

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stempowicz v. Dobbs*,
2023 BCSC 1951

Date: 20231108
Docket: M200541
Registry: Victoria

Between:

Tienna Stempowicz

Plaintiff

And:

Michael Dobbs

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraph [79] on
November 15, 2023

Before: The Honourable Justice Morley

Reasons for Judgment

Counsel for the Plaintiff:

R. Neary

Counsel for the Defendant:

M. Waghray
R. McLennan

Place and Dates of Trial:

Victoria, B.C.
September 25-29, 2023

Place and Date of Judgment:

Victoria, B.C.
November 8, 2023

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SUMMARY: Tienna Stempowicz (Stempowicz) vehicle turned left on a solid green light which collided with the vehicle of Michael Dobbs (Dobbs). Stempowicz sought for personal injuries that she suffered. The parties agreed Stempowicz suffered neck and upper midback pain and direct out-of-pocket expenses and past wage loss. Stempowicz disputed what appropriate monetary compensation should be given for the non-pecuniary damages for pain and the effect of the accident on Stempowicz's recreational and household activities, loss of future earning capacity, and costs of future care. Dobbs claimed that Stempowicz suddenly and negligently entered the intersection when Dobbs had no time to brake causing the accident, hence, it was Stempowicz who was 100% responsible. Stempowicz claimed that she initiated her left turn when Dobbs was sufficiently in the distance so as not to constitute an immediate hazard and that Dobbs was speeding and either failed to notice that Stempowicz was in front or did notice and thought that he could maneuver around.

HELD: Application granted in part.

When Dobbs had entered the intersection it was only when he made the realization that Stempowicz would not clear the space as quickly as he had originally expected that he began evasive action. Dobbs failed to keep his eyes on Stempowicz's car and update his assessment until too late. Even if Dobbs expected Stempowicz to be out of the left southbound lane space by the time he got to the intersection he still had the obligation to yield, instead of yielding he continued into the space of conflict at full speed until he was in the intersection. Dobbs failed to pay sustained attention to what was in front of him, it was clearly negligent driving. Stempowicz's stop in the midst of the turn was unexpected to Dobbs, therefore, Stempowicz was to some degree contributory negligent in the accident. While Stempowicz was partially at fault for stopping unexpectedly and for closing her eyes and taking her foot off the brake, she at all times had the right-of-way and her reactions were in the nature of ordinary frailties. 90% fault for the accident to Dobbs and 10% to Stempowicz. Damages assessed at \$269,426.50. Non-pecuniary loss \$75,000, Past wage loss \$2,160, loss of future income earning capacity \$180,000, cost of future care \$10,000 and special damages \$2,266.50.

INTRODUCTION

[1] This case arises out of a motor vehicle accident at the intersection of Veterans Memorial Parkway and Langford Parkway in Langford, British Columbia on the morning of February 13, 2018. The vehicle of the plaintiff Tienna Stempowicz, turning left on a solid green light, collided with that of the defendant Michael Dobbs, which was travelling straight through. Ms. Stempowicz sues for personal injuries she suffered as a result. Liability and damages are both in issue.

[2] A driver considering a left turn on a solid green light must yield to oncoming traffic if, but only if, the oncoming vehicle is close enough to constitute an “imminent hazard”. Once a left turn has been appropriately started, however, it is the oncoming vehicle that must yield, by slowing down and, if necessary, stopping. A critical issue in dispute is how close Mr. Dobbs was when Ms. Stempowicz began her left turn and whether that was close enough that she should not have attempted the turn.

[3] One independent witness testified that Mr. Dobbs was at least 300 meters back – far enough that if Ms. Stempowicz had not begun the turn, the witness would have honked at her. If this is correct, the collision happened not because Ms. Stempowicz made an unsafe left turn, but because Mr. Dobbs failed to yield, either because he was not paying attention or because he (mistakenly) thought Ms. Stempowicz would clear the space before he got there. But another independent witness has a very different recollection, namely that Ms. Stempowicz’s vehicle pulled out in front of Mr. Dobbs without slowing down. The drivers themselves testified as well, although their memories of the events were not as good – and of course they were not neutral observers. I must therefore determine what was most likely to have happened.

[4] Once I have decided who had the right-of-way, I will then consider if there are other ways in which either (or both) of the parties failed to meet the standard of care required of prudent drivers such that this failure caused or contributed to the accident.

[5] Unless I attribute fault for the accident entirely to Ms. Stempowicz, I must then assess damages. The parties agree Ms. Stempowicz suffered neck and upper midback pain as a result of the accident and have agreed on direct out-of-pocket expenses (“special damages”) and past wage loss. In dispute is what, if any, appropriate monetary compensation should be given for what Ms. Stempowicz alleges will be non-pecuniary damages for pain and the effect of the accident on Ms. Stempowicz’s recreational and household activities, loss of future earning capacity, and costs of future care.

LIABILITY

Background Facts

[6] Veterans Memorial Parkway and Langford Parkway form a “T” intersection. Veterans Memorial is the top of the “T” and runs north-south, with Langford branching in from the west. (The canonical directions do not strictly apply to either roadway at the intersection, but the parties used “north” to refer to the direction towards Highway 1 from the perspective of the intersection, and I will follow them.)

[7] At the T intersection, Veterans Memorial has two southbound lanes with a right-turning lane onto Langford, and two through lanes northbound and a left turning lane. Langford has two westbound lanes continuing from each of these turning lanes, two left-turn-only lanes eastbound, and a right-turn-only eastbound lane. Traffic is separated on both streets by raised medians and islands. At the time, there was no advance left turn signal for traffic turning left from Veterans Memorial onto Langford.

[8] On the morning of the accident, the weather was overcast, but all the roadways were dry. Traffic was not particularly heavy. By the time the accident happened, it was light out.

[9] Shortly after 8 a.m., Ms. Stempowicz was driving her white 2017 Toyota Corolla northbound on Veterans Memorial. She intended to take the left turn onto

Langford. When she reached the intersection, she put her signal light on and pulled into the left-turn lane.

[10] Lined up behind her was the first independent witness, Kaeleigh Gaunt. Ms. Gaunt was driving a Jeep Cherokee. She was also in the northbound left-turn lane on Veterans Memorial and would have been the next vehicle to make that left.

[11] Ms. Stempowicz advanced beyond the stop line on her side of the intersection. At some (disputed) point, she initiated the left turn and entered the northwest portion of the intersection in front of oncoming traffic (the “conflict” zone or area).

[12] Mr. Dobbs was travelling to work in a dark-coloured (“pewter gray”) 2005 Mazda RX8 GT. He turned southbound onto Veterans Memorial at the next intersection to the north, Meaford Avenue, 450 meters away from the subject intersection. He continued toward the intersection with the intention of continuing southbound.

