IN THE MATTER OF AN ARBITRATION

PURSUANT TO SECTION 148.2 OF THE REVISED REGULATIONS
TO THE INSURANCE (VEHICLE) ACT, B.C. Reg. 447/83 and
the Arbitration Act [SBC 2020] c. 2

BETWEEN:

ZAA

CLAIMANT

AND:

THE INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

ARBITRATION AWARD

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Arbitrator:	PETER W UNRUH
Dates of Hearing:	April 13 – 22, 2026
Place of Hearing:	Charest Reporting, Vancouver, BC
Date of Award:	August 17, 2026

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INTRODUCTION

1. This arbitration is in relation to claims for compensation for injuries sustained by the claimant, Ms. ZAA, pursuant to underinsured motorist provisions (UMP) as set out in section 148.2 of Part 10 of the *Insurance (Vehicle) Regulation* B.C. Reg 447/83 (the "*Regulation*") and the *Arbitration Act* [SBC 2020] Chapter 2.

2. Pursuant to agreement between counsel, this arbitration was conducted in accordance with the British Columbia *Supreme Court Civil Rules*.

3. The event giving rise to this arbitration involves a motor vehicle accident that occurred on May 11, 2018 (the "Accident"). At that time, Ms. ZAA was the operator of a 2014 Nissan Murano automobile and was at the intersection of Bennett Road and Garden City Road in Richmond, British Columbia, when her vehicle was rear-ended. A photograph of damage to the claimant's vehicle was introduced as Exhibit 2. Liability for the Accident has been admitted by the respondent.

4. A tort action was originally commenced and the claimant settled for the available insurance limits while maintaining the right to claim additional funds pursuant to UMP. This arbitration proceeded with the consent of the respondent.

5. The parties are in agreement with respect to any applicable deductions pursuant to s. 148.2 of the *Regulation* and those amounts are set out later in this Award. As arbitrator, I have been charged with the responsibility of quantifying the claims of Ms. ZAA, applying agreed deductions and making an award within the parameters of the *Regulation*.

6. In making this Award, I have reviewed and considered, but may not have made reference to, all of the evidence put forth at this arbitration. For ease of reference, I have set out the evidence of the claimant and all other witnesses in the table of contents.

EVIDENCE

a. Background, Education and Work History of the Claimant

7. Ms. ZAA was born on [redacted], 1986 in Saudi Arabia. She was 31 years of age at the time of the Accident of May 11, 2018, and is currently 39 years of age.

8. The claimant is married to AA and has four children whose birth dates are as follows:

i. AH was born on [redacted], 2012;
ii. AB was born on [redacted], 2013;
iii. F was born on [redacted], 2020; and
iv. AK was born on [redacted], 2022.

9. Currently, Ms. ZAA and her family reside in a rented three-bedroom townhome in Richmond, British Columbia.

10. In 2004, Ms. ZAA graduated from high school in Saudi Arabia (Exhibit 6) and from there she went on to attend at King Faisal University. She attended university from 2005 until 2008 where she studied English and nursing before completing an internship program in midwifery from approximately 2008 to 2009. The claimant gave evidence that the program was not easy and that she was required to be knowledgeable in her studies with “no mistakes”.

11. Ms. ZAA testified that her internship included working in an operating room, along with three months in a labour room and additional training in the maternity ward. She took the Saudi Midwifery licensing examination and passed with a grade of 49% in October 2010 (Exhibit 34). Her Professional Registration ID from the Saudi Commission for Health Specialties describes Ms. ZAA as a “Midwifery Tech” (Exhibit 34, Tab 1).

12. Following her internship, Ms. ZAA was hired as a midwife technician working in Ras Tanura Hospital in Saudi Arabia. As a midwife technician, the claimant worked in a delivery room setting and her duties included managing patient supplies and medications, performing blood tests, ultrasound work, sterilizing instruments, helping in the delivery room, handing newborns over to mothers and ensuring new mothers knew how to hold, wash and feed their babies. She says she also provided emotional support to mothers.

13. Ms. ZAA acknowledged that a “Midwifery Tech” was not the same as that of a “Midwife Specialist” which would have required additional education and training on her part in order to attain such a designation.

14. Ms. ZAA did not have hospital admitting or discharge privileges. Her work was limited exclusively to working in the hospital. She did not make any clinical visits outside the hospital. She testified that there were different categories of related health professionals in Saudi Arabia and that nursing assistants, for example, were a higher position than a midwife tech.

15. Ms. ZAA gave testimony that she worked twelve-hour shifts at the hospital and that she was on her feet almost her entire shift. She described that her work could be stressful, and it was important she maintained focus on work and made no mistakes. Ms. ZAA worked at Ras Tanura Hospital until 2011.

16. In 2010, Ms. ZAA became engaged to AA who was studying in Canada. They were married in Saudi Arabia in 2011. Ms. ZAA then took what can best be described as a leave of absence from her work and moved to Canada with her husband. They took up residence in Victoria where the claimant attended an ESL program at King George College for approximately five weeks (Exhibit 8).

17. Following her attendance at King George College, the claimant and her husband moved to Kamloops where they both began attending Thompson Rivers University ("TRU"). Ms. ZAA entered the business administration program in 2011. Both she and her husband were on scholarships and received living assistance from the government of Saudi Arabia. In August 2015, the claimant received a Diploma in Commerce and Business and by April 2016, she graduated from TRU with a Bachelor of Business Administration (Exhibits 12 and 13). Throughout this time, Ms. ZAA maintained it was her intention that she and her husband would return to Saudi Arabia where she would resume her work as a midwife tech following her husband's graduation from TRU in 2017.

18. As her husband came closer to completing his studies, their intention to return to Saudi Arabia changed as tensions in the Middle East began to rise. The claimant and her husband felt they had better opportunities in Canada. Following AA's graduation from TRU in 2017, they decided to remain in Canada and applied for their permanent resident status. It was also at that time Ms. ZAA resigned her position as a midwife tech in Saudi Arabia.

19. Following her graduation from TRU, the claimant received a three-year work permit from Immigration Canada (Exhibit 19(d)). She found work as a food cashier at Rogers Arena and then worked for JW Research, marketing MasterCard credit cards. The claimant had two children by that time, and she and her husband determined that Ms. ZAA would work evenings so she could care for the children during the day while her husband was at work. To that end, Ms. ZAA obtained overnight employment at a McDonald's restaurant.

20. In November of 2017, the claimant obtained employment as a store clerk at Shoppers Drug Mart working the night shift. She was working in that capacity when the Accident occurred. Her duties included stocking shelves, serving customers and performing general clean up which was described as heavier work. Her various occupations paid her at or around minimum wage. Her aspirations were to obtain a supervisory position which would have brought a wage increase.

21. During her time in Canada up to the date of the Accident, the claimant did not take steps towards becoming a midwife in British Columbia. Her original goal was to return to her work as a midwife tech in Saudi Arabia. When she and her husband decided to remain in Canada and apply for citizenship, she also did not apply to the midwifery program at the University of British Columbia ("UBC") or take any pre-requisite courses. Ms. ZAA gave evidence that she was not in a rush to obtain her credentials enabling her to work as a midwife in British Columbia. She testified that when she became a Canadian citizen she would work on it and that she was in no rush to obtain her credentials.

22. Ms. ZAA testified that while she kept the midwifery program in mind, her immediate plan was to obtain a supervisory or managerial role at Shoppers Drug Mart or in some other retail setting.

23. Prior to the Accident, Ms. ZAA enjoyed exploring the outdoors with her family. She enjoyed frequent camping and hiking excursions during the summer months and participated in all activities associated with camping, including chopping wood, cooking, setting up the tent and organizing the trip. She enjoyed travelling and had been to the Rockies, Victoria, Los Angeles, Toronto and Niagara Falls. She enjoyed winter activities as well which included tubing at Sun Peaks.

24. The claimant also enjoyed cake decorating and prided herself on her ability to create ornate cakes for which she received certificates at Michaels (Exhibit 3).

25. The claimant purchased a Cricut machine and was trying to start a small business making various items including mugs and t-shirts. While at TRU, she volunteered with the Saudi Student Association, where she helped manage club events, organize dinner parties and assist with budgeting, for which her work was recognized by the Association.

26. Of importance to Ms. ZAA were her religious devotions. Prior to the Accident, she regularly attended her mosque where she would sit on the floor and listen to messages from Muslim scholars. She described observances as "food for your soul" which made her feel good and improved her disposition.

27. Ms. ZAA also described her marriage with AA as excellent prior to the Accident. Her husband described it in similar terms. She enjoyed managing her household and raising her children. She frequently took her children on outings which included going to the library, shopping or attending at a local park. The claimant gave evidence that she did the cleaning in the home, which included vacuuming, laundry, sweeping and doing dishes. She took pride in the tidiness of her home. She was pleased she could manage the tasks of raising her children, manage the home, be a good spouse to her husband, and work largely full-time hours.

28. Ms. ZAA testified that prior to the Accident, she enjoyed good health. She performed her household and work activities with no limitations. No evidence was led to suggest the claimant had any physical or mental health issues or limitations which predated the Accident.

b. <u>The Motor Vehicle Accident – May 11, 2018</u>

29. On May 11, 2018, Ms. ZAA was alone in her vehicle and stopped at a stop sign on Bennett Road which governed the entry of traffic onto Garden City Road in Richmond, British Columbia. The claimant was the operator of a 2014 Nissan Murano and was on her way to pick up her children at a nearby school. She was wearing her lap and shoulder seat belt.

30. To the claimant's right was a pedestrian crossing Garden City Road. While stopped, her vehicle was struck on the left side, which she described as a strong impact. The claimant recalled the airbag deploying and striking her in the

face. She described being in a state of shock and was quite concerned about the delay in picking up her children. She also described seeing "smoke" in the vehicle and was able to remove herself from the vehicle, albeit with some difficulty.

31. Emergency services personnel attended the Accident scene but the claimant wanted to be with her children. AA attended at the Accident scene and described seeing his wife sitting on the sidewalk shaking and in apparent shock. AA took the claimant home where she was quite emotional and having trouble moving her left side. After a sleepless night, the claimant attended the emergency room at Richmond Hospital with what she described as "severe pain" and was crying.

c. The Claimant's Injuries

32. In summary, the claimant's complaints arising from the Accident were:

i. Chronic neck pain;
ii. Left shoulder pain;
iii. Mid and low back pain;
iv. Left hip pain;
v. Left knee and ankle pain;
vi. Sleeplessness; and
vii. Anxiety, particularly while driving, and Post Traumatic Stress Disorder.

33. With respect to her current condition, Ms. ZAA described having ongoing pain in her neck radiating into her upper back and shoulder area which she began experiencing the day of the Accident. She testified she continues to experience headaches related to her neck pain. She has limitations in her range of motion and goes to massage therapy to help with her neck pain.

34. Ms. ZAA experienced cracking in her left shoulder which has been quite painful. She had restrictions with her range of motion and she experienced weakness in her arm. She had difficulty dressing herself, using only her right hand to do so. She described being unable to carry much weight with her left hand. The claimant underwent an injection into her left shoulder, but she experienced little relief from it.

35. On April 15, 2025, Ms. ZAA underwent left shoulder surgery at Richmond Hospital which improved her left shoulder symptoms. She currently experiences less cracking in the joint and has improved range of motion in that she can raise her arm above her head although her left arm remains weak. Her shoulder pain has improved. She has somewhat greater function since the surgery.

36. On November 3, 2025, the claimant underwent gastrointestinal bypass surgery to promote weight loss. She described losing 42 kilograms since this surgery which has assisted with her pain, mobility and with her breathing. She has longer tolerance for activities. Her left knee, low back, hip pain and breathing have improved following her weight loss surgery.

37. Despite her surgeries, the claimant testified she continues to experience ongoing back pain which is aggravated by certain activities such as bending over to pick something up off the floor. Ms. ZAA testified that going from a sitting to a standing position is difficult and painful for her. She described the pain as severe at times. She sporadically experiences what was described as an electrical shock sensation in her back which is immobilizing and quite painful. Her pain adversely affects her mood as well.

38. The claimant testified that her left hip continues to cause her pain, particularly with walking. She experienced some improvement in her hip pain following her weight loss surgery. She utilizes a cane for stability.

39. Ms. ZAA also testified to having ongoing left knee pain. Her knee was swollen following the Accident. She has undergone three or four sets of knee injections, with the most recent being March 13, 2026.

40. The claimant continues to experience left ankle pain which affects her walking. She has undergone injections into her left ankle as well. She finds it difficult to put much weight on her left ankle and feels it is unstable.

41. Ms. ZAA testified that she has experienced poor sleep since the Accident. She often dreams of being in a car accident and says she cannot sleep without medication. She is easily awoken and if she hears sirens, loud brake sounds or vehicle traffic noise outside her home, her anxiety heightens. She is afraid to leave her home due to concerns over being in a further accident. She is also afraid that her children may be injured in an accident.

