

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(San Fernando)**

Claim No. CV 2006 – 01661

BETWEEN

WINSTON MC LAREN

Claimant

AND

**DANIEL DICKEY
RYAN SUMMERS
LESLIE KEEN
DREW SCOTT
EGORO JASPREWSKI**

Defendants

Before the Honourable Madame Justice Rajnauth-Lee

Appearances

Mr. Kevin Ratiram for the Claimant.

Mr. Mark Morgan instructed by Mrs. Nadia Kangaloo for the First, Third, Fourth and Fifth Defendants.

Dated the 5th June, 2009.

JUDGMENT

INTRODUCTION

1. In this action, the claimant claims against the defendants damages for assault and battery on the 28th November, 2005. The defendants have denied the claim and the third defendant has counterclaimed for damages for pain, injury, loss and damages suffered by her as a result of an alleged attack on her by the claimant. The claimant has denied the counterclaim.

THE PLEADINGS

2. By his Statement of Case filed on the 23rd June, 2006 the claimant, at the material time an employee of Junior Sammy Contractors Limited (“Junior Sammy”), claimed that on the 28th November, 2005, he attended a site meeting at the compound of Nu-Iron Trinidad and Tobago (“the site”) located at the Point Lisas Industrial Estate where he had been working as a steel fitter since September, 2005.
3. At paragraph 4 of the Statement of Case, the claimant alleged that at the site meeting, he expressed dissatisfaction in respect of various safety measures and/or facilities and/or provisions on the site. The claimant alleged that shortly after the meeting, he was ordered off the site by the first defendant. He further alleged that he enquired what was the reason for the order and was informed by the first defendant that if he, the claimant, did not leave the site, the first defendant would call security to have the claimant removed [paragraphs 5 and 6].

4. At paragraph 7 of the Statement of Case, the claimant alleged that he was then attacked by the defendants who assaulted and beat him. The claimant alleged that he was eventually rescued by his fellow workers, who were nearby [paragraph 8].

5. The claimant complains that as a consequence of the attack he attended the Accident and Emergency Department, Couva District Health Facility on the same day and that he suffered the following injuries:
 - (i) abrasions to right hand, thumb, middle and little fingers.
 - (ii) swelling to forehead.
 - (iii) Soft tissue injury to neck.
 - (iv) Soft tissue injury to right shoulder.

6. Mr. Ratiram, Attorney for the claimant, confirmed that the second defendant was never served. The other defendants (“these defendants”) filed a Defence on the 29th September, 2006.

7. At paragraph 2 of the Defence, these defendants sought to correct the record as to their employment at the material time:
 - (a) the first defendant was Nu-Iron’s Construction Manager on the site;
 - (b) the third defendant was Nu-Iron’s Security Manager on the site;
 - (c) the fourth defendant (whose full name is Darren Drew Scott) was Project Superintendent of Lexicon Inc, an American contractor, employed on the site.

- (d) The fifth defendant was an employee of ATCO, a sub-contractor employed on the site.

8. These defendants deny the claimant's version of the events and allege that the incident took place as set out in paragraph 4 of the Defence as follows:

- a) On the morning of November 28, 2005, the first defendant approached the ATCO area on the site and heard the claimant angrily and belligerently threaten to kill the fifth defendant.
- b) In an effort to calm the situation down, the first defendant told the claimant to return to his employer's area on the site.
- c) The claimant then began verbally abusing the first defendant, making racist remarks to him and threatening to kill him and all American contractors on the site and to send them out in body bags. During all this time the first defendant remained very calm, while the claimant was agitatedly jumping towards him and thrusting his finger in his face.
- d) Notwithstanding the claimant's hostility, verbal and racist abuse, the first defendant remained calm and indicated to the claimant that if he did not get back to his employer's area on the site, the first defendant would call the site security officers and have the claimant escorted off the site. The first defendant told this to the claimant several times.
- e) The claimant however ignored the first defendant and continued to abuse him verbally. The first defendant there contacted the third defendant by radio and in the hearing of the claimant, told her that

he had a semi-violent person who needed to be escorted off the site by the security personnel.

