

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
Sub-Registry, San Fernando

HCA No: S-1449 of 2004

CLAIM No: CV 2006- 01035

BETWEEN

ELVA DICK-NICHOLAS

Claimant

And

JAYSON HERNANDEZ

Defendant

CAPITAL INSURANCE COMPANY LIMITED

Co-Defendant



Before The Hon. Madam Justice Pemberton

Appearances:

For the Claimant: Mr. A. Ramlogan and Ms. C. Bhagwandeem

For the Defendant and Co-Defendant: Ms. A. Bailey and Mr R. Pheerangee

DECISION

[1] **INTRODUCTION**

On 20th February 2004, the Claimant (“Elva”) sustained severe personal injuries after being struck by the Defendant’s (“Jayson”) motor vehicle on the Lady Young Road, Morvant. She was hospitalized as a result of her injuries, which included damage to her face, pelvis, left leg, ribs and spine. She claimed both general and special damages against Jayson and the Co-Defendant (“Capital Insurance”), who were his insurers at the material time.

[2] On 16th March 2007 judgment was entered in Elva's favour against Jayson and Capital Insurance, due to their failure to comply with the Court Order dated 15th November 2006. The only issue left for determination was the quantum of damages to which Elva is entitled.

a. General Damages:- In considering the amount to be awarded, I must have regard to the injuries suffered and arrive at a global figure, which represents the extent to which Elva's life has been adversely affected. I also considered how inflation would affect this award, when arriving at the final figure.

b. Special Damages:- Elva tendered the relevant bills, invoices and receipts in support of the sums claimed as *Special Damages*.

[3] **ORDER**

It is hereby ordered as follows:

a) The Defendant and Co-Defendant to pay the Claimant the sums of:

i. General Damages in the following sums:

- Pain and Suffering/Loss of Amenities/Future Medical Care (TT) 407,999.20 TT;
- Loss of Future Earnings: \$120,000.00 TT;
- Future Medical Care \$126,500.00 US

ii. Special Damages in the sum of:

- \$169,552.64TT

for the personal injuries and consequential loss suffered, together with interest at the rates and for the periods hereunder:

CATEGORY	PERIOD of INTEREST	RATE
<u>A. GENERAL DAMAGES:</u>		
i. Pain and Suffering/ Loss of Amenities	Date of service of Statement of Case – Date of Judgment	9%
ii. Loss of Future Earnings	Date of Judgment – Date of Payment	12%
iii. All sums awarded as General Damages	Date of Judgment – Date of Payment	12%

<u>B. SPECIAL DAMAGES:</u>		
	Date of Accident – Date of Judgment	6%
	Date of Judgment – Date of Payment	12%

b) The Defendant and Co-Defendant to pay the Claimant's costs prescribed in the sums of \$ 64,739.54 TT and \$ 20,981.25 US.

[4] **BACKGROUND**

At approximately 8.30 pm on 20th February 2004, Elva and her daughter – Kafi Nicholas - alighted from a taxi on the Lady Young Road, in the vicinity of the Church on the Rock in Morvant. They then proceeded across the road at the zebra pedestrian crossing. Whilst crossing, Elva was struck on her left side by Jayson's motor vehicle. Jayson was driving at the time. Elva was, at that date, a married 44-year-old mother. She is now 48 years of age.

[5] Immediately following the accident, Elva was rendered unconscious for about three (3) days. She sustained severe personal injuries. These were detailed as follows:

- (a) Multiple lacerations and abrasions on the left side of her forehead and left eyelid;
- (b) Marked tenderness in the Pelvic region;
- (c) A small puncture wound with swelling and tenderness over the tibia of the left leg;
- (d) Marked diastasis of the pubic symphysis of the pelvis;
- (e) A comminuted fracture of the left tibia;
- (f) Fracture of the 5th and 6th ribs bilaterally;
- (g) Fracture of the floor of the left orbit.