42. The claimant described feelings of fear and hopelessness and that she seeks isolation from the outside world. She stated she wants to stay at home and does not want to see anyone. She drives only if she must, and only short distances such as to take her children to school or attend appointments near to her home. Attending her appointments is stressful for the claimant. She stated she has 3 or 4 appointments per week and that is too many for her. She just wants to relax.

43. Ms. ZAA described her weekly routines in simple terms. She performs stretching exercises. She sits on her sofa and scrolls on her phone. She only leaves her home for appointments and to go to her children's school. She is fearful and stressed being in a vehicle or as a pedestrian, particularly when she hears sirens. She says she just freezes. It adds to her overall sense of isolation. She finds cleaning her home to be too difficult and they have a cleaner come into the home. Currently, she rarely engages in her crafting, although has recently made efforts at crafting at the request of her counsellor.

44. The claimant gave evidence that she rarely attends her mosque as it is difficult for her to sit on the floor and utilizing chairs is not an option for her. She feels separated from her religious devotions and her community. She described feeling lost and uninspired.

45. The claimant expressed that she feels considerable anxiety about her limitations. She described that she had gone from an active mother before the Accident, to a person not able to do much of anything. Ms. ZAA expressed guilt because her husband has been required to assume tasks she capably performed before the Accident. She no longer contributes to the family's income and this is also a source of stress for her. She feels that she has let her spouse down as well as her children. Ms. ZAA feels her children have missed out on a lot of activities she would have otherwise done with them and they have been the worse for it. She described the Accident as affecting her entire family. She claimed none of these family stressors existed prior to the Accident.

46. Ms. ZAA acknowledged she had other stressors in her life including finances. The death of her father in 2023 was a particularly sad event for her. However, she described moving on from her father's death.

47. Ms. ZAA is taking duloxetine and trazadone for sleep and to help control her depression and anxiety. She currently attends massage therapy on a weekly or bi-weekly basis. She was also attending physiotherapy but stopped due to her recent gall bladder surgery. She intends to return to physiotherapy when she is sufficiently recovered from her gall bladder surgery.

48. Ms. ZAA has previously tried chiropractic treatments and is interested in resuming such treatments at some point. She has also worked with an occupational therapist and attended kinesiologist appointments in 2020 or 2021. Ms. ZAA testified that she exercises at home and utilizes exercise resistance bands, foam rollers and a massage gun as recommended by her doctors. She has also attended counselling but is not currently doing so.

49. Ms. ZAA has not experienced any accidents subsequent to the Accident. She has not experienced any other incidents or injuries since that time. Ms. ZAA had her gallbladder removed in early April 2026, and had not recovered from the surgery at the time of the arbitration.

d. Post-Accident Employment

50. Following the Accident, Ms. ZAA took approximately three weeks off from her work at Shoppers Drug Mart. She returned to her night shift routines in June 2018, but found the work physically challenging. She testified that she was unable to stock higher shelves or move heavier merchandise. She claimed that her pace of work was slower and she was less productive. She described taking taxis to work as she was fearful of driving. She described working as a frustrating and painful experience and she would come home exhausted following her shift. The claimant felt that she had to return to work as her family needed the income.

51. The claimant testified that prior to the Accident, her immediate plan was to continue working at Shoppers Drug Mart and try to obtain a supervisor's position. She also gave evidence that if she could not eventually obtain work in healthcare, she would work in a business in order to support her family.

52. According to Ms. ZAA, Shoppers Drug Mart began cutting back her shifts in the months following the Accident. She testified that due to her injuries, she needed to work with a helper, but Shoppers Drug Mart was unable to provide her with a helper and consequently her employer cut back her working hours. The claimant was able to obtain additional employment with Walmart by approximately November of 2018, and for a while she worked at both places.

53. Ultimately, Ms. ZAA found her work as a cashier at Walmart was a little easier for her to manage and gave up her shifts at Shoppers Drug Mart. At Walmart, she did not need to stock shelves and would try to work at a till at which she did not need to use her left arm as often. She also promoted MasterCard at Walmart and made a little extra income by inducing customers to sign on with MasterCard. She worked full-time hours. Nevertheless, the claimant testified to being in considerable discomfort while working.

54. Ms. ZAA testified that she continued to work on a full-time basis up until March 2020, when schools closed due to Covid. Ms. ZAA explained in cross-examination that she was unable to obtain adequate childcare arrangements and was unable to afford the costs involved in any event. These issues were noted in her exit interviews and Record of Employment with Walmart (Exhibit 34, Tabs 9 and 11). She left her work at Walmart to home school her children. She then went on maternity leave with the birth of her third child on April 30, 2020.

55. Since approximately March 2020, Ms. ZAA has not returned to paid employment. In her direct examination, the claimant stated that after leaving Walmart, her mental health worsened and she was unable to return to work. Her sleep was poor and she was reliant on her sleep medications. She felt isolated and her mood was quite poor. The claimant testified that her weight increased. She had difficulty walking or standing for lengthy periods of time.

56. Ms. ZAA maintained that work was very important to her and she would have returned to full-time work after the birth of her third child had it not been for her Accident-related injuries.

57. The parties are agreed that Ms. ZAA earned $78,732.00 in income following the Accident.

58. The claimant had her fourth child on April 15, 2022.

59. Ms. ZAA became a permanent resident of Canada in 2021, and she testified she became a citizen of Canada in 2024.

60. The claimant testified that both her mental and physical injuries prevent her from working or engaging in her pre-accident household activities and hobbies. Ms. ZAA testified that she has no clear path for herself. She maintains she tries to engage in daily activities which better her circumstances, but she does not see herself improving to the point at which she could return to work or to most of her pre-accident routines and interests. She admitted in cross-examination that her self-image has improved with the weight loss surgery. That

surgery also helped with her left knee and hip pain. She also agreed that her mobility in her left shoulder was improved following her shoulder surgery in April 2025.

e. Claimant's Lay Witnesses

1. AA

61. AA is the husband of the claimant. He is 38 years of age. AA was born in Saudi Arabia and worked as an electrician and helped on the family farm while in Saudi Arabia. He came to Canada in 2010 as a student and received funding from the government of Saudi Arabia. While he was in Canada, he was introduced to Ms. ZAA through his family. They were married in 2011 in Saudi Arabia, after which the claimant came to Canada with AA when he returned to his studies in British Columbia.

62. AA testified that their initial plan was to finish school in Canada and then return to Saudi Arabia for work. AA graduated from TRU in 2017 and the family decided to remain in Canada. He testified they enjoyed camping, hiking, and travelling. AA gave evidence that the claimant was responsible for planning and organizing the outdoor excursions, including camping trips.

63. AA testified that prior to the Accident, his wife performed all housekeeping and cooking tasks. She was largely responsible for raising their children. She attended to their daily personal care including feeding, bathing and otherwise nurturing the children.

64. AA described the claimant as quite active prior to the Accident, and she had no previous physical limitations or mental health challenges. He described her as happy, optimistic and capable of managing solutions to day-to-day problems at home.

65. AA testified that he attended at the Accident scene. He noted that the claimant appeared to be in a state of shock, and she seemed confused and scared. The day after the collision he took Ms. ZAA to Richmond Hospital. He noted that she continued to seem confused, scared, could not walk properly and was having difficulty with stairs. He testified that the claimant screamed from her apparent pain.

66. AA described the claimant as in obvious pain. As time went on, her mood was angrier and she seemed depressed. She slept poorly. He noted that the claimant required more support from him in the family home. AA noticed that she no longer wanted to see friends. Attending the mosque became difficult for her as she could no longer sit on the floor. He testified that she was becoming isolated and did not want to leave their home. He testified this is in sharp contrast to how Ms. ZAA was prior to the Accident.

67. AA testified that he currently assists the claimant with her personal grooming. She has difficulty bending to put on her socks. Modifications were made in the home so that she could more comfortably manage her personal care. These included modifications to the shower, including providing her with a shower chair.

68. AA took on most of the household tasks following the collision, as Ms. ZAA was unable to manage at home due to pain and limitations. They hired a housekeeper to assist. He described the changes in her relationship with the children in that she remained in the home, no longer taking them on outings to the library or swimming or art classes.

69. AA testified that his wife has significant anxiety while in a vehicle. She is a difficult passenger and driving with her is a stressful experience.

70. AA testified that he had recently switched his place of employment so he could be closer to home in the event the claimant needs anything from him during his workday. He testified that his new job as an entry level support worker pays less than his previous work, but that the move was necessary for the well-being of his wife.

71. AA is concerned about the claimant and stated that their big dreams of life in Canada have faded. He is worried about what the future will bring for his family.

2. SK

72. SK is a friend of the claimant who works as an accounting associate in Surrey. SK testified that she first met the claimant in 2013 while they were attending at TRU and where they became good friends. SK described the claimant as energetic, fun, outgoing and kind. Prior to the Accident, they went on outings together which included attending festivals, tubing at Sun Peaks ski resort, along with a trip to Victoria. She described the claimant as a talented cake decorator. It was clear from her evidence that prior to the Accident, SK enjoyed her time with Ms. ZAA.

73. SK described that prior to the Accident, the claimant's home was clean and well organized. SK noted that the claimant was adept at craft making and they would be on display when SK attended at the claimant's home.

74. After graduating from university, SK moved to Quesnel. They kept in contact and would hold video calls usually twice a month and they would get together perhaps two or three times per year.

75. Since the Accident, SK continues to keep in contact with Ms. ZAA. Their experiences together were described as markedly different from what they were prior to the Accident. SK testified that she almost has to force the claimant to socialize with her. She tries to encourage the claimant to go out of her home, but Ms. ZAA is often reluctant to so do and will frequently cancel their plans at the

last minute. SK has been to the claimant's home and noted that the claimant's home is no longer tidy and organized. The claimant seems embarrassed by the cluttered and untidy state of her home.

76. When they do venture out, SK observed that the claimant walks slower and uses a walking stick. SK noted that Ms. ZAA's mood appears poor and their visits are brief. SK observed that the claimant is an anxious passenger and that it is difficult to be in the same vehicle with her.

77. SK observed that she no longer sees the claimant baking cakes, or doing her crafts, including creating the personalized mugs or shirts as she did prior to the Accident. SK described the claimant as quiet, downcast, less energetic, and she no longer displays her former outgoing personality.

3. Blake Dobie – UBC Midwifery Program

78. Mr. Dobie provided evidence concerning the midwifery program at UBC. He is a senior administrator of the UBC midwifery program, and currently sits on the admissions committee which manages student admissions into the midwifery program.

79. Mr. Dobie testified that UBC has the only midwifery program in British Columbia which is taught as a four-year undergraduate degree program. Pre-requisites to the program are biology (anatomy and physiology) and what was described as a standard first year English course. The prerequisite courses are administered online and often take up to 8 months to complete. The English course may be waived for those with a prior post-secondary degree who have taken English.

80. Mr. Dobie testified that processes for entry include making an initial application which must be in by December 5. This is followed by a supplemental application which must be received by the faculty no later than January 15, following which interviews are granted to potential candidates of the program. Average marks for candidates accepted into the program are approximately 75 percent or higher. A candidate with lower marks may get accepted depending upon the field of applicants in any given year. As of 2023, thirty-two students are accepted into the program each year out of approximately 80 to 100 applicants.

81. Mr. Dobie confirmed that once in the program, the completion rate by students is approximately 95 per cent. Mr. Dobie was careful not to suggest that candidates with prior midwifery experience could expect preferential entry into the program. Applicants often have healthcare backgrounds or have worked as doulas, but even a candidate who had worked as a midwife would not be given high priority or automatic admission into the program. Such backgrounds may be worth some points, but do not determine entry. Mr. Dobie testified that perhaps the claimant's fluency in Arabic may provide "a point or two" in her favour during the interview process.

82. Mr. Dobie described the rigorous demands associated with the four-year midwifery degree. He described the intense nature of the program and that students cannot work, even on a part-time basis, while attending the program. Students in their second through fourth years participate in clinical placements of 6 to 13 weeks which could occur anywhere within the province. Students have practically no say in where they are placed and Mr. Dobie specified that no family-related exceptions exist for students who do not wish to move from their community. If a placement is made in a distant community, it is the obligation of the student to attend at the specified location. Mr. Dobie testified that a leave of absence could be available for a student who, for example, could not manage the placement if approved by the faculty. It is rare that a request for a leave of absence is denied.

83. The claimant testified that she had not taken any steps in order to apply to the UBC midwifery program at any time prior to the arbitration but that it was her intention to eventually apply for entry into the program had the Accident not occurred. She testified that due to her injuries, she considers herself unable to attend the program or work as a midwife.

f. Medical Opinion Evidence

84. Doctors Hassan, Lu, Giantomaso, Tseng, and Rickards provided expert reports and testified at the arbitration.

1. Dr. Riaz-ul Hassan – The Claimant's Family Physician

85. Dr. Hassan has been the claimant's family physician since approximately January 2020. He set out his opinions regarding diagnosis, causation and prognosis in a medical report dated October 11, 2024 (Exhibit 20). This report predates the claimant's shoulder and weight loss surgeries.

