023 ABKB 610 at paras 77, 110	Chronic neck and shoulder pain, right arm weakness and numbness.	\$95,000
<i>Gray v Lanz</i> , 2022 BCSC 2218 at paras 2, 72, 74	47-year-old suffered a dislocated shoulder, fractured right wrist, torn ligament in his left wrist, mild traumatic brain injury and post-concussion syndrome.	\$200,000
<i>Gustafson v MacFarlane</i> , 2022 BCSC 1872 at paras 6, 11, 195	Spinal cord injury, liver laceration, collapsed lung, and broken bones in the plaintiff's neck, ribs, sternum, and pelvis. She also went into cardiac arrest and was kept alive by CPR until paramedics arrived. As a result of the accident, she lost the use of her legs and had only partial use of her arms and hands.	\$435,000
<i>Sarginson v Nordquist</i> , 2019 BCSC 1386 at paras 68, 73	Permanent wrist injury, ongoing pain from a strained neck and lower back, and a mild psychological injury.	\$125,000
<i>Dirk v Toews</i> , 2019 ABQB 176, appeal dismissed 2020 ABCA 477 at paras 130, 153, 219, 222, 429	Several leg and ankle fractures, partial ligament tear in her thumb, fractured rib, mild traumatic brain injury, bruises, and abrasions.	\$185,000 (including \$15,000 for loss of housekeeping capacity)
<i>Rickett v Sangra</i> , 2019 BCSC 167 at paras 72, 89	Chest bruising, a soft tissue back injury, a wrist injury that continued to cause pain.	\$80,000
<i>Turner v Dionne</i> , 2017 BCSC 1905 at paras 312-313	Severe soft tissue injuries to neck and back, a compression fracture of T11 and T12, a concussion, severe depression, and anxiety.	\$200,000
<i>Herbert v Auto Connection (1993) Ltd.</i> , 2017 SKQB 110 at paras 157, 277	Broken hip requiring replacement.	\$77,876.64
<i>Gallant v Slootweg</i> , 2014 BCSC 1579 at paras 1, 62	61-year-old suffered fractured clavicle and two ribs, disabled for three months and able to resume activities after four months.	\$25,000
<i>Schoenhalz v Reeves</i> , 2013 BCSC 1196 at paras 4, 271	17-year-old suffered transverse process fractures of the T2–T3 vertebrae, facial injuries, injuries to her teeth, a fractured pelvis, and third-degree burns.	\$150,000 (reduced by 20% on account of contributory negligence)

<i>McCluskey v Desilets</i> , 2013 BCSC 1147 at paras 250, 298	Mild traumatic brain injury, fractured C-2 vertebrae in three places, a compression fracture at T8 and a transverse process fracture at L1, significant jaw injuries, a collapsed lung, headaches, chronic pain, and psychological injuries.	\$200,000
<i>Schenker v Scott</i> , 2013 BCSC 599, var'd on other grounds 2014 BCCA 203 at paras 188, 201	20-year-old suffered spinal fractures in four different areas of the spine.	\$150,000
<i>Tompkins v Bruce</i> , 2012 BCSC 266 at paras 20-44, 91	50-year-old suffered rib fractures, a collapsed lung, a fracture of the left hip, a fractured right leg, a pulmonary embolism, a blood transfusion was required, and the plaintiff was treated for suspected pneumonia.	\$200,000
<i>X. v Y.</i> , 2011 BCSC 944 at paras 1, 179	42-year-old sustained burst fracture of his T12 vertebra.	\$140,000
<i>McLaren v McLaren Estate</i> , 2010 ABQB 471 at paras 6, 15, 142, 156, 160, varied 2011 ABCA 299	Ongoing chronic pain, PTSD, and whole-body impairment of 24%.	\$140,000
<i>Slocombe v Wowchuk</i> , 2009 BCSC 967 at paras 51, 229, 231	25-year-old endured thoracic and lumbosacral spine injuries, chronic pain associated therewith, headaches, and pre-existing asymptomatic spondylolisthesis that became symptomatic.	\$125,000
<i>Seich v Tobin</i> , 2007 ABQB 492 at paras 149, 156	Wrist fracture (permanent disability), a brain injury, and psychological injuries including depression requiring hospitalization.	\$80,000 (including damages for impaired housekeeping ability)
<i>Johnson v Milton (City)</i> , 2006 CanLII 27234, [2006] OTC 736 (ONSC); overturned on appeal on liability, 2008 ONCA 440 at paras 95, 118	Suffered a fractured pelvis.	\$85,000
<i>Kamin v Kawartha Dairy Ltd.</i> , 2004 CanLII 9597 at para 5, 129 ACWS (3d) 1040 (ONSC), overturned on appeal <i>Kamin v Kawartha Dairy Ltd.</i> , 2006 CanLII 3259, 79 OR (3d) 284 (ONCA)	69-year-old sustained a broken hip.	\$87,500 (parties agreed to this number in respect of general damages)

