

CITATION: Legree v. Origlieri, 2021 ONSC 7650
COURT FILE NO.: CV-18-00000084-00
DATE: 2021 11 19

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

LAURA K. LEGREE

Plaintiff

- and -

TONYA L. ORIGLIERI

Defendant

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)
) Mark Elkin and Lane Foster, for the
) Plaintiff
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) J. Claude Blouin and Hue Nguyen,
) for the Defendant
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) **HEARD by Videoconference:** May
) 10, 11, 12, 13, 14, 17, 18, 19, 20, 21,
) 25, and 26, 2021
)

REASONS FOR JUDGMENT

Fowler Byrne J.

[1] The Plaintiff, Laura K. Legree, commenced this action seeking damages for the injuries she sustained during a motor vehicle accident that occurred on August 19, 2016 in Orangeville, Ontario.

[2] The Plaintiff maintains that the Defendant, Tonya L. Origlieri, is completely at fault for the accident. She maintains that as a result of this accident, she has sustained a permanent and serious impairment of an important physical, mental and/or psychological function. The Plaintiff is seeking general damages, past and future loss of income, future care costs and special damages.

[3] The Defendant seeks an order dismissing this claim. She claims that the injuries do not meet the statutory threshold, and the income loss claim is without foundation.

I. Issues

[4] The following issues must be decided by me:

- a) Who is at fault for this accident?
- b) Do the Plaintiff's injuries meet the threshold that would make the Defendant liable for her non-pecuniary losses and future health care costs?
- c) If they do,

- 1) what is the value of the Plaintiff's general damages?
 - 2) What is the value of the Plaintiff's special damages?
 - 3) Will the Plaintiff require any future care as a result of her injuries, and if so, what is the present value of the Plaintiff's future care costs?
- d) Has the Plaintiff suffered any past income loss as a result of this accident, and if so, what amount did she lose?
- e) Will the Plaintiff suffer any future income loss, or has she lost a competitive advantage, as a result of this accident, and if so, what is the value of that loss?

II. The Accident

[5] On August 19, 2016, around noon, the Plaintiff was proceeding westbound on Broadway Street, in Orangeville, Ontario, at the intersection of Second Street. She was driving her 2007 Nissan Sentra with her two children and a friend's child in her car. All were properly secured by car seatbelts. The traffic was slow, characterised as "stop and go".

[6] Suddenly and without warning, she was struck from behind by the Defendant, who was driving her 2014 Ram Pickup 1500. No police or

ambulance was called. The parties agreed to remove their cars from the road, and exchange insurance information. The Defendant then left the scene and the Plaintiff called her common law husband Michael Ireland, to advise him of the accident. As Mr. Ireland was a mechanic, he attended at the scene to ensure her car was safe to drive. He drove the Plaintiff's car home and the Plaintiff drove another vehicle brought by Mr. Ireland. The cost of repairing both cars was less than \$5,000 each.

III. Liability

[7] As indicated, no police were summoned to the scene. After the accident, the Plaintiff brought her children to the hospital to be examined. Afterwards, she reported the accident to the local police. She alone provided the information that resulted in the motor vehicle accident report. No charges were laid as a result of this collision.

[8] The Plaintiff and Mr. Ireland claim that the Defendant made statements following the accident that led them to believe that the Defendant was using her cellphone at the time of the accident. The Defendant denies that she was on her phone at that time.

[9] Nonetheless, for the purposes of this trial, it is not necessary for me to make a finding of whether the Defendant was using her phone at the time of the accident. I am satisfied on the uncontested evidence of both drivers, and after

reviewing the motor vehicle report, that the Defendant is completely at fault for the collision. There is also no claim for contributory negligence made out.

IV. Threshold

[10] For the reasons set forth before, I find that the Plaintiff has satisfied the court that, on a balance of probabilities, she has sustained a permanent serious impairment of an important physical function. Accordingly, she is entitled to recover general damages for pain and suffering, and for her past and future health care expenses.

A. Pre-Accident Medical History

[11] I have reviewed the Plaintiff's clinical notes and records since 2013 and the Ontario Health Insurance Plan ("OHIP") summary since 2011. I do not find any ongoing problems with headaches or neck pain prior to the accident. In fact, in May 2021, Dr. Catania made a note that the Plaintiff had no history of headaches or "MSK pain". The Plaintiff did concede that she suffered from some lower back pain following the birth of her second child, but that it was not debilitating in anyway. This is supported by the evidentiary record, which indicates that she was training to join a roller derby team and was on her way home from the gym at the time of the motor vehicle accident. The Plaintiff did state that she spun out on black ice in November 2019, but there was no collision and no injury.

[12] There are several notations in the record about the Plaintiff having a history with depression and anxiety. The sole source of this statement appears to be the Plaintiff being prescribed Ativan in or around 2012 when she was experiencing some anxiety with her domestic relationship while she was in dental assistant school. She took this medication for approximately one month and has not renewed the prescription. The Plaintiff can remember no other time in her medical history where she suffered from anxiety or depression or was prescribed any medication for it. The notes of Dr. Catania describe no particular mental health event.

[13] Accordingly, I find that there is no pre-existing conditions or medical history which have had an impact on the Plaintiff's current condition.

B. Plaintiff's Symptoms Following Accident

[14] The nature of the Plaintiff's symptoms immediately following the accident are largely uncontradicted.

[15] Following the collision, the Plaintiff brought her children and herself to the local hospital in Orangeville. She indicated to the triage nurse that she was in an accident. No airbags were deployed but she was complaining of stiffness or tightness to her upper neck, rating 6 out of 10 on a pain scale.

[16] When she was seen in the emergency room, the physician noted that she had pain across her shoulder blades but indicated no neck or head injury. The airbags did not deploy and there was no loss of consciousness. The physician noted that as a result of a low speed motor vehicle accident, the Plaintiff was suffering from upper back muscular pain, but no major injuries. He prescribed Advil or Tylenol for pain.

[17] The Plaintiff first saw her family physician Dr. Catania on August 23, 2016. Dr. Catania's notes indicate that the Plaintiff was experiencing neck pain at C3-4 and T1, had full range of motion, and had some pain and tingling down her left arm with forward flexion. The doctor diagnosed whiplash type injury from a motor vehicle accident and recommended Tylenol, Advil, ice, heat, physiotherapy, and massage therapy. The Plaintiff was advised to return if there was no improvement in two to three weeks.

[18] The Plaintiff indicates that in those first weeks, she had intense headaches, and experienced her first migraine. She experienced back pain and if she moved her neck too fast, she would experience shooting pain and headaches. Her headaches were daily, comprising of a constant dull ache.

[19] She did visit her doctor again approximately two weeks later, but for an unrelated reason and the physician made no notation about pain complaints. In

fact, there are no notations in Dr. Catania's records regarding the motor vehicle accident until 2018.