[13] Neither car made it through the intersection. Instead, they collided in the conflict zone, somewhere between the two southbound lanes.

[14] Both drivers say that when they realized there would be a collision, there was little they could do. Ms. Stempowicz, who concedes her memory of the accident is not good, recalls realizing Mr. Dobbs’ car was bearing down on her, closing her eyes and flinching and releasing the brake just before impact. Mr. Dobbs says he realized the collision would happen after he entered the intersection, just “feet away” from Ms. Stempowicz’s Corolla. He put on the brake, popped in the clutch, and swerved to the right, but he does not think he slowed down much.

[15] Ms. Stempowicz’s car was damaged across the front half. Its bumper came off. The collision caused Mr. Dobbs’ car to rotate and come to rest at the traffic island at the southwest side of the intersection. It came to rest right in front of the car driven by the second independent witness, Chantelle Smith. Ms. Smith was waiting

as the first vehicle in the curbside left-turn-only lane of Langford for her red light to turn.

Positions of the Parties on Liability and Framework For Analysis

[16] The defence theory of liability is that Ms. Stempowicz suddenly and negligently entered the intersection when Mr. Dobbs had no time to brake, causing the accident. The defendant says she is thus 100% responsible.

[17] The plaintiff's theory is that Ms. Stempowicz initiated her left turn when Mr. Dobbs was sufficiently in the distance so as not to constitute an immediate hazard. She then stopped in the intersection on the side of oncoming traffic. On the plaintiff's theory, Mr. Dobbs was speeding and either failed to notice that Ms. Stempowicz was in front of him, or did notice and thought (until it was too late) that he could maneuver around her. Either way, on this account, Ms. Stempowicz had the right-of-way and Mr. Dobbs should have yielded to her by slowing down and, if necessary, stopping. The plaintiff's theory is that fault for the accident is shared, but largely should be attributed to Mr. Dobbs.

[18] Section 174 of the *Motor Vehicle Act*, R.S.B.C 1996, c. 318 sets out the rule for who has the right-of-way when a driver intends to turn left on a solid green:

174 When a vehicle is in an intersection and its driver intends to turn left, the driver must yield the right of way to traffic approaching from the opposite direction that is in the intersection or so close as to constitute an immediate hazard, but having yielded and given a signal as required by sections 171 and 172, the driver may turn the vehicle to the left, and traffic approaching the intersection from the opposite direction must yield the right of way to the vehicle making the left turn. [Emphasis added.]

[19] An "immediate hazard" was defined by Davey J.A. in *Keen v. Stene* as arising if the driver of an oncoming car must "take some sudden or violent action to avoid threat of a collision": (1964), 44 D.L.R. (2d) 350 (B.C.C.A.) at p. 359. If the oncoming vehicle cannot safely come to a stop when its driver sees (or ought to see) the left-turning car enter the conflict space, then the oncoming vehicle is an immediate hazard and the turn must not be made. If the oncoming vehicle can safely come to a

stop upon seeing the initiation of the turn, then the turn is lawful and the driver of the oncoming car must yield the right of way.

[20] It is worth noting that a speeding vehicle can “constitute an immediate hazard” and, if it does, the driver intending to turn left must yield: *Chung Estate v. King*, [1992] B.C.J. No. 1830 (S.C.). Indeed, since a car moving too quickly is harder to stop, it is an immediate hazard further away than one driven in compliance with the posted speed limit. Excess speed and a failure to keep a proper lookout by the driver with the right-of-way can be contributing fault to the accident, but that is a separate inquiry.

[21] On the other hand, if the oncoming traffic does not constitute an immediate hazard when a left turn is *begun*, the through driver must yield, even if the turning driver stops unaccountably or unexpectedly. A driver who initiates a left turn may have valid reasons to stop, such as seeing a car come up quickly in the curb lane or a pedestrian occupy a crosswalk. Sometimes a driver will stop in the course of a left turn for no or a bad reason and if this hesitation is unexpected, it may contribute to an accident. Either way, oncoming traffic must yield if the turn was initiated when there was no immediate hazard when it was begun. Perhaps these actions might be at fault, but, once again, that is a distinct issue from who has the right-of-way.

[22] As set out in *Nerval v. Khehra*, 2012 BCCA 436, a two-stage analysis is therefore required to determine liability when a left-turning vehicle collides with a through vehicle in the circumstances described by s. 174 of the MVA:

- a) First, the court must determine who had the right-of-way, which turns on whether oncoming traffic constituted an “immediate hazard” when the left-turning driver began commenced the turn.
- b) Once this has been done, the court must determine whether the driver with the right-of-way is nonetheless negligent and at fault. When considering this question, the court presumes that the driver with the right-of-way (the “dominant driver”) could reasonably expect the other

(“servient”) driver to avoid the conflict and should only be held at fault for failing to take evasive action once put on notice that the servient driver is not going to yield.

[23] I will thus begin by considering the evidence of the four witnesses to the accident that testified before me to determine whether Mr. Dobbs’ vehicle constituted an “immediate hazard” when Ms. Stempowicz began her turn. After analyzing who should have yielded, I will consider what evidence there is of other departures from the standard of care of a reasonable and prudent driver that caused or contributed to the accident. Having done that, I will apportion fault.

Evidence on “Imminent Hazard” When Ms. Stempowicz Began Her Turn

[24] The first witness I heard from on the question of whether it was safe for Ms. Stempowicz to begin the turn when she did was Ms. Gaunt, the driver of a Jeep Cherokee that was right behind Ms. Stempowicz when she made the turn. Ms. Gaunt testified that she was very familiar with the intersection, driving through it daily for many years and that she had a good view, being in a raised Jeep.

[25] According to Ms. Gaunt, Ms. Stempowicz waited for 10-15 seconds with her left-turn signal on for oncoming traffic to pass before beginning to turn. Since Ms. Gaunt was also hoping to make the same turn, she was observing oncoming traffic closely. She recalled thinking when Ms. Stempowicz commenced her turn that the only oncoming car in sight was 300-400 meters back, that it was safe for Ms. Stempowicz to turn, that she would have done so herself, and indeed, that she might have honked her horn at Ms. Stempowicz if she had not started to turn.

[26] According to Ms. Gaunt, after starting the turn and entering into the path of oncoming traffic, Ms. Stempowicz halted her car. The car was halted at an angle because it had only partially turned. Ms. Stempowicz stayed immobile for a few seconds. Ms. Gaunt was less clear whether her car was in motion again by the time of the collision, but I interpret the thrust of her testimony to be that she remembers Ms. Stempowicz being in motion at the time of the collision.

