THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV. 2018-03124

Between

Petlyn Edwards

Claimant

And

The Tobago Hospitality and Tourism Institute

Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on 19 February, 2020

Appearances:

Mr. Kelvin Ramkissoon, Mr. Nizam Saladeen and Ms. Sonya Gyan, Attorneys at Law for the Claimant

Mr. Kimba Anderson and Ms Lesley Gray, Attorneys-at-Law for the Defendant

JUDGEMENT

A. Introduction

1. The Claimant, Petlyn Edwards, claims damages from her employer for injuries sustained on September 11, 2014, when she sat on a 4-wheel swivel chair at work and fell. She contends that the chair was defective and that her fall was due to defects in the chair.

2. It is not in dispute that prior to the fall there was a meeting on March 28, 2014 with Ms. Lyra Smith, the Chief Executive Officer ["CEO"] of her employer, when defective chairs were discussed. The Claimant's case is that she reported that chairs in her Department were defective and as a result a supervisor was ordered by Lyra Smith to remove the chairs. This was never done. Accordingly, her Claim is based on alleged negligence on the part of her employer in failing to ensure her safety at work by providing properly maintained chairs.

3. The injuries in relation to which the Claimant seeks compensation are in the region of her lower back and legs. She relies mainly on reports from three doctors, Toby, Ali and Maxwell to prove her injuries and claims to have been experiencing severe pain since the fall. As such, she was unable to return to work.

4. The Claimant's employer, the Defendant herein, has by its pleadings at paragraph 8, admitted that the fall took place and that the chair was defective. However, the Defendant contends that the Claimant worked as a Utility Assistant in the Maintenance Department which was responsible for maintenance of the chairs.

5. Further, they allege that at the same meeting referred to by the Claimant, the Claimant had been advised by Lyra Smith to remove the chair from her workspace and discontinue its use because it was defective. Accordingly, the Defence pleaded is that it was the Claimant's contributory negligence in failing to move the chair that resulted in her fall. The Defendant further alleges that the Claimant was negligent in her manner of sitting on the chair and this

either caused or contributed to her fall. Additionally, the Defendant contends that being aware of defects in the chairs, the Claimant failed to exercise due caution while sitting on one.

6. As it relates to the injuries alleged to have been sustained by the Claimant, the Defendant admits that she was examined by doctors Toby and Ali on the request of the Defendant. However, in reliance on two of the same medical reports by these doctors put forward by the Claimant, the Defendant contends that they are inconclusive with no indication as to the Claimant's prognosis.

B. <u>Issues</u>

7. In order to prove the alleged negligence on a balance of probabilities, the Claimant is required to establish that the Defendant breached a duty of care as an employer to provide safe plant and equipment. On the pleadings, the fact of the fall and the defects in the chair were not in dispute. However, the Defendant's pleadings challenge whether the removal of the defective chair fell within its duty of care or whether it was the Claimant herself who was responsible for moving the chair. The Claimant's manner of sitting is also put into issue as a lack of duty of care on her part.

8. Additionally, the Claimant must prove that she sustained an injury caused by the alleged breach of duty. Here, causation of the injury is not the focus of the Defence. Instead what the Defence raised, based on the medical reports, is that there was no conclusive injury sustained at all.

9. Belatedly, in closing submissions, Counsel for the Defendant raised the issue as to whether the medical evidence in support of the claim could be relied upon at all. The challenge to admissibility is based on the fact that the Claimant did not call doctors whose reports she relies on as witnesses. Furthermore, she failed to comply with **Rule 30.2 (2) of the Civil Proceedings Rules 1998 (as Amended) ["CPR"]**. That rule requires that a Hearsay Notice must be filed not later than the time when the Witness Statements are to be served or no less than 42 days before the hearing. The Claimant filed and served her Hearsay Notice around three days before the Trial. This issue cannot, however, be considered at this time for a number of reasons.

10. Firstly, it was clear from the pleadings that the Defendant also relied on two of the Doctors' reports referred to in the Claimant's Statement of Case.

11. Secondly, the Claimant and one of her witnesses, her son Shem Hercules, both included in their Witness Statements, accounts of the Claimant's medical condition with supporting medical reports attached. That was hearsay evidence, however, despite being given the opportunity to file evidential objections, the Defendant did not object. The Witness Statements, complete with information on the injuries, therefore, stood as the Evidence in Chief of the Claimant and her son.

