

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

CA 100 of 2011

Claim No. CV 2010-02874

**BETWEEN**

**RICHARD POORAN**

**(as Administrator ad litem of the Estate of Taramatee Pooran Bidasid**

**Claimant**

**AND**

**ANGAD RAMPERSAD**

**First Defendant**

**RICARDO RAMPERSAD**

**Second Defendant**

**SHOBA JAISIR**

**Third Defendant/Ancillary Claimant**

**RASEEM HOSEIN**

**Fourth Defendant/Ancillary Claimant**

**Before the Honourable Mr. Justice A. des Vignes**

**Appearances:**

Mr. Yaseen Ahmed for the Claimant

Mr. Bahadoorsingh holding for Mrs. L. Mendonca for the First and Second Defendants

Ms. Valini Maharaj, amicus, for the Third and Fourth Defendants/Ancillary Claimants

**REASONS**

1. On the 23<sup>rd</sup> May, 2011, I made the following Order at a Case Management Conference:  
*"IT IS ORDERED that:*
  1. *There be judgment for the Claimant against the Defendants for damages to be assessed.*
  2. *As against the First and Second Defendants by consent, there be judgment for 25% of the claim, interest and costs.*
  3. *As against the Third and Fourth Defendants, there be judgment for 75% of the claim, interest and costs.*
  4. *This matter is adjourned to the 11<sup>th</sup> July, 2011 at 9.00 a.m. in POS 20 for mention pending settlement."*
2. This action was filed on July 12, 2010 by the Claimant, as Administrator ad litem of the estate of Taramatee Pooran Bedasid, deceased. The claim arose out a motor vehicle accident on the 16<sup>th</sup> April, 2006 involving the Defendants as a consequence of which the third named Defendant's vehicle driven by the Fourth Defendant collided with the deceased and killed her instantly. The claim is therefore against the Defendants for damages for negligence.
3. The Claim Form and Statement of Case were served upon the third and fourth Defendants on the 27<sup>th</sup> September, 2010 and on the 4<sup>th</sup> October, 2010 appearances were entered on their behalf by Devesh Maharaj & Associates (hereinafter referred to as "D. Maharaj & Associates).
4. However, by Notice dated October 29, 2010, D. Maharaj & Associates filed a Notice that they had ceased to act on behalf of the Third and Fourth Defendants and by Notice dated and filed November 1, 2010, the Third and Fourth Defendants appointed R.M. Simon & Company (hereinafter referred to as "Simon & Company" to act as their Attorneys-at-Law.
5. In the meantime, prior to coming on record, Simon & Company filed a Defence on behalf of the Third and Fourth Defendants on the October 29, 2010. Thereafter, on November 1, 2010, Simon & Company filed an Ancillary Claim Form and Statement of Case against GTM Insurance Company Limited (hereinafter referred to as "GTM").
6. On November 10, 2010 an appearance was entered on behalf of GTM by D. Maharaj & Associates.

7. On November 18, 2010, Lydia Mendonca & Co. (hereinafter referred to as “Mendonca & Co.”) entered appearances on behalf of the First and Second Defendants and on December 1, 2010 they served a Defence on their behalf.
8. On December 2, 2010, D. Maharaj & Associates filed a Defence on behalf of GTM and on December 15, 2010 they filed an Amended Defence.
9. The first Case Management Conference was scheduled for the 31<sup>st</sup> January, 2011 but since neither Mendonca & Co. nor Simon & Company were notified of this date, the first CMC was adjourned to the March 21, 2011 and the Claimant’s Attorney undertook to notify the Attorneys of the adjourned date.
10. On March 17, 2011, D. Maharaj & Associates filed a Re-Amended Defence.
11. On March 21, 2011, at the first CMC, after hearing submissions from the Ancillary Defendant and the Ancillary Claimant on the issue of limitation raised by GTM in their defence, I dismissed the Ancillary Claim with costs assessed in the amount of \$1,600.00. I also pointed out to Mr. Simon that he should consider whether the Defence filed on behalf of the Third and Fourth Defendants disclosed a reasonable defence, having regard to Rule 10.5 (3) and (4) of the Civil Proceedings Rules and the decision of the Court of Appeal in **M.I. 5 Investigation Limited v. Centurion Protective Agency Limited, Civil Appeal No. 244 of 2008**. However, since Mendonca & Co. had not appeared at the CMC and the First and Second Defendants had also raised the issue of limitation in their defence, I adjourned the matter to May 23, 2011 to hear submissions on that limitation issue as between the Claimant and the First and Second Defendants and for Mr. Simon to consider what position he intended to adopt.
12. On May 23, 2011, when this matter was called, the Third and Fourth Defendants appeared in person and informed me that they had terminated the services of Simon & Co. and retained Mr. Vashiest Maharaj to act on their behalf since shortly after the last adjournment in March 2011, but he was unable to attend Court on that day. However, as a matter of record, there was no Notice of change of Attorneys filed by Mr. Maharaj and Simon & Company remained on record for the Third and Fourth Defendant. I explained this position to these Defendants and stood the matter down to give the Third and Fourth Defendants an opportunity to contact Mr. Maharaj so that proper arrangements could be made for someone to hold on his behalf.

13. Eventually, at 1.30 p.m. Ms. Valini Maharaj appeared before me to hold for Mr. Maharaj but she could not explain why Mr. Maharaj had not yet put himself on record for the Third and Fourth Defendants, despite being retained by them since March 2011. Notwithstanding this default, I permitted Ms. Maharaj to appear *amicus curiae* for the Third and Fourth Defendants and to make submissions on their behalf as to whether the Defence filed on their behalf disclosed a reasonable defence.
14. Having considered the submissions made by Ms. Maharaj and taking into account that no application had been made on their behalf to change the Defence as permitted by Rule 20.1, I was of the opinion that the Defence filed on behalf of the Third and Fourth Defendants failed to comply with Rule 10.5(3) and (4). In particular, I considered that the Defence, at paragraphs 3 and 4, failed to state the reasons for the denials contained therein and paragraph 5 was unintelligible and, in any event, without any particulars of negligence pleaded, did not satisfy the requirement of stating a different version of events from that given by the Claimant.
15. Accordingly, I considered that the Defence failed to disclose any reasonable grounds for defence and that I was entitled to treat the allegations made by the Claimant against the Third and Fourth Defendants as undisputed and to grant judgment for the Claimants against these Defendants.
16. However, notwithstanding the defence of limitation pleaded by the First and Second Defendants, Attorney-at-Law holding for Mrs. Mendonca on their behalf informed the Court that his instructions were to consent to judgment for 25% of the Claimant's claim, interest and costs. It is in those circumstances that I made the order set out at paragraph 1 hereof to give the Attorneys an opportunity to exchange proposals for settlement and to arrive at an amicable agreement on the quantum of damages, without incurring the costs of an assessment.

Dated the 9<sup>th</sup> day of June, 2011

André des Vignes  
Judge