

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Port of Spain

**Claim No. CV 2017 - 04586**

Between

**Luke Rampersad**

Claimant

And

**Water and Sewerage Authority  
Of Trinidad and Tobago**

Defendant

**Before the Honourable Madam Justice Eleanor J. Donaldson-Honeywell**

Delivered on October 18, 2019

**APPEARANCES:**

Mr. Alan C. Anderson, Attorney-at-Law for the Claimant

Mr. Keston McQuilkin and Ms. Sheena Ragoobar, Attorneys-at-Law for the Defendant

**JUDGEMENT**

**A. Introduction**

1. The Claim arose from an incident in December 2016 when two employees of the Water and Sewerage Authority of Trinidad and Tobago [“WASA” or “the Defendant”] sustained gunshot injuries. The two employees, including the Claimant Luke Rampersad were shot by a masked, unknown assailant who without notice or apparent provocation started firing in the direction of another person.

2. The two employees were among a group performing ruptured line repair duties on behalf of WASA at Powder Magazine, Phase II in Cocorite. The Claimant's colleague was shot dead. The Claimant survived but sustained injury to his left foot.
3. The Claimant contends that his employer WASA is liable to compensate him because his injury was due to what he views as negligence on the part of WASA in failing to provide a safe place of work. Furthermore, he alleges that WASA failed to comply with statutory safety requirements under the **Occupational Safety and Health Act Chap 88:08** ["OSH Act"].
4. Despite his injury the Claimant has retained his position as an employee of WASA. However, he seeks by this Claim damages for his pain, suffering and the loss of his ability to engage in sporting activities.
5. In light of the tragic circumstances of the shooting incident and the fact that the Claimant remains an employee of the Defendant, the parties were strongly urged during Case Management Conferences to engage in settlement talks to agree on a measure of ex gratia compensation for the Claimant. It was my view that a settlement should be agreed to reflect decency, goodwill and reasonableness in the employer employee relationship. Parties indicated however, that all such efforts were unsuccessful and the matter proceeded to Trial.
6. An interesting feature of the Claimant's case is the contention that the location where the shooting took place is a "hot spot" or in other words an area known as dangerous due to crime. It was based on this contention that the Claimant argued that WASA was negligent in failing to put in place security measures to make that work environment safe. The case for WASA is that up to the date of the incident "the Powder Magazine Area where the repairs to the broken main was conducted was not identified and considered by the Defendant as a crime infested area that would necessitate the provision of security personnel to accompany the crew."
7. In light of prevailing media coverage of a crime wave affecting certain areas of Trinidad and Tobago, the challenge for the Court was to put aside any pre-

conception based on media reports over the years concerning the shooting location. What was required from the Claimant was pleadings supported by evidence that at the specific time of the shooting, December 2016, Powder Magazine was a Hot Spot.

8. Having considered the pleaded case and the evidence presented it is clear to me that the Claimant has not proven on a balance of probabilities that the Defendant is liable as claimed. The reasons for this conclusion are further set out below.

**B. Pleadings**

9. The cross-examination of the Defendant's witness at times went beyond the contentions set out in the Statement of Case. However, the Claimant's pleaded case was limited to certain specific allegations based on which this matter is to be determined.
10. Firstly, the Claimant alleges that the Defendant failed to provide armed security personnel when he and the crew went to conduct repairs in Powder Magazine and that this was a breach of the OSH Act.
11. Secondly, the Claimant refers at paragraph 4 of the Statement of case to the Powder Magazine location where the Claimant went to do repair work for WASA as "a well-known crime hot spot". Citing an August 23, 2005, Guardian Newspaper Report, the Claimant says it is an area "where gangs declared all-out war". A copy of the said article, dated some ten years before the Claimant's injury, is attached to the Statement of Case. On careful perusal of the article, it is clear that the location it was referring to as being affected by the gang war was not Powder Magazine. It was Petit Valley.
12. Thirdly, the Claimant alleges that the Defendant failed to provide a safe place of work. This included allegedly failing to conduct a suitable and sufficient risk assessment for the task that was to be performed by the Claimant that would

ensure the safety and health of employees. Further, the Claimant says the Defendant did not sufficiently provide safety information, supervision and training.

13. Finally, the Claimant pleads that the fact that he was shot “itself gives rise to a presumption of negligence on the part of the Authority.”