[27] Ms. Gaunt says the car 300-400 meters back – which ultimately turned out to be Mr. Dobbs' Mazda – came up faster than could be expected, and was likely 15-20 km/h above the posted speed limit of 60 km/h. It did not slow down, and veered either to the right or to the left just before the impact.

[28] A very different version of events was given by the other independent witness, Ms. Smith, who reported that Ms. Stempowicz made the left turn immediately on coming to the intersection, without stopping, and, as a result, collided into Mr. Dobbs' car.

[29] Ms. Smith was travelling east bound on Langford Parkway, intending on turning left onto Veterans Memorial Parkway in the curbside left-turning lane (middle lane). In the moments before the collision, she was stopped at the red light that corresponded to the green light for traffic northbound and southbound on Veterans Memorial. She had no cars in front of her and had a clear view of the intersection.

[30] According to Ms. Smith's recollection, the white Corolla (Ms. Stempowicz's vehicle) did not stop but continued directly from the left-turn lane on Veterans and "turned into" the dark vehicle that she identified as Mr. Dobbs' car. To her, it did not appear that Mr. Dobbs was speeding and Ms. Stempowicz's car came into the oncoming traffic side of the intersection immediately before the collision.

[31] Ms. Stempowicz conceded that her memory of the events leading up to the collision was not good, either at the time of trial or immediately afterwards. She was unable to recall how far away oncoming traffic was when she made the turn. She did not remember when she stopped. The one clear memory she had was that at the moment when she realized the collision was going to happen, she flinched, closed her eyes and took her foot off the brake.

[32] Mr. Dobbs testified that he does not believe he was speeding because his general policy is not to speed since, he worries, police will take a special interest in drivers of sports cars. On cross-examination, he added that he looked at his

dashboard when he changed gears and would have seen that he was at the posted speed limit.

[33] Mr. Dobbs was quite clear that he only reacted to the possibility of collision once he was already in the intersection, mere “feet away” from Ms. Stempowicz’s vehicle.

[34] Mr. Waghray, as counsel for Mr. Dobbs, invites me to interpret this as a statement that this is when Mr. Dobbs first saw Ms. Stempowicz initiate the left turn by entering into the west side of the intersection. But in my review of Mr. Dobbs’ evidence as a whole, he was careful *not* to say that. His evidence was this was the moment he first became aware that they were going to collide, but he never claimed this was the moment he first became aware Ms. Stempowicz was making the turn.

[35] On the basis of a visit to the site shortly before trial, he says he would have had 10 seconds of view of a vehicle in Ms. Stempowicz’s position before arriving at the intersection. He was not willing to commit to what he *did* see during that time, but only what he *would* or *could* have seen.

[36] While Mr. Dobbs at one point in his direct examination mentions Ms. Stempowicz’s “entry” into “my space” – which I interpret as the conflict zone – he never clearly identifies if he saw Ms. Stempowicz begin the turn by crossing into the conflict zone or, if so, when this happened.

[37] Indeed, Mr. Dobbs was clear that Ms. Stempowicz was already “deeply committed” to the left turn when he became aware that there would be a collision on the cars’ current course. That implies that Ms. Stempowicz had begun the turn before that and implies that Mr. Dobbs either did not observe or does not remember when that turn began.

[38] In a statement to ICBC on February 13, 2018, Mr. Dobbs stated that Ms. Stempowicz pulled into the intersection and then “suddenly stopped.” ICBC’s record has been agreed to be an accurate statement and reflection of what Mr. Dobbs said, and the content of it is admissible as a statement against interest:

R. v. Evans, [1993] 3 S.C.R. 653 at p. 664. The statement implies that on the day in question, Mr. Dobbs noticed two different things in sequence: Ms. Stempowicz pulling into the intersection and her stopping. It is also implicit in the statement that it was not until he noticed Ms. Stempowicz had paused her turn that he took evasive action. This in turn suggests that before that, Mr. Dobbs expected Ms. Stempowicz to clear the space in front of the leftmost southbound lane by the time he closed the distance, and it was the realization that she was not going to do that in time that caused him to brake and swerve.

[39] I find it was only when Mr. Dobbs had entered the intersection that he made the realization that Ms. Stempowicz would not clear the space as quickly as he had originally expected that he began evasive action. I further find, as the most likely hypothesis, that this was a few seconds after he had first seen Ms. Stempowicz initiate the left turn, but that at that earlier moment, he was confident that Ms. Stempowicz would clear the conflict area by the time he got there. I find he failed to keep his eyes on her car and update his assessment until too late.

[40] In cross-examination, Mr. Dobbs denied that he had given a statement to ICBC, but the accuracy of the statement was admitted in response to a Notice to Admit. Although Mr. Dobbs said in cross-examination that he did “not believe” Ms. Stempowicz’s vehicle was stopped in front of him before contact, I prefer his contemporaneous statement on this issue. That is consistent with her vehicle being in motion at the time of impact if she removed her foot from the brake when she became aware that collision was likely.

[41] Mr. Dobbs, in cross-examination, was emphatic that Ms. Stempowicz’s vehicle was in motion at the time of the collision, albeit slowly. I will come back to this issue, but note at this point that this is compatible with her vehicle having stopped part-way through the turn before it began moving again.

Findings on “Imminent Hazard”

[42] Other than the evidence of Ms. Smith, in my view the evidence before me is all consistent with the following sequence of events, each of which took a few seconds:

- a) Ms. Stempowicz advanced from the stop line on her side of the intersection and waited for oncoming traffic to pass by.
- b) Ms. Stempowicz then initiated a left turn by entering the northwest quarter of the intersection. At this point, Mr. Dobbs was approximately 300 meters back.
- c) Ms. Stempowicz then stopped. During the time Ms. Stempowicz was stopped, Mr. Dobbs did not slow down and closed the gap between them at full speed, presumably in the expectation that Ms. Stempowicz would complete the turn or at least be in front of the curb lane by the time he reached the conflict space.
- d) Ms. Stempowicz perceived that Mr. Dobbs' vehicle was bearing down on her. She flinched, closed her eyes and released the brake. Since her car has an automatic transmission, it began to move in the direction it was pointed, albeit slowly, until the collision occurred.
- e) Mr. Dobbs realized that Ms. Stempowicz would not be out of the conflict space after he had already entered the intersection only a few feet from her. He popped the clutch, engaged the brake and swerved to the right. None of this was sufficient to avoid the collision.