86. In his report, Dr. Hassan set out the following diagnoses which he considered were caused or "worsened" by the Accident:

> "1. Left shoulder rotator cuff injury with supraspinatus partial tear;
> 2. Left knee sprain with worsening osteoarthrosis;
> 3. Posttraumatic stress disorder;
> 4. Anxiety/depression;
> 5. Excessive weight gain due to poor mobility and low mood with development of obstructive sleep apnea."

87. Dr. Hassan noted that Ms. ZAA had undergone treatments which included physiotherapy, massage therapy and kinesiology along with intra-articular steroid injection, and monoVisc. Dr. Hassan also noted that the claimant's "chronic low mood, inability to perform multiple physical activities, fear of going outside her house, fear of other vehicles around inducing post-traumatic stress disorder are affecting multiple aspects of her life". Dr. Hassan had prescribed Cipralex and duloxetine with respect to the claimant's low mood and anxiety and he noted Ms. ZAA had tried counselling but resisted a referral to a psychiatrist.

88. In terms of prognosis, Dr. Hassan noted that Ms. ZAA had made a "significant recovery" from her initial accident-related injuries, although she remains symptomatic with unresolved chronic pain complaints which continue to affect her activities. He also described the claimant as being in significant emotional distress with unresolved sleep issues. While Dr. Hassan did not anticipate surgery on the claimant's shoulder or knee as a result of the Accident, he recommended ongoing physical therapy and mental health counselling services for a "prolonged period".

89. On cross-examination, Dr. Hassan admitted that Ms. ZAA had experienced improvement in her condition at certain times. He agreed that between 2021 and 2022, the claimant's mood was doing better with medications, but that she was unable to sustain this progress. He altered her medication regime which seemed to be beneficial to the claimant.

90. Dr. Hassan also agreed that the claimant had improvement in her left shoulder symptoms following surgery. He described Ms. ZAA's weight loss following surgery as beneficial for her left knee and hip symptoms, and agreed that her left knee and hip should continue to improve with the weight loss. He also agreed that the claimant's anxiety, PTSD, low mood and sleep apnea could also improve over time as a consequence of the surgery. Ms. ZAA's self-image has also improved due to the weight loss surgery.

2. Dr. Tony Giantomaso – Physiatrist

91. Dr. Giantomaso saw the claimant on August 25, 2022 and November 8, 2024 at the request of her counsel. He provided his findings in reports dated September 13, 2022 (Exhibit 22) and November 25, 2024 (Exhibit 23).

92. In her assessment on August 25, 2022, the claimant told Dr. Giantomaso that she was experiencing low back, upper back and neck pain and was very depressed. Her pain increased with activity. She was having difficulties keeping up with her housework. She was fatigued and her sleep was poor and non-restorative. In his report of September 13, 2022, Dr. Giantomaso noted that her past medical history was "unremarkable".

93. When he reassessed Ms. ZAA on November 8, 2024, Dr. Giantomaso noted she had made no gains since he last saw her. He noted in his report of November 25, 2024, that the claimant's left-sided pain was ongoing. She utilized a quad cane for walking. He described her level of activity with respect to household chores and childcare as quite limited. Ms. ZAA told him she could barely tolerate five minutes of walking or standing. She required help from family and had hired an outside housekeeper. Dr. Giantomaso described the claimant's difficulties with balance due to her diffuse pain and increased weight. She was capable of some simple laundry duties and light cooking. Her sleep remained poor and she had sleep apnea. She was described as significantly overweight and deconditioned. She remained off work and told Dr. Giantomaso that she did not feel she was competitively employable, even in retail positions where she worked prior to the Accident.

94. Dr. Giantomaso noted in his report of November 25, 2024 that the claimant remained severely depressed with complaints of anxiety while driving. She was scheduled to undergo shoulder surgery, but no date had been set as at the time of his assessment.

95. With respect to physical testing, Dr. Giantomaso noted that the claimant exhibited poor balance, but her coordination in the upper extremities appeared normal. Upon palpation, the claimant had diffuse pain on the left side of her body from her head to her knee. She had decreased range of motion in extension and flexion diffusely throughout the spine. The claimant exhibited decreased range of motion in her left shoulder and she had signs of weakness including instability. Impingement tests were positive. Her knee examination produced signs of patellofemoral syndrome. He stated in his opinion that he considered the examination to be valid.

96. In his report of November 25, 2024, Dr. Giantomaso diagnosed the following as a consequence of Ms. ZAA's Accident:

> "1. Post-traumatic left shoulder injury consistent with ongoing tendinopathy, impingement and possible labral involvement. Chronic and ongoing.
>
> 2. Post-traumatic cervical sprain/strain injury consistent with a WAD-II injury. Chronic and ongoing.
>
> 3. Post-traumatic thoracic sprain/strain injury grade 1-2. Chronic and ongoing.
>
> 4. Post-traumatic lumbar sprain/strain injury grade 1-2. Chronic and ongoing.
>
> 5. Post-traumatic left knee sprain with associated patellofemoral syndrome and chondral injury. Chronic and ongoing.
>
> 6. Sleep apnea with a CPAP machine." (although he does not indicate if this condition is from the Accident).

97. Dr. Giantomaso also diagnosed:

> i. Evolution of the claimant's pain to a chronic diffuse pain syndrome of the spine; and
>
> ii. Ongoing left shoulder injury consistent with a rotator cuff tear and impingement.

98. Dr. Giantomaso noted Ms. ZAA's low mood and anxiety with PTSD-type features, but he acknowledged that such a diagnosis was outside of the scope of his specialty.

99. As for the prognosis contained in his report of November 25, 2024, Dr. Giantomaso noted that over six years had passed since the Accident and that the "vast majority of improvement through natural history and rehabilitation would have been expected to have occurred in the first 6 to 12 months post-trauma or earlier". Accordingly, his opinion was that in all likelihood the claimant "will continue to experience chronic pain to some degree long term in the future". He did not believe the claimant's condition should be considered curative.

100. In terms of recommendations, Dr. Giantomaso opined that further interventions, investigations or passive treatments are unlikely to be helpful at this point. He felt the claimant would most likely benefit from a multidisciplinary pain clinic through either Vancouver General Hospital or Surrey Memorial Hospital. Other recommendations for future care were that she receive assistance with housekeeping, home maintenance and transportation.

101. Dr. Giantomaso opined in his November 25, 2024, report that it was "very unlikely" that the claimant would be competitively employable at all in the future.

102. Dr. Giantomaso opined that he found in the claimant's first assessment more localized injuries, while with her second assessment he noted the claimant's diffuse pain condition had become infused with psychological issues.

103. The reports of Dr. Giantomaso were written prior to the claimant's shoulder and weight loss surgeries. He had not recommended shoulder surgery and on cross-examination he was surprised to learn that the claimant had benefited from the procedure. He also had not assessed her since her weight loss surgery, but agreed that such surgery would be helpful and assist with her mobility. He agreed that her diffuse pain could have improved as well, although he had not seen the claimant following her surgeries.

104. With her weight loss, Dr. Giantomaso commented that a pain clinic and an active rehabilitation treatment plan would likely be most beneficial for the claimant, and he conceded that such a program could lead to further improvement in her functioning. Due to the large areas of her body affected by her injuries, he felt interventional management techniques including Botox, nerve blocks or trigger point injections would prove unhelpful to the claimant. He questioned whether such interventions would be reasonable in Ms. ZAA's situation.

3. Dr. Shaohua Lu – Psychiatrist

105. Dr. Lu assessed Ms. ZAA on September 21, 2022 and October 15, 2024 at the request of her counsel. He provided expert psychiatric opinion in his reports dated October 4, 2022 (Exhibit 26) and October 19, 2024 (Exhibit 27).

106. Dr. Lu noted that the claimant participated in the assessments to the best of her ability. He noted that prior to May 2018, Ms. ZAA had no surgery, no chronic pain, no TBI, and no depression including postpartum depression. She

had received no prior psychological treatment. She did experience some stress related to her transition to Canada and worries and anxiety which went along with that transfer.

107. In his report of October 4, 2022, he diagnosed the claimant as having Post Traumatic Stress Disorder (moderate to severe) and chronic pain with “some of the clinical features of SSD (Somatic Symptom Disorder) with predominant pain”. Dr. Lu opined that the claimant’s chronic pain and PTSD are mutually reinforcing. He felt that her chronic pain and PTSD played a contributing role with respect to her SSD features and that there were overlaps between her PTSD and SSD.

108. Dr. Lu discussed the widespread impact her PTSD and chronic pain were having on the claimant including her anxiety while in a vehicle, her fatigue, reduced mental and physical stamina, poor physical tolerance and a limited routine. He found it unsurprising the claimant would be overwhelmed, especially given the demands associated with four young children. He testified that avoidance is a key feature of the claimant’s PTSD, but that the claimant’s chronic pain and anxiety with driving, for example, are constant reminders for her and serve as a negative feedback loop resulting in further limitations in the claimant’s life and lifestyle.

109. In his report of October 4, 2022, Dr. Lu opined that the claimant’s prognosis was highly guarded. He felt that “due to the complexity of her chronic physical and psychiatric conditions and her long-term relative disability, she is unlikely to return to her pre-existing function”.

110. In his second report dated October 19, 2024, Dr. Lu noted the claimant’s ongoing psychological and physical symptoms. He described Ms. ZAA as afraid to leave her home and that her home is her safe place. She is anxious and panics when she leaves her home as she has no control over events outside her home. She does not have regular activities. Dr. Lu noted that she hated the feeling of not working. He felt that the claimant had worsened considerably since he last assessed her.

111. Dr. Lu opined in his second report that the claimant continues to experience PTSD and chronic pain, along with elements of SSD with predominant fear of her pain. He felt the PTSD was entrenched and that her “loss of motivation, interest, and joy are the typical long term psychological impacts of chronic PTSD”. Dr. Lu opined that the claimant has a poor prognosis for recovery and that her current capacity is indicative of her long-term capacity. He felt that even with some improvement, the claimant would likely not regain her prior capacity and that she would likely remain disabled from gainful employment indefinitely.

112. On cross-examination, Dr. Lu agreed that the claimant could experience improvement and that her condition was amenable to further treatment through active therapy, cognitive rehabilitation and exposure therapy. An improvement in her pain could lead to an improvement in her psychiatric condition. He agreed that weight loss is also greatly beneficial in terms of both function and mental

health. He also agreed that periodic adjustments in the claimant's medications along with sleep monitoring could lead to further improvement in her overall condition.

113. Dr. Lu testified that weight loss surgery is helpful if the weight can be kept off but that it may not be sustainable, particularly without proper education. He also commented that the claimant's current condition is primarily due to chronic pain and PTSD. He testified that once a condition like PTSD or chronic depression becomes ingrained, it is re-enforced though brain chemistry over time. Consequently, the longer the duration of the psychiatric condition, the more difficult it is to treat. It represents a negative prognostic indicator. He did concede that the claimant has experienced periods of improvement which were helpful signs for her. He further agreed that the shoulder and weight loss surgery could improve her function and that could potentially lead to improvement in her overall mental health, but that the duration of her symptoms represented a significant negative factor for her in this regard.

4. Dr. Michael Tseng – Psychiatrist

114. Dr. Michael Tseng assessed the claimant on December 20, 2024 at the request of respondent's counsel. Dr. Tseng provided expert psychiatric opinion in his report dated January 7, 2025 (Exhibit 35, Tab 2).

115. Similar to Dr. Lu, Dr. Tseng diagnosed Ms. ZAA with Post Traumatic Stress Disorder as a consequence of the Accident. He found she has "significant intrusive symptoms of trauma, including intrusive and recurrent thoughts of the accident" along with nightmares. Dr. Tseng reported that Ms. ZAA has strong avoidance symptoms including while she is in a vehicle or as a pedestrian. Dr. Tseng also found the claimant to be experiencing cognitive and mood-related symptoms of trauma, guilt, fear, self-blame and social isolation.

116. Dr. Tseng opined that, from a psychiatric perspective, Ms. ZAA had not yet reached maximum medical improvement. He felt it reasonable for the claimant to engage in 12 to 16 future sessions of trauma-focused therapy, such as CBT with exposure or EMDR.

117. Dr. Tseng noted that there was no indication that the claimant had failed to follow medical advice or that she had been non-compliant in her course of treatment such that it contributed to any delay in her recovery.

118. Dr. Tseng's evidence was that Ms. ZAA remains currently disabled due to her overwhelming anxiety related to being harmed by vehicles as a consequence of her PTSD. He opined that travel to and from work would be very difficult for her. Dr. Tseng commented that once her PTSD was treated, particularly her avoidance symptoms relating to her commute to work, it would be reasonable for her to resume a graduated return to work.

119. On cross-examination, Dr. Tseng agreed that the longer a person experiences PTSD symptoms, the more difficult they are to treat. He also agreed that some patients do not recover from PTSD. He also agreed that Ms. ZAA's physical symptoms and her PTSD, along with the fact she has been away from work for many years, are negative prognostic factors. Dr. Tseng also noted his concern that the claimant's ongoing and untreated PTSD could result in the development of a Major Depressive Disorder, and he considered that she already exhibits several symptoms consistent with that condition.