[6] Elva's claim in negligence against: (a) Jayson, sought damages for the personal injuries and consequential loss suffered as a result of the accident; and as against (b) Capital Insurance, a Declaration that the insurance company would be liable to satisfy any

judgment she obtained from Jayson. In the usual fashion, she also sought to recover interest and any further relief, which the Court deemed just.

[7] On 30th August 2004, Jayson and Capital Insurance responded by way of a joint Defence. There was no dispute that a collision occurred at the date, time and venue contained in Elva's Statement of Claim. However the Defence alleged that the collision was caused solely by Elva's negligence.

[8] Trial directions were then issued on 15th November 2006, which directions included, inter alia:

- a) Witness Statements to be filed and served on or before 16th February 2007; and
- b) Pre-Trial Review scheduled for 16th March 2007.

[9] At the Pre-Trial Review, Attorney-at-Law for Jayson and Capital Insurance indicated that their four (4) witness statements had not yet been filed, as Jayson had not attended at their offices to sign the same. In consideration of this breach of my Order and not having made the relevant applications, I therefore opted to issue the sanction contained at **Part 26.2(1)(a)** of the CPR¹ and thus struck out the Defence. As a result, on 16th March 2007 I recorded a judgment in Elva's favour against both Jayson and Capital Insurance.

[10] The only outstanding issue therefore is the quantum of damages that Elva is entitled to, given the circumstances of this case.

[11] **EVIDENCE**

In support of her claims for damages, I had recourse to the following documents:

- (a) Statement of Claim dated 3rd August 2004;
- (b) Elva's Witness Statement of dated 16th February 2007;

¹ **Part 26.2(1)(a)** of the CPR reads:

"The court may strike out a statement of case or part of a statement of case if it appears to the court-

(a) that there has been a failure to comply with a rule, practice direction or with an order or direction given by the court in the proceedings."

- (c) Advice on Quantum filed on 18th May 2007;
- (d) Elva's Affidavit dated 18th May 2007;
- (e) Submissions on Quantum of Damages dated 28th August 2007;
- (f) Elva's Affidavit in Support of Special Damages dated 29th August 2007; and
- (g) Elva's Affidavit in Support of Pain and Suffering and Loss of Amenities dated 29th August 2007.

[12] Moreover, Elva furnished the Court with copies of the various medicals that she received from the medical practitioners who had examined her. The following medical reports were annexed:

- (a) Mr. Jheri Wade, FRCS, Registrar dated 25th May 2004;
- (b) Mr. David Santana, FRCS, Orthopaedic Consultant Surgeon dated 22nd November 2005;
- (c) Dr. J. E. Scipio, Clinical Director, Dental Hospital dated 3rd April 2006;
- (d) Dr. Santana dated 25th July 2006;
- (e) Dr. Scipio dated 20th April 2007;
- (f) Dr. Wade dated 7th May 2007;
- (g) Dr. Wade dated 22nd June 2007;
- (h) Dr. Wade dated 7th August 2007;
- (i) Dr. Scipio dated 23rd August 2007.

[13] Elva supplied documentation in some parts to support her claim. These documents were meticulously considered to verify the sums claimed. Where no receipts were provided, the sum was disallowed.

[14] **LAW**

GENERAL DAMAGES

I made the observation that in arriving at a figure for my consideration under this head, Attorney for Elva put forward separate figures for the individual injuries and totaled them to

arrive at the figure that should be awarded. I do not commend this approach. General damages, being incapable of specific calculation, can never be subjected to any arithmetical deduction. Instead a Court has the duty of arriving at a global figure, based on a holistic assessment of all the circumstances of the case and bearing in mind the awards granted for similar injuries².

[15] Wooding CJ in **Cornilliac v. St. Louis**³ provided us with a time-honoured approach to assessing General Damages in cases of this nature. The several sub-heads of damage to be contemplated are:

- a) the nature and extent of the injuries sustained;
- b) the nature and gravity of the resulting physical disability;
- c) the pain and suffering which had to be endured;
- d) the loss of amenities suffered; and
- e) the extent to which, consequentially, pecuniary prospects have been materially affected.

