

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claims Nos. CV 2015-02990

And CV 2015-02989

Between

Darren Roome

Claimant

And

Joseph Coraspe

First Defendant

And

Motor One Insurance Company Limited

Second Defendant

Between

Mathew Tambie

Claimant

And

Joseph Coraspe

First Defendant

And

Motor One Insurance Company Limited

Second Defendant

Before Her Honour Madam Justice Eleanor Joye Donaldson-Honeywell

Appearances:

Mr Nirad Samnada-Ramrekersingh, Mr. Philip Wilson and Mr. Cordell Salandy, Attorneys-at-Law for the Claimants

Ms Kathleen Pilgrim Thornhill and Ms. Chloe Mc Millan, Attorneys-at-Law for the Defendants

Delivered on: 23rd May, 2018

Judgement

A. Introduction

1. The two separate Claims addressed in this Judgment arose from a road accident on the Southern Main Road, Caroni, on September 16, 2011 during the State of Emergency. Two young men [“the Claimants”], riding home at 8.30 pm to beat the curfew, were involved in a collision with the First Defendant who was a Police Officer driving PBG 7511, a motor vehicle owned by another gentleman.
2. The cyclists were thrown in the air; one was dragged by the vehicle along a drain and both ended up in the drain at the side of the Southern Main Road. Injuries sustained were severe especially for the Claimant in CV 2015-02990 [“Roome”] some of whose facial features were scraped off. Both Roome and the Claimant in CV 2015-02989 [“Tambie”] were taken unconscious to the hospital after the 1st Defendant fled the scene.
3. They filed the instant Claims seeking damages for negligence and consequential loss caused by the negligent driving of the First Defendant. The matters were dealt with together during Case Management. Initially proceedings also included the Second Defendant, an Insurance Company that had at some time in the past insured the involved Motor Vehicle to be driven by its owner’s son.

4. The First Defendant was never insured to drive the vehicle which he borrowed from the owner, so proceedings against the Second Defendant were discontinued. As the First Defendant [“hereafter called “the Defendant”] was driving uninsured that night, he will not benefit from any indemnity cover for a finding of liability to pay damages to the Claimants.

B. Procedural History and Issues to be determined

5. On the Case Management directions of then presiding Judge Rajkumar J as he then was, Parties filed submissions on the Quantum of Damages in September 2016, without prejudice to the issue of liability.
6. Earlier on they had filed Witness Statements whereby each of the Claimants tendered their own evidence supported by a Statement from the other Claimant. The Defendant filed only his own Statement as evidence of his version of the accident. There were no evidential objections and the matter was heard at Trial on November 22, 2017. Parties were directed to file Written Submissions on the issue of liability over the period January to March 2018. However, they failed to meet these deadlines. Extensions of time being granted, submissions were closed on April 13, 2018.
7. The issues to be determined are:
 - a. Whether the Defendant was liable in negligence for the injuries sustained by the Claimants and whether the Claimant contributed by any Negligence on their part to the accident.
 - b. What is the appropriate quantum of damages to be awarded to the Claimants?

C. Undisputed Factual Matrix

8. It is not disputed that the collision took place on the Southern Main Road, Caroni at a part of that road where traffic runs East to West and West to East. In that area one lane heads East and one lanes heads West. There is a drain to the northern side of the road where Roome and Tambie eventually ended up after the admitted collision with the Defendant.

9. The collision took place on the northern side of the roadway i.e. the side where traffic heads East. The Defendant was travelling East on the Southern Main Road at the point of the collision whilst Roome and Tambie were riding West on their bicycles.
10. It is not disputed that Fredrick Settlement is South of the Southern Main Road and to get to the point of collision from there, one would have to come from the South (heading North) and turn right to head East on the Southern Main Road.
11. Further, on the pleadings there was no challenge to the following:
 - a. The Defendant was the driver of PBG 7511;
 - b. The Defendant was neither the registered owner of PBG 7511 nor insured to drive same as required by law;
 - c. Roome and Tambie were riding their bicycles;
 - d. The collision between the Claimants and the Defendant occurred on 16 September, 2011 around 8:30 p.m. at the Southern Main Road, Caroni (in the vicinity of T.Y.E. Industrial Estate near the TSTT sub-station);
 - e. At the time of the collision there was a curfew in effect in the Chaguanas Borough which operated from 9:00 p.m. to 5:00 a.m.;
 - f. At the time of the collision, the road was wet,
 - g. Roome and Tambie were taken to the Eric Williams Medical Sciences Complex where they were treated and warded,
 - h. Roome sustained injuries to his face and body and
 - i. Tambie sustained injuries primarily to his head and neck but also lesser injuries to his forearm and shin.