[20] Plaintiff did immediately start a course of physiotherapy and massage therapy, and notations regarding her treatment in the first-year post-accident are recorded here. On September 9, 2016, her physiotherapist reported to Dr. Catania. In this report, the physiotherapist indicates that the Plaintiff presented with lower back and neck pain with tingling into her left forearm, following a motor vehicle accident. The Plaintiff also complained of right-side neck pain and nightly headaches that started after the accident. Her lower back pain was exacerbated by the collision.

[21] After assessing the Plaintiff, the physiotherapist reported that the Plaintiff showed a cervicogenic headache, WAD II (2nd grade whiplash injury), and right side sacroiliac joint dysfunction. She recommended massage therapy, physiotherapy, heat and TENS, and acupuncture to reduce inflammation and pain. The physiotherapist expressed some concern about the integrity of her alar ligament and suggested that the doctor consider an x-ray to evaluate atlantoaxial alignment and atlantodental interspace.

[22] Dr. Catania accepted the physiotherapist's recommendation and sent the Plaintiff for an x-ray of her cervical spine on September 16, 2016. The clinical indication was "Tingling left forearm. Query atlantoaxial injury". The x-ray report

stated that no atlantoaxial injury was identified. It also states that if there is an ongoing clinical concern of fracture or significant mechanism of injury, a CT scan should be considered for further evaluation.

[23] The Plaintiff continued with physiotherapy and massage therapy for the year following the accident. She reports that it provided her with relief. Unfortunately, her insurance coverage was exhausted by the end of the summer of 2017 and she stopped these therapies. She reports that her headaches increased thereafter.

C. Plaintiff's Ongoing Symptoms

[24] In 2018, the Plaintiff reported to Dr. Catania that she was still experiencing ongoing left hand and arm numbness. Accordingly, Dr. Catania referred the Plaintiff to Dr. Sacro for an electrodiagnostic study. The study came back normal and there was no evidence of any significant nerve damage.

[25] In 2018, the Plaintiff obtained a loan through her counsel that allowed her to resume physiotherapy into the end of 2019. Despite this therapy, it appeared that the Plaintiff's symptomology continued. In June 12, 2019, the Plaintiff reported decreased sensation in the left face, and abdomen or leg. She underwent a head CT scan without and with contrast. The findings were that the ventricles, cisterns, and sulci are within normal limits and there was no midline shift or mass.

[26] On September 11, 2020, the Plaintiff went to see her doctor again about her symptoms. Dr. Catania reviewed the Plaintiff's medical history since the accident and, in her notes, Dr. Catania indicated that it was her opinion that the ongoing headaches experienced by the Plaintiff were the result of the motor vehicle accident in 2016.

[27] On October 29, 2020, the Plaintiff underwent an MRI/SPECT examination. The presenting complaint was identified as "post MVA concussion". The brain MRI showed no abnormalities, which Dr. Siow indicated was not unusual for a traumatic brain injury.

[28] With respect to the SPECT brain image, Dr. Siow concluded that "...in the balance of probabilities, the above-mentioned findings represent previous traumatic brain injury, intracranial pathology." Dr. Siow did not give evidence.

D. Plaintiff's Current Medical Condition

[29] It has now been five years since this accident occurred. Despite the passage of time, the Plaintiff continues to complain of neck pain, back pain, numbness in her arms and left leg, and constant headaches, with intermittent migraines. Her headache is described as a constant dull ache. The migraines can be so bad that they cause nausea and vomiting. She also complains that the neck pain and headaches feed off of each other, and her pain increases if she pushes herself too hard.

[30] She complains that the ongoing pain has significantly affected her daily life in that:

- a) She needs help from her husband for more strenuous housework, such as vacuuming and mopping;
- b) She can no longer help with snow shoveling or lifting heavy garbage or groceries or doing any gardening;
- c) While she can manage the rest of the housework on her own, she does so with pain;
- d) She is constantly taking Advil or Tylenol;
- e) She had to stop roller derby and going to the gym;
- f) She has stopped playing actively with her children; and
- g) She has stopped bike riding, hiking and going on rides at amusement parks.

[31] Ms. Legree's symptoms were corroborated by her friends and family.

[32] Ms. Legree's father reported that Ms. Legree is only about 10% as active as compared to before the accident. He recognizes her as someone who suffers though the pain and doesn't like to complain, but he can tell when she is in pain. He also notes a change in her previously outgoing demeanor. When he brought

everyone to Canada's Wonderland, the Plaintiff would not go on the rides because it would hurt her neck too much. Prior to the accident, she would always go on the rides.

[33] Ms. Legree's common law spouse, Mr. Michael Ireland, reported that Ms. Legree had experienced a personality change. She is not as outgoing and is nowhere near as active as before the accident.

[34] Ms. Legree's sister, Paige Legree, reports that Ms. Legree is not the same since the accident. She reports that Ms. Legree is always worried about what she can do. She observed that Ms. Legree always has a headache or is in pain. She sees that Ms. Legree gets depressed, and that she no longer rollerblades or goes for bike rides.

[35] Ms. Legree's close friend Josephine Cairney reports that Ms. Legree was previously very active – biking, roller blading and hiking. She would push kids on swings and go down slides. If she does it now, she gets a headache and pain in her neck. The changes were very significant, and she observed Ms. Legree becoming more anxious, worrying about everything and assuming the worse. She states that Ms. Legree doesn't like long drives or being on the highway.

[36] The Plaintiff also states that as a result of her ongoing pain, she is unable to return to her field of preference, namely as a dental assistant. The requirement of sitting at odd angles for a significant period of time would be too hard on her

neck and back. She has not applied for any dental assistant job, nor sought any accommodation in such a job since the accident.

[37] Since the accident, she has obtained a job as a part time school bus driver. She states that she is limited in how long she can sit, and accordingly has been accommodated and given the shortest routes. She does not believe she could work full time in any position because of her ongoing pain.

i. Chronic Pain

[38] The Plaintiff maintains that she is suffering from chronic pain. Two experts in this field were qualified to give expert opinion evidence in this area.

[39] Dr. Friedlander is a specialist in anesthesiology with a particular interest in chronic pain. He has diagnosed, investigated, and managed chronic pain for over twenty years, and currently practices chronic pain management in two clinics. After reviewing the Plaintiff's medical file in its entirety, and performing his own assessment, Dr. Friedlander is of the opinion that the Plaintiff suffers from the following:

- a) Chronic post-traumatic headaches: namely tension headaches with a migraine component and probable post-concussion symptoms (though he leaves a diagnosis of post-concussion syndrome to a neurologist);

- b) Cervical vertebral column sprain or strain, causing chronic post-traumatic musculoskeletal neck and shoulder blade pain;
- c) Lumbar vertebral column sprain or strain causing aggravation of chronic lumbar mechanical and myofascial pain; he states that although the Plaintiff's lower back pain was chronic, this accident significantly aggravated it; he also states that a sprain to the sacroiliac joint can cause similar symptoms;
- d) Possible psychological impairment; and
- e) Chronic pain syndrome.