120. However, Dr. Tseng maintained that there exists the opportunity for further improvement in Ms. ZAA's condition. He likened PTSD to an algorithm with many combinations of treatment options, including varieties of medications and therapies which might assist the claimant. He maintained that the claimant has tried only two medications thus far, and other treatment combinations could lead to further improvement with respect to the claimant's PTSD.

5. Dr. Robin Rickards – Orthopaedic Surgeon

121. Dr. Robin Rickards assessed the claimant on October 7, 2022 at the request of respondent's counsel. He provided his orthopaedic opinion in his report dated November 22, 2022 (Exhibit 35, Tab 5). Dr. Rickards provided a further report dated January 24, 2025 (Exhibit 35, Tab 6), although he did not assess the claimant in that report. Rather, it constituted a review of additional clinical material and opinions of Dr. Giantomaso.

122. During his assessment of Ms. ZAA, Dr. Rickards found the claimant had full range of motion in her cervical spine but pain on palpation was present to her left side, particularly at the C5-C6 level. She exhibited weakness in her left shoulder abductors and external rotators and labral testing provoked pain. The claimant experienced pain on passive elevation of the left shoulder beyond 90 degrees in either abduction or forward flexion. Ms. ZAA had pain on palpation to the left of her low back at the L5-S1 level. Finally, examination of the claimant's left knee produced pain directly over the patella tendon on palpation.

123. In his report of November 22, 2022, Dr. Rickards diagnosed the claimant as follows:

i. Possible labral tear in the left shoulder.

ii. Tendonitis in the left knee [patella tendon] and left ankle on the back side of the lateral aspect [peroneal tendons].

iii. Left sacroiliac [low back] joint strain.

124. While Dr. Rickards found that the claimant's symptoms in her left shoulder, left knee and low back were causally related to the Accident, he found there was no evidence suggestive of injury to her left ankle at the time of the Accident.

125. In his report of November 22, 2022, Dr. Rickards opined that improvement would occur regarding her neck, back and left knee symptoms with appropriate treatment. He recommended that the claimant undergo an MRI of her left shoulder to determine a prognosis and whether surgery might be warranted.

126. In his response report of January 24, 2025, Dr. Rickards largely agreed with the diagnostic opinions of Dr. Giantomaso. He agreed with Dr. Giantomaso that the left shoulder symptoms are likely related to "soft tissue difficulties" and similarly that the claimant's neck and low back symptoms are soft tissue in nature and the left knee symptoms are "likely related to the extensor mechanism of the left knee". However, Dr. Rickards opined that with an appropriate treatment regime which would include a structured exercise regime and weight loss, along with appropriate treatment regarding her left shoulder, the claimant should improve to the point that she will not experience any permanent disability arising from her Accident.

127. On cross-examination, Dr. Rickards agreed that some patients, possibly the claimant, do not recover despite treatment. He agreed that the longer the pain continues, the more difficult it becomes to treat. He also agreed that if the claimant had undergone a previous structured exercise program which did not result in a resolution of her symptoms, this would serve as a negative prognosticator. While noting that the claimant had attended a structured exercise program from May to December, 2021, Dr. Rickards noted that the effects of her pregnancy may have limited the potential benefit the claimant might otherwise have experienced. He also noted that she did experience some improvement while attending the program, but nothing close to a resolution of her symptoms.

128. Dr. Rickards agreed that with respect to the claimant's psychiatric injuries he would defer to a psychiatrist for opinion.

g. Non-Medical Expert Opinion Evidence

1. Raph Kowalik – Functional Capacity Evaluation

129. Mr. Kowalik was presented as an expert witness qualified to provide opinion evidence on Ms. ZAA's functional capacity along with her future care requirements and costs of same. Mr. Kowalik assessed Ms. ZAA on July 3, 2024 at the request of her counsel for the purposes of providing a functional capacity evaluation of the claimant. He provided his results and opinion in his report of August 19, 2024 (Exhibit 28). His report pre-dated the claimant's left shoulder surgery and her weight loss surgery.

130. Mr. Kowalik also provided a cost of care report dated December 6, 2024 (Exhibit 29) which will be canvassed in the discussion concerning Ms. ZAA's anticipated care costs.

131. Overall, Mr. Kowalik found that Ms. ZAA demonstrated poor balance with a limited capacity to stand for a maximum of 15 to 20 minutes and walking tolerances of approximately 10 minutes. She displayed a limited ability to stoop

and bend and was unable to crouch. She had limitations with respect to overhead and shoulder height reaching. She was unable to complete tests due to pain. Mr. Kowalik's conclusions at the time of his report were that the claimant was not employable in any physical capacity. He also stated she required assistance with domestic activities.

132. On cross-examination, Mr. Kowalik was aware that Ms. ZAA had initially returned to her work as a cashier following the Accident. He testified that at the time of his assessment she lacked the capacity to work as a cashier. He was unable to reconcile his testing results with the fact the claimant had worked for a period of time as a cashier and could not opine with respect to causation. He acknowledged that the claimant presented as deconditioned at the time of his evaluation. He stated that his evaluation in July 2024 represented a "snap shot" in time of the claimant and that opinions can get "stale" 6 months to a year after they were conducted, particularly if a person has experienced further changes in their symptoms or improvement.

2. Dr. Colleen Quee Newell – Vocational Therapist

133. Dr. Quee Newell holds a Doctoral degree in Counselling Psychology and offered expert evidence as a vocational consultant. While she did not meet or assess the claimant, she provided a report at the request of the respondent's counsel to offer expert opinion regarding the educational requirements necessary to practice as a midwife in British Columbia. She set out her findings in a report dated November 10, 2025 (Exhibit 25, Tab 12). She was not required for cross-examination at the arbitration.

134. Dr. Quee Newell noted that the claimant had completed post-secondary midwifery education and practiced as a midwife in Saudi Arabia prior to immigrating to Canada in 2011. For internationally trained midwives, in order to gain entry into the practice of midwifery in British Columbia, a candidate must complete a minimum nine month Internationally Educated Midwives Bridging Program (EMBP) offered at UBC. Eligibility for this program requires a candidate to have graduated from an accredited midwifery program including a minimum of 36 months full-time midwifery education or 2400 clinical hours and 850 academic hours over a minimum of 18 months of midwifery education. Other criteria include at least 100 births as a primary midwife within the preceding 10 years along with recent experience as a primary midwife. The criteria are quite extensive.

135. Dr. Quee Newell was of the opinion that the claimant would not have met the eligibility requirements for admission to the UBC Internationally Educated Midwives Bridging Program. The claimant had not participated in any midwifery education or work since 2011 and her experience at that point would not have been sufficient, in Dr. Quee Newell's opinion, for the claimant to have gained entry into the Bridging Program.

136. Accordingly, if Ms. ZAA was to practice midwifery in British Columbia, she would need to gain acceptance, attend and graduate from the 4-year UBC midwife degree program described by Mr. Dobie.

h. Expert Economic Evidence

1. Nicholas Coleman – Forensic Economist

137. Mr. Coleman is an economist and at the request of claimant's counsel, provided expert opinion in his report dated September 26, 2025 (Exhibit 30) concerning the claimant's potential earning losses arising from the Accident.

138. Mr. Coleman was asked by claimant's counsel to assume that but for the Accident, the claimant would have graduated from the midwifery program in June 2019 and would have started working as a midwife on July 1, 2019. For the purposes of labour force participation rates, Mr. Coleman considered occupational categories represented by those holding degrees in medicine, veterinary medicine or optometry.

139. Mr. Coleman also utilized statistics for the average person and the person in the 75th percentile. Mr. Coleman testified that he utilized third quartile statistics as he understood that midwives are primarily self-employed and if he were to rely on Statistics Canada averages, he might understate the earnings of Ms. ZAA if she were self-employed.

140. Without going into detail, the claimant forecasts her income loss both past and future as a midwife amount to $2,057,925 and alternatively, as a retail worker, are $1,608,628. Her overall claim in this regard is $2,000,000 for both past and future loss of capacity.

141. Starting from November 2025, Mr. Coleman utilized a future actuarial multiplier of $26,786 to age 75 for every $1,000 of anticipated annual income, or $21,151 to age 65. He utilizes an economic multiplier of 17.618 with respect to females in British Columbia with the education level of a degree in medicine, veterinary medicine or optometry.

2. Mark Szekely – Economist

142. Mr. Szekely is an economist who, at the request of respondent's counsel, provided a response expert report dated December 11, 2025 (Exhibit 35, Tab 9).

143. In contrast to Mr. Coleman, Mr. Szekely relied on the statistics of individuals with a bachelor's degree in health professions to calculate labour market contingencies. This led Mr. Szekely to rely on an economic multiplier of $16,032 for every $1,000 of annual income for females with "bachelor degrees in health professions and related programs".

3. John Kowalik – Economist and Actuary

144. Mr. Kowalik is an economic and actuarial expert who, at the request of claimant's counsel, provided reports dated December 9, 2024 (Exhibit 24) and September 26, 2025 (Exhibit 25) concerning present value calculations of Ms. ZAA's future care costs. He was not required for cross-examination at this arbitration.

THE CLAIMANT'S INJURIES AND THEIR CONSEQUENCES

a. Discussion

145. A summary of Ms. ZAA's injuries are as follows:

i. Chronic post-traumatic cervical neck strain consistent with a WAD II injury;
ii. Chronic post-traumatic thoracic strain;
iii. Chronic post-traumatic lumbar strain;
iv. Chronic post-traumatic left knee strain with patellofemoral tendonitis and chondral injury;
v. Chronic post-traumatic left shoulder injury with tendinopathy, impingement and labral involvement resulting in surgery;
vi. Post Traumatic Stress Disorder;
vii. Chronic pain along with elements of Somatic Symptom Disorder with a predominant fear of pain;
viii. Anxiety particularly while in or around vehicle traffic;
ix. Weight gain resulting in weight loss surgery;
x. Sleep impairment;
xi. Poor balance;
xii. Fatigue, lack of energy; and
xiii. Mood and personality changes, including no longer being active, outgoing, cheerful, energetic or self-confident.

b. Credibility

146. The claimant testified at the arbitration over the course of almost two days. The factors to be considered when assessing credibility and reliability of witnesses were summarized by Dillon J. in *Bradshaw v. Stenner*, 2010 BCSC 1398 as set out below:

> "[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness'

> testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356)."

147. I found the claimant and the lay witnesses to be both reliable and credible. In my view, the claimant did her best to be as accurate as possible and I have no significant concerns with her reliability. Similarly, I have no significant concerns regarding the reliability of the information the claimant relayed to experts in this arbitration. The claimant's evidence at arbitration was consistent with the descriptions of her symptoms as set out in the expert reports.

148. The claimant's evidence as to the nature and effect of her injuries was largely supported by that of the collateral witnesses, whom I also find to be sincere, generally reliable and credible.

149. While recognizing the subjective nature of the claimant's pain complaints, counsel for the claimant pointed out that no expert has suggested the claimant was anything less than forthright with respect to the information she provided. There was no suggestion by any of the experts that the claimant's descriptions were unreliable or exaggerated. The expert medical evidence is consistent in this respect.

150. In addition, counsel for the respondent did not challenge the claimant's credibility. Rather, the respondent argues the claimant's overall prognosis is more positive than she suggests or accepts.

c. <u>Causation of the Claimant's Injuries</u>

1. Legal Principles

151. The respondent's negligence need not be the sole cause of an injury as long as it is a necessary cause: *Emil Anderson Maintenance Co. Ltd. v. Taylor*, 2024 BCCA 156 at para 130. Furthermore, causation need not be determined with scientific precision: *Athey v. Leonati*, [1996] 3 S.C.R. 458 at paras 13-17.

152. The test for causation is whether "but for" the negligence of the respondent, the claimant would have suffered the injury. Compensation in accordance with the "but for" test is to be awarded where a substantial connection between the injury and the claimant's conduct is present: *Resurfice Corp. v. Hanke*, 2007 SCC 7 at paras 21-23*; Zenone v. Knight*, 2024 BCCA 200 at para 55.

153. None of the expert opinions have suggested the claimant was limited by a medical condition or otherwise prior to the Accident. In summary, I accept that the claimant's injuries and complaints as described are caused by the injuries she sustained in the Accident.

154. The evidence at arbitration established that prior to the Accident, Ms. ZAA was carrying on a highly active home and work life without any evidence of lifestyle-limiting injuries or symptoms. She was fully functional and no evidence of a pre-existing physical or psychiatric condition was put forth at arbitration. The respondent did not argue otherwise. I accept that the claimant's overall health at the time of the Accident was good.

2. Mitigation

155. The respondent does not contend that Ms. ZAA has failed to properly mitigate her losses arising from the Accident. The respondent would have the burden of proving that the claimant failed to mitigate her losses in accordance with the test set out in *Gregory v. Insurance Corporation of British Columbia*, 2011 BCCA 144 at para 56. The respondent provided no evidence in this regard.