[16] To this list, I would merely wish to add in the case at bar the category of Future Medical Care. Claimants can only receive estimates of the cost of obtaining medical attention in the future. As these sums were not already paid and are thus subject to change, they fall within the ambit of General Damage and must therefore be considered.

[17] **SPECIAL DAMAGES**

As stated in **Gourley**⁴, special damage “has to be specifically pleaded and proved”⁵. This was vehemently reiterated in several Court of Appeal⁶ and High Court decisions. It is clear

² **Cornilliac v. St. Louis** (1965) 7 W.I.R. 491. Wooding CJ made the following assertion at page 494:

“I am fully aware that it is not the practice to quantify damages separately under each head or, at any rate, to disclose the build-up of the global award. But I do think it is important for making a right assessment that the several heads of damage should be kept firmly in mind and that there should be conscious, even if undisclosed, quantification under each of them so as thereby to arrive at an appropriate final figure. I must not, however, be understood to mean that at the last count there should be a simple addition of a number of money sums. Any such arithmetical exercise would ignore the realities that are so often encountered”.

³ *Supra*, page 492

⁴ **British Transport Commission v. Gourley** [1956] AC 185.

⁵ *Supra*, at page 206 Lord Goddard defined both General and Special Damages as follows:

that the mere enumeration of alleged losses is insufficient proof and the Court would be restrained to deny compensation for items of damage not proven by way of proper documentation, for instance the production of receipts or invoices⁷.

[18] Elva would only be reimbursed for those items of Special Damage, which she lists and then supports by tendering the relevant documents that exhibit the amount claimed.

[19] **INTEREST**

It is trite law that interest is awarded to a party as compensation for being kept out of money that ought to have been paid to him⁸. The **period** for which such sums become payable and the applicable **rates** differ, based on the category of damages being dealt with.

➤ **PERIOD DURING WHICH INTEREST IS TO RUN**

i. **Special Damages**

The period for which a Claimant receives interest on Special Damages, where there was no trial, is from the date of the accident to the date of judgment. For Elva, interest on Special Damages would be recouped from the date of the accident – 20th February 2004 - to the date on which judgment was entered – 16th March 2007.

ii. **Pain and Suffering/ Loss of Amenities**

Interest runs from the date that the Statement of Case was served. This is tenable given the fact that these misfortunes are not suffered on the date of the accident and thus cannot

“... special damages, which has to be specifically pleaded and proved. This consists of out-of-pocket expenses and loss of earning incurred down to the date of trial, and is generally capable of substantially exact calculation. Secondly, there is general damage which the law implies and which is not specially pleaded”.

[Emphasis mine]

⁶ **Grant v. Motilal Moonan Limited and Rampersad** Civ. App. No. 162 of 1985. Per Bernard CJ, at pg 5:

“... a party claiming damages must prove its case, and to justify an award of these damages he must satisfy the Court both as to the fact of damage and its amount”.

⁷ **Bonham Carter v. Hyde Park Hotel** (1948) 64 T.L.R. 178, which was adopted into the local jurisdiction in the **Moonan Case**. The learned Chief Justice said:

“Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the Court saying ‘this is what I have lost; I ask you to give me these damages’. They have to prove it’.

⁸ **Jefford v. Gee** [1970] 2 Q.B. 130

be quantified at that moment. Elva only becomes entitled to compensation from the date that Jayson is made aware of their existence, namely when the pleadings are served. In this case, it is not clear when service was effected. I shall take the appropriate date to be the date of the entry of appearance – 16th August 2004.

iii. Loss of Future Earnings

There would be no interest awarded on this sum prior to judgment, given the fact such monies would not have been earned by the Claimant to that date, even if the accident had not occurred. However, as is the case with all other damages, if the Defendant delays in paying the sum awarded interest is charged from the date of judgment to the date of payment.