12. Thirdly, under cross-examination, the Defendant's Manager of Human Resources admitted that since, not only those two medical reports relied on by the Defendant, but also the report by Dr. Maxwell came from medical doctors, she accepted the findings.

13. The issues to be determined, therefore, are as follows:
    a. Was there a duty of care to the Claimant on the part of the Defendant regarding safety of the chair?
    b. If so, has the Claimant established that the Defendant failed to discharge that duty?
    c. Was there contributory negligence on the part of the Claimant that partially or fully caused the fall?
    d. Did the Claimant conclusively sustain injuries as a result of the fall?
    e. If so, what is the quantum of damages that should be awarded to her?

C. Law

14. **Clerk & Lindsell on Torts 17th Ed. para. 7-04** sets out the elements that a Claimant must prove to establish a Defendant's liability for negligence: (1) the existence of a duty of care situation; (2) careless behaviour by the Defendant; (3) a causal connection between the Defendant's careless conduct and the damage; (4) foreseeability that such conduct would have inflicted upon the particular Claimant the particular kind of damage of which he complains...; (5) the

extent of the responsibility for the damage to be apportioned to the Defendant where others are also held responsible; and (6) the monetary estimate of that extent of damage.

15. The onus is, therefore, on the Claimant to prove that if it were not for the Defendant's wrongful conduct she or he would not have sustained the harm or loss in question. The Claimant must establish at least this degree of causal connection between his damage and the Defendant's conduct before the Defendant will be held responsible for the damage - **Munkman: Employer's Liability at Common Law, Chapter 3 para 3.12**.

16. In an employment situation, an employer has a duty to employees to take reasonable care for their safety: **Charlesworth & Percy on Negligence 11th Edn. Para 10-02**. Employees must not be subject to unnecessary risk or injury. **Harris v Bright Asphalt Contractors (1953) 1QB 617 at 626** defined the duty as follows:

> *"...a duty not to subject the employee to any risk which the employer can reasonably foresee, or, to put it slightly lower, not to subject the employee to any risk that the employer can reasonably foresee and against which he can guard by any measures, the convenience and expense of which are not entirely disproportionate to the risk involved."*

17. There exists a duty at common law on employers to provide their workmen with a safe place of work. An employer must not merely warn against unusual dangers known to them, but also make the place of employment as safe as the exercise of reasonable skill and care would permit - **See Naismith v London Film Productions Ltd [1939] 1 All E.R. 794 at 798**.

18. Rahim J., in **Jamal Mohammed v Port Authority CV2011-01833** also discussed the employer's duty to take reasonable care to provide and maintain proper plant and machinery. The plant must be kept in good order and the employer must also set up a regular system of maintenance - **Munkman: Employer's Liability at Common Law, 15th Edn. Chapter 4**. "Plant" was considered to denote all things employed in the course of work and was held to include a seatbelt and a pothole cover in the circumstances of the case.

19. In the present case therefore, the Defendant employer is under such a duty to provide a safe place of work and to take reasonable care to provide and maintain proper plant and machinery.

20. Contributory negligence means some act or omission by the injured person which constituted a fault, in that it was blameworthy failure to take reasonable care for his or her own safety and which has materially contributed to the damage caused - **See Munkman: Employer's Liability at Common Law, 15th Ed., Chapter 6, paragraph 6.10**.

21. The Defendant, having alleged that the Claimant was contributorily negligent for the accident, must show that she failed to take reasonable care for her safety and this materially contributed to the damage caused.

D. <u>Evidence</u>

22. The Claimant's case was supported by two witnesses in addition to her own testimony. The first was her son Shem Hercules, who supported her account as to her injuries, the Doctor's diagnosis and her efforts to seek medical help.

23. The second witness was the Claimant's co-worker Lerlyn Anderson. She did not give any answers that would tend to support the Defendant's case that their duties included chair removal. Instead, based on the job description common to herself and the Claimant, her evidence was that her responsibilities were janitorial. She supported the Claimant's case regarding the complaints they both made prior to the incident about defective chairs, describing them as old, rusty and unstable.

24. She was also any eye-witness corroborating the Claimant's version of the events at the meeting with the CEO, Lyra Smith. She confirmed that the CEO commented that the Claimant raised a "good point" about the need to remove the defective chairs from the maintenance department and ordered their supervisor to do so. However, no chairs were ever removed.