156. In addition, no expert suggested the claimant acted unreasonably in her care or that her damages would have been reduced had she taken some other recommended medical approach.

157. Rather, the respondent argues that there exist treatment options the claimant has not yet undertaken, through no fault of her own, which have the potential of improving the claimant's overall condition.

ASSESSMENT OF DAMAGES

a. Non-Pecuniary Loss

158. Non-pecuniary damages are awarded to compensate a claimant for their pain, suffering, loss of amenities and loss of enjoyment of life which they have incurred as a consequence of their injuries: *Langford (City) v. Matthews*, 2024 BCCA 214 at para 46.

159. In *Stapley v. Hejslet*, 2006 BCCA 34 at para 46, the Court of Appeal provided a non-exhaustive list of common factors to be considered in an award of non-pecuniary damages. Such factors include the following:

- age of the claimant;
- nature of the injury;
- severity and duration of the pain;
- disability;
- emotional suffering;
- loss or impairment of life;

- impairment of family, marital and social relationships;
- impairment of physical and mental abilities; and
- loss of lifestyle.

160. To the extent possible, non-pecuniary damages are intended to compensate a claimant for the pain and suffering caused by their injuries, along with the direct and indirect consequences of those injuries. Any award to compensate a claimant for their pain, suffering and loss of enjoyment of life must be fair to all parties, and fairness is relational to awards made in comparable cases: *Parypa v. Wickware*, 1999 BCCA 88. Nevertheless, each claimant's circumstances have their own unique features and case authorities, while helpful, serve as a guide. Awards in each case will necessarily vary given the unique circumstances of the injured claimant.

161. An award for pain and suffering is determined by a functional approach which depends not simply on the gravity of an injury. As Dickson J. summarized in *McCliggot v. Elliot*, 2022 BCCA 315 at para 44 (citing *Lindal v. Lindal*, [1981] 2 S.C.R. 629) an award for non-pecuniary damages also depends:

> "…on the ability of the award "to ameliorate the condition of the victim considering his or her particular situation". It follows that the need for solace does not necessarily correlate with the seriousness of an injury. When assessing non-pecuniary damages, the role of the trier of fact is to gain a full appreciation of the plaintiff's overall loss and determine an amount of compensation appropriate to the circumstances of that particular plaintiff: *Lindal* at 637."

162. I have previously summarized the evidence with respect to the claimant's injuries, along with the symptoms she continues to experience. As I have described, the effects of the Accident for the claimant have been significant, if not devastating, in terms of the loss of her previous happy, independent, and fulfilling life. Her social life has been redefined by her injuries and limitations. Simply leaving her home is difficult for her due to her challenges with PTSD. Participation in her religious devotions have been negatively impacted to the point her ability to attend at her mosque has almost ceased entirely, and this is a considerable loss for her.

163. Ms. ZAA's life has been negatively transformed in many respects. Her work and career aspirations, her domestic abilities, along with her family and social relationships, have been markedly impacted by the Accident. She professes considerable guilt and frustration regarding her inability to nurture and care for her children in accordance with the standards she set for herself. She feels she is not the supportive spouse she wishes to be for her husband and she feels guilt that he must manage many of the household chores and care for her as well.

164. Prior to the Accident, the totality of the evidence leads me to find she was a high-functioning, hard-working, high-achieving and happy individual. She had no prior health concerns. Her life for the past eight years has largely been characterized by pain, anxiety, fatigue and limitation, including a consequent inability to work. The tenor of the evidence from collateral witnesses was that the claimant is an entirely different person since the Accident.

165. Nevertheless, the claimant's injuries are not the type which are often identified as "catastrophic". She is able to accomplish a number of activities in her day. She manages simple tasks, for example, such as taking her children to their nearby school or attempting her crafts from time to time.

166. While the claimant suffered physical and emotional injuries, she was initially able to return to her work at Shoppers Drug Mart after a three-week absence and worked until March 2020 following the Accident, when she left for reasons relating to childcare and home schooling. The respondent argues that the claimant's ability to continue to participate in producing Eid decorations and her efforts using a Cricut machine, albeit with limitations, indicate the claimant has perhaps more function than she perceives.

167. In addition, the respondent further argues that the claimant's overall condition has improved recently, particularly with her weight loss surgery and left shoulder surgery and that there are reasonable prospects for improvement in her overall condition with time.

168. The claimant argues that her limitations are permanent and any improvement is unlikely to significantly enhance her function.

169. In my view, there was clear and compelling evidence about the claimant's changed circumstances, including the drastic changes to her personality. Previously, she was meticulous about her home. She was described as sociable and outgoing. Particularly poignant was the claimant's descriptions of the deterioration of her ability to parent her children. She is now reliant on her oldest to assist her with tasks she managed prior to the Accident.

170. Counsel have provided me with a number of authorities which support their views concerning an appropriate award for Ms. ZAA's non-pecuniary damages. A detailed review of each authority submitted by the parties is unnecessary, although I draw attention to awards found in the authorities cited.

171. The claimant referred me to non-pecuniary awards of $170,000 (present value $222,500) in *Manoharan v. Kaur*, 2016 BCSC 692; $190,000 (present value $232,800) in *Niescierowicz v. Brookes*, 2020 BCSC 1590; and $190,000 (present value $227,800) in *Tompkins v. Meisters*, 2021 BCSC 2080.

172. The claimant maintains an appropriate non-pecuniary award would be $225,000.

173. The respondent referred me to non-pecuniary awards of $125,000 (present value $130,000) in *Smith v. Ries*, 2023 BCSC 1434; $120,000 (present value $135,000) in *Thaker v. Bhatti* et al, 2022 BCSC 401; $120,000 (present value $144,000) in *Wong v. Au*, 2021 BCSC 58; $142,500 (present value $155,000) in *Pruett v. Robert*, 2023 BCSC 49; $150,000 (present value $180,000) in *Bachynsky v. Quinnell*, 2020 BCSC 2066; and $160,000 (present value $195,000) in *Watts v. Lindsay*, 2019 BCSC 2239.

174. The respondent submits that $150,000 is a reasonable award for the claimant's non-pecuniary damages.

175. Following the Accident, the claimant attempted to regain her life by returning to work in June of 2018, and persevered through fatigue, pain and anxiety until she could no longer continue in the spring of 2020. Her time since leaving her work has largely involved attending appointments with physicians and therapists. She testified that only under limited circumstances does she leave her home, with relatively little other activity. Her days, for the most part, are largely spent resting at home, in pain, fatigued and anxious.

176. The claimant was 31 at the time of the Accident. She gave evidence that over the past 8 years she has missed out on being the type of person, spouse and parent to her four children she would have otherwise been absent the Accident. Her evidence was clearly provided, and it described in compelling terms her circumstances both prior to and following the Accident. I accept that the quality and conduct of her life has been significantly impacted by the Accident.

177. On balance, taking into account the claimant's circumstances, and having regard to the authorities cited by the parties, I find that an appropriate award for non-pecuniary damages is $210,000 in this case.

b. <u>Loss of Earnings</u>

178. Claims for past and future loss of earning capacity involve claims for the loss of the value of the work the claimant would or will be unable to perform due to the injuries caused by the Accident (*Falati v. Smith*, 2010 BCSC 465 at para 39, aff'd 2011 BCCA 45; *Tootakhil v. Richmond Cabs Ltd*., 2024 BCSC 1860 at para 201).

179. Compensation for past loss of earnings is to be based on what the claimant would have earned but for the injuries sustained in the Accident: *Hartman v. MMS Homes Ltd*., 2023 BCCA 400 at para 64, citing *Rowe v. Bobell Express Ltd.*, 2005 BCCA 141 at para 30.

180. In accordance with s. 98 of the *Insurance (Vehicle) Act*, R.S.B.C 1996, c. 231, past losses are limited to the claimant's past net income loss.

181. The claimant's burden of proof with respect to past events is based on a balance of probabilities. However, the assessment as to whether a claimant should be awarded damages for past and future earning capacity involves a consideration of hypothetical events. The hypothetical possibility of a past or future event will be considered as long as the event is determined to be a real and substantial possibility and not mere speculation: *Dornan v. Silva*, 2021 BCCA 228 at paras 63-64; *Rousta v. MacKay*, 2018 BCCA 29 at paras 16-17, *Athey* at para 27.

182. In *Rosvold v. Dunlop*, 2001 BCCA 1, the Court set out the approach a trier of fact should engage in when assessing damages for loss of income earning capacity starting at para 8:

> "[8] The most basic of those principles is that a plaintiff is entitled to be put into the position he would have been in but for the accident so far as money can do that. An award for loss of earning capacity is based on the recognition that a plaintiff's capacity to earn income is an asset which has been taken away: *Andrews v. Grand & Toy Alberta Ltd.*, 1978 CanLII 1 (SCC), [1978] 2 S.C.R. 229; *Parypa v. Wickware* (1999), 1999 BCCA 88 (CanLII), 65 B.C.L.R. (3d) 155 (C.A.). Where a plaintiff's permanent injury limits him in his capacity to perform certain activities and consequently impairs his income earning capacity, he is entitled to compensation. What is being compensated is not lost projected future earnings but the loss or impairment of earning capacity as a capital asset. In some cases, projections from past earnings may be a useful factor to consider in valuing the loss but past earnings are not the only factor to consider.
>
> [9] Because damage awards are made as lump sums, an award for loss of future earning capacity must deal to some extent with the unknowable. The standard of proof to be applied when evaluating hypothetical events that may affect an award is simple probability, not the balance of probabilities: *Athey v. Leonati*, 1996 CanLII 183 (SCC), [1996] 3 S.C.R. 458. Possibilities and probabilities, chances, opportunities, and risks must all be considered, so long as they are a real and substantial possibility and not mere speculation. These possibilities are to be given weight according to the percentage chance they would have happened or will happen.
>
> [10] The trial judge's task is to assess the loss on a judgmental basis, taking into consideration all the relevant factors arising from the evidence: *Mazzuca v. Alexakis*, [1994] B.C.J. No. 2128 (S.C.) (Q.L.) at para. 121, aff'd [1997] B.C.J. No. 2178 (C.A.) (Q.L.). Guidance as to what factors may be relevant can be found in *Parypa v. Wickware*, *supra*, at para. 31; *Kwei v. Boisclair* (1991), 60 B.C.L.R. (2d) 126 (C.A.); and *Brown v. Golaiy* (1985), 1985 CanLII 149 (BC SC), 26 B.C.L.R. (3d) 353 (S.C.) *per* Finch J. They include:
>
> 1. whether the plaintiff has been rendered less capable overall from earning income from all types of employment;

> 2. whether the plaintiff is less marketable or attractive as an employee to potential employers;
> 3. whether the plaintiff has lost the ability to take advantage of all job opportunities which might otherwise have been open to him, had he not been injured; and
> 4. whether the plaintiff is less valuable to himself as a person capable of earning income in a competitive labour market.
>
> [11] The task of the court is to assess damages, not to calculate them according to some mathematical formula: *Mulholland (Guardian ad litem of) v. Riley Estate* (1995), 1995 CanLII 1971 (BC CA), 12 B.C.L.R. (3d) 248 (C.A.). Once impairment of a plaintiff's earning capacity as a capital asset has been established, that impairment must be valued. The valuation may involve a comparison of the likely future of the plaintiff if the accident had not happened with the plaintiff's likely future after the accident has happened. As a starting point, a trial judge may determine the present value of the difference between the amounts earned under those two scenarios. But if this is done, it is not to be the end of the inquiry: *Ryder (Guardian ad litem of) v. Jubbal*, [1995] B.C.J. No. 644 (C.A.) (Q.L.); *Parypa v. Wickware*, *supra*. The overall fairness and reasonableness of the award must be considered taking into account all the evidence."

183. Forecasting what a claimant would have earned in the past had they not been injured is an assessment and not simply an arithmetic exercise. It has been described from time to time as "gazing into a crystal ball" and is a process which can be more "art than science": *Shapiro v. Dailey*, 2012 BCCA 128. Nevertheless, the assessment must be fair and reasonable to the parties.

184. As difficult as it may be, the task is to attempt to place Ms. ZAA in the same position she would have been in, neither better nor worse, but for the Accident. Accordingly, Ms. ZAA's earnings prior to May 2018 are of assistance, but are not the only factor to consider.

c. <u>Past Loss of Earnings or Earning Capacity</u>

185. As noted earlier, Ms. ZAA left her work as a clerk/cashier at Walmart in approximately March of 2020 to care for her children during Covid. Her third child was born on [redacted], 2020, and her fourth child was born [redacted], 2022, and she went on maternity leave. Since leaving her work with Walmart in or around March 2020, the claimant has not returned to paid employment in over six years.

186. The evidence supports that the claimant has been incapacitated from any form of work as a consequence of her Accident-related injuries since her maternity leave following the birth of her third child. This is due to her left shoulder injuries along with diffuse pain symptoms from her neck down her left side into her left knee, and her PTSD and anxiety. She continues to suffer from these symptoms. The respondent does not argue otherwise.