➤ RATE OF INTEREST

Interest awards are totally within the Court's discretion⁹.

i. Special Damages

The rate of interest is stated to be half the rate of General Damages¹⁰ and differs based on whether it is being calculated pre- or post-judgment. In this case, since the accident occurred in 2004, the appropriate rate of interest to be applied to Elva's Special Damages is 6% for the pre-judgment period and 12% after judgment.

ii. Pain and Suffering/ Loss of Amenities

It was stated that the appropriate rate of interest would be the "rate allowed by the court on the short-term investment account, taken as an average over the period for which interest is awarded"¹¹. Up to the date of judgment, I consider the rate of 9% to be suitable in the circumstances of this case. Thereafter, I am obliged to apply the rate of 12%¹².

⁹ Section 25 of the SUPREME COURT OF JUDICATURE ACT CH 4:01

¹⁰ *Supra*, at page 147

¹¹ *Supra*, at page 151

¹² CH 4:01, s. 25A

iii. Loss of Future Earnings

Pursuant to the **SUPREME COURT of JUDICATURE ACT, as amended**¹³ the prescribed rate of interest after judgment is 12%.

[20] **ANALYSIS and CONCLUSION**

1. What is the quantum of General Damages that should be awarded?

A. THE CORNILLIAC FACTORS

i. Nature and Extent of Injuries

The injuries sustained by Elva can be enumerated as follows:

- a) FACE
 - Lacerations and abrasions;
 - Fracture of the floor of the left orbit, with retro-displacement of the malar bone and orbital contents,
 - Left orbital fracture;

- b) PELVIS
 - Pelvic girdle fracture/Open book pelvic fracture;

- c) LEFT LEG
 - Comminuted fracture,
 - Small puncture wound swelling and tenderness,

- d) RIBS
 - Fracture of 4th and 5th ribs;

- e) SPINE
 - Injuries sustained to entire spinal area.

¹³ *Supra*

[21] **ii. Nature and Gravity of the Resulting Physical Disability**

The extent of Elva's resulting disability could never be adequately and accurately reduced into writing. The gravity of the injuries manifested themselves in the following regions:

a) TEETH

- Unsalvageable maxillary right first premolar, first molar, maxillary left canine and left second molar;

b) PELVIS

- Tenderness,
- Diastasis of pubic symphysis;

c) LEFT LEG

- Shortening of the left tibia;

d) SPINE

- Lumbar spondylosis,
- Cervical spondylosis.

[22] I will now attempt to summarise Elva's experiences following 20th February 2004. Elva was rendered unconscious for several days immediately after the collision. She was hospitalized for approximately three (3) months, during which time she had to undergo several surgical procedures. Elva was placed in a body sling due to the injury to her ribs and pelvis. For seven (7) weeks she needed a suppository bag and urinal, until the appropriate surgical procedure was performed. Various ointments and injections had to be administered to minimize the pain being experienced and to reduce swelling. Elva was also highly traumatized by the incident and to date it is extremely difficult for her to return to the scene of the accident. Moreover she was depressed for approximately six (6) months.

[23] **iii. Pain and Suffering**

It is absolutely indisputable that Elva suffered an immense amount of pain following her ordeal. According to her, her pain was severe for the three (3) months immediately following the accident. To date, Elva experiences moderate pain. She suffers from headaches approximately every week, which span over 24 hours. In addition, she has experienced cramps along her left leg and muscle spasms in her hands since April 2006. Lastly, she experiences “sharp cutting pains” in her lower back. She has been informed that such pain would never cease but would actually get progressively worse.

[24] **iv. Loss of Amenities**

The accident has materially adversely affected Elva’s daily life. She now has to employ the use of external implements to perform what was otherwise normal everyday functions. For instance, Elva had to use a wheelchair for about four (4) months; is required to wear spectacles due to her eye injuries and has had to use a back brace since January 2007.