25. This account of the meeting by both the Claimant and her witness is uncontroverted. The Defendant failed to call CEO Lyra Smith or anyone else to prove that the Claimant was told at the meeting to remove the chairs.

26. Finally, Lerlyn Anderson was present when the Claimant fell. She did not actually see the fall but confirmed the aftermath, the Claimant on the floor, her efforts to get up and the lack of assistance rendered by others.

27. The Claimant herself testified in a very straightforward consistent manner. Under cross-examination, there was no deviation from her case. In her Witness Statement, she explained that she and other co-workers made more than one request to have defective chairs removed from their department.

28. She said that on the day of the fall, she and Lerlyn Anderson were sitting on chairs speaking. She hit her lower body and back on the floor and felt pain. Calls by Ms. Anderson for help went unanswered, though others entered the room. Eventually, the Claimant got up off the floor and limped off to call the Human Resource Manager, Ms. Panda, who did not assist.

29. The Claimant waited three hours, Ms. Panda came down to see what happened, got into an argument with Ms. Anderson and then the Claimant's son arrived to take her for treatment. According to the Claimant's evidence, the Defendant took no steps to ensure that the chairs provided to the Department were safe, failed to inspect the chair when she fell and did not identify the defect in the chair from which, when she leaned to the back, she fell. The Defendant has presented no witness to contradict this. The Defendant's sole witness admitted under cross-examination that she did not inspect the chair after the fall. She had no idea whether it had been removed or not since then.

30. The Claimant did not admit under cross-examination that she knew the particular chair she was sitting on was defective before she fell. She said she only knew when she sat on it and said if it

fell while she did so, it must have been defective. Thus, she did not agree that having reported that chairs generally were defective in her Department, she failed to take due care for her own safety when she sat on the chair.

31. She admitted that after reporting the chair, she did nothing because she knew there was a supervisor there and said that moving chairs was not her duty. Under re-examination, the Claimant reiterated that, at the meeting prior to the fall, the CEO had told her supervisor to remove the chairs immediately. No witness was called to contradict this account.

32. The sole witness for the Defendant was the Human Resource Manager, Ms. Panda. Ms. Panda was not an eyewitness to any aspect of the case that could support the pleaded Defence. In particular, having not attended the meeting with the CEO and the Claimant, prior to the fall, said she could not and did not give evidence to support the particulars at paragraph 9 of the Defence as to the Claimant being instructed to remove chairs. Ms. Panda was not present when the Claimant fell and gave no evidence to prove the Defendant's case that she sat on the chair in a manner that caused the fall.

33. In an attempt to prove that removal of chairs was part of the Claimant's job function, Ms. Panda attached her Job Description as "JP1" to her Witness Statement. However, the only task of relevance listed therein as the Claimant's responsibility was to report "any broken furniture". The uncontroverted evidence is that the Claimant fulfilled this responsibility. There is nothing in her Job Description to support the Defendant's case that removal of broken furniture was also the Claimant's duty.

34. Under cross-examination, Ms. Panda could not speak to whether the Claimant was ever called upon to remove defective furniture. She also admitted that whatever was stated in the medical reports had to be accepted. She did not dispute any of the findings of the doctors, including the assessment as to 60% permanent partial disability.

E. Findings on Liability

35. On a review of the evidence, it is clear that on a balance of probabilities, the issues identified above at a, b, c and d must be determined in favour of the Claimant. On a balance of probabilities, there is no evidence before the Court other than that it was the Defendant's responsibility to remove defective chairs. It has not been proven that this was the Claimant's responsibility.

36. In the absence of an eyewitness, I accept the uncontroverted evidence of the Claimant that she and her co-worker had reported generally on defective chairs in her department. The chair she fell from could therefore, on a balance of probabilities, have been one such chair. She did not know it was so until she sat on it, leaned back and fell.

37. The Defendant has presented no evidence that a negligent manner of sitting caused the fall. The Defendant's submission that the Claimant did not exercise care because she knew of the defect is also not borne out. It is undisputed that the Claimant did all in her power to address the concern by making reports about it. Her evidence that her supervisor was directed by the CEO to move the chairs but did not, is uncontroverted. It would not be practical to expect a worker to remain standing, so sitting on a chair may not per se be negligent.

38. The Defendant has presented no evidence that the chairs were properly assessed and in good order either before or after the fall. It is more probable than not that the Defendant failed to discharge a duty of care to the Claimant in ensuring the chair was safe for the Claimant to sit on.