[40] Dr. Friedlander indicated that chronic pain syndrome arises when pain persists beyond the usual three to six-month healing period. After reviewing the Plaintiff's file and following his examination, Dr. Friedlander is of the opinion that these conditions are directly linked to the motor vehicle accident.

[41] He has concluded that as a result of her chronic pain, Ms. Legree has limitations in lifting, carrying, bending, running, and physical and prolonged sedentary activities. He concludes that her injuries have had a "...significant detrimental impact on employment, activities of daily living, enjoyment of leisure and recreational activities and enjoyment of a normal life."

[42] Dr. Friedlander also found that Ms. Legree cannot return to work as a dental assistant. The sitting position required of a dental assistant would cause too much pain in her neck and back. He states "...because of the impairments arising from the accident in question, her ability to perform tasks of employment as a dental assistant are diminished and continue to prevent her from returning to this type of work on a full time basis without modifications."

[43] Dr. Michael Boucher does not agree with the diagnosis of chronic pain. Dr. Boucher agrees with the diagnosis of cervical myofascial strain, thoracic myofascial strain and lumbosacral myofascial strain, but claims that these have all resolved. He also reviewed the Plaintiff's history and medical documentation. He conducted range of motion tests which showed full range of motion in all areas except the cervical spine, although the Plaintiff reported pain in the cervical spine and thoracolumbar spine when tested. Dr. Boucher also noted that the Plaintiff reported sensory deficit in the entire lower left extremity and in both arms. He notes that this numbness was non-physiological, which he stated means that there was no reason for this.

[44] After considering the evidence of both doctors, I prefer the opinion evidence of Dr. Friedlander, and find that the Plaintiff suffers from chronic post traumatic headaches, cervical vertebral column and lumbar vertebral sprain or

strain, causing neck, shoulder blade pain and lower back pain, and chronic pain syndrome.

[45] I reach this determination for a number of reasons.

[46] Firstly, both Dr. Friedlander and Dr. Boucher accept Ms. Legree's complaints as described. In fact, Dr. Boucher acknowledges her complaints and notes that the Plaintiff scored low on the Pain Catastrophizing Scale. This means that she does not ruminate about her pain, magnify the symptoms, or feel helpless about her pain.

[47] Secondly, even though Dr. Boucher does not see objective evidence of the Plaintiff's pain, he does acknowledge that she continues to experience numbness in her extremities. I note that this has been an ongoing complaint by the Plaintiff since the accident.

[48] Thirdly, both Dr. Friedlander and Dr. Boucher agree that the Plaintiff suffers from a moderate disability. The Plaintiff reports consistent levels and areas of pain to both specialists. Their difference of opinion is not on the nature of the disability, but the impact this disability has had on the Plaintiff's ability to work, her activities of daily living, and her enjoyment of pre-accident activities.

[49] Finally, I also have considered the Plaintiff's subjective complaints of her ongoing pain, as well as the observations of her family and friends. The Plaintiff

has consistently complained of these ailments. Her direct evidence has not been contradicted in any manner. I note that surveillance has been unable to capture her doing any of the activities which she claims she cannot do. I find the Plaintiff to be forthright in her evidence, and not prone to exaggeration. She is the type of person that does her best to carry on, despite pain, and despite her circumstances. The Plaintiff is credible.

ii. Head or Brain Injury

[50] The Plaintiff claims she is suffering from post-concussion syndrome and some form of mild traumatic brain injury. Three experts were qualified to give expert opinion evidence in this area, in order to assist the court.

[51] Dr. Vincenzo Basile is a neurologist. He has expertise in the area of the brain, including the spine, peripheral nerves, and muscles. He has subspecialized in stroke, neuromuscular issues and concussion. He is currently the division head of neurology at the William Osler Health System.

[52] Dr. Basile reviewed the Plaintiff's medical history and performed his own assessment in March 2020. He also had the opportunity to review the conclusions of Dr. Boucher and Dr. Mark Watson.

[53] Following his review, Dr. Basile opined that the Plaintiff suffers from post-concussion syndrome, post-traumatic headaches, left side pinched nerves,

ongoing vertigo, musculoskeletal soft-tissue injuries, and chronic pain syndrome. Given that these symptoms were ongoing for approximately three and one-half years (by the time he assessed her), he believes her prognosis is guarded. He recommended a multi-faceted treatment to help her cope with her ongoing symptoms.

[54] Dr. Basile explained that a concussion is a milder form of traumatic brain injury. He acknowledges that the Plaintiff did not lose consciousness or show any signs of significant brain injury when first assessed. Nonetheless, he opines that her initial assessment at the hospital following the accident does not preclude mild traumatic brain injury. He also explained that that post-concussion syndrome is diagnosed when a person's concussion syndromes do not resolve after three months. He points to her ongoing reports of headaches, vertigo and tinnitus. He indicated that in his professional experience, approximately ten to fifteen percent of patients have prolonged symptoms associated with concussion. In general, if there is no recovery after three years, the prognosis is not good for an overall recovery.

[55] Following his initial opinion, Dr. Basile reviewed the results of a brain MRI and SPECT scan on the Plaintiff, which took place in October 2020. The MRI was normal. With respect to the SPECT scan, he states that the results may be

indicative of a mild traumatic brain injury. He states that it shows further support for his opinion.

[56] Dr. Gordon Cheung was recognized by this court as an expert in the field of neuroradiology and was qualified to give opinion evidence in this area. He reviewed the Plaintiff's CT head scan of December 2019, the MRI, and the SPECT scan of her brain in October 2020. It was his opinion that abnormal SPECT imaging is commonly seen in patients with any number of neurological or psychiatric conditions, which include patients with migraine headaches, chronic pain, fibromyalgia, mood disorders, schizophrenia, substance abuse, or a mild traumatic brain injury. He cautioned against attributing the SPECT result to any one particular ailment.

[57] Dr. Basile does acknowledge that the use of a SPECT scan to diagnose brain injury in Canada is the subject of some controversy, but that it is used more commonly in Europe. He also acknowledges that this test cannot pinpoint when a brain injury occurred. However, Dr. Basile formed his opinion of the Plaintiff's injuries prior to obtaining the results of the SPECT scan. In his opinion, the SPECT results are simply another indicator that support his conclusions.

[58] Dr. Mark Watson is a neuropsychologist, who also offered his opinion on the Plaintiff's condition. He is not a medical doctor nor a neurologist. He explains that neuropsychology is a more specialized branch of psychology that

focuses on the assessment and diagnosis of brain injury and how it may relate to psychological functioning. In the course of his assessments, if he noted something that may be medical in nature, he would refer it to a medical doctor.