- f) The third defendant arrived shortly afterwards with a female security officer and saw and heard the claimant verbally abusing the first defendant and making loud and aggressive racist comments.
- g) Upon their arrival, the first defendant requested the third defendant and the security officer to escort the claimant off the site.
- h) The third defendant and the security officer approached the claimant and the third defendant calmly requested him to accompany her off the site. The claimant refused, heatedly telling the third defendant “You can’t tell me what to do”.
- i) The third defendant continued to repeat calmly to the claimant that she wanted to him to accompany her off the site when the claimant abruptly turned, walked about 4 steps away and suddenly reached down under a piece of corrugated metal and brought out a metal pipe about 8 feet long and 2 inches wide.
- j) This aggressive action by the claimant caused the third defendant in fear of her safety, to back up against a trailer behind her with the security officer.
- k) Having grabbed the metal pipe, the claimant then turned back towards the third defendant, shouting “You can’t tell me what to do” and assaulted and attacked the third defendant lunging towards and swinging the pipe at her.

- l) The third defendant who was completely defenceless against this unprovoked attack by the claimant, tried to duck and avoid being struck by the claimant, but she was not successful and the claimant forcibly struck her on her right hip before she was pulled to safety behind the trailer by the second defendant.

- m) The claimant then turned towards the first defendant and assaulted and attacked him swinging the metal pipe at the first defendant's head. The first defendant ducked, pushed his head into the claimant's chest, grabbed his knees and tackled him to the ground, as he was entitled to do in order to prevent further assault by the claimant.

- n) The claimant in a complete rage continued to kick and hit out at the first defendant in an attempt to hurt him and so, as they were entitled to do, in order to restrain him and to prevent any further assault and attack by him on the first defendant, the second defendant and other persons assisted the first defendant in controlling the claimant.

- o) By then a large crowd had gathered and had started closing in on the scene and encouraged by the claimant, unknown members of that crowd then joined in with the claimant in his attack on the first defendant and those that had come to his rescue including the second defendant.

- p) The actions of the claimant attracted other persons to the scene including the fourth defendant, who when he arrived saw the first defendant and others being attacked by the claimant and others. As he was entitled to do, he therefore, intervened to assist and to try to

prevent further attacks when he was assaulted and attacked by claimant who pushed, shoved, punched and swung at him until he fell to the ground and had to be rescued by others from the claimant's attack.

- q) Eventually the claimant was removed from the site by security personnel.
- r) At all material times, the first and fourth defendants used only and no more force against the claimant than was reasonably necessary in the circumstances, to prevent further assault to themselves and others who were under attack by the claimant and other parties unknown.

9. The third defendant who was born on the 25th February, 1959 has counterclaimed that she suffered the following injury as a result of the alleged attack by the claimant:

Blunt object contusion to the right hip.

10. The claimant filed a Defence to Counterclaim denying the allegations in the Defence and Counterclaim.

THE ISSUE

11. Having regard to the Statement of Case and the Defence, it cannot be disputed that the claimant and some of these defendants were involved in an altercation on the said 28th November, 2005. Attorneys for the parties have agreed that the sole issue before the Court is a question of fact. Essentially the Court must determine on a balance of probabilities whose evidence the Court should accept and accordingly which party is liable for the attack.

THE COURT'S APPROACH

12. Where there is an acute conflict of evidence, the Judicial Committee of the Privy Council has laid down the following principles in the case of **Horace Reid v Dowling Charles and Percival Bain** Privy Council App. No. 36 of 1987. At page 6, Lord Ackner delivering the judgment of the Board examined the approach of the trial judge:

“Mr. James Guthrie, in his able submissions on behalf of Mr. Reid, emphasized to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

13. Accordingly, the trial judge must check the impression that the evidence of the witnesses makes upon him against

- (i) contemporary documents, where they exist;
- (ii) the pleaded case; and
- (iii) the inherent probability or improbability of the rival contentions.

14. The Judicial Committee of the Privy Council adopted a similar approach in the case of the **Attorney General and another v Kalicklal Bhooplal Samlal** (1987) 36 WIR 382. Lord Ackner who delivered the judgment of the Board made the following statement at page 387:

“The trial judge may well have reached his decision entirely as a result of the impression made upon him by the manner in which the witnesses gave their evidence. Indeed, it is difficult to draw any other conclusion. But a judge must check his impression on the subject of demeanour by a critical examination of the whole of the evidence (see Yuill v Yuill [1945] P 15 at page 20). In this case the Court of Appeal were fully entitled to conclude that he did not balance demeanour against the rest of the evidence and had thus not taken proper advantage of having seen and heard the witnesses. It is essential when weighing the credibility of a witness to put correctly into the scales the important contemporaneous documents (the brochure and the letter of 12th October 1981) and the inherent improbability, as the Court of Appeal percipiently pointed out, that the licence would have been granted without samples of those tiles which were not depicted in the brochure, being produced. Thus the balancing operation, which is of the very essence of the judicial function, was not properly carried out.”

