

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2014-03174

**BETWEEN
KHIMRAJ KATWAROO**

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. Andrew John on behalf of the Claimant

Mr. Nairobi Smart on behalf of the Defendant

REASONS

1. On 19th January 2018, I gave Judgment for the claimant on liability. On 5th February 2018, I made an award of general damages in the sum of one hundred and twenty thousand dollars (\$120,000.00).
2. I first had to determine how the accident was caused i.e. whether it occurred because the Defendant had failed to provide a safe system of work. The claimant was a police officer. On 19th February 2012 which was Carnival Sunday he was on duty at Cunapo Southern Main Road, Biche, in the vicinity of the Health Center. He and a colleague PC Heeraman were on duty. There was a Carnival Sunday street fete (it appears this was an annual event) in progress on the roadway about fifty (50) feet away from where the officers were stationed.

3. Their duties were essentially to manage the two metal barriers which had been placed across the roadway to control access. Each was expected from time to time to lift one end of the barriers on his side of the road, to remove it and to allow passage of certain vehicles, music trucks, police and emergency vehicles, also vendors.
4. The officers assumed their positions at about 7:30 p.m. They took turns to lift the barriers and by 8:30 p.m. each had done so about five times. The claimant was attempting to do what he had successfully done about the sixth time when he suddenly sustained a back injury. He began to cry out in pain.
5. The Defence claimed that one end of the barrier fell into a pothole, and that this is what caused the jolt while the officer was lifting and which caused the injury. The Claimant denied there was a pothole at all.
6. The Defendant claimed that this accident was “not reasonably foreseeable, and was wholly accidental.” The Defendant also claimed that it had discharged its duty of care by: -

“the provision of a reliable and safe method of lifting the barriers-(side hooks) and as pairing of the claimant with another officer who was able and did render immediate assistance by him in the event of an unforeseeable accident.”

I did not understand the Defendant to plead that the two officers were expected to lift the barrier at all times. And that could not be the case where the barriers were connected.

7. The Defendant also claimed that the claimant in any case contributed to the accident in that: -

“he should have been more cautions as to the trajectory of the barrier, to avoid it awkwardly and dangerously falling into any pot holes and causing avoidable accident.”

8. The evidence established that each barrier is about 8 feet long and according to the Defendant’s witness, Officer Heeraman each weighs in excess of 100 lbs. The Claimant said, and his colleague PC Heeraman confirmed that the officers had never received training on how to lift heavy objects such as the barriers, nor were they ever provided with any equipment such as back braces, lifts or belts to assist them in lifting. This issue of the lack of training was never disputed by the Defendant.

9. Secondly, PC Heeraman confirmed that it was not expected or the practice to have both officers lift one of the barriers. The defence when it is examined closely is that the “pairing of” the claimant with another officer “to provide able assistance in the event of an unforeseeable accident.”

10. I found that something on the road caused the end of the barrier to stick or cause some resistance with a jolting effect which caused the injury. Whether it was a pothole (of the usual obvious sort) or a sink because of the weight of the barriers sinking into the hot asphalt over several hours before dark, it mattered not.

11. I rejected the Defence’s position that this was unforeseeable or that it was not liable because the state of the road, potholes and all is not within its control. I found however that whatever the condition of the road, the accident occurred because of the system

which was in place which required officers to lift and drag heavy metal barriers. This method, especially with the barriers unconnected, allowed shifting of the other end of it on the roadway. There are several features which could have presented resistance to the pulling part of the exercise that the claimant was engaged in. It may have been a small hole or some feature which rendered the surface of the road uneven.

12. These barriers are heavy and the officers were expected in addition to other duties of crowd control and providing security to repeatedly lift and carry them dragging one end over uneven road surfaces for a tour duty over several hours. They had no training. They had no proper back braces. The risk of the kind of jolt the claimant suffered and the resultant injury ought to have been foreseeable.

13. The duty of the state to provide employees a safe system of work and to safeguard them from harm is trite. Insofar as the Defendant claimed it had discharged its duty in the specific ways referred to paragraph 5, above, the defence was quickly put to rest. As I have said before both officers accepted that the barriers were not connected or hooked on to each other on that evening. This meant that there was no anchoring in the middle to prevent the shifting of the end the barrier that was not being lifted and pulled. It therefore allowed movement and shifting of its position on the unmanned side.

14. I reject the claim of contributory negligence. The officers did not put the barrier down in that particular location. They assumed duty at 7:30 p.m. when it had already become dark. There was no street lighting close to the barriers. Even so I would not expect the officers to check the road surface before they assumed their duties. The barriers had been there for several hours before. The claimant was simply discharging his duties in

the way he was expected to do and under conditions of which the Defendant must have been aware. The accident was therefore entirely foreseeable. The risk of injury was always there and steps could have been taken to avoid it.

15. There may have been a time when employers considered that “able” officers should lift objects in the course of their duties, simply because they were supposed to be so. Employers are now required to be more sensitive to the risk of accidents arising out of all types of manual lifting. Activities that may have been regarded as risk free for several decades, may now have to be viewed very differently.

16. I granted judgment for the claimant. At the assessment, I considered the submissions of Counsel and the authorities relied upon, and made the award in the sum of one hundred and twenty thousand dollars (\$120,000.00).

Dated this 24th day of April 2018

CAROL GOBIN

Judge