

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2010 - 05291

BETWEEN

THERESA DALY

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr. Justice Ronnie Boodoosingh

APPEARANCES:

Mr. Robert Boodoosingh for the Claimant

Mr Neal Byam for the Defendant

Dated 9 June 2016

Reasons (Edited Oral Judgment)

1. This is a claim for personal injury arising from the claimant falling down steps at the Immigration Office in Port of Spain, a public building.
2. The Claimant is a 63 year old retired cleaner, who worked at the Immigration Department in the Ministry of National Security.

3. The Claimant says that on or about 2 January 2007, at approximately 9:00am, she was in the process of performing her regular duties on the second floor of the Immigration Department located at No. 67, Frederick Street, Port of Spain, when she fell down 8 stairs to the first floor of the building.
4. The Claimant alleged that her fall was caused by the negligence of the Defendant and/or its servants and/or its agents by:
 - i. Storing boxes on the landing of the steps;
 - ii. Failing to provide any signs warning persons of this danger;
 - iii. Failing to provide an alternative route to get between the floors of the building;
 - iv. Undertaking repairs to the inside of the building whilst it was not safe to do so;
 - v. Undertaking repairs to the inside of the building whilst work was continuing;
 - vi. Failing to provide a safe environment for the Claimant to perform her duties; and
 - vii. Flagrant breach of the OSHA requirements.
5. As a result of the fall, the Claimant claims that she sustained personal injuries and loss, namely, swelling and an Edema in the Quadratus Lumborum Musculature; limitations to Flexion 50%, Extension 50%, Rotation (R&L) 65% and Lateral Bending 50%; and Disc Bulge of the L4/L5, L5/S1 Lumbar Complex with associated Myospasms.
6. The Claimant also claims special damages as set out at paragraph 6 of her statement of case.
7. The Defendant admitted in its defence that the Claimant fell while at the Immigration Department. However, the Defendant denied that Claimant fell as she described – down eight flights of stairs. The Defendant further denied that the Claimant’s fall was caused by any action and/or inaction and/or negligence and/or omission by the Immigration Department. However no evidence was led by the defendant.

8. The Defendant further admitted in its defence that after the fall, the Claimant was taken to the Port of Spain General Hospital.
9. Therefore, the issues for determination are: whether the Claimant fell as she alleged, whether the Claimant's fall was as a result of the negligence of the defendant; and what is the appropriate measure and quantum of damages.
10. The first issue to be determined is whether the Claimant fell as she alleged. There was no evidence led by the Defendant that the Claimant did not fall in that manner. Of equal importance is the fact that the Claimant was not seriously challenged on her version of the events. I have no reason to doubt the Claimant's version as she gave no indication that she was not credible and ought not to be believed. I accepted the Claimant's evidence that on a balance of probabilities, she fell as a result of an obstruction on the landing of the staircase on the 2nd floor, down eight rungs of stairs.
11. The second issue for consideration is whether the fall was as a result of the negligence of the Defendant. It is instructive to note that in the case of **X (minors) v Bedfordshire County Council** [1995] 3 All ER 353 at 362, a case involving a hospital authority, Lord Jauncey concurring with the judgment of Lord Browne-Wilkinson said:

“The owners of a National Health Service hospital owe precisely the same duty of care to their patients as do the owners of a private hospital and they owe it because of the common law of negligence and not because they happen to be operating under statutory provisions”.
12. The Defendant admits that there was a fall and that as a result of the fall, the Claimant was taken to the Port of Spain General Hospital, but the Defendant submits in its defence that the fall was as a result of the Claimant's own negligence. Once more, in the absence of any evidence to the contrary, and in the absence of any cross examination that cast doubt on the Claimant's version of the events, I accept there was an obstruction, without

any cautionary signs, and the Claimant fell. In these circumstances, I find that the Defendant was negligent.

13. Third, the question of the appropriate measure and quantum of damages is to be considered. Considering the evidence of the Claimant, it is noted that the Claimant says that the accident occurred on 2 January 2007, but did not visit Dr. Billy David Mohess until 8 May 2010. However, I note that throughout the period prior to 8 May 2010, the Claimant continued to seek medical attention from various doctors. Dr. Mohess, in a report dated 12 May 2010, states that he treated the Claimant for injuries she alleged were obtained from a fall and identified the injuries and diagnosis stated at paragraph 5 of this judgment. I accepted this evidence.
14. The Defendant in its Defence submitted that the evidence of Dr. Mohess ought not to be considered, since he is not a qualified medical doctor and that the document fails to state the scientific basis for his findings. Dr. Mohess explained, while giving viva voce evidence, that he is qualified to provide rehabilitative assistance to persons with physical problems resulting from the effects of, but not limited to, arthritis, accident and injury and any spinal injury. Dr. Mohess also stated that there is still some pain and some restriction the Claimant continues to experience, and some restriction in what the Claimant can do going forward.
15. Given what the evidence has established, I find the following authorities to be of particular assistance when considering the appropriate award for the Claimant's injuries:
 - a. H.C.A 2316 of 2001 **Moonsammy v Ramdhanie & Capital Insurance Ltd**, \$75,000.00 was awarded in April 2005.
 - b. H.C.A 2834 of 2002 **Thomas v Forde, RBTT & NEMWIL**, \$100,000.00 was awarded in September 2008.
 - c. H.C.A 3958 of 2006 **Marchong v T&TEC & Galt & Littlepage**, \$60,000.00 was awarded in May 2010.

d. H.C.A. 04748 **Wills v Unilever Caribbean Ltd**, \$75,000.00 was awarded in February 2010.

16. The injuries detailed were closer to the Marchong and Wills cases although there was not detailed evidence to establish the seriousness. The claimant must have suffered significant pain in the early stages, some loss of amenities and diminution in her capacity to perform all the tasks she ordinarily did for some time. In these circumstances, I find an award of \$80,000.00 for general damages to be appropriate.

17. Based on the injuries the sum of \$18,050.00, representing the cost of rehabilitation therapy, has also been proved as being Special Damages arising from the 2007 fall. I note that the invoice dated 12 May 2010 takes into account the first visit, as well as 71 other visits. However, while giving viva voce evidence, Dr. Mohess stated that he did in fact see the Claimant on 72 occasions, the first visit cost \$300.00, while the subsequent visits were \$250.00 each. I find the witness to be credible and in the absence of any evidence to the contrary, I accepted this evidence. It seems that the claimant did get some relief over time by her visits to Dr Mohess.

18. Accordingly, there is judgment for the Claimant against the Defendant. The Defendant must pay the Claimant general damages in the sum of \$80,000.00 and special damages in the sum of \$18,050.00. Interest on both general and special damages to run at the rate of 6 % per annum from the date of the appearance by the Defendant to the date of judgment. Costs are to be paid by the Defendant to the Claimant on the prescribed scale based on an award of \$98,050.00 in the sum of \$23,610.00. There is a stay of execution of 42 days.

Ronnie Boodoosingh
Judge