187. A major difference between the parties relates to the type of work Ms. ZAA might have pursued had the Accident not occurred, and of course, the income that would have been earned as a result. I have previously outlined the claimant's work history in Canada which includes retail, marketing and services work at locations including McDonald's, Walmart and Shoppers Drug Mart.

188. Ms. ZAA submits that it was her intention, at some point, to practice midwifery in British Columbia.

189. The claimant submits that she had considerable passion for midwifery work and that she greatly enjoyed her experience as a midwife tech in Saudi Arabia. She described herself as a hard worker and was motivated to better support her family with the higher income typically earned by midwives. She argues she would have persevered and overcome obstacles such as her prior grades, and utilized attributes such as speaking a second language, her volunteerism, previous midwife experience and her leadership skills to gain entry into the UBC program and eventually work as a fully qualified midwife. She further argues that she would have already gained entry into the midwifery program at UBC but for the Accident.

190. The respondent submits that prior or subsequent to the Accident, the claimant took no active steps to enroll in a midwifery program or investigate and complete any prerequisite courses that may have been required before entering the program.

191. Briefly stated, the respondent argues that Ms. ZAA had not made any serious attempt to get into the midwifery program in British Columbia, and that the claimant has greatly underestimated the steps required for her to become a midwife in British Columbia. To gain entrance into the program presents its own difficulties as the pre-requisite courses and other qualification requirements are challenging. The program was described as intense and full-time, with potential practicums taking place in communities all over the province.

192. In addition, the respondent argues the demands placed on midwives in British Columbia are well beyond what the claimant experienced while working as a midwife tech at Ras Tanura Hospital in Saudi Arabia. As an example, midwives in BC take clinical histories. They also conduct assessments, prescribe medications, and interpret ultrasound results. Midwives in BC have admission and discharge privileges. The claimant had no such responsibilities in Saudi Arabia.

193. Accordingly, the respondent argues that absent the Accident, Ms. ZAA would have had no real and substantial possibility of working as a midwife by this point, or at all. Rather, absent the Accident and following her maternity leave in 2020 and in 2022, the respondent submits that the claimant would likely have continued working in retail settings such as Shoppers Drug Mart or Walmart, earning wages close to or at a rate equivalent to that of a store manager or supervisor by approximately 2020.

194. Insofar as her past wage loss claims are concerned, the claimant submits she would have worked in retail in a supervisory capacity up until the time of her admission into the UBC midwife program, which she asserts could have occurred as early as September 2022. In the alternative, she argues that absent the Accident, she would have continued working in retail in a supervisory role at much higher rates of pay than those submitted by the respondent with a view towards eventually entering into the UBC midwifery program.

d. <u>Assessment of Past Losses</u>

195. The evidence fully supports that the claimant has been incapacitated from work as a result of her Accident-related injuries since the end of her maternity leave in April 2021, and she remains so at this time.

196. The claimant seeks the sum of $2,000,000 with respect to her claims for both past and future loss of earning capacity. She does not differentiate as to which amount she is claiming for her past income losses and which is claimed with respect to her future loss of capacity.

197. In this regard the Court of Appeal recently noted in *Lewis v. Gibeau*, 2025 BCCA 127, that the practice of "lumping" together past and future loss of earning capacity awards ought to be avoided. The Court noted that not all relevant events are necessarily hypothetical for past claims, while the real and substantial possibilities and contingencies attached to future claims may operate differently than those related to past claims. The technical distinction between past loss of income, net of taxes, may be somewhat difficult to discern if those losses are lumped in with future losses. Accordingly, as a matter of transparency, the Court in *Lewis* discourages the lumping of past and future losses together, and accordingly I decline to do so.

198. I do not see it feasible that the claimant would have been enrolled in the midwifery program at UBC by this point. In my view, her family circumstances with four children, two of which are very young, along with the onerous nature of the program, the pre-requisite courses, the full-time nature of the program, and practicums which can take a candidate away from their home for an extended period, do not give rise to a real and substantial possibility of the claimant entering the midwife program at UBC by this time.

199. Moreover, the claimant testified she was in "no rush" and had it in mind to apply sometime after she became a Canadian citizen, which the claimant testified, occurred in 2024.

200. Rather, I conclude that with respect to her past income claims, the claimant, following her periods of maternity leave, would have remained working in retail and eventually moved into a supervisory position at a retail establishment such as Shoppers Drug Mart. I also assume Ms. ZAA would have taken time away from work in 2020 and 2022 for maternity leave.

201. The claimant suggests through StatsCan postings that sales supervisors can earn approximately $25.00 to $73.00 per hour, or $52,150 to $152,250 per year (Exhibits 32 and 33). The respondent pointed out, however, that there was no evidence provided concerning what a retail sales supervisor might earn.

202. The respondent concedes that Ms. ZAA was a motivated and hard-working individual prior to the Accident and that absent the Accident, she could have been promoted into a supervisory role likely starting in early 2020, and would likely have worked full-time following her return from maternity leave. The respondent suggests that such a position would have paid the claimant approximately $24.00 per hour, or $40,000 per year (Exhibit 34, Tabs 20-25).

203. The respondent argues that after factoring in maternity leave, Ms. ZAA would have earned approximately $150,000 net income had the Accident not occurred. After backing out the claimant's earnings from the time of the Accident, the respondent suggests that her net income loss is approximately $71,000 net of taxes ($150,000 minus $78,732) up to the time of arbitration.

204. What the claimant would have earned between March 2020 and the present is somewhat difficult to determine based on the evidence. The income the claimant would have generated after the Accident involves a consideration of hypothetical events which have a real and substantial possibility of occurring. The respondent suggests it is an exercise in crystal ball gazing, and I would agree.

205. In my view, starting in early 2020, and prior to her maternity leave, there is a real and substantial possibility that the claimant would have attained work in a sales supervisory position. I accept that such a position would likely have paid her greater income. Doing the best I am able with the evidence before me, I find that her income earning potential during this time is greater than that suggested by the respondent, but lower than the estimates put forth by the claimant. I am also of the view that absent the Accident, she would have continued working in such a capacity to the present.

206. Looking at the variables noted above and considering a higher annual income earning capability as a sales supervisor, situated closer to the lower end suggested by the claimant, I find Ms. ZAA's annual income would have been $55,000 per year. Taking into account her time away during her maternity leave, her total gross past income earnings would have been $236,500 from the date of the Accident.

207. Between the time of the Accident and the arbitration, the claimant earned $78,732 which is to be deducted from her past income calculations.

208. I therefore assess the claimant's gross past income loss at $236,500. However, from this amount her post-Accident earnings of $78,732 must be deducted, resulting in a gross past income award, slightly rounded up, of $158,000.

209. I shall leave it with counsel to calculate the net past income loss of $158,000 after taking into account the appropriate deductions for taxes.

e. <u>Future Loss of Capacity</u>

210. In considering damages for loss of future capacity, the task involves comparing the likely future working life of the claimant without the Accident, to their likely future working life with the Accident and consequential injuries: *Davies v. Penner*, 2023 BCCA 300 at para 25; *Rab v. Prescott*, 2021 BCCA 345 at para 65.

211. In this case, the claimant was incapacitated from work at the time of the arbitration and her incapacity is likely to continue. The existence of a real and substantial possibility of an event giving rise to a future loss is evident: *Canada (Minister of Public Safety and Solicitor General) v. McLellan*, 2023 BCCA 279 at paras 49-52.

212. Accordingly, what is required is an assessment of the value of the claimant's future loss, and in so doing, assessing all relevant possibilities and likelihoods of future hypothetical events which may affect quantification, including potential positive or negative contingencies: *Rab* at para 29.

213. In assessing a future loss, all real and substantial possibilities must be considered and given weight in accordance with their likelihood: *Parypa v. Wickware*, 1999 BCCA 88 at para 67.

214. The claimant argues that she is permanently and completely disabled from gainful employment.

215. The BC Court of Appeal delivered a trilogy of decisions in 2021 which give guidance to the proper approach in assessing claims of loss of future earning capacity: *Rab; Dornan;* and *Lo v. Vos*, 2021 BCCA 421. The Court described a three-step process for assessing damages as set out in *Rab*:

> "[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*). 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* at paras 93–95."

216. The respondent concedes the first two steps from *Rab*, namely that the evidence discloses a potential future event which could give rise to a loss of capacity; and that there is a real and substantial possibility that the future event

in question will cause a pecuniary loss. However, they submit that any award for future loss of earning capacity should be reduced, and take into account:

i. the claimant's residual working capacity, including part-time or possibly full-time employment;

ii. the possibility, or in fact probability, that the claimant would not have become a practicing midwife in Canada; and

iii. the probability that the claimant absent Accident would have only been capable of earning annual income at rates lower than those submitted by the claimant.

217. I find that the medical evidence establishes that Ms. ZAA is not competitively employable in any vocation at present. Her persistent symptoms which include chronic diffuse pain, particularly on her left side down to her left knee, along with her PTSD and anxiety, all combine to support such a conclusion. Again, I refer to the opinion evidence of Doctors Lu, Giantomaso, Tseng and Rickards, along with that of her family physician, Dr. Hassan.

218. To summarize, in my view, the likely future scenario for the claimant is that she remains disabled from any sort of employment, permanently.

219. However, while the prospect for any sort of substantial recovery in relation to Ms. ZAA's working capacity remains negative, in my view there remains a real and substantial possibility of improvement in the claimant's symptoms such that she could potentially work in the future. Such is the respondent's position, who argues it is also consistent with the medical opinions of Drs. Tseng and Rickards.

220. The respondent submits that with the recent shoulder surgery and weight loss surgery, the claimant's potential for further improvement remains open. In addition, Dr. Rickards gave evidence that Ms. ZAA could have further improvement through active therapy. Dr. Tseng stated that improvement regarding her mental health challenges could come through adjustments in her medication in combination with therapies such as EMDR or CBT.

221. Dr. Giantomaso gave evidence that if the claimant were to receive further benefits from her weight loss surgery, including keeping the weight off, and her left shoulder were to continue to improve, it is possible for her to have improvement overall. A pain clinic may also provide assistance to the claimant in better coping with her limitations. Dr. Lu also agreed that the claimant might see some improvement through better coping skills and that controlling her weight is essential to managing her symptoms.

222. Both Drs. Giantomaso and Lu cautioned against any expectation that Ms. ZAA's overall condition will significantly improve, as her symptoms are quite entrenched.

223. I consider it highly unlikely that Ms. ZAA will ever return to specialized and demanding work such as that of a midwife. Based on the claimant's test results, such as what could be obtained, Mr. Kowalik noted her physical limitations were so profound that, for example, she was only capable of lifting or carrying 5 pounds. The claimant has undergone two surgeries following his report. While Mr. Kowalik conceded his report only represented a snapshot of her physical capabilities at the time of his assessment, the evidence at arbitration supported Ms. ZAA's assertions that her Accident-related disability is significant and ongoing.

224. The claimant suggests three scenarios which are to be considered for the purpose of assessing her past and future loss of capacity. The claimant did not differentiate the past losses from the future losses in her calculations, but combined the losses to age 70 as follows:

i. The claimant obtaining her qualifications to work full time as a midwife in British Columbia in 2028, with an ultimate earning potential of $130,000 per year. Her claim in this regard, using Mr. Coleman's discount multipliers for past and future losses, is $2,057,925.

ii. The claimant working in retail at a supervisory level with her income capping out at $70,000 per annum. The claimant suggests these past and future losses, after factoring in the discount multipliers, are $1,366,743.

iii. The claimant working at a higher paid position in retail with her income trending upward from $93,000 to $150,000 per year. Ms. ZAA submits that the past and future capacity losses in relation to this scenario are $1,608,928.

225. The respondent suggests two principle scenarios to be considered in assessing the claimant's future loss of capacity based on calculations from Mr. Szekely:

i. Absent the Accident, the claimant would most likely have continued working in retail at an annual salary ranging from $59,000 to $70,000. The respondent submits that using an economic multiplier of $16,032 (to age 75) on $65,000 per year, the claimant's future earnings total $1,041,503. To age 65, Mr. Szekely utilizes a multiplier of $15,041 per $1,000 earned. Alternatively, if Ms. ZAA were to remain working at minimum wage levels, the respondent projects her future earnings would be approximately $586,400.

ii. The claimant practicing as a midwife in British Columbia with entry into the profession at between the ages of 45 to 50. The respondent submits her future earnings, absent the Accident, are estimated at between $727,958 to $1,027,108. The respondent submits in any event, that without her Accident, it is unlikely the claimant would have become a midwife in British Columbia.

226. The respondent also submits that an appropriate economic multiplier, should the claimant have become a midwife, would be either $11,629 (starting at age 45 to age 75) or $8,242 (starting at age 50 to age 75) per $1,000 earned. To age 65, the multiplier from age 45 would be $10,638 and $7,251 from age 50, according to Mr. Szekely's calculations.

227. The respondent submits that Ms. ZAA has a 50% residual earning capacity and that her award for loss of her future capacity to earn income should be $500,000. However, the respondent does not suggest a vocation, method, or time frame by which she could earn such income.