[43] Ms. Smith's account is the only one that conflicts with this sequence. While I have no doubt that Ms. Smith was an honest and careful witness trying her best to assist the Court, where her recollection was incompatible with that of Ms. Gaunt, I consider Ms. Gaunt's perceptions and recollection to be more reliable for the following reasons:

- a) Since Ms. Gaunt was about to make the very same turn Ms. Stempowicz tried to make, she had every reason to be attentive to oncoming traffic and the timing of Ms. Stempowicz's movements. By contrast, Ms. Smith was waiting for a red light to change and would have no decisions to make once that occurred. There was no reason for her to attend to Ms. Stempowicz's vehicle until the collision.
- b) Ms. Gaunt gave a statement to the police on the morning of the accident. Ms. Smith was unable to do that: she believed she left her contact information with the police, but it appears that she may have given it to someone else and the police either never received it or never followed up. In any event, Ms. Smith was never contacted about these events until shortly before trial, more than five years after the events. It is not surprising that her memory is vague. She was unable to identify anything about the driver of the dark vehicle that rotated and almost hit her own vehicle, including gender or skin colour. She was sure that the dark vehicle was travelling on the curb lane, even though all the other evidence is that it was travelling in the left lane.
- c) Ms. Smith's memory that Ms. Stempowicz did not stop at all – either in the left-turn lane, in the east side of the intersection or after beginning the turn – is radically at odds with what Ms. Gaunt very clearly remembered of both a lengthy stop while waiting for traffic to clear and then a stop in the west side of the intersection while turned. Since Ms. Gaunt was in a much better position to observe this, I have to conclude that Ms. Smith was mistaken.

[44] I therefore accept Ms. Gaunt's evidence that Mr. Dobbs was at least 300 meters away when Ms. Stempowicz began her left turn. At that distance, even if he was speeding, Mr. Dobbs did not represent an immediate hazard. Even at 80 km/h, which is 20 km/h above the posted speed limit, it would have taken him more than 13 seconds to make up that distance, plenty of time to complete a left turn

if Ms. Stempowicz had not hesitated. In my view, it was likely that Mr. Dobbs made precisely this calculation when he noticed her begin the left turn and he did not slow down.

[45] I also accept Ms. Gaunt's lay opinion, as a driver and frequent user of that intersection, that it was safe to make a left turn when Ms. Stempowicz did. This is compatible with the fact the collision happened, because of the subsequent events of Ms. Stempowicz's halt and Mr. Dobbs' failure to slow down as a result of that halt.

[46] Ms. Gaunt's evidence that Ms. Stempowicz stopped while part way through the turn is corroborated both by Mr. Dobbs' statement to ICBC and by Ms. Stempowicz's own recollection of being stopped when she realized the collision was about to happen and then released the brake.

[47] In my interpretation of his evidence, Mr. Dobbs did not make any claims that are inconsistent with the sequence of events as described by Ms. Gaunt. In particular, I am unable to get from his evidence a clear statement that he observed Ms. Stempowicz beginning her turn, let alone that she did so too late for him to slow down. His reference to Ms. Stempowicz's "entry" into the space is garbled and his evidence generally seems to be consistent with the possibility that she was stopped in front of him while he continued to proceed at full speed.

[48] If I am wrong about this, however, I prefer Ms. Gaunt's evidence to that of Mr. Dobbs. While I do not see any reason to think Mr. Dobbs was outright deceptive about a fact, his evidence was not forthcoming and he disputed points in cross-examination that he should have conceded, such as that he was aware that his speed would be a major issue in the trial or that he had an interest in avoiding increases in his insurance rates. His evidence was defensive and argumentative. Much of his evidence was asserted in terms of what he "would do", when the natural answer would either be to say what he did do or concede he did not recall. His emphatic denial that he spoke to ICBC on February 13, 2018 could not be correct.

[49] The first stage of the *Nerval* analysis is to ask who had the right of way. I find the answer was that Ms. Stempowicz had the right of way because when she started her left turn, Mr. Dobbs was far enough away that he could easily slow to a stop before the intersection. He was therefore not an imminent hazard. Mr. Dobbs had an obligation to stop if Ms. Stempowicz began the turn and did not clear the space in front of him. Even if Mr. Dobbs expected Ms. Stempowicz to be out of the left southbound lane space by the time he got to the intersection, he still had the obligation to yield. Instead of yielding to Ms. Stempowicz, however, he continued into the space of conflict at full speed until he was in the intersection. I find that this was because he failed to pay sustained attention to what was in front of him. This is clearly negligent driving.

Other Findings on Fault

[50] The next question is whether Ms. Stempowicz was also at fault in the accident. I note that she conceded that she had some contributory negligence.

[51] I have found that Ms. Stempowicz's stop in the midst of the turn was unexpected to Mr. Dobbs. It likely contributed to the collision in the sense that if she had not stopped, Mr. Dobbs would likely have been able to pass by her on his left. It was the fact that the stop occurred and was unexpected to Mr. Dobbs that led to the collision. To the extent the stop was a failure to meet the standard of care, it would constitute contributory negligence.

[52] A driver with the right-of-way can reasonably expect servient drivers to yield, at least until they have clear notice that this is not going to happen. Moreover, it is sometimes the safest thing to do for a driver in mid-turn to stop: one point of the rule set out in s. 174 of the *MVA* is that, if this happens, the oncoming drivers will have the time and obligation to stop themselves, thereby avoiding collisions.

[53] Unfortunately, we do not know why Ms. Stempowicz stopped. Her own memory was affected by the trauma of the accident. Ms. Gaunt supposed that Ms. Stempowicz stopped because she observed Mr. Dobbs coming towards her. If Mr. Dobbs was in the left-hand lane, however, this would not be a sensible thing to

do. It is possible that when she first stopped, Mr. Dobbs was in the curb lane, but that leaves unexplained why she did not restart when he changed lanes.

[54] According to Mr. Dobbs' contemporaneous statement, this stop was sudden and unexpected. Since it is also unexplained, on a balance of probabilities, I find that this stop departed to some degree from the standard of care of the prudent driver and contributed to the accident.

[55] Ms. Stempowicz was clear that her reaction to the perception that Mr. Dobbs was about to collide with her was to close her eyes, flinch and release the brake. While it is impossible to say whether there was any course of action open to her at that point that would avoid the collision, this response was clearly not the best one. It would probably have reduced the impact of the accident if Ms. Stempowicz had responded more proactively.

[56] Ms. Stempowicz's reactions are human and understandable, but I find they do not meet the standard of care. A prudent driver does not halt suddenly for unexplained reasons and does not close their eyes and release the brake when a collision seems imminent. In my view, therefore, Ms. Stempowicz was, to some degree, contributorily negligent in the accident: *Bradley v. Bath*, 2010 BCCA 10 at para. 27.