[59] Dr. Watson explained that a neuropsychological assessment is actually two assessments: a neurocognitive assessment and a psychological assessment. A neurocognitive assessment looks for a neurocognitive disorder. A psychological assessment assesses someone's mood and mental state.

[60] Dr. Watson does not believe that the Plaintiff suffers from any traumatic brain injury, mild or not. He also disagrees that she suffers from post-concussion syndrome. Dr. Watson agrees that the recovery period for a mild traumatic brain injury is three months but points out that the Plaintiff does not report concussion type symptoms after that initial three-month period. The Plaintiff did indicate to Dr. Watson that she had weakness in her hands and had vertigo about three times. She denied dizziness, balance issues or tinnitus. It is not until Dr. Basile examined the Plaintiff in 2020 that the diagnosis of concussion arose.

[61] After reviewing the evidence of these doctors, I prefer the evidence of Dr. Basile. I do so for several reasons. First, Dr. Watson conducted tests that determine whether the Plaintiff's responses were valid. This is important in his field, as much of the information that is assessed comes from the patient directly, such as her subjective complaints and reported symptoms. After reviewing these

tests results, Dr. Watson concluded that the Plaintiff's test data must be regarded as a credible source of confirmatory information with respect to her current psychological and neuropsychological state. Accordingly, it is hard to reconcile how Dr. Watson can believe the Plaintiff is accurately reporting her ongoing headaches but not accept that they are symptomatic of an ongoing condition.

[62] Secondly, Dr. Watson opined in areas that were beyond his area of expertise. He was asked to comment on Dr. Basile's opinion that the Plaintiff suffered a mild traumatic brain injury and has post-concussion syndrome. He disagrees with Dr. Basile despite the fact that Dr. Watson is not a medical doctor and certainly not a neurologist. He does say that he disagrees with the diagnosis of chronic pain, from a psychological viewpoint, but he cannot provide a competing opinion from a neurological perspective.

[63] Thirdly, Dr. Watson indicates that the Plaintiff complained of no concussion type symptoms after three months post-accident. This is not supported by the evidentiary record. Ms. Legree continued to report these symptoms to her physiotherapy and massage therapist and reported them again to her family doctor in 2018.

[64] Lastly, Dr. Watson accepts that the Plaintiff shows borderline neurocognitive deficit in three areas – immediate recall of lists, visual long-term memory, and general knowledge – but will not acknowledge that these deficits

indicate an impairment on the part of the Plaintiff. He opines it is not unexpected that a patient could fall into an impaired range because of sleep issues, substance abuse, psychiatrist conditions or a development disorder, all of which the Plaintiff denies. Dr. Watson also indicates though, that a finding of deficits in these three areas could also be a result of pain or headaches, or a head or brain injury. These are the very conditions that the Plaintiff claims she is suffering.

[65] Given that the Plaintiff is found to be a credible test subject, her neuropsychological deficits are either reflective of a neuropsychological deficit, or are indicative of pain, headaches, or a brain injury. Either way, it shows that there is some type of ongoing symptomology, three to four years after this accident. Neither Dr. Cheng nor Dr. Watson have been able to refute the Plaintiff's position, that on the balance of probabilities, any deficit she is suffering is a result of the motor vehicle accident.

[66] Accordingly, I accept Dr. Basile's diagnosis of post-concussion syndrome, post-traumatic headaches, pinched nerve, musculoskeletal issues and chronic pain syndrome.

iii. Mental Health

[67] Mr. Allan Walton is a registered psychologist who, with Dr. Philip Miller, provided a psychovocational assessment for Ms. Legree. He was qualified as an

expert who could provide opinion evidence in the area of psychoeducational assessments.

[68] Like both Dr. Friedlander and Dr. Basile, Mr. Walton also did not find that Ms. Legree was exaggerating her symptoms, and also did not find that she was malingering. After conducting his numerous tests, he opined that Ms. Legree met the DSM-5 criteria for a generalized anxiety disorder and also the criteria for an adjustment disorder with depressed mood. He links these disorders to the motor vehicle accident. He did not find that she suffered from post traumatic stress disorder.

[69] Mr. Walton concluded that although Ms. Legree continues to perform the larger share of domestic tasks, it takes her longer because of her headaches and pain. If she rides a bike, it is difficult and causes pain. She no longer engages with her children as she used to. Her ongoing pain has caused a strain on her relationship with Mr. Ireland.

[70] Mr. Walton concluded that on the balance of probabilities, Ms. Legree is unable to perform her own former occupation as a dental assistant or other occupations consistent with her training.

[71] As indicated, the Defendant had Dr. Watson provide an expert opinion in the area of clinical psychology and neuropsychology. The latter field focuses on neuropsychological conditions associated with brain injury, while the former

covers psychological conditions such as depression or post-traumatic stress disorder (“PTSD”). Dr. Watson had no concerns about the validity of his findings.

[72] Dr. Watson’s review of Mr. Walton’s opinion led him to the conclusion that Mr. Walton did not find that Ms. Legree was psychologically disabled, but rather that she is psychologically impaired. Dr. Watson’s conclusions are that while Ms. Legree may suffer from moods, nothing experienced is at the level of a psychological condition. More importantly, he sees no psychological impediments to employment.

[73] I have considered all these opinions and find that Ms. Legree is suffering from a psychological impairment, which is an agreed diagnosis from both Mr. Walton and Dr. Watson. In particular, I find that Ms. Legree is suffering from anxiety and an adjustment disorder, but on a mild to moderate scale.

E. Law

[74] In accordance with s.267.5(5) of the *Insurance Act*, R.S.O. 1990, c.1.8, a Defendant may only be liable for the non-pecuniary losses of the Plaintiff, if the Plaintiff can prove that he or she sustained either (a) a permanent serious disfigurement or (b) a permanent serious impairment of an important physical, mental or psychological function. In this case, the Plaintiff is not alleging a disfigurement. The same limitations exist with respect to a Plaintiff’s claim for

damages for health care costs, which is set out in s.267.5(3) of the *Insurance Act*.

[75] The test for determining whether Ms. Legree has proven that the threshold has been established is set out in *Lento v. Castaldo*, (1993), 15 O.R. (3d) 129 (C.A.), at para. 16. In this case, the Court of Appeal for Ontario stated that the appropriate approach is to answer sequentially the following questions:

1. Has the injured person sustained permanent impairment of a bodily function caused by continuing injury which is physical in nature?
2. If the answer to question number 1 is yes, is the bodily function, which is permanently impaired, an important one?
3. If the answer to question number 2 is yes, is the impairment of the important bodily function serious?

[76] Whether or not an impairment causes *substantial interference* in work, training or daily living, is described in s.4.2(1)1 of O.Reg.461/96, *Insurance Act*. What is considered *permanent* is set out in s.4.2(1)3 of the same regulation. Finally, whether or not the impairment is of an *important* function, is set out in s.4.2(1)2 of the same regulation.