228. I accept the scenarios presented to me are starting points for the analysis.

229. Ms. ZAA did not give evidence as to when she planned to retire. Her counsel submits that her work ethic and the importance of work to her are considerations to support a finding of a real and substantial possibility she could work past age 65.

230. Retirement at age 65 is a societal norm in most occupations. It is also the default age for the commencement of a pension pursuant to the Canada Pension Plan. Ms. ZAA did not provide evidence of the type which persuaded Kent, J. to assume the plaintiff would have a later retirement age in *Meckic v. Chan*, 2022 BCSC 182 (at paras 161-163). I am not persuaded by the claimant's submissions that there is a real and substantial possibility she would have worked longer. In the absence of evidence of a specific contingency, I assume the claimant would have retired, but for the Accident, at age 65.

231. As noted earlier, losses with respect to the claimant's past and future loss of capacity should be differentiated. In doing so, I find the earning projections contained in the report of Mr. Coleman to be of limited assistance. Mr. Coleman was asked to assume that the claimant would have graduated from the midwife program by June 2019, which was not possible. He also assumed that the claimant would have worked part-time while attending the midwifery program which was not feasible based upon the evidence of Mr. Dobie. Mr. Coleman also utilized economic multipliers to reflect allowances for employment contingencies for women with degrees in medicine, dentistry, veterinary medicine or optometry rather than females with a bachelor's degree in health professions as did Mr. Szekely.

232. Alternatively, Mr. Szekely utilizes an economic multiplier for BC females with a bachelor's degree in health professions and related programs. In addition, Mr. Szekely was of the view that average earnings for midwives and health professionals are a more accurate depiction of earnings than third quartile earnings because there was insufficient information to conclude that the claimant would have earned more than the average midwife.

233. On cross-examination, Mr. Szekely agreed that greater investment in one's education will likely lead to less negative contingencies for that person during their working life. However, he maintained that there was a distinct difference between having, for example, two bachelor's level programs versus a bachelor's level program followed by medical school, which he described was central to Mr. Coleman's analysis.

234. On the whole, I find the economic multipliers and occupational classification of the claimant as put forth by Mr. Szekely to be of greater assistance to the analysis of the claimant's future income losses.

235. With respect to Ms. ZAA's residual capacity for future employment, the respondent submits that the claimant is motivated and driven to succeed and she will succeed in returning to the workforce. That is evidenced by the fact she worked for almost two years post-Accident. The respondent expects that with appropriate treatment she will improve, and submits her PTSD is treatable and, according to Dr. Rickards, her physical symptoms should not prevent the claimant from gradually returning to work in some capacity.

236. However, the respondent argues that despite the claimant's educational background, determination and work ethic, she could perhaps attain a supervisory or managerial role in retail work had the Accident not occurred, but not a marketing or trade manager position. The respondent also takes issue with the claimant's desire to become a midwife in British Columbia and is of the view it was an event unlikely to occur.

237. In terms of the claimant's residual capacity, I find it most likely Ms. ZAA will earn very little or nothing in the future. She has been out of the workforce for over six years.

238. However, I accept there is a real and substantial possibility that Ms. ZAA could find some employment in the future, although I consider that probability quite low. Considerable improvement in the claimant's current condition would be required. Should that occur, the most likely scenario would be that Ms. ZAA would work in a limited capacity, on a part-time basis. I must do the best I can to assess the value of this possibility.

239. I place little weight on the prospect of the claimant working more than 50% in the future, in any capacity. At best, the claimant may recover to the point she could do some form of remunerative work, some years into the future. I hypothesize it will take five years for this to occur.

240. Any potential return to the workforce would likely be in an entry level position, likely at a lower wage (closer to minimum wage) and with a very understanding employer. Mr. Szekely projects earning potential of approximately $37,000 per year for females paid at minimum wage levels. Were she to work full-time at minimum wage or thereabouts, I therefore hypothesize the claimant would earn approximately $37,000 per year.

241. The respondent argues that the claimant has a 50% residual earning capacity. At 50%, as suggested by the respondent, her yearly earnings would be approximately $18,500 per year, based on annual earnings of $37,000. With the application of the economic multiplier suggested by Mr. Szekely at $10,638 per $1,000 earned, this results in potential future earnings of $197,000 (slightly rounded up).

242. All of this is contingent upon the success of the claimant's future treatments and improvement in her condition. I assess the chance the claimant can earn this amount of income at 35%, which gives the value of the claimant's residual earning capacity at $68,950 rounded up to $70,000. This is one estimate of the claimant's residual earning capacity. Other assumptions will result in higher or lower estimates, but in my view this amount represents a fair and reasonable middle ground estimate of the claimant's residual working capacity.

243. The claimant argues she would have completed her educational requirements as a midwife such that she could have begun practicing as a midwife by 2028. She submits that factors including her work ethic, her prior experience as a midwife, her aptitude, education, and previous volunteer work all support her stated intention to become a midwife in BC.

244. The negative contingencies to be considered include the entrance requirements that she has successfully completed her pre-requisite courses, which will likely take a year. Entry into the midwifery program is competitive and the acceptance rates average from 30 to 37.5% of all applications. She will need good grades to be considered a candidate for the program. If accepted, Ms. ZAA will then enter into four years of intense study with practicum assignments which may take her quite some distance from her family for months at a time. Complicating matters is that she has a young family with two children not yet in grade school and for which she is a central care person, particularly while her husband works full-time. She would also be unable to work during the periods she would be in school. Equally important is the consideration as to when she would have begun such schooling.

245. The claimant submits in argument that she realistically would have begun working as a midwife by 2028. She does so without giving any specifics as to how this would have occurred at that time. She also submits that I must weigh the hypothetical event of her being accepted into the program and completing it based on its relative likelihood. She suggests that likelihood is 60%.

246. As I concluded earlier, absent the Accident, I am of the view the claimant would not have continued to work at wage rates around minimum wage. Had she remained in retail, she most likely would have gone on an upward trajectory by becoming a supervisor and then would go on to take on a managerial role at rates which are discussed above. The respondent submits that the claimant had the potential to earn between $59,000 to $70,000 per year and ultimately suggests an annual income amount of $65,000. The respondent submits her losses in this regard would be just over $1,000,000.

247. Absent the Accident, I am of the view that there was a real and substantial possibility of the claimant, at some point, practicing as a midwife in British Columbia. However, I find that if the claimant were to have entered into the midwifery program at UBC, she would not have begun the process before all her children were all at least of school age. She would of course, need to gain admission into the program which is not a given by any measure. She would need to complete her prerequisite requirements as well. Although the program is four years in length, she may have required more than four years to obtain her degree. While attending university, she would not have earned income due to the demands of the program, however she could have earned some income during the summer break.

248. Based on StatsCan data, the claimant submits that the hourly wage of a midwife is currently around $63.00 per hour or, as she argues, $131,000 annually (Exhibit 31). The lower end of hourly wages included in the StatsCan exhibit are at $43.40 in British Columbia. Based upon Mr. Szekely's opinion, the respondent submits the annual wage rates for midwives would be approximately $88,300.

249. In the alternative, the claimant argues that had she remained in retail, such work would have provided her with income well above $70,000 per year. She submits her likely annual income would be between $93,000 to $152,000 per year for work in the field of a "Retail and Wholesale Trade Manager". No evidence was proffered from the claimant as to what is involved with such an occupation or the credentials required to obtain such a position, assuming she was interested.

250. I am therefore offered scenarios by the parties where the claimant's income could vary from $65,000 to $152,000 per year. The evidence for much of this analysis from the claimant is based on StatsCan data, which in turn limits the analysis.

251. What I am left with after considering the scenarios is to weigh the claimant's scenarios with the respondent's scenarios. I do not accept that the claimant could have found work as a midwife which pays her $131,000 per year by 2028. I am more inclined to accept the figure cited by Mr. Szekely of $88,300 rounded to $90,000 per annum as a more realistic and current starting point. I am also of the view that absent the Accident, if she were to enter into the midwifery program at UBC, the claimant would not have been in a position to work as a midwife before the age of forty-five but more likely closer to fifty years of age.

252. Similarly, I do not find the evidence presented to me concerning wages for corporate sales managers or district sales managers with income ranging from $93,000 to $152,000 helpful to the analysis. There is a lack of evidence upon which I could consider these submissions as reasonable.

253. As I have noted, I accept the claimant had a real and substantial possibility of becoming a midwife. Doing the best I am able with the evidence in front of me, I apply a 25% likelihood that the claimant at some point, after all her

children were of school age, may have attempted entry into the UBC program and eventually become qualified to work as a midwife in British Columbia.

254. However, in becoming a midwife in British Columbia, the claimant would have to give up at least four years or more of income to complete the midwife program, excluding perhaps some work during the summer. While the claimant would likely have found the educational experience and work of a midwife quite fulfilling, the reduced income over the time she would be in school does affect this analysis. In other words, the difference in the higher annual income she may earn as a midwife years from now could well be set off by the income she would lose by not working for the years she is in university. With a 25% likelihood of the claimant becoming a midwife, the losses to the claimant are therefore minimal, if any, rather than those submitted by the claimant.

255. I also conclude she had a 75% likelihood of continuing to work in retail circumstances as a supervisor or store manager. Her yearly income earning potential is likely to be higher than $65,000 as submitted by the respondent, but lower than $93,000 per annum as submitted by the claimant. The claimant submits that her income potential is consistent with her becoming a higher paid manager with a range of duties which include vendor negotiations, analyzing market trends, planning and directing and evaluating the operations of such a business. There was no evidence led by the claimant that she had any inclination to do such work, or the qualifications she may have possessed (or required) to allow her to be considered as a candidate for such work. I find it reasonable that Ms. ZAA's future income earning potential in retail industry is $72,500 per annum. Utilizing Mr. Szekely's economic multiplier with its contingencies, to age 65 of $15,041 per $1,000, this amounts to $1,091,000 (rounded up).

256. Accordingly, I do not find I can follow the exact submissions of either party, nor the particular scenarios offered to me. Therefore, as stated previously, I find what I hope is a reasonable and fair assessment of the claimant's losses. In so doing, I am mindful of the comments of the Court of Appeal in *Dong v Li*, 2024 at para 29:

> "Often, a judge will be faced with numerous possibilities and variables in assessing the loss of future earning capacity, and the assessment will be a rough one. As this Court has said, judges are not, in making such awards, required to "show [their] math": *Kringhaug v Men*, 2022 BCCA186 at para. 50. An award will be upheld as long as it is a reasonable one on the evidence."

257. Weighing each of the scenarios results in a lifetime earning loss of approximately $1,091,000, inclusive of any losses as a midwife. From this, I deduct $70,000 representing the claimant's residual income earning capacity.

258. Thus, my assessment of the claimant's damages for loss of future earning capacity is $1,021,000.

f. Cost of Future Care

259. The applicable legal principles guiding an award for costs relating to future care were set out in *Paur v. Providence Health Care*, 2017 BCCA 161:

> "[109] The law is clear that in order to be included in an award of damages, an item of future care must be medically necessary. In *Tsalamandris v. McLeod* 2012 BCCA 239, this court reviewed the applicable principles:
>
> The test for assessing future care costs is well-settled: the test is whether the costs are reasonable and whether the items are medically necessary: *Milina v. Bartsch* (1985), 1985 CanLII 179 (BC SC), 49 B.C.L.R. (2d) 33 at page 78; affirmed (1987), 49 B.C.L.R. (2d) 99 (C.A.):
>
> > 3. The primary emphasis in assessing damages for a serious injury is provision of adequate future care. The award for future care is based on what is reasonably necessary to promote the mental and physical health of the plaintiff.
>
> McLachlin J., as she then was, then went on to state what has become the frequently cited formulation of the "test" for future care awards at page 84:
>
> > The test for determining the appropriate award under the heading of cost of future care, it may be inferred, is an objective one based on medical evidence.
> >
> > These authorities establish (1) that there must be a medical justification for claims for cost of future care; and (2) that the claims must be reasonable. [At paras. 62–3.]
>
> While there must be some evidentiary link between a medical expert's assessment of disability and the care recommended, it is not necessary that a medical expert testify to the medical necessity of each and every item of care that is claimed: *Gregory v. Insurance Corporation of British Columbia* 2011 BCCA 144 at para. 39; *Aberdeen v. Zanatta* 2008 BCCA 420 at paras. 43, 63."

260. This passage from *Paur* was applied by the Court of Appeal in *McGuigan Estate v. Pevach*, 2024 BCCA 106. See also, *Gao v Dietrich*, 2018 BCCA 372 at paras 68-70.

261. Accordingly, a claimant is entitled to compensation for the costs of future care if there is medical justification for the costs and such costs are reasonable. If the evidence shows that a claimant is unlikely to make use of the care item, then an award for such a medical service should not be made: *Izony v. Weidlich*, 2006 BCSC 1315, at para 74.