[57] I also need to consider whether Mr. Dobbs exhibited other departures from the standard of care in addition to the principal one of failing to yield the right of way. Ms. Gaunt's lay opinion was that Mr. Dobbs was speeding. She based this on her knowledge of the intersection and how long it normally takes traffic to go from where she first saw Mr. Dobbs compared with how quickly he arrived in the intersection.

[58] Mr. Dobbs says he was not speeding, but I cannot give much weight to an assertion based on what he would do and then, in cross-examination, based on saying he must have looked at the dash when he changed gears.

[59] In my view, Mr. Dobbs was probably speeding to some degree, and I accept the lower end of Ms. Gaunt's estimate of 75-80 km/h as established on a balance of

probabilities. While this would not have caused the accident if Ms. Stempowicz had not stopped, the accident also would likely not have occurred if Mr. Dobbs had driven at the posted speed limit. Certainly, the impact would have been less.

Apportionment

[60] Under s. 1(1) of the *Negligence Act*, R.S.B.C. 1996, c. 333, when a plaintiff contributes negligently to causing his or her own injury, liability is in proportion to the degree of fault.

[61] The court's task is to assess the respective blameworthiness of the parties, rather than the extent to which the loss may be said to have been caused by the conduct of each. Fault or blameworthiness evaluates the parties' conduct in the circumstances, and the extent or degree to which it may be said to depart from the standard of reasonable care: *Alberta Wheat Pool v. Northwest Pile Driving Ltd.*, 2000 BCCA 505 at paras. 45-46; *Bradley v. Bath*, at para. 24.

[62] While a dominant driver may be apportioned fault, it is an error to do so on the basis that they should have taken evasive action when they had no reason to think the servient driver would fail to yield the right-of-way. As a general matter, it will be a rare case where a servient driver failing to yield the right-of-way will not be found to be predominantly responsible for a collision that occurs as a direct result.

[63] While I have found Ms. Stempowicz to be partially at fault for stopping unexpectedly and for closing her eyes and taking her foot off the brake when collision seemed imminent, she at all times had the right-of-way and her reactions are in the nature of ordinary frailties. Mr. Dobbs, by contrast, just assumed he could continue at full speed because he failed to consider the contingency that Ms. Stempowicz would hesitate in the turn, failed to notice she had stopped in time or some combination of both. He was also, I have found, speeding.

[64] I would therefore attribute 90% of the fault for the accident to Mr. Dobbs and 10% to Ms. Stempowicz.

CAUSATION AND DAMAGES**Background Facts**

[65] Ms. Stempowicz was born September 5, 1988 and so was 29 years old at the time of the accident. She has been generally physically healthy and fit: I will address a 2013 accident she had while she was riding a bicycle later. At the time of the accident, she worked as a diet technician supervisor for Island Health at \$27 per hour. She currently works as a hospitality manager with Broadmead Care in a supervisory/office position that is better remunerated than that position. As I will discuss in more detail later, her current position is a high responsibility job that she performs in part because of accommodations by her employer. She has a Bachelor of Commerce degree and a Food Service and Nutrition certificate. At the time of trial she was expecting her first child.

[66] Immediately after the accident, Ms. Stempowicz reported temporary issues with her hips and torso, which resolved after a year. She continues to suffer from neck, shoulder and upper back pain, which have not resolved in the five years since the accident and therefore are not likely ever to go away. Neck pain symptoms spread to her upper shoulders, upper midback and upper chest region. They fluctuate in intensity depending on activities and are exacerbated by prolonged sitting or heavy lifting, carrying and reaching. She describes her pain as not excruciating or debilitating, but there and something that takes her focus. Sometimes the front of her neck feels like it is being pulled by strings at each end and her shoulders feel like there is a load of bricks on them. She suffers from low mood and irritability as a result of pain. I will discuss later the extent to which these symptoms can be attributed (in the relevant legal sense) to the pre-existing injury of the 2013 bicycle accident.

[67] Before the 2018 accident, Ms. Stempowicz was a highly athletic person, participating in flag football, baseball, volleyball, hiking and running, including half marathons annually up to the time of the accident. Part of her motivation for moving to Vancouver Island from Ontario a decade ago was for the active lifestyle. Physical

activity is important for her mental well-being. Since the accident, she continues to play baseball and go for long hikes periodically, but has had to abandon running, paddle boarding and volleyball. When she does engage in relatively strenuous physical activity, like the hikes, she takes longer to recuperate and uses heating pads.

[68] Ms. Stempowicz has trouble sitting in the same position for any length of time. Among other things, this makes it difficult to go on long drives without stopping.

[69] Ms. Stempowicz's duties involve paper work, meetings, responding to emails, meeting with residents and their families and managing staff. She has full days with many scheduled tasks and many that are unscheduled. She has 84 direct reports. She has a sit-stand desk and modified mats, chairs and stools. She sometimes finds her pain is such that she tires more easily and can feel herself getting irritable with those she needs to manage. She has sufficient trust with her employer that if she is having a difficult day, she can reduce her tasks and make it up at other times. She testified that without this flexibility, she would feel the way she does at the end of the day much earlier and doubts her ability to do the type of job she does in those circumstances.

[70] Ms. Stempowicz reports pain and discomfort during pregnancy that is exacerbated by the pain in her neck and shoulders. She is worried that she will find it difficult to keep up physically with her child. Her sister testified that Ms. Stempowicz is less able to play physically with her nephew and this has caused some anxiety as Ms. Stempowicz starts a family of her own.

[71] I received expert reports by specialists in physiatry, Dr. Mark Adrian (called by the plaintiff) and Dr. Todd Bentley (called by the defendant). Leaving aside the issue of pre-existing injury, the facts and assumptions they relied on were backed up by evidence from Ms. Stempowicz, which I accept, and by clinical records which have been accepted into evidence as business records.

[72] Dr. Adrian diagnoses Ms. Stempowicz as suffering from “chronic mechanical neck and upper midback pain”. Dr. Bentley diagnoses her as suffering from Whiplash Associated Disorder Type II and thoracic sprain/strain. I have no evidence of the significance of the distinction between these two diagnoses. The two experts agree that her symptoms are real and attributable to the accident. They agree that she will experience difficulties with activities that place physical forces onto the injured structures involving her spinal column, which, as Dr. Adrian explains, includes employment, recreational and household activities that involve prolonged static or awkward spinal positioning, prolonged sitting or desk work, heavier lifting or carrying, repetitive, prolonged or forceful reaching and jarring activities. While Dr. Bentley emphasized that these limitations do not affect her current job duties, Dr. Adrian stated that if her employment as a hospitality manager was not modified so as to avoid these physical aspects, she would probably experience difficulty performing the work. These two propositions can, of course, both be true.