[77] Section 4.3(5) of this regulation mandates that a Plaintiff must, in addition to establishing the requirements for medical evidence, also adduce evidence that corroborates the change in the function that is alleged to be a permanent and serious impairment of an important physical, mental or psychological function.

This corroboration can come from the Plaintiff themselves, or their family member or employer: *Gyorffy v. Drury*, 2015 ONCA 31, 123 O.R. (3d) 721, at para. 37.

[78] Each case must be assessed on a case by case basis. The Plaintiff bears the onus of proving that their impairments meet the threshold, on the balance of probabilities: *Lento*, at para. 12 and 50.

[79] The Plaintiff must also prove on a balance of probabilities that the injuries sustained, and the impairments suffered, were directly or indirectly a result of the use or operation of a motor vehicle: *Sauvé v. Steele*, 2021 ONSC 4053, at para. 38.

F. Analysis

i. Causation

[80] It is Ms. Legree's obligation to show that her impairments were, on the balance of probabilities, the result of the motor vehicle accident.

[81] On the facts before me, I have no difficulty in finding that Ms. Legree's injuries and the impairments suffered were the direct result of the accident. Ms. Legree's family doctor directly attributes her injuries to the accident. Dr. Friedlander and Dr. Basile agree. There are no pre-existing injuries, nor any intervening events that would explain it otherwise. The defence argues that Ms. Legree is unconditioned or overweight. These allegations, however, are at most

speculation. Indeed, these allegations are further evidence of a woman, who was previously active, going to the gym and trying out for a roller derby team, is unable to maintain her prior level of activity. The defence argues that it is not possible that the motor vehicle accident could have resulted in these injuries, but no one has a viable reason for these injuries otherwise.

ii. Has Ms. Legree sustained a permanent impairment of a physical, mental or psychological function?

[82] According to Dr. Friedlander, Ms. Legree's chronic pain limits her ability to lift, carry, bend, run and complete any physical and prolonged sedentary activities. It limits her to part time employment as a bus driver and indicates that she could not work full time as a dental assistant without modifications.

[83] Dr. Friedlander concludes:

Based on the description of the...injury, the chronicity of the symptoms and the resultant impairment at this point in time, some 3 ½ years since the accident, I believe the prognosis for full recovery is now poor. ...Further treatment interventions are indicated and are likely to provide some improvement in terms of pain management but complete healing or cure is, in my experience unlikely after this period of time following the accident with ongoing significant symptoms.

[84] Dr. Basile has opined that Ms. Legree has decreased range of motion, decreased strength, and difficulty doing activities with her left arm and leg. He

also finds that cognitively, she has suffered a permanent disability as a result of her diagnosis of post-concussion syndrome. He also concludes:

Overall, at this point in time now years and 7 months since the accident of August 19, 2016, Laura Legree has reached maximum medical improvement (MMI). Her prognosis for further recovery is extremely guarded but is dependant upon further workup and treatments outlined below.

[85] “Permanent” has been interpreted to mean lasting, or intending to last, indefinitely into the future without any defined or foreseeable end. The requirement of an injury being “permanent” is also met where the injury is unlikely to improve: *Brak v. Walsh*, 2008 ONCA 221, 90 O.R. (3d) 34, at para. 4.

[86] Both Dr. Friedlander and Dr. Basile have concluded that Ms. Legree’s impairment will continue indefinitely. They both do not see a good prognosis. Based on these opinions, which I have accepted, and the criteria set out in the regulations, I find that Ms. Legree has proven that on the balance of probabilities, she has suffered a permanent impairment of a physical function.

iii. Is the bodily function, which is permanently impaired, an important one?

[87] Not every bodily function is important and thus, when considering whether the impairment is important, the court must consider the effect that the relevant bodily function has upon the Plaintiff’s own personal way of life and conduct that examination in the broadest possible sense: *Lento*, at para. 24.

[88] Based on the evidence, I find that the impairment suffered by Ms. Legree is an important one. Ms. Legree is a young woman. At the time of the accident she was only 27 years old. She was a young mother. Her ability to actively raise her children was important to her, as it was in her own childhood. Ms. Legree is also largely uneducated. She does not have a high school diploma. Her only formal training is as a dental assistant, which she claims is now not possible. She cannot even drive a school bus for prolonged periods of time. Ms. Legree used to be able to go to the gym and was trying out for roller derby. None of that is now possible. Her ability to be a good parent, be a good spouse and help support her family, without constant pain, is very important to her. Her chronic pain has made her ability to partake in the usual activities of daily living extremely difficult if not impossible. To be rendered incapacitated in this way, at her age and at this stage of her family life, supports the conclusion that, on the balance of probabilities, this impairment is an important one.

iv. Is the Impairment of the Important Bodily Function Serious?

[89] In determining whether the impairment is serious, my task is to decide whether the impairment is serious to Ms. Legree. In doing so, I must determine the detrimental effect which the impairment has had upon her life: *Lento*, at para. 36.

[90] “Serious” was addressed by the Court of Appeal for Ontario in *May v. Casola*, [1998] O.J. No. 2475 (Ont. C.A.). Carthy J.A. stated, at para. 1:

In our view a person who can carry on daily activities, but is subject to permanent symptoms including, sleep disorder, severe neck pain, headaches, dizziness and nausea which, as found by the motions judge, had a significant effect on her enjoyment of life must be considered as constituting serious impairment.

[91] I find that Ms. Legree’s impairments go beyond a detrimental impact on her life. She is in constant pain, which at times renders her completely unable to do anything other than retire to her room. When she suffers a migraine, she is nauseous. She is unable to actively parent her young children. She cannot take care of her home without assistance. She cannot enjoy the activities she used to enjoy. For a woman in her 20’s, this is serious. This is supported by the medical opinions which I have accepted, as well as by Ms. Legree and her friends and family.

[92] Accordingly, I find that Ms. Legree has proven, on the balance of probabilities, that her impairment is a serious one.

V. Assessment of General Damages

[93] As indicated, I find that Ms. Legree suffers from chronic pain, post-traumatic headaches, muscoskeletal injuries of the neck and lower back, pinched

nerve, and post-concussion syndrome. She also suffers from mild anxiety and a mild adjustment disorder.

[94] In *Rizzi v. Marvos*, 2008 ONCA 172, the Court of Appeal for Ontario, after reviewing various general damage awards for chronic pain and fibromyalgia, found that damages for injuries of this nature range from \$55,000 to \$120,000. In *Akeelah v. Clow*, 2018 ONSC 3410, the Plaintiff suffered similar complaints to Ms. Legree and was awarded \$100,000 in non-pecuniary damages. Ms. Legree also suffered injuries similar to those in *Hoffman v. Jekel*, 2011 ONSC 1324, except that Mr. Hoffman also suffered a panic disorder, which is not present here. In that case, Mr. Hoffman was awarded \$125,000 in non-pecuniary damages. In *Brown v. Flaharty*, 2004 CanLII 11122 (Ont. S.C.), Mr. Brown suffered from chronic pain, soft tissue injury to his neck, back and shoulders, ongoing headaches and depression. He was awarded \$90,000 in general damages.