14. The Case for the Defendant as pleaded essentially makes two points. Firstly as highlighted above, the Defendant says that Powder Magazine was not at the relevant time identified as a crime “hot spot”. Hence the need for heightened security for employees has not been proven.

15. Secondly, the Defendant pleads that all practicable steps were taken to provide the Claimant with a safe place of work since;

a. “The Defendant analyzed the attendant risks for the performance of the job and informed the Claimant and other employees of those risks, took steps to mitigate them, that included advice to the Claimant and his employees;

b. The Defendant performed an assessment of the Area that the crew was required to work on 13th December 2016 and determined that it was not a crime “hot spot” area that necessitated security personnel to accompany the crew;

c. The Defendant provides their internal Security Personnel and in other appropriate cases requested the Trinidad and Tobago Police Service to accompany their crews performing work in known “hot spot” areas.

d. The Defendant took all reasonable and practicable steps to provide a safe place of work for the Claimant.”

### **C. Issues**

16. The decision herein turned on very narrow issues as there was no factual dispute as to how the Claimant’s injury took place. Additionally, the Claimant applied at the Trial to address liability only and that the assessment of damages be referred to the Master in the event of the Claimant’s success at Trial. This was agreed to by

the Defendant, subject to the Claimant applying for relief from sanctions in order to file witness statements for the said Assessment of Damages.

17. The sole issues to be determined, therefore, were whether
  - a. Powder Magazine was identified as a crime hot spot around the time of the incident, such that WASA had a duty of care to provide security measures for the employees on duty there and
  - b. WASA had in fact taken reasonable measures to ensure the safety of employees in such circumstances.

**D. Applicable Law**

18. The Claim is one in Tort alleging Employer's Liability for Negligence. As highlighted by Counsel for the Defendant citing **Blyth v Birmingham Waterworks Co (1956) 11 Exch 781 at 784**, proof of liability in negligence must be based on demonstrated lack of adherence to the expected standard of care which is based on reasonableness. Accordingly, the Claimant must establish that the Defendant has fallen short of the standard of care required of a prudent reasonable employer in the circumstances of this case.

19. The elements of the Employer's Liability against which the evidence of adherence to a reasonable standard of care must be examined are well established. **Halsbury's Laws of England**<sup>1</sup> explains that "the common law has from early times imposed a duty on an employer to take reasonable care to see that his employees, jointly engaged with him in carrying on his work or industry, do not suffer injury in consequence of his personal negligence, including his failure properly to superintend and control the undertaking in which he and they are mutually engaged."

20. The Claimant's Counsel also relied extensively on certain provisions of the **Occupational Safety and Health Act**. Counsel submits that the Defendant has

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<sup>1</sup> Halsbury's Laws of England/Tort (Volume 97 (2015))/10. Tort and Employment/(1) Employer's Liabilities to Employee/(i) Employer's Liabilities at Common Law/759. Employer's common law duty to employee

failed to comply with such provisions and that the Court should “*send a clear message to the Defendant and other transgressors who may believe that the OSH Act is not to be taken seriously.*” The provisions relied on include the following:

“6. (1) It shall be the duty of every employer to ensure, so far as it reasonably practicable, the safety, health and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer’s duty under subsection (1), the matters to which that duty extends include in particulars-

(a) the provision and maintenance of plant and systems of work that are , so far as is reasonably practicable , safe and without risk to health;

(b).....

(c ).....

(d) the provisions of such information, instructions, training and supervision as is necessary to ensure so far as is reasonably practicable, the safety and health at work of its employees”

14 (A) (1) Every employer shall make a suitable and sufficient assessment of

(a) The risk to the safety and health of his employees to which they are exposed whilst they are at work; and

(b) .....

46. (1) Where an accident which causes death or critical injury occurs-

(a).....

(b) in the course of employment, the employer shall inform the Chief Inspector of the accident forthwith by telephone, facsimile, email or other direct means and shall send a written notice of the accident, in the prescribed form and accompanied by the prescribed particulars to the Chief Inspector within forty-eight hours of his learning of the accident.”

21. There was no reference however, by Counsel for the Claimant to Section 83 and 83A of the OSH Act which vests jurisdiction for determining breaches and awarding redress in the Industrial Court. There having been no determination of this issue put before this Court the message concerning alleged breach of the OSH Act may not appropriately form part of this decision.

