THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain (Virtual Hearing)

Claim No: CV: 2018-03141

Between

Anthony Barrington *Claimant*

And

International Waterfront Resources Limited

First Defendant.

Hyatt Trinidad limited *trading as*

Hyatt Regency Trinidad *Second Defendant*

Before the Honourable Madam Justice Eleanor Donaldson-Honeywell

Delivered on: 27 January 2021

Appearances

Mr St.Clair O'Neil, Ms Akilah Paul and Mr. Gerard Gray, Attorneys-at-Law for the Claimant

Ms Alvia Mootoo and Mr. Ramnarine Mungroo, Attorneys-at-Law for the Defendants

JUDGMENT

A. Introduction

1. The Claimant, Anthony Barrington, seeks compensation from his employer ["the Defendants"] for injuries sustained while performing his night shift cleaning duties at the Hyatt Regency on 02 September 2014. His back was injured when, while

mopping, the floor a "blind" fell on him. The Claimant required medical treatment and was unable to perform other than light duties after this incident.

2. The Defendants dismissed the Claimant from his job as a Public Areas Attendant in the Housekeeping Department at the Hyatt Regency. They paid, up to 2020, for some medical services provided to him.

3. The Claimant's case is that his injuries were sustained due to the negligence of his employer, the Defendants. The Defendants accept that there was a duty of care owed by them to the Claimant based on the employment relationship. However, they deny all allegations of negligence on their part as employers since they took all reasonable steps to provide the Claimant with a safe system of work. The Defendants contend that the Claimant's injury was due to his own negligence in trying to move the blind as he should have either called the appropriate staff member to move it or simply mopped around it.

B. Issues

4. The issues to be determined, as to liability, are whether;
    a. the Defendants breached the duty of care to the Claimant and were therefore negligent,
    b. the Claimant contributed to any injury suffered.

5. The decisions made on these issues are explained further along in this judgment. At the outset, it can be said in summary that my finding is that the Claimant has proven, on a balance of probabilities, that the Defendants' negligence caused his injury. More specifically, the Defendants are liable for those injuries because, as the Claimant's Employer, they failed to adhere to the standard safe system of work that was in place for the cleaning of the premises.

6. This standard system included ensuring that the areas to be cleaned were cleared of movable objects such as the "blind" that fell on the Claimant. The Defendants

presented no evidence of their own as to contributory negligence by the Claimant. They relied on an unclear entry written by the Claimant himself on an injury form just after the incident.

7. The Defendants interpreted that entry as meaning that the Claimant had tried to move a "blind" that was left unmoved from the area where he was cleaning. They further say that "blind" really means "bar back". However, the entry is quite short and appears to be incomplete as it ends without a full stop. The Claimant's evidence before this Court is that in writing "blin" in the entry he was referring to the "bin" that he had tried to move. He says that the words "it fell" in his entry refer to the "blind" that fell on him.

8. There was no evidence in support of the Defendants' interpretation. The Defendants admitted no attempt was made to find out from the Claimant what words he intended to write on the injury form just after he was injured. Under cross-examination, the Defendants' witnesses admitted that there are misspelt words in the entry and that it is unclear.

9. In any event, the Claimant has established that the fact of the "blind" being left where the Claimant was required to clean was not in keeping with the standard safe system of work for the Claimant. It was negligent.

10. The Claimant's un-contradicted evidence is that the "blind" fell on him and he was injured. According to the Defendants, he ought to have further proven exactly how the movable "blind" fell. My finding is that the Claimant has sufficiently provided an explanation for this occurrence in his evidence. He says that he was mopping around the "blind" and at the same time, he reached for a bin. The "blind" fell on him. There is no cogent or compelling evidence to contradict that, on a balance of probabilities, this happened. The Claimant has succeeded in his case as to liability.

11. The remaining issue to be determined therefore is an assessment of the extent of the injury, loss and damage suffered by the Claimant and a finding as to the appropriate quantum of damages, interest and costs to be awarded.

C. Legal principles

12. Counsel on both sides, in written closing submissions, cited the guiding legal principles on the law governing Employer's Liability. In particular, Counsel for the Claimant cited **Augustine Prime v Attorney General CV2006-1057 (S377-2003)** and **Jamal Mohammed v The Port Authority Of Trinidad And Tobago CV2011-1833** in submitting that the Defendants breached a duty of care owed by them to the Claimant.