39. Finally, it has been established that the Claimant sustained injury due to her fall. The extent of the injury is supported by her evidence and that of her witnesses and by the medical reports, the findings of which were partly relied on and partly admitted by the Defendant.

F. Assessment of Damages

40. Having determined that the Defendant is wholly liable for the Claimant's injuries sustained in the fall, the damages claimed by the Claimant must be assessed.

Special Damages;

41. The Claimant's special damages claims are assessed under the headings below:

Medication

42. The Claimant averred in her witness statement that she purchases over the counter medication from time to time. The Claimant submits that this is a reasonable expense that should be allowed in the sum of $3,300 in the absence of receipts. The Defendant challenges this on the basis that all damages pleaded must be proven specifically – **Anand Rampersad v Willie's Ice Cream Ltd CV 20 of 2002**.

43. In relation to this sum, the Claimant has not only failed to prove that this amount was actually expended, but she also has failed to prove that these expenses were required as a result of the accident. It is not stated that these purchases were made during any specific period and it is clear that they were not prescribed.

Past and/or future loss of earnings

44. The Claimant claims loss of earnings from December 2014 until retirement at a salary of $3,700 per month.

45. The Claimant has been assessed by the District Medical Officer in January, 2016 and July, 2016 with a 60% disability. However, the Social Welfare Division Medical Officer's Report shows that this disability is only assessed to have a permanence of six months. The Claimant submits that in order to prove loss of pecuniary prospects, she must show that the injury was of such a nature that it rendered her incapable of performing any form of work. She claims that she has so proven, relying on lack of evidence to contradict and the Claimant's "present condition".

46. The Defendant states, firstly, that it discontinued the Claimant's salary due to her unwillingness to provide proper medicals despite being notified of the requirement from 23 September, 2014 to 19 January, 2015. Further, the Defendant submits that the Claimant's own medicals do not suggest any permanent disability and therefore she fails to prove entitlement to loss of earnings beyond the 6 months indicated in the medical reports.

47. The medical evidence presented by the Claimant indeed does not suggest that there will have been a lasting disability beyond January 2017. Even from as early as 2016 there is the medical indication by Dr Ali, outlined further below, that the Claimant's pain and discomfort is unsupported by a medical finding. Therefore, the Claimant has only succeeded in proving her inability to work from the time her employment was terminated (1 January, 2015) to the date the disability was assessed to last (1 January, 2017).

48. The Claimant, in reply submissions, submits that the entitlement recoverable under the Workmen's Compensation Act, Chap. 88:05 for a partial disability is one-third of the salary. The Claimant suggests, and it is reasonable, that the compensation to be awarded to her under this head should be assessed on a similar basis. Therefore, the Claimant would be entitled to the sum of $29,600 as one-third of the monthly salary of $3,700 for two years.

Future Medical Services

49. Again, the medical reports submitted by the Claimant do not show that she is suffering from a permanent medical condition. The need for further physiotherapy treatment has been identified, but there is no specificity as to how long this will be required. Further, the claimant has not produced any documents outlining the cost of this treatment. This sum, unquantified in the claim and unquantifiable from the evidence produced by the Claimant, will therefore not be awarded.

Aggravated Damages

50. The Claimant makes a claim for aggravated damages due to the manner of treatment of the Claimant by the Defendant surrounding her fall at the workplace. The Claimant cites the fact that she had made a complaint about defective chairs prior to the incident and the lack of assistance from the Defendant in getting her to the hospital on the day of the fall.

51. The Defendant cites the case of **Kralj v McGrath [1986] 1 All ER 54** as authority for its submission that aggravated damages are not generally awarded for the tort of negligence or for breach of contract. Indeed, it was held in that case that the concept of aggravated damages was not appropriate to claims arising out of medical negligence, since it conflicted with the general principle that damages for loss suffered as the result of the defendant's breach of duty should be *compensatory*.

52. The Claimant in the present case has not demonstrated any major injury to pride or dignity to be compensated for that occurred as a result of the Defendant's alleged callous demeanour towards the Claimant. Under cross-examination she appeared more affronted by the Defendant's actions in terminating her employment than humiliated or distressed by her treatment on the day of the injury.