15. Having regard to the well-recognised principles set out by the Judicial Committee of the Privy Council in the above cases, the Court proposes to carry out that *balancing operation* on examining the evidence advanced on behalf of the parties.

PRELIMINARY MATTERS

16. Prior to looking at the evidence, however, the Court wishes to mention some matters which were raised by Attorneys on the first day of the trial. Firstly, Attorneys for the parties agreed that the Court should determine the issue of liability only and if it becomes necessary, the Court will proceed to assess damages at a later stage.
17. Further, on the 20th April, 2007, Attorney for these defendants filed a hearsay notice to use the witness statement of the fourth defendant at the trial. The fourth defendant could not attend the trial, being overseas. The fourth defendant's witness statement was formally admitted into evidence without objection.
18. Additionally, two medical reports were admitted into evidence by consent
- (a) the Medical Report of the Couva District Health Facility dated the 13th December, 2005 [Agreed Document "A"].
 - (b) the Medical Report of Dr. Jay J. Manohar dated the 30th November, 2005 [Agreed Document "B"].
19. Further, Mr. Ratiram on behalf of the claimant indicated to the Court that the claimant was not pursuing a claim for loss of earnings beyond the sum of \$10,000.00 claimed in the Statement of Case. Mr. Ratiram indicated to the Court however that he was pursuing the claimant's contention that he was not able to work. Consequently, Mr. Ratiram applied to amend the claimant's Statement of Case to include under the heading of the "Particulars of Claimant's Injuries" the following:

“The claimant has been unable to work since the 28th November, 2005.”

20. Mr. Ratiram also applied to amend the Statement of Case under the heading “Particulars of Special Damages to the Claimant” by deleting “\$10,000.00” and by inserting the words “\$3,500.00 per month from the 28th November, 2005 and continuing”. Mr. Ratiram conceded that the claimant had produced no medical evidence in support of the proposed amendments but he argued that the proposed amendments found support in the claimant’s witness statement filed on the 19th January, 2007 [paragraph 16]. [That portion of paragraph 16 was subsequently struck out by the Court on the ground of irrelevance].

21. Mr. Morgan objected to the applications to amend. The Court agreed with Mr. Morgan that there was no medical evidence filed by the claimant to support the allegation that post – April, 2006, the claimant was not able to work. The Court further agreed with Mr. Morgan’s argument that the claimant had not demonstrated any change in circumstances which justified the exercise of the discretion of the Court to allow the proposed amendments pursuant to the Part 20.1(3) of the Civil Proceedings Rules, 1998 as amended. The Court has since looked at the judgment of Kangaloo J.A. in the unreported appeal of **Ramesh Seebalack v Charmaine Bernard (Legal Personal Representative of the estate of Reagan Nicky Bernard)** Civ. App. No. 261 of 2008. The Court adopts the dictum of Kangaloo J.A. at page 7 (paragraph 10) of his judgment:

“For the respondent to attempt to effect such alterations, which amount to \$401,420.52, when all that was pleaded in both the original and the amended statement of case was a prayer for damages *simpliciter* fundamentally alters the substance of her claim. The Court of Appeal cannot countenance such action which is a throwback to the pre-CPR culture of litigation where trial by ambush was the order of the day.”

22. In all the circumstances, the Court refused the claimant's applications to amend. Even if the "change" in the Statement of Case was a "non-fundamental change", that change would still be caught by Part 20.1(3) of Civil Proceedings Rules [Kangaloo J.A. paragraph 12].
23. In addition Mr. Morgan applied to the Court to use the witness statement of Andre Snaggs filed out of time on the 20th April, 2007 (mere days before the commencement of the trial). Mr. Morgan argued that it was impossible for Mr. Snaggs to give his witness statement before he completed his investigation and that his witness statement dealt with matters that came into existence between the 5th and 12th April, 2007. There was objection to the application. The Court having heard the application and having looked at the witness statement ruled that the witness statement of Snaggs was filed out of time in breach of the Rules and that no proper explanation had been provided by Attorney for these defendants to justify the late filing. Accordingly, Mr. Morgan's application was refused.