**E. Evidence and submissions**

22. The Claimant called no supporting witnesses on the issue of liability. He presented his own evidence by Witness Statement dated August 22, 2018 and he was cross-examined on it. His testimony included the undisputed facts that the shooting incident took place and that there was no security presence put in place there by WASA.
  
23. The Claimant however, failed to present any evidence on a critical aspect of his case. Nothing cogent or compelling was presented to prove that the location of the shooting was known or ought to have been known by the Defendant as a crime hotspot prior to the time of the incident. A Guardian newspaper article on gang warfare in Petit Valley, dated some ten years before the incident was the only information pleaded and put into evidence by the Claimant purporting to support that aspect of his case. The article, as aforementioned, proved to be wholly irrelevant as there was no factual content therein pointing to gang warfare in Powder Magazine, Cocorite.
  
24. The article mentioned that arising from the gang war in Petit Valley, one person was gunned down at Powder Magazine. There was no evidence presented to support that one incident of shooting in 2005, with no evidence of other incidents over a ten year period, was sufficient for a location to be considered a hot spot. In fact, such a contention, had it been put forward, would defy logic.
  
25. Under cross-examination the article was read to the Claimant and he accepted that it did not refer to any gang warfare in Cocorite. He candidly agreed that he had not referred in his Witness Statement to any evidence of gang warfare in Cocorite at the time of the 2005 article or in the eleven years thereafter. The Claimant called no police officer, security professional, journalist, trade union representative, criminologist or anyone else capable of supporting the case that Cocorite was a known Crime hot spot in December 2016.

26. Having failed to present crucial evidence that the location of the incident was a crime hot spot, the Claimant further relies on a pleading that the fact that he was shot “itself gives rise to a presumption of negligence on the part of the Authority.” This contention was effectively refuted by Counsel for the Defendant in closing submissions as follows

“The fact that an incident occurred does not automatically lead to the conclusion that security should have been provided. The law does not insist on a counsel of perfection but rather reasonableness and therefore, for the Claimant to prove his case against the Defendant, there should be evidence that demonstrates that it was reasonable for the Defendant to have provided security to the Claimant’s crew on 13th December 2016”.

27. At the close of the Claimant’s case, counsel to the Defendant rose to make a no-case submission, indicating that he would elect to call no witnesses. He, however, changed course and decided to call his sole witness. This was done when it was brought to his attention that, although the Claimant did not prove his own case as to the status of Powder Magazine as a crime hot spot at the time of his injury, the Defendant’s disclosed documents at first blush appeared to fill that evidence gap for him.

28. The Defendant’s sole witness, Sergeant Anderson McKain had attached two documents to his Witness Statement filed on September 13, 2018. The second document, “AMK 2” was a letter dated November 3, 2014 from the Public Services Association of Trinidad and Tobago [“PSA”] to a WASA Senior Manager. The PSA referred to a prior undertaking given to WASA that the PSA would furnish WASA with a list of areas deemed hot spots, where armed security would be required to accompany their members performing regular duties. It was noted in the letter that for areas not identified in the list “if the criminality level is elevated and employees request”, security arrangements would be made.

29. The PSA letter at “AMK 2” listed several locations all over Trinidad and Tobago as hot spots. Powder Magazine, Cocorite was not included but Waterhole, Cocorite



was on the list. If the Claimant had presented geographic evidence that Waterhole and Powder Magazine are at the same location, i.e that they are the same place with alternate names, then this letter, disclosed by the Defendant, may, in my view, have assisted his case.