General Damages

53. General Damages will be assessed in accordance with the five factors set out in *locus classicus* of **Cornilliac v St. Louis (1965) 7 WIR 491**.

a) The nature and extent of the injury sustained;

54. The Claimant relies on the following medical reports to demonstrate the nature of her injuries from the fall:

i. Report of Dr Maxwell Adeyami dated 18/02/2016: "…she appears to be in pain, unable to walk steadily, unable to bend… and has altered gait. She also complained of numbness on the

right lower limb. I have referred her for Orthopaedic Consultation in view of her persistent pain."

ii. Report of Dr A. Sinanan dated 21/10/2014: "Apart from a mild degree of spondylotic changes within the lumbar region, no other significant abnormality is identified on this examination. There is no evidence of acute or old bony injury and no evidence of any disc bulges or protrusions within the lumbar or thoracic region. There is also no evidence of nerve root compression nor of spinal canal stenosis within the lumbar or lower thoracic region on this examination."

iii. Report of Dr David Toby dated 10 July, 2018: "…On examination she had restriction of movement accompanied by pain which she said was unrelenting. She also walked with a stick. In my opinion, her symptoms were subjective and not much to find objectively. She feels she is not able to perform. She is not fit to work."

iv. Report of Dr Terry Ali dated 21 March, 2016: "I could see no evidence of paraspinal muscle injury on the MRI films. I can find no reason for her persistent pain and disability. There is a possibility that her lumbar spondylosis was aggravated by her fall but this should have shown inflammatory changes in her MRI scan and would have resolved with analgesics and physiotherapy. I believe, at this stage, she should have a psychological assessment".

v. Tobago Regional Health Authority Therapy Referral dated 13/7/16: "…Diagnosis: Chronic lower back pain … lumbar radiculopathy…"

vi. Tobago Regional Health Authority Therapy Referral dated 07/11/14: "…Diagnosis: Severe lower back pain … lumbar radiculopathy…"

vii. Ministry of Health Referral Form dated 13/11/15 from Neurosurgery to Orthopaedic: "She was evaluated with MRI and X-ray which had no indication for any surgical intervention from our point of view."

viii. Scarborough General Hospital Occupational Therapy Report dated 24th November 2015: "Diagnosis: Chronic lower back pain with radiculopathy…"

ix. Social Welfare Division Medical Officer's Report dated 7th July 2016: "Nature of Illness or injury: Degenerative Disc & Joint Disease (Chronic lower back pain). Whether disabled from earning: Yes. Percentage of disability: 60%. Probable duration of disability: (6) six months."

x. Social Welfare Division Medical Officer's Report dated 11th January 2016: "Nature of Illness: Chronic lower back pain with radiculopathy)….Percentage of disability: 60%. Whether disability is permanent: for 6 (six) months."

55. It is clear from the medical reports that the Claimant sustained a mild injury to her lower back which caused her to experience severe pain affecting her ability to walk and bend. The 2014 report of the radiologist, Dr Sinanan, identified no significant abnormality in the Claimant's spine.

56. As early as 2016, the Claimant's assessment by Dr. Terry Ali, Orthopaedic Surgeon, concludes that there is no reason for her persistent pain and disability and recommends psychological assessment. It is also clear that by 2018 on examination by Dr. Toby, Orthopaedic Surgeon, the Claimant's symptoms were concluded to be subjective and there was no objective finding of lasting injury.

57. The Claimant also claims that it is unclear whether she would require surgery, however, there is indication in the 2015 Referral Form from the Ministry of Health attached to her witness statement that surgical intervention was not deemed necessary by the Neurosurgery Department.

b) The nature and gravity of the resulting disability;

58. The Claimant submits that she suffers continued numbness in her right lower limb, altered gait, inability to walk steadily or bend forwards, facet joint hypertrophy consistent with mild degree of spondylotic changes and chronic/severe lower back pain. She submits further that from the date of the accident to present, she has experienced so much pain that she has been unable to work and her everyday life has been hampered including cooking, standing, sitting, sleeping, swimming, playing with her grandson, gardening and attending or participating in church, the women's group or social work.