THE EVIDENCE

24. At the trial, Attorneys consented to the Court's hearing the evidence of these defendants prior to the evidence of the claimant since some of their witnesses had come from abroad for the trial. The Court will, however, examine the evidence advanced on behalf of the claimant first.

THE CLAIMANT'S EVIDENCE

Winston McLaren, the claimant

25. The claimant's witness statement was signed by him and filed on the 19th January, 2007. The Court notes that at paragraphs 3, 4 and 5 of the witness statement, the claimant gave details of the site meeting which had preceded the alleged attack and which he referred to as a "safety" meeting. According to paragraph 3 of the claimant's witness statement, about 100 workers attended the

meeting. The first defendant was present. During the meeting, the claimant complained about several aspects of safety on the site, the need to have separate changing rooms and toilets for male and female employees, and also about the unclean drinking water. He also complained that the Occupational, Safety and Health Act (OSHA) had not been implemented in Trinidad and Tobago. According to his witness statement, he complained as well that the workers were supposed to be receiving fringe and safety benefits and attendance allowance. [paragraph 3].

26. At paragraph 4 of his witness statement, the claimant said that the first defendant, in an annoyed tone, stated that he had already paid monies to Junior Sammy for those things and he was not going to pay anymore. According to the claimant at paragraph 5 of his witness statement, the workers decided that they were not going to continue to work, unless the issues raised during the meeting were properly addressed by management.

27. According to paragraphs 6 to 8 of the claimant's witness statement, the meeting ended and he proceeded to the cafeteria to buy a pack of peanuts. Upon leaving the cafeteria he was confronted by the defendants. The first defendant asked him in a rough tone what was "the real issue" and ordered him to leave the job site. According to the claimant, he enquired why he should leave the job site and the first defendant told him if he did not leave that he would have him removed. According to the claimant's witness statement, this confrontation was followed by the attack on him by the defendants who then surrounded him and physically assaulted him. The assault is described at paragraphs 9 to 11 of the claimant's witness statement,

28. The Court considers it appropriate at this stage to set out *verbatim* part of the cross-examination of the claimant as to how the alleged attack on him took place. He said in answer to questions posed by Mr. Morgan:

“The only person I could remember was Mr. Dan Dickey. He was in front of my face. I cannot remember where Mr. Summers was. I cannot remember where Mr. Scott was. I cannot remember where Mr. Egon was.

I proceeded to go back slowly, when they surrounded me until I stepped on the foot of someone behind me. I could not go back any more. There was someone blocking me from going back. I did not turn around to find out who it was.

I then say Dickey grabbed me by my neck. He grabbed me with his right hand – one hand. He did not grab me on the left hand side of my neck. He grabbed me on the right hand side of my neck. I now say he grabbed me on the left hand side of my neck. He had to reach up to grab me on the left hand side of my neck. [Court notes that the witness hesitates]

When he did that, the others were still surrounding me in a tight circle. He used his right hand and pulled me to the ground. No, he pushed me to the left to the ground.

I did not hit one of the other people crowding me in but I hit the ground. I did not attempt to hold onto any of the people who were crowding me in. The way it happened, I could do nothing at the time.

When this was happening, I fall straight down on my shoulder. I could not do nothing with my hand. I did not fall on my left shoulder. Yes, I fell on my left shoulder.”

29. During this cross-examination, the claimant was hesitant and uncertain in answering the questions posed to him. The Court appreciates that the incident took place over a short space of time and that what may seem obvious in the “sanctity of the court room” should not be confused with the unfolding events that

occurred in the heat of the moment on the 28th November, 2005. [See the helpful observations of Jamadar J. in the unreported case of Neil Budhoo v Allan Campbell CV 2006-00054 (p. 6)]. Nevertheless, the claimant did not impress the Court as a witness of truth. He appeared to want to ensure that his answers as to how the attack took place supported the injuries that he had suffered.

30. The claimant went on to describe the attack further in cross-examination:

“After Mr. Dickey pushed me down I was not still standing. After Mr. Dickey pushed me to the ground, he locked my neck with his hand. I cannot remember which shoulder I fell on. He pushed me to the ground so I fell on a shoulder.