[73] They also agree that her prognosis for significant improvement in future is not good. I accept Dr. Adrian’s evidence that she is not likely to suffer spontaneous deterioration, unless there is another injury, but her neck and upper midback are vulnerable to injury in the future.

[74] The parties have agreed that Ms. Stempowicz’s special damages as a result of the accident were \$2,266.50 and that her past wage loss as a result of time taken off work directly after the accident was \$2,160.00.

Causation -- Framework For Analysis and Position of the Parties

[75] A key issue between the parties is the extent to which her current and future pain and her actual and potential limitation on her recreational, household and workplace activities can be attributed to the subject accident in 2018, as opposed to another accident she had while riding a bicycle in 2013.

[76] Mr. Dobbs concedes that the 2018 accident was of sufficient force to cause some injury, but argues that damages should be discounted significantly because of pre-existing injury. Ms. Stempowicz says that while the 2013 accident made her

more vulnerable to injury in 2018, it had for all significant purposes cleared up before she was injured in 2018 and therefore none of her ongoing damages can legally be attributed to what happened in 2013.

[77] In principle, damages are assessed based on the difference between the condition Ms. Stempowicz is in because the accident took place and the condition she would have been in had it not taken place: *Clements v. Clements*, 2012 SCC 32 at paras. 8-9. The onus of proof is on the plaintiff on a balance of probabilities. Causation can be established on a common sense basis without scientific evidence.

[78] The “but for” test applies to the *subject accident*. It does not matter if a plaintiff would not have suffered as much if a previous accident had not happened: *Athey v. Leonati*, [1996] 3 S.C.R. 458. In what have been called the “thin skull cases”, a previous accident makes a plaintiff more susceptible to injury. Subject to the principle that damages must be foreseeable, this does not reduce damages. By contrast, in what have been called “crumbling skull” cases, injuries that are attributable to the previous accident in the sense that they would have occurred even if the subject accident had never happened *will* reduce damages. In these cases, the measure of damages is based on the difference between the losses the plaintiff in fact experiences and what they would have experienced even if the subject accident had not taken place.

[79] Ms. Stempowicz’s damages would therefore not include limits to her occupational capacity, pain and suffering or to her recreational and other activities that would have continued from the 2013 accident even if the 2018 accident had never occurred, but if I find that Ms. Stempowicz would not have suffered as much from the 2018 accident without the earlier trauma, this does not matter to the extent that those losses would not have occurred without the 2018 accident.

Facts of the 2013 Accident

[80] Ms. Stempowicz was in a prior accident on August 13, 2013, when she was struck by a car while riding her bicycle.

[81] Ms. Stempowicz testified that she experienced soreness in her whole body initially after the 2013 accident. Over the next few years, she felt continued pain and discomfort underneath her shoulder blades and on her legs and had numbness and tingling in her arms. She sought treatment from a number of health care practitioners in relation to this continuing pain, and they found it difficult to pinpoint an objective cause.

[82] She was referred to a neurologist, Dr. Kimble, who found her to be neurologically and electro-diagnostically normal. A rheumatologist, Dr. Shaw, diagnosed her with fibromyalgia in August 2016 and prescribed Amitriptyline. She attended the Mayo Clinic for trigger point injections.

[83] Ms. Stempowicz testified that she ceased any treatment for the 2013 bicycle accident by early 2017, although medical records show some massage, physiotherapy and acupuncture treatments in May 2017. She resumed a highly athletic life style, including running half marathons. Her work was not restricted as a result of the 2013 accident prior to the subject accident in 2018. Medical records kept by her family doctor suggest that she stopped complaining about neck and back pain after August 2016, despite visits on other issues.

[84] Dr. Adrian opined that Ms. Stempowicz's prior history of experiencing pain involving her neck and upper midback as a result of the 2013 bicycle accident meant "these areas were probably vulnerable to injury", but that it is unlikely that "she would have spontaneously developed physically limiting pain involving her neck and upper midback absent the [2018] accident".

[85] Dr. Bentley concluded that the 2018 accident resulted in a "material worsening" of a pre-existing chronic pain condition attributable to the 2013 accident. He also indicated that there was a pre-existing thoracic sprain/strain that impaired rotation range of movement that was worsened by the 2018 accident. Dr. Bentley did not set out what he would expect the long-term prognosis of these pre-existing conditions to have been if the accident had not occurred.

[86] Mr. Dobbs argues that Dr. Adrian's evidence should be given less weight because in cross-examination he did not change his conclusions after the pre-2018 accident clinical records were put to him. But as Dr. Adrian explained satisfactorily in cross-examination, the assumption he based his conclusion on was that for two years prior to the 2018 accident, the 2013 accident did not "limit her participation with her usual activities" and in particular, she was able to work without limitation and conducted intense athletic activities, and the pre-2018 clinical records were perfectly consistent with this assumption. Dr. Adrian did not assume that Ms. Stempowicz had had a two-year period in which she was completely pain free and testified in cross-examination that when he interviewed her in preparation for his report, she told him that she had some symptoms more recently than two years before the accident.

[87] Dr. Bentley may be correct that the 2018 accident exacerbated a previous "condition" in the medical sense. But the legally relevant issue is whether that condition would have continued to cause the plaintiff loss in the time after the tort. I see no evidence of that: by the time of the accident, she was not complaining about the pain, she was not treated for it and it was not interfering with a highly physically active lifestyle.

[88] In my view, Ms. Stempowicz has established that any pain she would continued to have felt as a result of the 2013 accident if the 2018 accident had never occurred would be occasional and *de minimis*. While the 2013 trauma made her more susceptible, I find that Ms. Stempowicz probably would not have continued to suffer more than minimal pain in the time since the 2018 accident if that accident had not happened. Any such minimal pain would have no effect on her damages for non-pecuniary loss or for loss of future earning capacity.

[89] At the same time, I accept that when evaluating the contingency that things will worsen for Ms. Stempowicz in the future, whether for the purposes of a non-pecuniary loss or future income capacity determination, I must take into account the contingency that she would have those suffered some of that pain and

experienced some of those limitations in any event because of her heightened sensitivity as a result of the 2013 accident. In other words, while Ms. Stempowicz is more likely to suffer from a further trauma to her neck or back than she was prior to 2018, she still would have been more susceptible than a person who never experienced such an injury as a result of the 2013 accident. To the extent a non-pecuniary loss or future earning capacity award is based on contingencies of new injuries in the future, I will assess damages based only on the *additional* likelihood of injury as a result of the 2018 accident.