D. Disputed facts

12. The main fact in dispute is whether the collision took place off the side of the east bound lane, on a “side-walk” as pleaded by the Claimants or on the roadway of the east bound lane as alleged by the Defendant.
13. The Claimants plead that they were riding their bicycles along the sidewalk heading north and in the direction towards the flow of traffic. They contend that the Defendant, on reaching the intersection, in the vicinity of Young Sing

and Co made an extreme right turn and drove off the road onto the side-walk. They say he thereby collided with them, throwing them into the air after which they fell into the drain by the road.

14. They say the accident was caused by the Defendant's negligence in failing to keep a proper look out, failing to brake or manage his vehicle so as to avoid the collision, driving dangerously, at excessive speed without making allowance for the wet, slippery road surface and driving onto the pavement without heeding the presence of the Claimants.
15. The Defendant denies that he was negligent but pleads in the alternative that the Claimants were contributorily negligent. He pleads that he was driving cautiously and slowly in a southerly direction along the Southern Main Road when, approaching a bend on reaching the vicinity of Young Sing & Co, he observed the Claimants riding in a northerly direction.
16. He says there was no sidewalk and the Claimants were in his path and in the same lane that he was in. He further contends that it was dark but they had no lights or reflectors on their bikes and they wore dark clothing. He denies that he made an extreme right turn or drove on the sidewalk. According to the Defendant's pleadings he swerved to avoid a collision but his vehicle remained at all times on the roadway.
17. As to the collision, he claims that one of the Claimant's bikes struck his left front windshield and left mirror, a point of impact which he claims is not consistent with the Claimant's version of the accident. Finally, the Defendant denies that one of the Claimant's was dragged along the drain by him in the vehicle he was driving. He says he was always driving on the roadway and the vehicle he drove never entered the drain to the side of the road.
18. The Defendant's case is that the accident was caused by the Claimant's Negligence in riding on the wrong side of the road, failing to keep a proper look out, not riding with lights or suitable clothing and riding in the path of his vehicle.

19. The Defendant neither admits nor denies the Claimants' injuries but did not object to any of the medical reports evidencing same, which were admitted without calling any doctors to testify in Court. He however put the Claimants to strict proof of the adverse effects, including loss of earnings, suffered as a result.

E. Evidence and Submissions

20. The evidence presented in the written submissions filed by the parties did not depart in any material respect from their pleadings. It is perhaps for this reason that no evidential objections were filed to be determined at the Pre-Trial Review as directed by the Court. However, belatedly in closing submission, counsel for the Defendant highlighted aspects of the Claimants' cases that had not been set out in their pleadings but formed part of their written evidence.

21. Firstly, counsel for the Defendant highlighted that there was some confusion on the Claimants' cases with respect to cardinal points. It is clear in my view that nothing turns on that, as it was clearly not in dispute at the Trial that the Southern Main Road runs east to west and the Claimants were proceeding westerly while the Defendant drove in an easterly direction. The Claimants' witness statements initially placed them on the extreme left/southern side of the road but this was corrected at the commencement of their oral testimony in Court. There was no dispute that the collision took place on the right / northern side.

22. Secondly, an aspect of the Claimants' case that was not fully set out in the pleadings was as to where the Defendant was coming from when he made the alleged extreme right turn at the intersection by Young Sing. In the witness Statement of Roome, he explained that the Defendant exited from the Frederick Settlement road into the intersection and made the right turn.

23. This issue of where Roome says the Defendant was coming from does not in my view amount to a material departure from the pleadings. On all accounts all parties were proceeding in opposite directions along the left lane of the Southern Main Road at the time of the collision. The question whether the Defendant

was manoeuvring a bend as he alleges or an extreme right turn at an intersection as the Claimant's allege is however taken into account in the context of the credibility of each witness as to how the collision more probably than not occurred.

24. Finally, it is raised in the submissions of the Defendant that the Claimant's did not say in their Statement of Case that their bicycles carried any type of lighting or that they wore fluorescent clothing. This was only stated as evidence in the Witness Statements of the Claimants after the Defendant pleaded in his Defence that they had neither lights nor bright clothing. Prior to that, no further pleading in the form of a Reply made mention of lighting or fluorescent clothing.

25. Counsel for the Claimants correctly points out in response that it was not essential that this information be included in pleadings in order for the Claimants to rely on it as part of their case. The issues as to the name of the road intersection near Young Sing where the Defendant was allegedly emerging from and as to the Claimants lighting were not necessary to be pleaded in sufficiently making out a cause of action in negligence against the Defendant.