<i>Lynch Estate v Anderson</i> , 1999 CanLII 19133 at paras 75-80, 180 Nfld & PEIR 225 (NLSC)	33-year-old with multiple rib fractures and pelvic fracture. Cleared for work after three and half months.	\$16,000
<i>Neufeld v Foster</i> , 1999 CanLII 6939 at paras 44-51, [1999] BCJ No 764 (Lexis) (BCSC)	Fractured pelvis, injury to sciatic nerve, fractured ribs, fracture of right third metacarpal, lacerations of forehead, right forearm, and neck. Plaintiff is probably unable to work in future.	\$160,000
<i>Kosteroski v Westfair Properties Ltd.</i> , 1997 CanLII 17181 at paras 5, 20, 155 Sask R 37 (SKQB)	66-year-old suffered fractured hip in three places.	\$40,000 (claim dismissed but damages assessed in any event)
<i>Lang v Porter</i> , 1988 CarswellBC 1214 (Westlaw), [1988] BCWLD 3475 (BCSC); varied by <i>Lang v Porter</i> , 1991 CanLII 536, 57 BCLR (2d) 253 (BCCA)	Severe pelvic fractures, and various abrasions and contusions.	\$50,000
<i>Lester v Smith</i> , 1987 CanLII 7883 at paras 17-18, 78 NBR (2d) 100 (NBQB)	Stroke, four fractures of the pelvis and multiple lacerations.	\$35,000
<i>Lee v Leeming</i> , 1985 CanLII 1454 at paras 24-30, 58 AR 204 (ABQB)	47-year-old suffered three fractured ribs, fractured pelvis, muscle aches, headaches and back pain.	\$25,000

[140] The case law suggests a wide range being awarded for general damages in personal injury cases. The case law further suggests a trend in recent years to increase general damage awards, even after adjusting dated precedents to account for inflation. However, it is not sufficient to look at the nature of the injury in order to determine the quantum of general damages.

[141] A useful summary of the task of assessing general damages was set out by the British Columbia Court of Appeal in *Stapley v Hejslet*, 2006 BCCA 34 at paras 45-46 (leave to appeal to SCC denied 2006 CanLII 35804, [2006] SCCA No 100

(Lexis) (SCC)):

[45] Before embarking on that task, I think it is instructive to reiterate the underlying purpose of non-pecuniary damages. Much, of course, has been said about this topic. However, given the not-infrequent inclination by lawyers and judges to compare only injuries, the following passage from *Lindal v. Lindal*, *supra*, at 637 is a helpful reminder:

Thus the amount of an award for non-pecuniary damage should not depend alone upon the seriousness of the injury but upon its ability to ameliorate the condition of the victim considering his or her particular situation. It therefore will not follow that in considering what part of the maximum should be awarded the gravity of the injury alone will be determinative. An appreciation of the individual's loss is the key and the "need for solace will not necessarily correlate with the seriousness of the injury" (Cooper-Stephenson and Saunders, *Personal Injury Damages in Canada* (1981), at p. 373). In dealing with an award of this nature it will be impossible to develop a "tariff". An award will vary in each case "to meet the specific circumstances of the individual case" (*Thornton* at p. 284 of S.C.R.).

[Emphasis added by BCCA]

[46] The inexhaustive list of common factors cited in *Boyd* [2004 BCCA 146] that influence an award of non-pecuniary damages includes:

- (a) age of the plaintiff;
- (b) nature of the injury;
- (c) severity and duration of pain;
- (d) disability;
- (e) emotional suffering; and
- (f) loss or impairment of life;

I would add the following factors, although they may arguably be subsumed in the above list:

- (g) impairment of family, marital and social relationships;
- (h) impairment of physical and mental abilities;
- (i) loss of lifestyle; and
- (j) the plaintiff's stoicism (as a factor that should not, generally speaking,

penalize the plaintiff: *Giang v. Clayton*, [2005] B.C.J. No. 163 (QL), 2005 BCCA 54).

[142] Mr. Brar sustained his injuries as a young man, just starting his working life. The injuries were significant and took six months for the bones to heal, but he has been left with a permanent displacement or dislocation of the pelvis. I do not find he walks with a limp, but I do find that the injury has some impact on his day-to-day life, for example, when shoveling or staying in one position for extended periods without stretching.

[143] The accident also had a significant impact on Mr. Brar's family relationships. In the months following the accident, his wife had to take on more responsibility, and he became reliant on his in-laws for a period of time. The injuries sustained in the accident affected his lifestyle, and he was unable to do even routine tasks without assistance for several months.

[144] There is no case that has been identified which has facts similar to the facts in this case. However, in light of the authorities and given the particular facts in this case, I award \$90,000 in general damages. In making this award, I have taken into account Mr. Brar's age at the time of the accident, its impact on his life, his loss or impairment of life, the length it took to heal, his emotional suffering, and the nature of the injuries he sustained which include multiple rib fractures, displaced pelvic fractures, cuts, bruising and ongoing discomfort. The \$90,000 general damages award excludes homemaking capacity which is dealt with separately.