He pushed me, locked my neck and threw me to the ground.

Initially, I said he put his hand on the left side of my neck. Before he pushed me to the ground, he had his hand on my neck; he then put his same arm around my neck and pushed me to the ground.

I meant not his hand, but he put his arm on my neck. I mean he reached up with his arm and got me in an arm lock. He locked my neck like that and threw me to the ground. [Witness demonstrates].

When I fell to the ground, he still had my neck in an arm lock. We were both on the ground.

I was trying to get out of the lock, but I could not because the other defendants began to kick me and cuff me.”

31. According to the claimant in further cross-examination, the other defendants began to kick him, and the third defendant, Miss Leslie Keen, stooped down and began to cuff him. Whilst all of this was going on, the first defendant was still holding him on the ground. The Court finds it unbelievable that some of the defendants would kick the claimant while the first defendant was on the ground lying at the claimant's side and holding onto him with his arm in an arm lock, and while the third defendant was stooping down and cuffing him. It makes no sense to the Court.

32. According to the claimant in further cross-examination, the other workers on the site rushed the defendants, started to use obscene language and pulled the defendants off him. The claimant testified that he was bleeding from his injuries, but for some reason that this Court cannot fathom, he decided that he would go to the Police Station before seeking medical treatment. According to the claimant, even though he was bleeding he went to the Police Station because he "had to get the certificate from the Police".

Romero Abraham

33. Mr. Abraham was a co-worker of the claimant employed with Junior Sammy on the site. According to his evidence in cross-examination, at least, five (5) Junior Sammy workers spoke at the safety meeting, namely, the witness Abraham, the claimant and some others. According to him, they raised issues of safety, fringe benefits and attendance allowance. According to this witness, the first defendant behaved "real hysterical and unmannerly" and this witness concluded that he would never forget such behaviour. Despite that, however, he never put that in his witness statement. Further, according to this witness in cross-examination, he was some forty (40) feet away when he saw the defendants surrounding the claimant. According to him, although the fourth defendant was taller than the claimant and was standing behind the claimant (between the claimant and the witness), the fourth defendant was not blocking his view.

34. The Court observed that this witness was uncertain and aggressive and refused to answer simple, straightforward questions which were asked of him. In fact, one simple question had to be asked four (4) times before it was answered. According to this witness, the first defendant was “getting plenty of blows from his own people”. This witness in cross-examination testified that the third defendant, Miss Leslie Keen, kicked the claimant about his whole body.

35. The Court was not impressed with this witness’ demeanour. He appeared to be guilty of exaggeration. It appeared to the Court that he came to tell a certain story and knew little outside of that.

36. Before the Court passes on to the evidence of the claimant’s other witness, Mr. Dain Sonnylal, the Court wishes to mention a matter which came up early in the cross-examination of the witness Abraham. He was asked by Mr. Morgan whether he was in Court on the last day. According to this witness, he and Mr. Sonnylal waited in the precincts of the court until the matter was finished. According to him, he had a brief conversation with the claimant (approximately 3-5 minutes), but he said that the claimant did not tell him about his cross-examination and that they did not talk about the case.

Dain Sonnylal

37. This witness is also a co-worker of the claimant. At the start of his cross-examination, he too was asked whether he was in court on the last occasion with Mr. Abraham. According to him, he waited until the matter had ended and then the claimant, Mr. Abraham and the witness Sonnylal had a conversation. He testified that the claimant told Mr. Abraham and the witness Sonnylal what happened in Court that day and about the evidence that the claimant had given in Court. Later in cross-examination, this witness said that he had not given certain evidence in his witness statement because, according to him, “*my story has to*

match Mr. McLaren's story. Mr. McLaren and I sat down and discussed how it happened."

38. This witness' evidence has left the Court with a sense of unease that the claimant and his witnesses had collaborated to ensure that their evidence matched. In addition, the Court notes that the witness Abraham was deliberately untruthful to the Court.

39. The Court notes that this witness' evidence on some issues accorded with these defendants' case: that the first defendant told the workers to take up their complaints with Junior Sammy; that the first defendant was not really "vex with anybody". According to him, everyone with the exception of the claimant was using "construction language". This witness did not know the defendants by name, save the first defendant, and did not see who precipitated the attack.