26. As submitted by counsel for the Claimants, citing **Charmaine Bernard v Ramesh Seebalack [2010] UKPC 15** at para 41:

"If a statement of case contains allegations which are 'sufficiently made' (so that it satisfies the requirements of Part 8), there is no need to amend it in order to provide particulars. These can be provided by way of further information or in the form of a witness statement."

And at paragraph 27:

"If a statement of case contains allegations which are "sufficiently made" (so that it satisfies the requirement of Part 8), there is no need to amend it to provide particulars. These can be provided by way of further information or in the form of a witness statement."

27. Overall I found that there was no material inconsistency between the written evidence and the pleadings. My determination as to liability was informed more by the extent to which the credibility of the witnesses was supported by corroborating evidence and withstood cross-examination. In addition I considered the inherent probability of each version of events presented in deciding on a balance of probabilities whether the Defendant's negligence and/or the Claimants' caused the accident.

Tambie

28. The first witness called was Tambie, a 28 year old who described himself as a car washer and part time construction worker. He and Roome are lifelong friends and Tambie also worked for Roome at his Car Wash business. His evidence in chief, set out in his witness statement, was that he and Roome had planned on getting fried chicken that night in Chaguanas. They were riding there on bicycles fitted with reflectors but turned back as they felt they couldn't reach home before the curfew. Tambie said he was riding behind Roome and they were both riding "*along the sidewalk or the extreme right side of the Southern Main Road.*" [Emphasis added].

29. He said a vehicle heading in the opposite direction at a fast rate of speed suddenly pulled into their path and collided with them. He was thrown in the air, fell in a drain, was dragged and lost consciousness. He was taken to the hospital as he was injured and he says since then he has difficulty remembering things.

30. In the witness box Tambie presented as a person who was somewhat developmentally challenged. In answering questions there was an almost childlike innocence in the way he responded. He struck me as a person without the mental capability for lying. He was very soft-spoken and seemed eager to be respectful to Counsel for the Defendant by agreeing to almost everything she put to him. Tambie often answered "Yes ma'am" even to points that the average witness would not admit.

31. For example, when asked “I suggest that it is just a Main Road, no sidewalk on either side” he answered “Yes Ma’am”. Again, when it was suggested he and Roome were riding on the wrong side of the road he admitted it without hesitation. He even said ‘yes’ when it was put to him that he and Roome were riding recklessly and in the path of the Defendant’s vehicle.
32. When asked whether they caused the accident, he said “*No. I don’t think so.*” He maintained that the Defendant was speeding. However, in the face of what I found to be effortless honesty on the part of Tambie, his evidence as to other aspects of the case, where he held firm under cross-examination, was taken as truthful.
33. It was clear from his evidence that there was an issue in his mind as to whether the extreme right side of the road where he and Roome were riding could be defined as a ‘sidewalk’. When asked, he said he knew a sidewalk as “*a little concrete on a path for people to walk on*”. His evidence is clear that that is not what he and Roome were riding on. Instead he says he was riding on what he believes was a bicycle lane. He also said people used to walk on the road and there was a foot path.
34. This evidence was not inconsistent with his pleadings where he referred to the path where he was riding as a sidewalk OR the extreme right side of the road. The labelling of that path as a sidewalk raised issues of semantics that are not material in affecting the credibility of Tambie’s version of events.
35. Tambie said his bicycle carried a light at the front which he said was the reflectors. He admitted there was no other light. This evidence was consistent with paragraph 5 of his Witness Statement. Under cross-examination he also answered ‘yes’ when asked whether he had on fluorescent clothing but admits that wasn’t mentioned in his witness statement. This omission is however addressed in the Witness Statement of Tambie’s supporting witness Roome.

36. Tambie volunteered under cross-examination that it was Roome and not himself who was dragged in the drain. The question as to who was dragged is not material. The uncertainty could be explained by the fact that it was admitted by Tambie that he informed one of his attending doctor's that he lost consciousness and could not remember what happened in the accident.

Roome

37. Roome was a witness who displayed more self-assurance in his intellectual abilities. On the other hand he was clearly uncomfortable about his appearance, shying away when looked at directly. It could clearly be seen that parts of his facial structure were missing, including his nose.