[25] In addition relatively mundane activities have now proved themselves problematic for Elva. In this regard she experiences difficulty in sitting or walking consistently for twenty (20) or ten (10) minutes, respectively. Any attempt to perform these activities result in severe pain and a great sense of discomfort. Elva is also unable to lift objects, except during physiotherapy sessions, during which time she engages in foot and water exercises. Then whenever Elva is exposed to the sun for a long period of time, she states that her face feels “like it is cooking”. Furthermore Elva is unable to have sexual intercourse with her husband, as her pelvic injuries have rendered her misaligned and penetration is no longer possible. Elva’s left leg has also shortened by approximately 2”.

[26] The limitations now experienced by her have thus stultified the extent to which she is willing and/or able to perform household chores or engage in her usual activities. Gardening and redecorating her home were once hobbies that Elva enjoyed. Her injuries prevent her from doing either. Elva describes her pre-accident self as “very social and active”. She was a member of various committees at church and in her daughter’s school and would often go out with friends and family. Now, she refuses to socialize being

conscious of the disfigurement of her face and fully appreciating the extent of her physical limitations.

[27] COMPENSATION for PAIN AND SUFFERING and LOSS OF AMENITIES

In the final analysis, Elva's Attorneys-at-Law considered similar authorities and concluded that the sum of \$400,000.00 would adequately compensate her for her pain and suffering and loss of amenities¹⁴. I have also reviewed these authorities and see no reason to alter this suggestion.

[28] **v. The extent to which her Pecuniary Prospects were Materially Affected**

In accordance with the Smith v Manchester¹⁵ principle, Elva has been subject to a *Loss of Future Earnings*. She was diagnosed as being unfit to return to work in the medical of Dr. Santana dated 22nd November 2005. This was exacerbated by the fact that her former employers perceived her as a potential liability and have refused to rehire her. The result is that she is no longer able to earn her pre-accident salary and the multiplier/multiplicand method must be utilized to calculate the compensation due to her in this regard.

[29] At the date of the accident – 20th February 2004 – Elva was employed as a Programme Co-ordinator and earned a monthly salary of \$4,340.28. Her annual salary was therefore \$52,083.36. However her monthly expenses totaled \$3,340.28 so that her surplus worth totaled \$1,000.00 per month. As such the annual sum of \$12,000.00 represents the multiplicand to be employed given the circumstances of this case. Elva was 44 years old at the time of the accident and was expected to be on the labour market until the retirement age of 65. In the Submissions filed on 28th August 2007, Attorneys-at-law for Elva contend that a multiplier of 10 is reasonable having regard to the contingencies of life.

¹⁴ The figures provided herein represent the sum awarded adjusted to April 2007: Millar v. Montes de Oca H.C.A. No. 1740/71: \$ 260,002.00 ; Layne v. Sylvester H.C.A. No. 1186/73: \$ 236,047; Diffenthaler v. Grant H.C.A. No. 3444/81: \$ 472,565.00 ; Gopaul v. Walker S. 218/86: \$ 189,597.00 (Plaintiff); Cruikshank v. P.T.S.C. H.C.A. No. 684/69: \$ 340,338.00 ; Cole v. Bujou & Augustine H.C.A. No. 2700/79: ; Tyson v. Jugmohan H.C.A. No. 747/69: \$ 127,349.00.

¹⁵ Smith v. Manchester City Corporation (1974) 118 S.J. 597

[30] I accept with this view and agree that the sum of \$120,000.00 represents Elva's loss of future earnings.

[31] **B. FUTURE MEDICAL CARE**

In the medical provided by Dr. Scipio dated 20th April 2004, the practitioner highlighted the fact that \$92,000 USD was the gross estimate of the cost of an oculoplastic surgeon, maxillofacial surgeon, an endodontist and a prosthodontist; all of which Elva would need to consult. Furthermore she would require further medical attention in the vicinity of \$23,000 USD. These sums total \$115,000 US.

[32] As a result of her orbital injuries, Elva has had to purchase a pair of spectacles. It is expected that she would require at least two (2) other pairs of glasses, which would also necessitate an eye examination. As such, she estimates the future cost of eyewear at the sum of \$7,272 TTD.