[95] Considering Ms. Legree's ongoing symptoms and the general damages awarded in similar situations, I assess her general damages at \$100,000.

VI. Special Damages

[96] Ms. Legree exhausted her accident benefits for physiotherapy and massage therapy. In order to continue her therapy, Ms. Legree needed to obtain

a loan through BridgePoint Financial Services Inc. for the sum of \$5,000. As of April 27, 2021, she owes \$1,993.10 in principle.

[97] Given my findings, Ms. Legree is entitled to this sum.

VII. Health Care Costs

[98] As a result of her injuries, Ms. Legree claims future care costs of \$889,600. These costs were calculated by Ms. Marla Tennen, a Certified Rehabilitation Registered Nurse, who was qualified as an expert in the field of future care costs and life planning. She provided opinion evidence of Ms. Legree's future care needs based on the medical reports and physiotherapy reports provided as well as her own assessment as a rehabilitation nurse with 30 years experience. She did not have the benefit of Dr. Friedlander's report when she prepared her assessment.

[99] Dr. Friedlander, the chronic pain expert, made a number of recommendations for treatment:

- a) Clinical consultations with a psychologist and an interventional pain and headache specialist;
- b) Further investigations, such as an MRI and diagnostic nerve blocks;

- c) Pharmacological treatment, namely acetaminophen and long-acting non-steroidal anti-inflammatories;
- d) Interventionist pain management, such as corticosteroid injections or Botulinum Toxin therapy;
- e) Physical rehabilitation techniques, which would include strength training, aquatherapy, and moderate weight loss;
- f) Psychological rehabilitation, such as psychotherapy, hypnotherapy, cognitive behavioural or mindfulness therapy; and
- g) Employment assistance, such as a functional abilities evaluation.

[100] Dr. Basile has recommended high doses of fish oils with omega-3 fatty acids and daily meditation. He also recommends a referral to an integrated post-concussion syndrome programme with multidisciplinary treatments. He also recommends a pain management clinic and migraine prophylactic medication such as Amitriptyline or Nortriptyline. He also recommends the continuation of physiotherapy and massage therapy at least two to three times per week and the continuation of chiropractic treatments. Finally, he recommends a functional assessment to assist Ms. Legree with heavy housekeeping, house maintenance and recreational sporting tasks.

[101] The Defendant made a preliminary objection to the evidence of Ms. Tennen. In particular, Mr. Blouin argues that Ms. Tennen's opinion evidence is without foundation and her evidence shows that she is clearly bias. The Plaintiff argues that her opinion evidence stems from her years of experience as a rehabilitation nurse and her interaction with Ms. Legree.

[102] I see no reason to find that Ms. Tennen is biased. She signed the Form 53 Acknowledgment of Expert's Duty, just as all the other experts did, whether called by the Plaintiff or the Defendant. Nothing in her evidence showed her to step away from her duty to give impartial evidence.

[103] With respect to Mr. Blouin's other objection, I do accept that some of the recommendations made by Ms. Tennen may be without evidentiary foundation, or outside the area of her expertise. While I accept she is qualified to provide a cost analysis of the future care costs of a patient, and that as a rehabilitation nurse she has some intimate knowledge of the necessary therapies, careful attention will be given to the nature and scope of her recommendations to ensure that there is an evidentiary basis and that she has not opined outside of her area of expertise.

[104] I will review only the recommendations where there would be an out-of-pocket cost to Ms. Legree.

A. Psychological Counselling

[105] Given her diagnosis, and the recommendations of Dr. Friedlander, some psychological counselling would be in order. No recommendations for the frequency or duration of such counselling was provided by Mr. Walton or Dr. Friedlander. In the opinion of Ms. Tennen, Ms. Legree would benefit from weekly sessions the first two years, then every two weeks for the next three years, and then that a reserve be put in place that would allow her to receive additional counselling being the equivalent of twice a month for up to six years, spread out as she desires.

[106] Given the lack of an evidentiary basis for such a long period of counselling, and the fact that I have found Ms. Legree's psychological impairment to be on the mid to low end, I see no basis to set aside a reserve for an indefinite period of time. Psychologically counselling should be provided, but only up to a period of five years.

B. Biofeedback Sessions, Cognitive Remediation Sessions and Relationship Counselling

[107] I see no evidentiary basis for these therapies. Accordingly, no damages will be awarded for these types of therapies.

C. Physiotherapy and Massage Therapy

[108] The benefit of physiotherapy and massage therapy for Ms. Legree has been well-established in the evidence. It appears to be the only therapy she

has accessed in the years following the accident and it has provided her with level of pain relief. Accordingly, these therapies should continue.

[109] Given the opinion of Dr. Friedlander and Dr. Basile, that Ms. Legree will be suffering from headaches and chronic pain indefinitely, the length of these therapies, as set out in Ms. Tennen's report, are reasonable. That being said, Ms. Tennen suggests that Ms. Legree's life expectancy is another 50 years. It is not reasonable to assume, nor was evidence provided, that if physiotherapy is required for another 50 years, that it will be directly attributable to this accident. Accordingly, treatment up to 10 years is reasonable in the circumstances.

D. Chiropractic Treatment

[110] While Dr. Basile recommended the continuation of this treatment, there is no evidence that Ms. Legree ever tried chiropractic adjustments. Accordingly, there is no evidentiary basis for this therapy and no damages will be awarded.

E. Occupational Therapy Assessment and Intervention

[111] The evidence does support Ms. Legree having assistance with her activities of daily living. That being said, the duration suggested by Ms. Tennen is not supported. A one-time assessment is appropriate but the necessity of an occupational therapist coming to the home for six hours in one month and then

three hours per month over a year, has not been made out. Accordingly, an additional \$2,500 only will be provided which is the equivalent of 20 further hours of support at the rate of \$125 per hour.

F. Chronic Pain Programme & Mindfulness Based Stress Reduction

[112] Given Ms. Legree's diagnosis of chronic pain, and Dr. Friedlander's and Dr. Basile's recommendation that Ms. Legree participate in a chronic pain programme, this is an appropriate expense. Dr. Friedlander did recommend that Botox injections or cortisone therapies may be part of this programme. There is no indication though, that these therapies should continue for five or ten years. That should be in the discretion of the main management clinician. Accordingly, an allotment of only \$5,000 should be set aside to cover these injections.

[113] There is no evidentiary basis for a mindfulness-based stress reduction that is recommended. Dr. Friedlander recommended psychological counselling or mindfulness exercises, not both.