Non-pecuniary Damages

[90] Non-pecuniary losses are those that do not require an actual outlay or loss of money. The purpose of a non-pecuniary damage award is to provide compensation for things such as pain, suffering, disability, inconvenience, disfigurement, loss of enjoyment of life and loss of expectation of life. Since these are not things that money can provide, one purpose of an award of damages for non-pecuniary loss is to substitute other amenities for those that the plaintiff has lost: *Lindal v. Lindal*, [1981] 2 S.C.R. 629 at pp. 636-639.

[91] Ms. Stempowicz seeks an award in the amount of \$100,000 for non-pecuniary damages. Mr. Dobbs submits that \$75,000 is more appropriate.

[92] The Court of Appeal has set out the following non-exhaustive list of factors to be considered in determining an award of non-pecuniary damages, including (a) age of the plaintiff, (b) nature of the injury, (c) severity and duration of pain, (d) disability, (e) emotional suffering, (f) loss or impairment of life, (g) impairment of family, marital and social relationships, (h) impairment of physical and mental abilities, (i) loss of lifestyle and (j) the plaintiff's stoicism, a factor which should not, generally speaking, penalize the plaintiff: *Stapley v. Hejslet*, 2006 BCCA 34 at para. 46.

[93] Compensation awards must be fair to all parties. Fairness must inevitably be measured against awards made in comparable cases, although such cases, however helpful, serve as a rough guide. Each case depends on its own unique facts: *McColl v. Dushenko*, 2020 BCSC 1674 at paras. 72-73.

[94] Ms. Stempowicz puts forward the following cases as comparable for the purposes of assessing non-pecuniary loss: *Chau v. Farshid*, 2023 BCSC 1004 (\$140,000 for non-pecuniary loss), *Jarrett v. Wold*, 2021 BCSC 302 (\$90,000, inflation adjusted to \$100,161.30) and *Allen v. Dhillon*, 2022 BCSC 1277 (\$80,000, inflation adjusted to \$83,197.90). Mr. Dobbs puts forward *Grewal v. Chandi*, 2021 BCSC 1200 (\$70,000 before reduction, inflation adjusted to \$77,903.23), *Stewart v. Dhoulthou*, 2020 BCSC 1439 (\$60,000 before reduction, inflation adjusted to \$69,503.65), *Thind v. Mole*, 2022 BCSC 979 (\$75,000, inflation adjusted to \$77,998.03), *Singer v. Guidi*, 2023 BCSC 837 (\$80,000 before reduction) and *Ayles v. Vanderkooi*, 2021 BCSC 838 (\$70,000 before reduction, inflation adjusted to \$75,677.42).

[95] In my view, the *Chau* and *Jarrett* cases led to higher awards than would be appropriate in this case primarily because of the existence of clear and compelling evidence of interference in family life and housekeeping ability. In those cases, the plaintiffs demonstrated damage to their relationships with their children and partners by comparison with what would likely have been the case if the injuries had not occurred. I recognize that Ms. Stempowicz has testified both that she is less able to play physically with her nephew and has legitimate concerns about how she will be able to interact physically with her child once it is born. I consider that this is part of what she should be compensated for, but I have to consider that this remains a contingent, as opposed to established, loss. I think there is therefore a meaningful distinction with the fact situations in *Chau* and *Jarrett*.

[96] The *Allen* case put forward by Ms. Stempowicz is one where the plaintiff was very similar in respect of the *Stapley* factors and I accept it as a very useful comparator.

[97] Many of the cases put forward by Mr. Dobbs involve more significant pre-existing injuries than in the case here. Leaving that element aside, they are generally reasonable comparators, once adjusted for inflation, but typically there is at least one *Stapley* factor in which Ms. Stempowicz's injuries are worse than those

in Mr. Dobbs' comparators. For example, the plaintiffs in *Grewal*, *Singer* and *Ayles* were significantly older than Ms. Stempowicz at the time of the accident, implying that the life years affected by an unresolved chronic pain injury were less. While the plaintiffs in *Stewart* and *Thind* were similar in age to Ms. Stempowicz, they were not facing the difficulty of raising a child.

[98] Taking the comparator cases provided to me into account and adjusting for the unique features of Ms. Stempowicz's injuries, I consider \$75,000 an appropriate award for non-pecuniary damages. This figure includes my consideration of all the *Stapley* factors. While I have not set out a specific discount, this figure takes into account that Ms. Stempowicz should only be compensated for contingent future pain and suffering as a result of injuries to which she is *more* susceptible because of the subject accident and that there was some contingency as a result of the 2013 bike accident.

Loss of Future Earning Capacity

[99] To receive compensation for loss of future earning capacity, a plaintiff must demonstrate impairment to their earning *capacity* and a real and substantial possibility that the impairment will result in a pecuniary loss in the future. The capital asset approach involves considering factors such as (a) whether the plaintiff has been rendered less capable overall of earning income from all types of employment, (b) whether the plaintiff is less marketable or attractive as a potential employee, (c) whether the plaintiff has lost the ability to take advantage of all job opportunities that might otherwise have been open, and (d) whether the plaintiff is less valuable to themselves as a person capable of earning income in a competitive labour market: *Morgan v. Galbraith*, 2013 BCCA 305 at paras. 53, 56.

[100] A real and substantial possibility of pecuniary loss need not be more-likely-than-not: rather, the amount of the award is discounted by the probability. It is well-established that a loss of capacity award can be made even where a plaintiff has not suffered any current loss of income or even has earned more than before the accident: *Jarrett* at para. 104.

[101] I accept Dr. Adrian's conclusion that Ms. Stempowicz will continue to experience difficulty with work activities that involve prolonged sitting or desk work, heavier lifting or carrying or repetitive, prolonged or forceful reaching and jarring activities. Her chosen career will likely not require her to engage in heavy lifting or carrying, but it will require desk work. In addition, her chosen career requires a high degree of patience and empathy with large numbers of people, expressed consistently. I accept that this is more difficult when experiencing pain and discomfort and when it requires being performed consistently for many hours. These injuries limit Ms. Stempowicz's ability to take advantage of all kinds of job opportunities, make her less marketable or attractive for jobs that she would otherwise be a marketable or attractive candidate for and mean she has lost the ability to take advantage of all the job opportunities that would have been available if the accident had never occurred. I accept that this has had an impact on her own perception of her value in the job market, at least if she at some point needs to find a different position from the one she currently occupies.