59. The Claimant asks the court to infer that she continues to experience her pain and discomfort from her disability despite the indication in the Social Welfare medical reports that the disability is expected to last approximately six months from the assessment. The later date of assessment is 7 July, 2016 which would have predicted disability lasting until January, 2017.

c) The pain and suffering which the party has endured and is likely to endure;

60. The Claimant produced the Scarborough General Hospital's Occupational Therapy Department's Report dated 1st December 2015, which stated, to support her evidence, that the pain and suffering experienced from the fall was as follows:

"Physical Dysfunction:

…Based on the assessment, she demonstrated the following problems which resulted in pain in the lower back. The following movements were found to exacerbate the pain in the lower back:

Leg raise

Rotation of the trunk

Bending

Lifting objects

Climbing steps

Sitting for long periods

Rising from a low position

Lying in bed, positions in bed could cause discomfort

Performing household duties i.e. sweeping, mopping, standing for long periods

Pt. ambulates slowly to minimize pain

Treatment Goals:

Monitor patient for depression

Provide support as needed and educate on coping strategies to decrease stress

Current Status:

Ms. Petlyn had ongoing therapy sessions since 2014 but continues to have pain in her lower back and complains of pain in her right hip. Patient reports using pain medication and a back trap but these provide temporary relief. She now ambulates slowly with a single point cane since she loses her balance without an assistive device. No improvements were noted in patient's overall physical condition with ongoing occupational therapy involvement. She continues to experience chronic lower back pain while performing the activities listed above.

Recommendations:
Ms. Petlyn is unable to return to her job as a Utility Assistant since her chronic back pain prevents her from performing her duties. As a result, she has a lot of stressors due to her financial situation…"

61. The Claimant claims that notwithstanding ongoing therapy sessions since 2014, she continues to have pain in the lower back, to which medication and a back trap only give temporary relief. Pain and suffering has been proven as a result of the injury but has not been proven to have continued past the period estimated by the 2014 to 2016 medical reports.

d) The loss of amenity;

62. The loss of amenity claimed is outlined at paras. 47-49 above. Again, the Claimant claims that this is continuing along with the pain and discomfort experienced due to the injury. However, this loss of amenity is neither supported by recent medical reports nor by the six month estimated permanence of the disability outlined in the Social Welfare Division Medical Officer's Reports.

e) The extent to which the pecuniary prospects of the injured party have been affected;

63. At the time of the incident in 2014, the Claimant was 51 years of age and is now 56 years old. She claims that, since the accident, she has been unable to work and continues to be unable to work.

64. The Claimant sets out cases with similar injuries showing comparative awards ranging from $46,000 to $80,000. The Defendant submits that a perusal of the case law with respect to similar injuries which suggests that a fair sum payable for an injury of this nature would be $60,000.00.

65. The cases of **Dexter Sobers v AG CV2008-04393; Claudia Samuel v Retrofit (Trinidad) Ltd CA Civ 105/1991** and **Carolyn Fleming v AG CV2007-02766** involving awards of $80,000 cited by the Claimant, involved some permanent disability/impairment which has not been proven to be the case in the present circumstance. Additionally, the Claimant's injuries are not parallel with those sustained in the case of **Irwing Williams v MIC Institute of Technology CV2017-01897** cited belatedly by the Claimant in reply submissions, despite there being a similar fall from a chair.

66. Indeed, the Claimant's injuries appear to be more in line with those suffered in **Andre Marchong v T&TEC; Galt and Littlepage Ltd CV2008-04045**. In that case, following the collapse of a chair on which he was sitting, the claimant sustained soft tissue injury and lumbar spasm which resulted in some narrowing of the lateral recess at L4-L5 with possible impingement of the traversing L5 nerve root and early disc desiccation at the L5/S1 level. He complained of continuous back pain and was awarded $60,000.00 for pain and suffering and loss of amenities.

67. As stated by Master Alexander at para. 13 of the **Lennard Garcia v Point Lisas Industrial Port Development Corporation Ltd CV2010-03061** decision, the award of general damages is a one-off award so it must be such that it would fully compensate for pain and suffering and all present and future losses occasioned by the tort, without granting an unmeritorious windfall. In the present case, the appropriate award is $60,000 in light of the pain suffered by the Claimant from the date of the incident in 2014 to the estimated period of disability by the medical reports up to 2016.

G. Order

68. The Claimant therefore succeeds in her claim against the Defendant for damages resulting from negligence. The Defendant has failed to prove any contribution to the accident by the Claimant.

69. It is hereby ordered that the Defendant pay to the Claimant:

i. The sum of $29,600 in special damages for loss of earnings with interest of 2.5% from the date of filing the claim to the date of Judgment;

ii. The sum of $60,000 in general damages with interest of 2.5% from the date of filing the claim to the date of Judgment; and

iii. Costs on the prescribed basis in the amount of $25,227.84.

……

Eleanor Donaldson-Honeywell

Judge

Assisted by: Christie Borely, JRC 1