38. On Roome's case, he and Tambie were riding in the vicinity of the T.Y.E. Industrial Estate near the T.S.T.T sub-station. The Defendant drove vehicle PBG 7511 out of Frederick Settlement and to the right onto the Southern Main Road in the direction from which he and Tambie were coming. The Defendant made this manoeuvre at a fast rate of speed and collided with them after coming onto the sidewalk on which they were riding.

39. Roome says he was never on the lane in which the Defendant was driving. He says PBG 7511 was not on its lane but in the path of Roome and Tambie. On Roome's case the Defendant's turn, on exiting the Frederick Settlement intersection, was done so carelessly that he did not stay within his lane. He took the turn so wide that he exited his lane and collided with Roome and Tambie.

40. Roome stated that he was wearing an orange and black jacket with a silver and black pants. Tambie was wearing a black three quarter length pants with a yellow and white striped jersey. He claimed both bicycles were fitted with white reflector lights at the front and red reflector lights to the rear.

41. Roome's evidence-in chief is similar to Tambie's in all material respects. He refers to the side-walk as the part of the roadway reserved for persons to walk along. He supports Roome in his assertion that they were not riding on the lane in which PBG 7511 was driving. This 'sidewalk' he states, was at the extreme right side (his) of the Southern Main Road.

42. Unlike Tambie he did not admit to riding recklessly. He said they were riding carefully because it was a busy road and they were aware of vehicles that would “voosh past”. He admitted that he did not know he should lawfully have been riding on the other side of the road but said he felt it was safer to ride along the side of the road facing the traffic so he could see it coming and avoid it.
43. On this point of riding on the wrong side of the road, Counsel for the Defendant submits that the Claimants were at least contributorily negligent and thereby liable for the injuries sustained in the accident. Counsel contends, at paragraph 37 of her submissions, that the Claimants were negligent in that they were riding on the wrong side of the road.
44. She points out that ***The Motor Vehicle and Road Traffic Act Chapter 48:50***, in its interpretation section describes “‘traffic’ to include “bicycles, tricycles, motor vehicles, tramcars, vehicles of every description, pedestrians and all animals being ridden, driven or led” and the Regulations thereunder provide at 38:

*‘Every driver of a motor vehicle shall comply with the following Rules:
Rule 38 (5) (1) He shall keep the motor vehicle on the left of the road unless prevented by some sufficient cause save where the road is wide enough to accommodate 3 motor vehicles abreast and is marked off by the competent authority with a centre line allowing vehicles occupying the centre to turn right’.*

45. According to counsel for the Defendant:

“there is no evidence in the instant case of any sufficient cause or the proviso. The evidence in cross examination is that the Southern Main Road where the accident occurred is a 2 lane road, with one for east bound traffic and the other west bound.

Rule 38 (9) goes on to state that: ‘He shall conform to the rules of the road in regard to all kinds of traffic and shall comply with the lawful

direction of any Constable or Transport Officer charged with the Regulations”.

Regulation 50 (1) (a) states that the Regulation 38 rule 5 (1) and 9 referred to above in relation to motor vehicles shall apply in respect of persons driving, riding, drawing, propelling any vehicles other than a motor vehicle and in respect of any person riding any animal on any road.

The term ‘Vehicle’ in the Regulations is described to include tramcars, carriages, wagons, carts, motor vehicles, bicycles etc.

It is therefore clear from the Regulations that the Claimants were riding on the wrong side of the road. The Claimants were heading in a westerly direction and should have therefore been riding on the southern side of the Southern Main Road on the west bound lane.

It is respectfully submitted that had the Claimants been riding on the right lane this collision would not have occurred. The Claimants put themselves in danger by riding in the wrong lane thereby exposing themselves to danger from traffic coming around the bend.”

46. In response to this submission Counsel for the Claimant underscored that the alleged breach of the Road Traffic Regulations cannot of itself be taken as evidence of negligence of the Claimants for purposes of civil liability. He cites **Powell v Phillips [1972]3 All E.R 864 at 868** where the Court of Appeal stated:

“It is clear that a breach creates no presumption of negligence calling for an explanation, still less a presumption of negligence making a real contribution to causing an accident or injury. The breach is just one of the circumstances on which one party is entitled to rely in establishing the negligence of the other and its contribution to causing the accident or injury. Here it must be considered with all the other circumstances ...it must not be elevated into a breach of statutory duty which gives a right of action to anyone who can prove that his injury resulted from it.”