262. In addition, in *Pang v. Nowakowski*, 2021 BCCA 478 at para 57, the Court of Appeal also identified additional considerations of which the court needs to satisfy itself while making a future care award. They are:

i. That the care item is one which has been made necessary by the injury and that it is not an expense that a claimant would, in any event, have incurred; and

ii. There is no significant overlap in the various care items sought.

1. Claimant's Position

263. Ms. ZAA testified that she has participated in various treatment modalities to date. These include massage therapy, physiotherapy, chiropractic therapy, kinesiology, occupational therapy, psychological counselling and injections. She has taken medications including duloxetine for anxiety and trazodone for depression. She has undergone left shoulder surgery in April of 2025 and more recently, weight loss surgery in November of 2025. The claimant maintains that her ongoing care needs will not be curative, but rather they will assist in allowing her to better manage her symptoms. She relies on the future care recommendations of Raph Kowalik as set out in his report dated December 6, 2024.

264. Ms. ZAA puts forth a claim with respect to her future care which totals $569,376.00 relying on the present value calculations of John Kowalik as set out in his reports of December 9, 2024 and September 26, 2025.

265. From Raph Kowalik's recommendations, the claimant seeks the following:

	Service	**Replacement Time**	**Annual/Total Costs Claimed**
1.	Heavier Home Cleaning Support	Yearly to age 75, with 20% reduction thereafter each year to age 80	$10,435.80 yearly $282,138.00 total cost to age 80
2.	Home Exercise Equipment – Ball/Foam Roller	Every 5 years	$1,858.00 in total net present value
3.	Sleep Aides – Pillow/Mattress Topper	Every 3 to 5 years	$289.58 yearly $3,000.00 in total costs claimed
4.	Gym/pool pass	Yearly to age 65	$720.00 yearly and $576.00 yearly after 65 $21,474.00 in total costs claimed
5.	Nutritionist – Weight Loss	12 sessions	$1,620.00 in total cost claimed

6.	Psychiatrist/Psychologist	One time cost followed by 12 sessions	$2,700.00 for psychiatrist in total cost claimed
7.	Driving Anxiety Course	25 hours of classroom time plus 15 on road sessions	$1,870.00 to $5,500.00 for driving course $2,700.00 for psychologist in total costs claimed
8.	Chiropractic Treatments	24 sessions yearly	$1,140.00 in total costs claimed
9.	Massage Therapy	52 sessions yearly	$6,500.00 yearly $13,000.00 in total costs claimed
10.	Botox Injections and Prolotherapy Injections	Yearly and ongoing Botox injections every 3 to 4 months; Prolotherapy injections as determined by physician	$4,520.00 in yearly costs for Botox $400.00 to $800.00 per injection as determined by physician $152,746.00 in total costs claimed
11.	Chronic Pain Program	One time	$12,000.00 in total costs claimed
12.	Medication Costs including Naproxen, Trazodone, Duloxetine, Lidocaine Cream, Flexeril, Lyrica, Gabapentin, Vortioxetine, Dayvigo, Rybelsus	Ongoing	$201,653.00 in total $75,000.00 in total costs claimed
Total:			$569,376.00

2. Respondent's Position

266. The respondent's position with respect to the claimant's cost of future care claims is as follows:

	Service	**Respondent's Position**	**Respondent's Cost Recommendation**

1.	Heavier Home Cleaning Support	Claimant has improved with surgeries	$75,000.00
2.	Exercise Equipment	Accepted	$1,858.00
3.	Sleep Aides	Needed regardless of collision	$0.00
4.	Gym/pool pass	Needed regardless of collision	$0.00
5.	Nutritionist	Not necessary as nutritionist is being paid through MSP	$0.00
6.	Vocational Rehab	Not claimed by claimant – accepted by respondent	$1,870.00
7.	Psychologist and Psychiatrist	Accepted	$10,000.00
8.	Driver's anxiety course	Accepted	$2,700.00
9.	Massage Therapy	Accepted	$13,000.00
10.	Chiropractic Treatments	Accepted	$1,140.00
11.	Prolotherapy Injections	Dr. Giantomaso says such interventional treatment not helpful	$0.00
12.	Botox Injections	Dr. Giantomaso says such interventional treatments not helpful	$0.00
13.	Chronic Pain Program	Accepted	$12,000.00
14.	Naproxen	Accepted	$7,922.00
15.	Trazodone	Accepted	$8,258.00
16.	Duloxetine	Accepted	$11,992.00
17.	Lidocaine Cream	Accepted	$5,476.00
18.	Flexeril	Not necessary – using Naproxen for pain	$0.00
19.	Lyrica	Not necessary – using Naproxen for pain	$0.00
20.	Gabapentin	Not necessary – using Naproxen for pain	$0.00
21.	Vortioxetine	Not necessary – using Duloxetine	$0.00
22.	Dayvigo	Accepted	$21,872.00
23.	Rybelsus	Not necessary with weight loss	$0.00
Total:			$173,088.00

267. The respondent submits that after a slight rounding up of their calculations, the sum of $175,000.00 is reasonable compensation with respect to the claimant's cost of future care.

3. Assessment

268. The claimant correctly points out that damages for future care costs represent an "exercise in prediction" as the future is uncertain. Accordingly, an assessment of damages for future care costs is not a precise mathematical exercise: *Krangle (Guardian, ad item of) v. Brisco,* 2002 SCC 9 at para 21.

269. I will assess each of the claims in turn.

270. With respect to weekly home cleaning support, Mr. Kowalik recommends four hours of service per week at an hourly rate of $50.00. After applying the discount, the claimant seeks an award of $282,138.00 to age 80. The claimant has recently been paying a housekeeper to clean on a monthly or bi-weekly basis. They had not previously hired a housekeeper. The respondent acknowledges the need for some housekeeping.

271. In my view, the claim for home cleaning support should be discounted substantially. My future loss assessment is predicated on the notion that the claimant would have worked full-time. Ms. ZAA's husband works full-time as well. In a growing family of four children with two full-time income earners, some housekeeping assistance could be anticipated, particularly as the claimant and her husband age. Housekeeping to age 80 is also excessive. In addition, the estimated hourly rates seem high. I allow the claim at 40% of the amount claimed, or in other words, $113,000.00.

272. The parties are agreed at $1,858.00 for exercise equipment, and I so make that award.

273. The claimant submits $3,000.00 is appropriate for sleep aides as recommended by Mr. Kowalik. The respondent disputes this expense in its entirety. The claimant gave evidence that she has difficulty with sleeping and wakes up due to pain or nightmares. I accept the claimant's testimony that she continues to suffer from problems with her sleep and the opinion of Mr. Kowalik is that such sleep aides would be beneficial. I am of the view that $2,000.00 is reasonable and justified based on Ms. ZAA's injuries.

274. With respect to gym and pool passes, the respondent's position is that the claimant would have made such purchases in any event had the Accident not occurred. The claimant seeks $21,474 for such expenses. The totality of the medical evidence recommends the claimant become increasingly active. I accept that this would benefit her not only physically, but emotionally as well. I allow $11,000.00 for these items.

275. Having regard to a nutritionist, I am mindful of the comments of Dr. Lu, when he testified that the benefits of the claimant's weight loss surgery may not be sustainable without further education. Mr. Kowalik recommends a one-time expenditure for this service. I find this expense to be both reasonable and justifiable and allow $1,620.00 towards the costs of a nutritionist.

276. With respect to psychiatric and psychological assistance for Ms. ZAA, the respondent recommends an award of $10,000.00. Both the respondent and claimant submit $2,700 is an appropriate amount for a driving anxiety course. I find both the expenses reasonable and justified and allow $12,700.00 for these expenses which includes a course to address the claimant's driving anxiety.

277. Regarding massage and chiropractic therapies, the parties are agreed at costs of $13,000.00 for future massage treatments and $1,140.00 for future chiropractic treatments. These expenses are supported in Mr. Kowalik's report, and I award the total sum of $14,140.00 for future massage and chiropractic treatments.

278. Mr. Kowalik recommended the claimant have access to a chronic pain program. The parties agree on an expenditure of $12,000.00 toward this item and I concur. This care item is justified and allowed at $12,000.00.

279. Regarding injection costs for prolotherapy and Botox, Mr. Kowalik suggests Botox and prolotherapy treatments be made available to the claimant based on the comments found in Dr Giantomaso's report of September 13, 2022. At that time, Dr. Giantomaso suggested the claimant be referred to an independent pain management specialist in regard to trigger point injections, Botox and prolotherapy. Dr. Giantomaso made no similar recommendations in his report of November 25, 2024 and opined it was unlikely that interventional management would be of assistance to Ms ZAA.

280. On cross-examination, Dr. Giantomaso was asked to consider what role prolotherapy or Botox injections might have for the claimant as part of her ongoing treatment regime. Given Ms. ZAA's diffuse pain symptoms, he did not foresee a method by which she could be treated using these types of interventions. He felt that within the context of the claimant's diffuse symptoms, these interventions would not be reasonable or, as he described, "worth it." Under the circumstances, I am not persuaded that prolotherapy or Botox injections are reasonable and make no award for these items.

281. The claimant claims $75,000.00 in future medication costs, while the respondent submits that $55,520.00 is an appropriate sum to cover the claimant's future medication costs. Ms. ZAA has altered or added to her medications from time to time. Dr. Tseng emphasized that the claimant may experience a benefit from a variety of different medication combinations over time, and accordingly some medications as indicated in Mr. Kowalik's report are priced higher than those suggested by the respondent. In my view, an award of $70,000.00 is reasonable and reflects slightly less than 30% of the amounts described by Mr. Kowalik.

282. In total, I award Ms. ZAA $238,318.00 rounded down to $238,300.00 in future care costs.

g. Loss of Housekeeping Capacity

283. In some situations, it may be appropriate to make a pecuniary award for loss of housekeeping capacity. The test for a pecuniary award for future loss of housekeeping capacity is set out 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.
>
> [34] Whichever option a court chooses, when valuing these different types of awards, courts should pay heed to the differing rationales behind them. In particular, when valuing the pecuniary damages for the loss of capacity suffered by a plaintiff, courts may look to the cost of hiring replacement services, but they should ensure that any award for that loss, and any deduction to that award, is tied to the actual loss of capacity which justifies the award in the first place."

284. *Kim* was endorsed in the Court of Appeal decision, *McKee v. Hicks*, 2023 BCCA 109:

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

285. The claimant seeks an award of $25,000.00 for her loss of housekeeping capacity. The respondent does not agree to any award.

286. Ms. ZAA provided evidence that her ability to perform household chores and duties has been significantly affected by the Accident. Prior to that time, she was the person primarily responsible for most indoor domestic activities including cleaning, laundry, groceries and cooking. She enjoyed hosting friends at her home and was pleased by the tidiness of her home.

287. The claimant submits she is now able to do very little, if anything, in the way of home keeping. She is only capable of the lightest housekeeping tasks, such as folding some clothes or perhaps placing dishes on the top rack of the dishwasher for limited periods of time. Her energy is limited. Since the Accident, there has been a substantial change in responsibility for household work. Her husband is now responsible for most of this work. He does much of the cooking, cleaning and laundry. He tries to assist as much as possible, but he works full-time. As a consequence, Ms. ZAA and her husband have hired a housekeeper who comes every two weeks to a month.

288. In summary, this is not a situation where the claimant's housekeeping ability is diminished such that she remains capable of performing homemaking activities, albeit in pain, or with modest limitations. Ms. ZAA remains largely unable to perform homemaking activities in any manner close to her previous level.

289. Ms. ZAA claims $25,000.00 for loss of housekeeping capacity. I accept this modest sum should be awarded. The award must recognize that some allowance has been made for the cost of cleaning services. I note by Mr. Kowalik's calculations a claim for housekeeping services at $50.00 per hour. Even at a rate half of that, one hour per day of housekeeping would cost $9,125.00 per year.

h. Special Damages

290. The parties are agreed on the claimant's special damages in the amount of $9,497.38.

CONCLUSION AND SUMMARY

291. The claimant's award is therefore summarized as follows:

Non-pecuniary Damages	$ 210,000.00
Past Loss of Earning Capacity	$ 158,000.00 (gross income loss)
Loss of Future Earning Capacity	$1,021,000.00
Loss of Housekeeping Capacity	$ 25,000.00
Cost of Future Care	$ 238,300.00
Special Damages	$ 9,497.38
Total	$1,661,797.38

The past loss of earning capacity award will need to be adjusted for taxes to comply with s. 98 of the *Insurance (Vehicle) Act*, R.S.B.C 1996,

292. The parties have agreed on UMP deductions at $450,000.00.

293. The net award is $1,211,797.38, minus amounts for deductions on the past loss of capacity award. In the event of disagreement, the parties have liberty to apply with respect to the appropriate deductions on past income loss as required by law.

294. The parties have 30 days to contact me if clarification of the award is required. Subject to any applicable prior costs orders, or issues regarding offers to settle and the application of R. 9-1(15) of the *Supreme Court Civil Rules*, the claimant will have her costs of the arbitration.

295. Lastly, I would like to thank counsel for their able submissions, professionalism and level of cooperation throughout these proceedings.

Arbitrator - Peter W. Unruh

August 17, 2026