[33] To these figures, I wish to apply the 10% inflation rate, in acknowledgment of the social realities. As a result, the total estimated cost of Elva's future medical care is \$7,999.20 TT and \$126,500 US.

[34] Elva's **General Damages** can be outlined as follows:

TTD

a. Pain and Suffering and Loss of Amenities:	\$ 400,000.00
b. Loss of Future Earnings :	\$ 120,000.00
c. Cost of Future Medical Care :	<u>\$ 7,999.20</u>
	<u>\$ 527,999.20</u>

USD

a. Cost of Future Medical Care :	<u>\$ 126,500.00</u>
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[35] **2. What is the measure of Special Damages to be awarded in this case?**

It is quite clear from the learning in *Moonan*¹⁶ that the measure of special damages awarded hinges on the documentation produced by the Claimant. I referred to the affidavit of Elva dated 29th August 2007 in my analysis of the measure of Special Damage to be awarded. Some of the claims Elva made were disallowed, due to the absence of supporting documentation, further details of which would be advanced below. The various documents provided in support of Elva's Special Damages would be categorized in much the same way as the affidavit was presented:

a. Cellular Phone

Elva asserted that the force of the impact destroyed the cellular phone that she had in her possession at the time of the accident. The original cost of the phone was **\$799.00**, as evidenced by the receipt from TSTT. This sum would therefore be allowed.

b. Travelling Expenses

Elva submitted two sets of figures in relation to the transportation expenses incurred when seeking medical attention, which total **\$2,849.00**. The first set relates to the cost of hiring a private taxi; while the second relates to public transportation. Elva purports to produce receipts in support of the cost of the taxi. However these are insufficient. They are not dated nor do they bear the signature of the person who allegedly acknowledged receipt of the payments. As such, the sum of \$ 2,220 would be disallowed. Elva would only receive the sum of **\$649.00**, in satisfaction of her transportation expenses.

c. Opthamology

The eye injuries sustained by Elva impaired her vision. As a result, she had to undergo eye examinations, which were determinative of the fact that she now needed a pair of spectacles. The cost of the examination was **\$50.00** as evidenced by receipt dated 21st December 2004. The cost of the spectacles was **\$1,951.50**. Elva is thus entitled to the sum of **\$2,001.50** under this head of damage.

¹⁶ See fn 5

d. Medical Expenses – Consultations and Medications

There was a variety of medical expenses borne by Elva in the period following the accident. I therefore thought it prudent to distinguish between the costs of medication and consultations, as opposed to the costs of the medical implements that had to be purchased. Under this first sub-head, I take note of her consultations with medical practitioners, the cost of obtaining their reports and the cost of the medication that Elva had to utilize. In the final analysis, the sum of **\$1,730.78** would be allowed. The various heads can be itemized as follows:

a. Cost of Obtaining Medical Reports: \$ 150.00

- Dr. Wade (receipt dd. 14th April 2004): \$ 37.50
- Dr. Santana (receipt dated 26th April 2005): \$ 37.50
- Eric Williams Medical Sciences Complex (receipt dd. 27th April 2007):
\$ 75.00

b. Cost of Consultations: \$280.00

- Mount Hope (receipt dd. 26th July 2005): \$140.00
- Mount Hope (receipt dd. 27th September 2005): \$140.00

c. Cost of medication: \$ 1,300.78

e. Medical Expenses – Medical Equipment

This second sub-category deals with the medical tools Elva required to assist her to perform regular daily functions, now rendered difficult due to her injuries. Under this sub-head of medical expenses, Elva would receive the sum of **\$3,782.00**. They include the following articles:

- a. Pelvic Brackets (receipt dated 4th March 2004):\$ 400.00;
- b. Female urinal (receipt dated 29th March 2003): \$ 98.00;
- c. Second-hand walker (receipt dated 17th April 2004): \$ 300.00;
- d. Bone Plates and screws (receipt dated 28th April 2004): \$ 2,840.00;
- e. Cane (receipt dated 8th March 2005): \$144.00.