THE DEFENDANTS' EVIDENCE

40. Several witnesses gave evidence on behalf of these defendants and were cross-examined:

- the first, third and fifth defendants;
- Mr. Kelley McGill, a Project Manager with Lexicon Inc. who came from the United States for the trial;
- Miss Angela Seon, Woman Security Officer employed by Security Escort Services Limited on the site on the 28th November, 2005;
- Mr. Rawle Jaggernauth employed with Junior Sammy as a Site Clerk at the material time.

- Mr. Paramdeo Rajkumar, a Warehouseman with Nu-Iron Limited at the material time.

41. On the first day of cross-examination, the first three witnesses, namely, the first and fifth defendants and the witness McGill impressed the Court as witnesses of truth. Their demeanour and attitude were impressive. The following day, however, the evidence of the witnesses, namely the third defendant, and Seon, Jaggernaut and Rajkumar, contained several inconsistencies:

- as to the sequence of events
- as to distances
- as to length of time
- as to location

42. Despite the several inconsistencies in the evidence of these last four (4) witnesses, however, the Court finds that the evidence advanced on behalf of these defendants was reliable on the essential ingredients of the case.

CONCLUSIONS

43. Having examined the evidence advanced on behalf of the parties, the Court finds that it is inherently improbable that the defendants would have staged a *concerted attack* on the claimant as the claimant has alleged. These defendants, having regard to their respective positions of authority and responsibilities on the site, had far more to lose than the claimant, had they engaged in an unprovoked attack on a worker. Further, they were foreigners and it was likely that they would have been sensitive to the consequences of an unprovoked, concerted attack on the claimant, such as criminal prosecution, fines, imprisonment,

deportation and loss of their jobs. It was suggested by the claimant that the first defendant had attacked the claimant because he had lodged several complaints at the site meeting. However, the claimant's own witness, Mr. Abraham, had confirmed that at least five (5) Junior Sammy workers had complained at the meeting. The Claimant's other witness, Mr. Sonnylal, had testified that at the meeting although everyone, but for the claimant, was using "construction language", there was no one who was particularly hostile or "vex", to use his word. In the judgment of the Court, there was no reason for the defendants to single out the claimant for a good beating.

44. Further, in the Court's view, it is hardly likely that the five (5) defendants, all foreigners (including a woman) would participate in an unprovoked, concerted attack on the claimant, a local Junior Sammy worker, who did not work under their authority, while some one hundred (100) local workers were nearby and were no doubt ready to defend their colleague.

45. In the judgment of the Court, it is also inherently improbable that the attack on the claimant would have been carried out as alleged by the claimant. It is not likely that, in view of the fact that the workers had decided to strike, the claimant would simply have left his job site after that meeting to go to another job site to purchase a pack of peanuts. It is more likely that he went over to the ATCO area on the site, the part of the site not controlled by Junior Sammy, in an attempt to incite the ATCO workers to strike. It is also likely that in that scenario, the first defendant demanded that the claimant leave the ATCO area.

46. The Court also heard the evidence of Dr. Neil C. Persad, Orthopaedic Surgeon, who gave evidence on behalf of the claimant. This witness' evidence confirmed that the injuries allegedly suffered by the claimant were not documented by the doctor who first examined and treated the claimant at the Couva District Health Facility. The Court notes that the claimant and his witnesses described a severe beating, but that is not borne out by the Medical

Report of Dr. Adesh Goolcharan, House Officer, who saw the claimant at the Couva District Health Facility.

47. Having regard to all the evidence and in all the circumstances of the case, on a balance of probabilities, the Court prefers the evidence advanced on behalf of these defendants. The Court has also considered the injury suffered by the third defendant. Having regard to the minor nature of the injury, the Court does not consider it necessary to assess the third defendant's damages at a subsequent hearing.

ORDER:

The Court therefore makes the following order:

- (1) The claimant's claim is hereby dismissed.
- (2) There shall be judgment for the third defendant on her Counterclaim. The claimant shall pay to the third defendant damages assessed in the sum of \$2,500.00 inclusive of interest to the date of this judgment.
- (3) The claimant shall pay to the first, third, fourth and fifth defendants prescribed costs of the claim in the sum of \$14,000.00 and to the third defendant prescribed costs of the Counterclaim in the sum of \$625.00.

**MAUREEN RAJNAUTH-LEE
JUDGE**