[102] Mr. Dobbs argues that there is no evidence of even a real and substantial possibility that Ms. Stempowicz will suffer a pecuniary loss. I disagree. The evidence is that Ms. Stempowicz is able to do her job effectively and succeed at it because she has an understanding employer who accommodates her. She is only 34 years old and so likely has three decades of work before retirement. Both experts agree that her current impairment is unlikely to get better and there is a contingency that if triggered by a new trauma, it could well get worse. She has no guarantee of employment with that employer until retirement, since the employer may become insolvent, downsize its operations or change management. Not all employers or potential employers are as willing to accommodate employees with injuries as they should be and it takes time to build trust. I therefore accept that there is a real and substantial possibility that Ms. Stempowicz will ultimately be less able to market herself for an alternative job or will find such a job difficult or impossible as a result of this injury. While this contingency has not been shown to be highly likely, that goes to the *amount* of a loss of future earning capacity award and not whether one should be made at all.

[103] I also disagree with Mr. Dobbs' argument that I should base a future earning capacity award on Ms. Stempowicz's income at the time of the accident, rather than at the time of trial. The point of such an award is to reflect the contingency of a difference in the future between what Ms. Stempowicz would be likely to earn without the impairment and the possibility that the impairment will limit that earning potential. The earning potential absent an impairment is surely better assessed by her current income since that is what she would be likely be earning if the accident had never occurred.

[104] *Rab v. Prescott*, 2021 BCCA 345 is distinguishable. In that case, the trial judge used the plaintiff's highest annual income ever, even though on the evidence that was no longer a good basis for her future earning capacity for reasons unconnected to the accident. By contrast, in this case, I find that Ms. Stempowicz's current income is the best starting point for assessing what her future income earning capacity is likely to be, and therefore the best starting point for assessing the contingency that it will be impaired by the accident.

[105] In *Pallos v. Insurance Corp. of British Columbia* (1995), 100 B.C.L.R. (2d) 260 (C.A.) at para. 43, Finch J.A. (as he then was) set out three methods of assigning a dollar value to a loss of capacity to earn income, accepting that all were "equally arbitrary". The one Ms. Stempowicz asks me to use here is to "award the plaintiff's entire annual income for one or more years". This is typically used when, as here, the plaintiff works after the accident and earns as much as, or more than, they did at the time. As the case law has subsequently suggested, this "one or more years" is usually a range of one to two: *Kania v Evans*, 2021 BCSC 797 at para. 91. I note though that three years has been awarded to young plaintiffs with an uncertain career path: *Jarrett* at para. 106.

[106] Ms. Stempowicz argues here that she should be awarded two and one-half years. I consider this to be higher than is appropriate in these circumstances. While Ms. Stempowicz was young at the time of the accident, on her current career path, it does not seem very likely that her limitations will have a pecuniary effect. I accept

that the future is uncertain and not all employers are as accommodating as they should be to people in Ms. Stempowicz's position. However, I consider a two-year award to be appropriate here. Since her salary is \$90,000, that would be \$180,000.

Cost of Future Care

[107] Dr. Adrian recommends that Ms. Stempowicz continue with her exercise program and her injection treatments. Dr. Bentley recommended maintenance IMS, manual cervical spine tractions/mobilizations bimonthly for six months, an active rehabilitation program for eight weeks to set up a specialized gym program, and in-home occupational therapy assessment.

[108] I have no real evidence of what these recommendations would cost to implement. I accept that difficulty of appraisal is not a reason to deny damages altogether when there is a basis for a head of damage. At the same time, the onus is on the plaintiff to prove damages and so I am not prepared to go above the lower end. I award \$10,000 for cost of future care.

SUMMARY OF ANALYSIS

[109] Liability primarily depends on whether Ms. Stempowicz had the right of way when she began her left turn, which itself depends on whether Mr. Dobbs was close enough to constitute an "immediate hazard" when she began that turn. I find that Ms. Gaunt was the witness with the most reliable assessment of whether this was the case and accept her assessment that Mr. Dobbs was far enough back that it was clearly appropriate for Ms. Stempowicz to begin the turn. I find that she halted in the midst of that turn for unknown reasons and that Mr. Dobbs did not slow down or make evasive maneuvers until he was already in the intersection and a collision was inevitable. Ms. Stempowicz reacted by closing her eyes and removing her foot from the brake, which caused her vehicle to move, albeit not very quickly. I apportion 90% of the fault for the accident to Mr. Dobbs and 10% to Ms. Stempowicz.

[110] Ms. Stempowicz suffered back and neck pain from the accident and it is unlikely to get significantly better in the future. I accept her evidence about the

effects of the accident on her life. I do not think there was any significant continuing pre-existing injury from her 2013 accident while riding a bicycle, but that accident reduces her future contingent losses, both non-pecuniary and in loss of future income earning capacity.

[111] Damages are assessed at \$269,426.50, divided into the following heads of damages, of which Mr. Dobbs must pay 90% or \$242,483.85:

- a) non-pecuniary loss in the amount of \$75,000;
- b) past wage loss in the amount of \$2,160.00, as agreed by the parties;
- c) loss of future income earning capacity in the amount of \$180,000, representing two years of her current salary, which I find to be a reasonable estimate of the effect of the contingency that she will earn less as a result of her limitations caused by the accident;
- d) subject to s. 83 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, cost of future care in the amount of \$10,000;
- e) special damages in the amount of \$2,266.50, as agreed by the parties.

ORDER

[112] I therefore make the following orders:

- a) a declaration that the plaintiff Tienna Stempowicz is 10% at fault and the defendant Michael Dobbs is 90% at fault in the collision of their motor vehicles on February 13, 2018 (the "Accident");
- b) a declaration that the damages sustained by the plaintiff Tienna Stempowicz as a result of the Accident are as follows:
 - i. non-pecuniary loss in the amount of \$75,000;
 - ii. past wage loss in the amount of \$2,160.00;

- iii. loss of future income earning capacity in the amount of \$180,000;
 - iv. subject to s. 83 of the *Insurance (Vehicle) Act*, R.S.B.C. 1996, c. 231, cost of future care in the amount of \$10,000; and,
 - v. special damages in the amount of \$2,266.50.
- c) subject to paragraph (e), an award of damages payable by the defendant Michael Dobbs to the plaintiff Tienna Stempowicz in the amount of \$242,483.85;
- d) an award of interest as determined under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- e) an order that an application by the defendant for a reduction in the judgment amount for costs of future care must be made no later than 28 days after the date of this order, unless extended by further order of this court;
- f) an order that the parties have leave to request a further hearing on the issue of costs, if the request is received no later than 28 days after the date of these reasons for judgment;
- g) an order that if no party requests leave for a further hearing within 28 days after the date of this order, the defendant Michael Dobbs shall pay the plaintiff Tienna Stempowicz 90% of her costs assessed at Scale B on a party and party basis.

“J. G. Morley, J.”
The Honourable Justice Morley