(b) Loss of Homemaking

[145] I am satisfied that Mr. Brar would have needed help for 24 months. The plaintiff proposes an annual rate of \$3,378.65 for loss of housekeeping. The defence suggests that the pre-trial loss of homemaking capacity should be \$3,000 at most. In this case, I do not have evidence of costs specifically paid to third parties for

housekeeping work. Rather, the evidence is that family stepped in to provide aid. The Court employs two different approaches when looking at a claim of loss of homemaking capacity. In examining future homemaking capacity, the focus is on what will be incurred in terms of costs to do that work. When looking at past homemaking, the question is not simply what costs were incurred but how much more difficult was it for this plaintiff to do that work, if they did do that work. See: *McCallum v Ritter*, 1990 CanLII 7823 at paras 16-19, 72 DLR (4th) 49 (SKCA).

[146] The loss of homemaking capacity is assessed at \$3,378.65 per year. I have used the plaintiff's pre-trial loss of homemaking capacity, identified as \$26,382.45, which covers the date of accident to trial and determined the annual rate. I am prepared to grant a pre-trial loss of homemaking capacity for a period of two years, which totals \$6,757.30. In terms of the claim for increased difficulty in doing homemaking tasks going forward, the evidence on this point is limited and consists of stiffness when shovelling or engaging in similar work, so I am only prepared to award \$2,500.00 in damages for this claim. The total claim under this head of damages is \$9,257.30.

(c) B.C. Medical Services Subrogated Claim

[147] I heard no evidence respecting this claim. No amount claimed on behalf of B.C. Medical is listed in the damages chart provided by the plaintiff at paragraph 107 of his brief. Accordingly, I am unable to order any amount for this claim.

(d) Loss of Income

[148] The loss of income head of damages is where there is the most disparity. I accept Mr. Marcoux's evidence that an owner/operator can earn \$128,155 annually. The evidence, however, is that as of 2021, Mr. Brar was, in fact, an owner/operator again. I do not accept that he was unable to drive after a brief period in 2021 because he was driving in 2022 and received a citation while operating a truck that year. I also have evidence that Mr. Brar is a shareholder in Deck SX, a trucking company.

[149] I am not satisfied that the income of Mr. Brar's trucking endeavours has been adequately disclosed. There are discrepancies in Mr. Brar's evidence, and it is clear that he was not candid in his 2015 tax return. This tax return is inaccurate and has never been corrected.

[150] The evidence establishes that Mr. Brar, in the 18 months following the accident, earned \$25,638. An owner/operator in this period would have earned \$192,232.50 which means that there is a shortfall of \$166,594.50. I am also satisfied that the injuries had an impact on Mr. Brar's earning capacity into 2017, for a period of six months. In that six-month period, Mr. Brar earned \$29,200.50 (being one half of his annual reported income of \$58,401). As an owner/operator, he would have earned \$64,077.50 in that period (being one half of \$128,155). This is a shortfall of \$34,877. When this is added to \$166,594.50, it yields a total loss of income claim of \$201,471.50 calculated to the end of June 2017.

[151] In 2017, Mr. Brar and Ms. Gill decided to focus their energies, capital and efforts on buying a home and renovating it themselves. I am not satisfied, given the evidence, that Mr. Brar's earning potential was affected after an initial 24-month period. Accordingly, I am not prepared to award anything toward a loss of income claim after the first six months of 2017.

(e) Costs

[152] I am not prepared to make a determination on the question of costs without hearing from the parties. The Local Registrar shall arrange for a call with the parties for the purposes of establishing a process by which the question of costs will be determined.

Summary

[153] In light of my findings, Mr. Brar's damages are calculated as follows:

General Damages	\$90,000.00
Loss of Homemaking Capacity	\$9,257.30
Loss of Income	\$201,471.50
Reduction on account of Contributory Negligence (15%)	(\$45,109.32)
Total	\$255,619.48

[154] Mr. Brar is entitled to judgment as against the defendants, Wesley Stahl and The Hutterian Brethren Church of Riverview Limited, in the amount of \$210,510.16, being 70% of the total loss, plus pre-judgment interest. This is the amount for which Mr. Stahl is liable and for which Riverview is vicariously liable. In addition, Riverview is liable for a further \$45,109.32 on account of its own negligence, plus pre-judgment interest. The total award to which Mr. Brar is therefore entitled as against the defendants is \$255,619.48.

[155] The Registrar shall schedule a call with the parties for the purposes of discussing the issue of costs.

[156] Finally, I want to thank the parties for their oral and written submissions which were of great assistance to the Court.

“N. Bardai” J.A.
N. BARDAI, *ex officio*