47. The credibility of Roome as a witness was in no way diminished under cross-examination as his evidence remained consistent and he gave a probable account throughout his testimony.
48. The evidence that the Defendant was exiting Frederick Settlement when he manoeuvred carelessly is highly probable as it is not disputed that that is the intersection near Young Sing where the collision occurred. Counsel for the Defendant in submissions contends that her witness did not admit that he exited there. However, on my recollection and review of the evidence I agree with the observation of Counsel for the Claimants that there was no contradiction in the oral testimony of the Defendant to the fact that he exited Frederick Settlement. In any event if he wasn't exiting the intersection but merely manoeuvring a bend in the road he was driving along his failure to avoid the Claimants is even more inexplicable.

The Defendant

49. The Defendant was the sole witness presented after the Case for both Claimants was closed. He admitted that he had been a Police Officer for almost 30 years and had appeared as a witness more than 30 times. He was a more experienced witness than the Claimants. However, while giving evidence he presented as extremely forlorn, remorseful and lacking in the confidence expected of a person experienced in court matters and certain of his blameless position in the accident.
50. His credibility was adversely affected at the outset when, though being an experienced Police Officer, he said that he did not know that it was an offence for him to be driving the vehicle without insurance.
51. There was no objection by the Defendant to the admission into evidence of an Investigator's Report dated August 20, 2013 which was included in a Hearsay Notice filed on November 17, 2017. In the report the Defendant is said to have told the Police that he was driving at 40 m.p.h. This was in excess of the speed limit on the Southern Main Road of 50 km/h. (64.4 km/h.).

52. Initially, in oral testimony, the Defendant said he was driving at 40mph. While under cross-examination, he changed this to 40 km/h. However, he was confronted with the fact that in the report of Kwame Belliel Investigations Services Limited, a written statement that he gave to the police was set out where he is reported to have stated that he was travelling at 40 m.p.h.
53. In circumstances of being an experienced Police Officer I find that he must have known what he was saying when he reported that he was driving at 40 mph. This was a report he made shortly after the night of the accident so the change of position to say he was driving at 40 km/h is not credible.
54. Additionally, there is merit to the submission of Counsel for the Claimants that the Defendant's conduct after the collision as being an experienced police officer affects his credibility. According to him, despite observing the Claimants in the drain and the severe facial injuries to Roome, he went home. He did not wait to ensure an ambulance came for the Claimants and did not report the accident immediately.
55. Essentially, he fled the scene because, according to him, he heard bystanders making comments about the accident and thought they would blame him. He gave no evidence that he tried to get names of potential witnesses despite the nature of the accident and injuries he observed. His conduct was inconsistent with a lack of responsibility for the accident.
56. As to how the Defendant said the collision occurred, he admitted under cross-examination that he had on his bright lights and first saw the Claimants when they were 20 feet away. The road could accommodate trucks or vehicles passing each other. He gave no evidence of oncoming traffic on the other side, yet his attempted evasive action failed to avoid collision with the two cyclists. He admitted he was unfamiliar with the area but claims there was no sidewalk, only a grassy verge between the roadway and the drain.

F. Analysis and Findings

57. On a balance of probabilities the account given by the Defendant was less credible than that of the Claimants. It is my finding that he was driving at an excessive speed, in an area he was unfamiliar with, on a wet road surface at night and he made an extreme swerve causing him to leave his path and veer into the Claimants path on the extreme right side of the road.
58. The cyclists did not emerge suddenly out of nowhere as they were consistently proceeding along the same path. The Defendant had on his car lights and saw them 20 feet away, in time to take evasive action had he not been speeding. I accept the Claimants as witnesses of truth that they were riding to the extreme side of the road. There was no evidence of any other vehicle in the road that could have obstructed the Defendant's ability to avoid hitting the cyclists
59. The point at which the Claimants bounced off the Defendant's left windscreen was not more consistent with his version of events than theirs. It is clear that the Defendant was at least partly responsible for the collision.
60. The Claimants bear some responsibility for the accident as they were riding along the wrong side of the road. From Tambie's candid testimony I have a clear picture that there was no separate, built up side walk they were riding on. Instead they were keeping to the extreme side of the road where, there being no formal sidewalk, people would walk and it could also be used as a path for bicycles. It is my finding that the side path where the Claimants were riding was part of the roadway and though intending to be careful they should have been on the other side of the road. If they had been, this accident may not have occurred.
61. The contributory negligence is however mitigated by the fact that the Claimants' bikes had reflectors and they wore bright clothing to be seen easily by motorists. The Defendant saw them and failed to take evasive action.

62. Accordingly, it is my finding that the Claimants were each 25% contributorily negligent in the accident and the Defendant is 75% liable in negligence in both cases.