30. During the cross-examination of the Defence witness, Counsel for the Claimant was urged to ask questions to clarify this point. Ultimately, the oral testimony at Trial pointed to Waterhole and Powder Magazine being completely separate locations in Cocorite. Thus “AMK 2” did not assist the Claimant in proving that Powder Magazine was identified as a hot spot prior to 2016.
31. The other document attached to the Defendant’s Witness Statement marked as “AMK 1”, was an undated list of hot spot areas prepared by WASA. It was expressly prepared as an update to the PSA list at “AMK 2”. It was labeled as an “extract from Risk Assessment identifying the Hot Spot Areas” and was compiled from information provided by personnel executing work within the areas. This undated list included Powder Magazine, Cocorite as a High Risk Level area requiring TTPS level security.
32. It is clear that had there been a date endorsed on this updated list which indicated that it was in existence prior to December 2016, this information disclosed by the Defendant would represent critical evidence in support of the Claimant’s case. However, the Defendant’s witness did not, in his Witness Statement, specifically speak to “AMK 1” as having been in existence at that time. Instead he said at paragraph 9 of his Witness Statement that a Risk Assessment had been conducted of hot spot areas. He did not say when this was done. He attached “AMK 1” as “a true copy of an extract from Risk Assessment”. Later on, at Paragraph 11, the Defendant’s witness incorrectly stated that Powder Magazine in Cocorite is not listed in the Risk Assessment. This aspect of the Defence witness’s written Statement was quite garbled and required clarification.

33. Under cross-examination, the Defendant's witness clarified that the Risk Assessment was an ongoing process whereby, from time to time, the list is added to. There would have been updates in 2015. He explained that the Risk Assessment extract attached to his Witness Statement at "AMK1" was one of the more recent updates prepared after 2016. It included the addition of Powder Magazine based on the incident that occurred involving the Claimant.
34. "AMK 1" and "AMK 2" had not, at the close of the Claimant's case, been put into evidence. As such, had the Defendant stood by the election and made a no-case submission, the Claimant could not have relied on them in support of his case. It is my finding that the Claimant, having failed to present any pleadings or evidence to support the hot spot status of the location where he was injured, has not succeeded in proving his case based on documents disclosed by the Defendant. On a balance of probabilities, I accept the un-contradicted testimony of the Defendant's witness under cross-examination that "AMK 1" was not in existence at the time of the incident.
35. Although the Claimant did not present either a pleaded case or evidence to prove that Powder Magazine was a hot spot, he did include some evidence relevant to the alleged lack of due care on the part of the Defendant in providing a safe place of work. His evidence was that he could not recall having been given any safety training or risk assessment information by the Defendant for carrying out duties in crime hot spot areas.
36. The evidence of the Defence witness, Mr. Mckain, was that, based on information received from the Trinidad and Tobago Police Service as well as WASA incident reports, the Defendant identified particular areas as hot-spot areas. This information was used in risk assessments which generated updated lists of crime hot spots subsequent to the list provided by the PSA in 2014. Based on this regularly updated risk assessment process, the Defendant would provide security and/or request additional security support from the Trinidad and Tobago Police Service to accompany employees. It may have been more compelling had the

Defendant relied on additional versions of the Risk Assessment dated prior to 2016 to show the ongoing process.

37. No evidence was presented by the Defence witness to prove that he informed the Claimant and other employees of the Risk Assessment process. However, on the facts of this case that factor is irrelevant, as I have accepted the Defence evidence that Powder Magazine was not on the Risk Assessment list at the time of the Claimant's injury.

38. Counsel for the Claimant suggested in closing submissions that the Defendant's witness admitted that there was no proper Risk Assessment done prior to the December 2016 incident. However, there is no such admission reflected in the Witness Statement or in the transcript of his oral evidence. In fact, under cross – examination, the Defendant's witness described in detail the frequency and methods of liaising with the Police for information on crime risk levels prior to 2016 and thereafter. He indicated that risk assessments are not done annually because the situation normally changes weekly or per fortnight. Briefings from the police would be taken orally by telephone.

39. On a balance of probabilities, the evidence of Mr. McKain for the Defence and the documents at "AMK 1" and "AMK 2" support that a sufficient safety process was used by the Defendant to assess security risks and thereby take reasonable steps to secure the safety of employees. There was neither evidence nor legal precedent presented on the case for the Claimant to establish that this process did not meet the reasonable standard of due care for the Defendant as an employer.

**F. Conclusion**

40. The Claimant has not succeeded in this matter. However, the tragic circumstances of the Claim call out for empathetic treatment by the Defendant in keeping with the good industrial relations practices that all employers must adhere to in order to foster healthy employee morale and productivity in the workplace. The

Defendant ought not, at this stage, rule out consideration of an ex gratia payment to the Claimant.

41. IT IS HEREBY ORDERED that the Claim is dismissed and the Claimant is to pay the Defendant's costs on the prescribed basis in the amount of \$14,000.00.

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Eleanor Joye Donaldson-Honeywell

Judge