G. Fitness Facility Membership and Personal Trainer

[114] Prior to the accident, Ms. Legree attended her local gym. Had this accident not occurred, she probably would have continued to do so. Accordingly, this is not a compensable claim. That being said, she could benefit from a personal trainer that could advise her of the exercises that, in conjunction with

her physiotherapy, would best alleviate her pain. Dr. Basile recommended this as well. One year of guided training should provide Ms. Legree with the tools required to address her symptoms.

H. Driving Assessment and Driving Desensitization Sessions

[115] Ms. Legree continues to drive. In fact, she drives for a living. There is no evidentiary basis for this expense being covered.

I. Medication Allowance, Medical Marijuana and Assistive Devices

[116] Dr. Friedlander recommended pharmacological treatment, namely acetaminophen and long-acting non-steroidal anti-inflammatories. Ms. Tennen estimates the costs of anti-inflammatories to be \$46.67 per month, or \$560 per year. Ms. Tennen recommends that this be covered for life but acknowledges that when Ms. Legree turns 65, she will be otherwise covered. Accordingly, Ms. Legree should be covered from the date of the accident until she turns 65, which is another 36 years.

[117] Dr. Basile recommended Amitriptyline, which is a tricyclic antidepressant to help her sleep. Ms. Tennen priced out Imovane, which is also a sleep aid. The monthly cost of this drug is \$28.84 or approximately \$345 per year. This should also be allowed until she is 65 years old.

[118] These is no evidentiary basis for the other medications or assistive devices recommended, nor for the medical marijuana.

J. Attendant Care

[119] This claim was withdrawn at trial.

K. Total Future Care Costs

[120] Ms. Tennen provided the cost of each item. Mr. Durrani, an accountant who was qualified to give expert opinion evidence in the area of forensic economics, provided the present value of those future care costs. I see no reason to deviate from his calculations. As set out in Schedule “A”, the present value of these future care costs is \$143,560.78.

VIII. Loss of Income

A. Employment History

[121] Ms. Legree is not an idle woman. The evidence shows that except for the time following the birth of her children, she managed to find employment, no matter what town she lived in and wherever her life brought her.

[122] Ms. Legree had not finished her final year of high school when she dropped out in 2004. She was 16 years old. She since tried to finish online, but

the online requirements associated with the COVID-19 pandemic made it too challenging.

[123] When she dropped out, she moved in with Mr. Ireland, who is now her common law spouse, and his parents in Mount Forest, Ontario. She tried to go to high school there, but she needed to work to pay rent. She quit school and worked at Tim Horton's. When she and Mr. Ireland's family moved to Bolton later that year, she started working at McDonald's while working towards her high school diploma.

[124] In or around 2005, Mr. Ireland's family moved again to Loretto, Ontario, so she had to leave McDonald's and get a job at Blockbuster in Alliston. In or around this time, she found out she was pregnant, so she and Mr. Ireland moved out on their own to Orangeville. She was able to transfer to the Blockbuster in Orangeville so that she could continue to work and take a maternity leave. She stayed with Blockbuster until after her daughter was born in 2009.

[125] Unfortunately, Blockbuster closed down, so Ms. Legree started working at Tim Horton's again in Erin, Ontario.

[126] In 2011, Ms. Legree decided to return to school at the Medix School and started a 12-month programme in order to be a dental assistant. She claims that it has always been her wish to work in a dental office. Ms. Legree's family

confirmed this in their evidence, although her father indicated that her plans did vary a bit when Ms. Legree was a teenager. Ms. Legree enrolled in the programme with her sister Paige Legree. She took a leave of absence in the middle of the programme due to some personal issues at home and a short-term bout of anxiety. However, she did return and complete her work placements of 200 hours, and she graduated. She received her diploma in February 2013 and had a course average of 84%. She funded her programme through Ontario Student Assistance Program (“OSAP”), and she currently owes approximately \$27,000, which she pays back at a rate of \$111 to \$176 per month. It will take her 14 years to pay off this loan.

[127] While in Orangeville, and following graduation, she got a job with Princess Auto in Barrie. Shortly thereafter, Mr. Ireland got a better paying job and they moved back to Shelbourne. Mr. Ireland had to use Ms. Legree’s car, so any job search had to be local. She did apply to be a dental assistant in Shelbourne, but only one job came up, and her friend got the position. She needed to work so she took a job with Turf Patrol, which involved clearing rocks from farmer’s fields. She also worked part time at Petro-Canada.

[128] After about a year and a half, Mr. Ireland got his own vehicle and Ms. Legree finally got a working interview at Heritage Dental in Orangeville. She worked for only a day or two before she discovered she was pregnant again, and

it was determined that the gases used by the dentist would be too dangerous for her. Accordingly, her last day with Heritage Dental was March 17, 2015.

[129] Ms. Legree had difficulty finding alternate employment due to her pregnancy. Following the birth of her son on September 29, 2015, Ms. Legree took a “maternity leave”, which in essence was a break from working, as there was no job from which she could take a leave.

[130] In her initial application for accident benefits, Heritage Dental was asked to complete the “Employer’s Confirmation Form”. That form was completed on May 12, 2018 and with respect to employment details, it stated “working interviews for a dental assistant job”. A copy of her pay stub with Heritage Dental showed that she earned a gross income of \$319.25 in the weeks of March 3, 2015 and March 17, 2015.

[131] In addition, in the accident benefits file there is a handwritten note on the Employer’s Confirmation Form that states “[Ms. Legree] did not work for us at the time of the accident and does not work for us now.” The date of this notation is not known.

[132] Ms. Legree claims that just before the accident, she had updated her resume and intended to start applying again to be a dental assistant, after her son turned one, which would be on September 29, 2016. As indicated, the accident occurred on August 19, 2016.

[133] Following the accident, Ms. Legree did not work until her friend told her about a job driving a school bus with FirstCanada ULC. Ms. Legree states it worked out well because she could bring her kids with her, and eventually drop her children off at school when they were old enough, so no daycare was required. She started her job on December 7, 2016.

[134] On her application form, Ms. Legree indicated that she had a motor vehicle accident in August 2016 but stated that there were no injuries. She certified her responses to be true. Nonetheless, Ms. Legree indicated that she interpreted this to mean that she did not suffer any injuries that prevented her from doing the job of a bus driver. She did advise her trainer though, that she could not sit for a long period of time due to pain in her neck and back. This was verified by Ms. Linda Thorpe, who trained Ms. Legree. Ms. Thorpe confirmed that Ms. Legree took a bit longer in her training because she could not be behind the wheel for a long period of time. The company tried to accommodate her in training. They also gave her the shorter routes in order to accommodate her when she started working.

[135] Ms. Legree drove for FirstCanada ULC until March 2018, when the school board contract was taken over by Attridge Transportation Inc. (“Attridge”). She continued with Attridge, on a shorter route, to accommodate her back and neck pain, and remains employed with them as of the date of the trial.