G. Quantum of Damages

63. As set out by both parties in their submissions on quantum, in assessing general damages, the following factors from the leading authority **Cornilliac v St. Louis (1965) 7 W.R.I. 491** will be taken into consideration:

- a. The nature and extent of the injuries sustained;
- b. The nature and gravity of the resulting physical disability;
- c. Pain and suffering;
- d. Loss of amenities; and
- e. The extent to which pecuniary prospects were affected.

Tambie

64. As a result of the collision, Tambie was thrown from his bicycle and into a drain face down and was dragged as the Defendant's vehicle continued. This resulted in mild head injuries and multiple soft tissue injuries. Tambie also claims to have suffered loss of memory, headaches and weakness in his left arm. Further, medical reports described him as being irritable and abusive towards his mother since the accident and diagnosed him with post-traumatic headache and psychological issues. For this he was prescribed analgesia for the headaches and was advised to seek psychological counselling. His injuries left scars on his body and face.

65. Upon assessment by a psychiatrist, he was found to have been suffering from Post-Traumatic Disorder and cerebral irritability secondary to the head injury and was recommended to a neuro-psychologist. Due to these psychological issues, he claims that he is unable to seek work.

66. He claims to suffer continuous pain since the accident including mild and constant pains in his neck and headaches. His interactions with his family and other persons he claims are no longer positive and this inhibits his ability to seek

employment. He also claims to have lost interest in socialising and cycling due to the accident.

67. Prior to the accident he worked at Blue Magic Car Wash receiving a salary of \$350 per week. He now requires visits to the Clinical Psychiatrist at a cost of \$600 per session.
68. Counsel for Tambie submits that his injuries are most comparable with that of the claimant in **Howard v T&T National Petroleum HCA 2350 of 1981** and therefore that a similar sum should be awarded with an upward adjustment for the difference in Index of Retail Prices and Inflation since 1981. In that case the claimant suffered a blow to face and back, cut at back of the head, unconsciousness with suffering with pains in head, neck and back and was affected by noise, causing the him to be aggressive irritable and intolerant at work and he was awarded, \$25,000 which Counsel calculated the adjustment to 2010 to be \$147,058.
69. Counsel for the Defendant suggests however that the award should be between the range of \$20,000 to \$50,000 due to the lack of proof of any lasting disability and as the injuries sustained were relatively minor. Indeed, in the case cited by the Defendant of **Gillian Roxanne Isaac v Shaun Solomon and Motor And General Insurance Company Limited CV 2007-04400** the trial judge inferred from the claimant's failure to seek any further medical attention after a certain period was evidence that her pain and suffering had diminished and gave an award of \$40,000. In the present circumstance, the Claimant has not produced any recent receipts for medication for his headaches nor attempts to seek psychological counselling after 2012.
70. This case is much more recent and bears similarity to the facts of the present case. It appears, therefore, that an award more in line with that decision, with an uplift for the difference in Index of Retail Prices and Inflation since 2009 would be appropriate in the present case. Tambie would therefore be entitled to general damages in the sum of \$52,694.00.

71. Regarding the claim for loss of earnings and loss of earning capacity, I find that Tambie has not shown sufficient evidential basis of his inability to work. In the psychologist's report, no mention is made whatsoever of a likely impact of his injuries upon his future earning capacity. Accordingly, there is no scientific basis for such a claim. An award would therefore be made for loss of earnings only up until the time of last assessment by a medical professional which was by Helen Marceau-Crooks Consultant Psychiatrist on 22nd November, 2012. His claims for loss of earnings thereafter and loss of future earning capacity fail as he has not proven his inability to work on a balance of probabilities.

72. Further, with regard to future medical expenses, the fact that Tambie has not given evidence of seeking psychological attention since 2012 is indicative either that his psychological state has improved or of his lack of intention to seek psychological counselling. Indeed, there was no medical evidence provided on which this court could determine if the need for psychological counselling would continue and how frequently it should occur. I am however, prepared to make an award for psychological counselling for one year based upon the recommendation of the Psychiatrist in 2012 for further assessment.

73. Therefore the final amount awarded is as follows:

GENERAL DAMAGES	\$ \$52,694.00
FUTURE MEDICAL EXPENSES	
@ \$600 per month for 12 months	\$ 7,200.00
SPECIAL DAMAGES	
- Medical Expenses	\$ 600.00
- Loss of Earnings	
@ \$350 per week for 56 weeks	\$ 19,600.00
TOTAL	<hr/> \$ 80,094.00

Roome

74. Similarly, as a result of the collision Roome was thrown off his bicycle and into the drain face down and subsequently dragged along while the vehicle driven by the 1st Defendant continued. This, however, resulted in much more severe personal injury than that incurred by Tambie, including disfigurement to his face and body. Indeed, Roome would undergo many surgeries and intensive medical treatment in the years following the accident.