f. **Obtaining Documents**

The sum claimed under this head would not be awarded. Any expense associated with swearing affidavits is recovered when the costs of the action are being calculated. The other items claimed do not reasonably follow from the injuries inflicted by the collision and thus would also be denied.

g. **Loss of (Past) Earnings**

It is not disputed that Elva was employed as a College recruit at the College Recruits of the Caribbean immediately preceding the accident. Her personal injuries are so severe that she has been unable to work since the date of the accident. There is sufficient documentation to establish that her monthly salary was \$4,340.28. Given the fact that 37 months lapsed, between the date of the accident and the date of the judgment, she would receive the sum of \$160,590.36 for earnings lost up to the date of judgment.

[36] The various sums permitted under these categories are as follows:

a)	Cellular Phone	\$ 799.00
b)	Travelling Expenses	\$ 649.00
c)	Ophthalmology	\$ 2,001.50
d)	Consultations and Medication	\$ 1,730.78
e)	Medical Equipment	\$ 3,782.00
f)	Loss of (Past) Earnings	<u>\$ 160,590.36</u>
		<u>\$ 169,552.64</u>

[37] In the final analysis, Elva is entitled to the sum of \$169,552.64 as Special Damages.

[38] **3. What are the rates to be awarded as interest in this case?**

The applicable rates would be depicted in the table below:

CATEGORY	PERIOD of INTEREST	RATE
A. GENERAL DAMAGES:		
i. Pain and Suffering/ Loss of Amenities	Date of service of Statement of Case – Date of Judgment	9%
ii. Loss of Future Earnings	Date of Judgment – Date of Payment	12%

iii. All sums awarded as General Damages	Date of Judgment – Date of Payment	12%
B. SPECIAL DAMAGES:		
	Date of Accident – Date of Judgment	6%
	Date of Judgment – Date of Payment	12%

[39] **COSTS**

The general rule under the CPR is that costs follow the event¹⁷. Costs were calculated pursuant to the Table in Appendix B and the formula at Appendix C of Part 67 of the CPR.

[40] As such, Elva’s costs in this action are prescribed at the sums of \$64,739.54 TT and \$20,981.25 US.

[41] **CONCLUSION**

Elva is therefore entitled to the sums of \$527,999.20 TT and \$126,500.00 US representing General Damages and \$169,552.64 representing Special damages; together with Interest at the rates specified and Costs prescribed in the sums of \$64,739.54 TT and \$20,981.25.

[42] **ORDER**

It is hereby ordered as follows:

- a) The Defendant and Co-Defendant to pay the Claimant the sums of:
 - i. General Damages in the following sums:
 - Pain and Suffering/Loss of Amenities/Future Medical Care (TT): \$407,999.20 TT,
 - Loss of Future Earnings: \$120,000.00 TT,
 - Future Medical Care (US): \$126,500.00 US.

¹⁷ Part 66.6(1) of the CPR reads:

“If the court, including the Court of Appeal, decides to make an order about the costs of any proceedings, the general is that it must order the unsuccessful party to pay the costs of the successful party”.

ii. Special Damages in the sum of:

- \$ 169,552.64 TT

for the personal injuries and consequential loss suffered, together with Interest at the rates and for the periods hereunder:

CATEGORY	PERIOD of INTEREST	RATE
A. GENERAL DAMAGES:		
i. Pain and Suffering/ Loss of Amenities	Date of service of Statement of Case – Date of Judgment	9%
ii. Loss of Future Earnings	Date of Judgment – Date of Payment	12%
iii. All sums awarded as General Damages	Date of Judgment – Date of Payment	12%
B. SPECIAL DAMAGES:		
	Date of Accident – Date of Judgment	6%
	Date of Judgment – Date of Payment	12%

b) The Defendant and Co-Defendant to pay the Claimant's costs prescribed in the sums of \$64,739.54 TT and \$20,981.25 US.

Dated this 27th day of June 2008.

/s/ CHARMAINE PEMBERTON
HIGH COURT JUDGE