[136] It is Ms. Legree's evidence that she would have preferred to work as a dental assistant, but she knew she was unable. She had worked already for 200 hours in her school placement and knew the physical requirements of the job. She knew that the pain in her back and neck would not allow her to take any dental assistant position.

[137] In the three years prior to the accident (2013 to 2015), Ms. Legree's average annual income was \$5,800. Once she started working as a bus driver, her income has increased to \$10,461 in 2017, \$13,212 in 2018, \$19,076 in 2019 and \$29,885 in 2020. Her income was higher in this last year due to Canada Emergency Response Benefit ("CERB") benefits and extra income from her employer as a result of their extra sanitizing duties due to the pandemic.

B. Income Loss as of the Date of Trial

[138] Mr. Durrani gave expert opinion evidence on what Ms. Legree could have expected to earn under two scenarios. The first scenario uses the average income earned by a dental assistant for full time, part time or sporadic work as a dental assistant. The second scenario assumes that Ms. Legree would only work full time. No scenario was provided if Ms. Legree did not work as a dental assistant.

[139] At this juncture, I am unable to conclude that Ms. Legree would have only worked as a dental assistant but for the accident. While I accept that this is

her preferred career, her history is that she would take any type of work in order to help with the family finances. It took her approximately two years from the date of her graduation to obtain an opportunity at Heritage Dental, with one intervening application. While this is no criticism of Ms. Legree, she was restricted by her access to a car and her physical location. There is no evidence to support that a dental assistant job would even have been available had she not been injured from the time of the accident to the time of trial.

[140] In addition, she gave evidence that she enjoyed the bus driving job because it worked with the children's school schedule and no daycare was required. It could very well have been that she would have taken this job while she waited for an appropriate dental assistant job. When an appropriate job would have surfaced is unknown.

[141] Accordingly, I do not find, on the balance of probabilities, that Ms. Legree would have worked as a dental assistant but for the accident, up until the time of the trial. Accordingly, neither of Mr. Durrani's scenarios, for losses prior to trial, are of assistance. I am not prepared to find that, on the balance of probabilities, Ms. Legree's income would have been any different up to the date of the trial, even if the accident had not occurred.

C. Income Loss – Post Trial

[142] In order to assess these losses, Mr. Durrani again provided two scenarios – one where Ms. Legree worked anywhere between full time, part time, and sporadically, and another where it is assumed that she only worked full time.

[143] I have no doubt that Ms. Legree wanted to be a dental assistant. I find this for a number of reasons. First of all, she received training for it. She obtained a large student loan to finish the programme. She had to take a leave due to anxiety. Rather than quit, she returned, excelled, and graduated. The evidence also supports that when her circumstances allowed for it, she applied to be a dental assistant.

[144] That being said, the evidence presented at trial does not support, on the balance of probabilities, that but for the accident, she would have had a career as a dental assistant.

[145] First of all, she never tried that job after the accident. She is currently driving a school bus, which is hard on her back. She sought and obtained accommodation at that job. There is no reason to believe that she could not be accommodated the same way as a dental assistant. Without even trying to work as a dental assistant, there is no evidence to suggest that it was not possible.

[146] Secondly, I take judicial notice that a smaller population has a smaller need for dental assistants. Ms. Legree has usually lived in small communities, as has her family. There is nothing to suggest that the family would

move in order to accommodate Ms. Legree's career. The likelihood that she would obtain such a job, and that it would be accommodated by her family, has not been established. No evidence was presented that showed the likelihood that such a job would have even been available to her, but for the accident.

[147] Thirdly, Ms. Legree's work history as a dental assistant is sparse. She did her placement for her diploma, but after that, she never worked as a dental assistant. I accept that she was with Heritage Dental for a couple of days, but the only evidence regarding that position is from Heritage Dental, which indicated that she had a "working interview." In its report to the accident benefits insurer, Heritage Dental claimed she had never worked there. Accordingly, between the time she received her diploma in 2013 and the date of the accident, a period of approximately three and one-half years, she never worked as a dental assistant.

[148] Finally, there is also no evidence to support the suggestion that she would have worked in this capacity until retirement, as suggested in the report of Mr. Durrani. We heard from two witnesses who received the same training. Ms. Legree's sister left after three years of part time work. She said the work was hard on her back and she currently sees a chiropractor. She eventually went back to school to be a personal support worker. She indicated she left the dental

assistant field, not because of the strain on her back, but because it did not involve enough interaction with people.

[149] We also heard from Ms. Lisa Lynch who worked as a dental assistant for 17 years and left due to back issues. While she worked as a dental assistant, she would regularly need massage and acupuncture to alleviate her back pain.

[150] Accordingly, although Ms. Legree's desire to be a dental assistant is accepted, she has not established, on the balance of probabilities, that she would have worked as a dental assistant, but for this accident.

IX. Conclusion

[151] For the reasons set out herein, I make the following orders:

- a) The Defendant's motion seeking to dismiss the Plaintiff's claim for failing to prove that her injuries fall within the statutory exception under s.267.5(3) and s.267(5) of the *Insurance Act*, R.S.O. 1990, c.l.8, is dismissed;
- b) The Defendant shall pay to the Plaintiff the following:
 - 1) general damages in the sum of \$100,000, subject to the usual statutory deductible under the *Insurance Act*,

- 2) special damages in the sum of \$1,993.10;
 - 3) damages for future health care costs in the sum of \$143,560.78;
 - 4) interest and costs; and
- c) The remaining claims are dismissed.

[152] If the parties are unable to agree on the deductible amount applicable to general damages, any deductions appropriate for the health care costs, or prejudgement interest and costs, the parties may contact the trial coordinator to arrange an appointment before me.

Fowler Byrne J.

Released: November 19, 2021

SCHEDULE "A"

Item	Cost	Present Value of Costs
Psychological Counselling: 48 sessions/yr for 2 years and 24 sessions/yr for 3 future years	\$36,960	\$36,917
Physiotherapy: 48 sessions/yr for 1 year, 2 sessions/month for 9 years	\$33,000	\$32,910
Massage Therapy: 48 sessions/yr for 1 year, 24 sessions/yr for 9 years	\$26,400	\$26,328
Occupation Therapist: \$600 initial assessment plus \$2,500 allowance	\$3,100	\$3,100
Chronic Pain Programme: cost of programme plus \$5,000 towards injections	\$16,375	\$16,375
Personal Trainer: 1 year, at 24 sessions/yr	\$2,160	\$2,160
Medications: anti-inflammatories at \$560/yr and sleep aids at \$345/yr until age 65 (36 years)	\$32,580	\$25,770
Total:	\$150,575	\$143,560.78

CITATION: Legree v. Origlieri, 2021 ONSC 7650
COURT FILE NO.: CV-18-00000084-00
DATE: 2021 11 19

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Laura K. Legree

Plaintiff

- and -

Tonya L. Origlieri

Defendant

REASONS FOR JUDGMENT

Fowler Byrne J.

Released: November 19, 2021