75. His medical treatment and diagnoses were summarised in his submissions as follows:

“3. In a Medical report undated and produced by Dr. Ravindra M Lalla following treatment at Eric Williams Medical Sciences Complex the Claimant was said to have sustained craniofacial injuries, a fractured femur, head injuries with loss of consciousness, palatal fracture and cervical spine fracture. The report further indicated that the Claimant’s injuries resulted in composite avulsion (tearing away) of the soft tissue midface removing tissue off the anterior alveolus. The tissue was also attached to the external nasal structure attached to the upper lip.

4. In a Medical Report dated 19th March, 2012 Dr. M.H. Jamalabadi indicated that the Claimant developed cataract as a result of the trauma caused by his injuries.

5. Dr. Fayard in a report dated 23rd February, 2012 opined that the Claimant’s facial injuries were of the most severe kind and required treatment abroad since adequate treatment is not available regionally. He added that the Claimant requires possible treatment from an ENT Surgeon, Psychologist, Maxillo-Facial Surgeon and Neurologist.

6. In a Medical Report of Dr. R.U. Adam dated May 1st 2012 the Claimant was found to have, along with the aforementioned injuries, fracture of the left femur, left tibia and fibula along with loss of three upper jaw teeth and all lower jaw teeth. He was also found to be suffering from Post-Concussion Syndrome.

...

10. Dr A.K. Asraph in a medical report dated May 24th 2012 added that the Claimant had abnormal facial contours and scarred tissue around the mouth which restricted the opening of his jaw, metal arch bars to achieve intermaxillary fixation in situ, loss of the buccal bony alveolus in the anterior maxilla and mandible, obliteration of the soft tissue buccal sulcus of the maxilla and mandible as a result of the reconstructive surgery and loss of teeth 8,11,22,23,24,25,26,27

and 28. Dr Ashraph in a CT Scan undergone by the Claimant also found that he suffered multiple comminuted facial bone fractures.”

76. Roome also suffers from sickle cell haemoglobinopathy which slowed his recovery significantly and necessitate further treatment to be undergone abroad. Further, he suffered an infection of the injury to his left femur after surgery which caused him continuous pain and required further surgery to correct it.
77. The injuries and subsequent surgeries resulted in loss of his external nasal structure causing him not only severe pain and discomfort in breathing but also much embarrassment as he has been publicly ridiculed for it. He has become withdrawn and depressed, causing him to avoid socialisation and to seek counselling at his church. He also believes that it has deterred his ability to pursue romantic relationships and to have a family as a result.
78. He has also been unable to enjoy the leisure activities he previously enjoyed such as football due to his physical impairments and he can no longer cycle due to the trauma of the incident.
79. He suffers with constant headaches mood swings, inability to remember recent events, sleep difficulty, diminished vision in the right eye and pain in the lower limbs
80. He claims that he has become handicapped in the labour market due to the physical pains he experiences as well as his inability to positively interact with others. He has no qualifications nor has he received any specialised training and therefore argues that pursuit of an alternative career would be unlikely.
81. Many of the cases cited by the Defendant are from the 1970s – 1980s and are therefore the awards would be quite outdated. They do cite, however, three more recent decisions in which awards ranging from \$250,000 to \$320,000 were given.

82. Counsel for Roome cites the cases of **Anil Reds v Nyan Rattan and Inshan Salim CV2007-00903** and **Roger Gangadeen v Helen Reyes and Mark Durham and Capital Insurance Limited CV2009-00906** as comparators to the present case. Both these cases involve severe facial disfigurement as well as lasting discomfort and pain from the injuries. In **Gangadeen** an award of \$220,000 was made as well as a further cost for future surgery in 2012. In **Reds**, the court awarded the sum of \$320,000 in 2011.
83. Counsel for Roome submits that the award should be higher than that awarded in **Reds** due to the gravity of the injuries sustained and to take into account uplift for the difference in Index of Retail Prices and Inflation from 2011 to present. They submit that the sum of \$510,000 is reasonable in the circumstances.
84. Roome, however, also claims for the cost of two future surgeries. The Defendant submits and it does appear from the medical reports that these future surgeries would likely reduce the pain and suffering of Roome significantly and some discount in the general damages award should be made as a result. I consider an award of \$220,000 in line with the **Gangadeen** decision should be made with a slight uplift for the difference in Index of Retail Prices and Inflation from 2012 to present in the sum of \$277,200.00.
85. Under special damages, Roome claimed that he lost income of \$690 fortnightly from the Unemployment Relief Programme and \$800 weekly from his carwash. However, it was elicited from him under cross-examination that after payments made to Tambie and to his brother for assisting with the car wash, he only was able to keep \$200 for himself. Further, he admitted that he currently receives social disability grants amounting to more than he earned while working.
86. Counsel for Roome argues that disability grant payments should not be deducted from an award of damages. However this type of set off has been made before in several cases. In **Latchman v Balgobin & Sons Bandsawmilling Co. Ltd. CV2007-02060** the claimant's disability grant was deducted from his claim for loss of earnings and reduced the multiplicand for future loss of earnings, taking this grant into account. Further the House of Lords in **Hodgson v Trapp**

[1989] 1 AC 807 held that a disability grant was to be deducted and set off from a personal injury award for past and future care as “*damages under negligence was purely compensatory, so it was the net loss and expense caused by the injury, which the defendant should be required to meet.*”

87. The facts that Roome has not shown sufficient evidence of his inability to work aside from social anxiety and that the future surgeries will likely alleviate much of the discomfort and embarrassment he experiences have also been considered. As a result, based on Roome’s admittance of the disability grant, no award will be made under the head of loss of earnings and the multiplicand will be reduced to three for loss of future earnings to take into account the fact that the disability grant may not continue. Therefore both loss of earnings and future loss of earnings will be calculated based on this amount.

88. Roome’s medical expenses and transportation costs to date have been pleaded and proven sufficiently and are not disputed by the 1st Defendant. The 1st Defendant also has not disputed the future medical expenses for the surgeries. The sums claimed under this head will therefore be awarded.

89. The damages for Roome will be awarded as follows:

GENERAL DAMAGES	\$277,200.00
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SPECIAL DAMAGES

- Medical Expenses	
Dr R.U. Adam	\$ 600.00
Electroencephalogram	\$ 800.00
Dr Santana	\$ 400.00
Dr Fayard Mohammed	\$ 1,500.00
- Transportation	\$ 1,800.00

TOTAL Special Damages	\$ 5,100.00
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FUTURE MEDICAL EXPENSES

- Estimated cost of Future oral and maxilla facial Surgery	\$217,600.00
- Estimated cost of Nasal Reconstruction surgery	US\$828,799.00
- Surgeon Fees	US\$ 49,000.00

FUTURE LOSS OF EARNINGS

- @ \$200.00 weekly as a Car Wash Owner

For 3 years @\$9,600.00 per year \$ 28,800.00

- @ \$690.00 fortnightly as a Car Wash Owner

For 3 years @\$16,560.00 per year \$ 49,680.00

TOTAL Damages

\$578,380.00 plus

US \$877,799.00

H. Decision

Claim No. CV 2015-02989- Tambie

90. The Claimant has succeeded in proving that the 1st Defendant is partly liable in negligence, resulting in the accident and his injury. The Claimant's contributory negligence to the extent of 25% in riding along the side of the wrong lane of the road also caused the accident. The Claimant is therefore awarded \$39,521.00 being 75% of \$52,694.00 in general damages and \$15,150.00 being 75% of \$20,200.00 in special damages plus interest on both amounts at 2.5% as the prevailing interest rate from the date of filing of the Claim to the date of Judgment.

91. The Claimant is also awarded the sums of \$7,200.00 for future medical expenses.

92. The 1st Defendant is directed to pay the Claimant costs of the Claim at the prescribed rate.

Claim No. CV2015-02990 - Roome

93. The Claimant has succeeded in proving that the 1st Defendant is partly liable in negligence, resulting in the accident and his injury. The Claimant's contributory negligence to the extent of 25% in riding along the side of the wrong lane of the road also caused the accident. The Claimant is therefore awarded \$207,900.00 being 75% of \$277,200.00 in general damages and \$3,825.00 being 75% of \$5,100.00 in special damages plus interest on both amounts at 2.5% as the

prevailing interest rate from the date of filing of the Claim to the date of Judgment.

94. The Claimant is also awarded the sums of \$217,600.00 and \$877,799.00US for future medical expenses and \$78,480.00 for future loss of earnings.

95. The 1st Defendant is directed to pay the Claimant costs of the Claim at the prescribed rate.

Delivered on: 23rd May, 2018

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Eleanor Joye Donaldson-Honeywell
Judge

Assisted by: Christie Borely JRC 1