13. The decision in **Augustine Prime** concisely summarises the position at common law in relation to liability of employers:

> *"At common law, employers have a duty to take reasonable care for the safety of their employees during the course of their employment. This general duty which has been elaborated upon by the courts over the years involves the following four categories of specific responsibilities:*
>
> *a) The duty to provide competent staff;*
>
> *b) The duty to provide proper plant and work appliances and apparatus;*
>
> *c) The duty to provide a safe work place; and*
>
> *d) The duty to provide a safe system of work. It cannot be disputed that the Defendant owed a duty to the Claimant to take reasonable care to provide a safe place and a safe system of work.*
>
> *There are three criteria for the imposition of a duty of care and these are:*
>
> *1) Foreseeability of damage;*
>
> *2) Proximity of relationship; and*
>
> *3) Justice and reasonableness."*

14. In the present circumstances, it is the safety of the Claimant's workplace and the system of work provided by the Defendants that is challenged.

15. A safe system of work may involve the organisation of the work, the procedure to be followed in carrying it out, the sequence of the work, the adhering to safety precautions and the stage at which they are to be taken, the number of workers to be employed and the parts to be taken by them, and the provision of any necessary supervision - **Clerk and Lindsell on Torts 22nd Ed. pg. 915**.

16. In **Darryl Damian Abraham v The Attorney General of Trinidad and Tobago CV2011- 03101** at page 26 the court stated:

    "...the fact of prescribing a safe system of work does not sufficiently discharge an employer's duty, unless it is also accompanied by steps reasonably to ensure it is followed, such as, for example, inspection and supervision."

17. The Claimant also cites the statutory duty of an employer under the **Occupational Safety and Health Act, Chap. 88:08** ection 6(2) which provides for the general duties owed to an employee in the course of his or her work, which include:

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

    (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of equipment, machinery, articles and substances;

    (c) the provision of adequate and suitable protective clothing or devices of an approved standard to employees who in the course of employment are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury and the provision of adequate instructions in the use of such protective clothing or devices;

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

    (e) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that

is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(f) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards amenities and arrangements for their welfare at work; and

(g) compliance with sections 7, 12, 37, 46, 75 and 76, Parts III and IX and such other duties that may be imposed on him by this Act."

18. Some of the cases cited by Counsel for the Defendants were not applicable in determining whether the Defendants were liable as Employers in the instant circumstances. It was acknowledged, for example, that some of the cases, such as **Kirpalani's Limited v Wilma Hoyte App No 77 of 1971,** addressed the law on occupier's liability instead of the law governing employer's liability.

19. Counsel for the Claimant also cited the case of **Flaherty v Smith Coggins Limited [1951] 2 Lloyd's Rep 397** in contending that the Claimant ought to have provided evidence on what negligence by the Defendants caused his injuries. The Defendants' point is that the case for the Claimant should have been such that "*the matter was not left in the region of surmise and conjecture so that the onus of proof upon the plaintiff had not been adequately discharged*." However, in the instant case, there was no room for conjecture, as the Claimant's case is that the Defendants' failure to move the "blind" was negligence. Questions as to how the "blind" fell are not therefore critical to proving the Claimant's case and there is no need for conjecture in that regard.

20. Likewise the cases such as **Makita (Australia) Pty Ltd v Sprowles, [2001] NSWCA 305 (2001)** and **CV 2014-04027 Erica Henry v Massy Stores (Trinidad)** dealt with allegations of negligence that had to do with the characteristics such as slipperiness, defects, unevenness or the dangerous state of the particular items that caused a person to fall. Those circumstances are not relevant here so the

cases are distinguishable and unpersuasive in supporting the Defendants' case. In any event, the Defendants presented no evidence as to the stability of the movable "blind" left in an area that should have been cleared for cleaning.

D. Analysis of the pleadings, evidence and submissions on Liability

21. The Claimant was his own sole witness as to liability at the Trial. As to his injuries, the Claimant filed hearsay notices to rely on medical reports disclosed. However, the Defendants filed a counter notice that one of the doctors, Neurosurgeon Dr. St. Louis be called as a witness. He gave evidence at Trial in response to a summons by the Claimant.

22. The Defendants called three witnesses at trial: Katheryn Matthews - Team Leader Housekeeping at the HYATT, Kirt Francis - Team Leader Housekeeping at the HYATT and Aka Ali-Kerr - Human Resources Director at the HYATT.

23. The Claimant's pleaded case is as stated in the introductory paragraphs of this Judgment. However, further detail is provided at paragraph 10 of his pleaded case that when the "blind" fell on him, it caused him to "pitch backwards." This detail is later contradicted in the Claimant's Witness Statement where his sworn evidence was that when the "blind" fell, it caused him the "pitch forward". Counsel for the Defendants cross-examined the Claimant about this inconsistency. Counsel also argued in written closing submissions that the difference between "fell backward" or "forward" provides proof of lack of credibility on the part of the Claimant.

24. My finding is that the Claimant was not discredited by what could have been a typographical error. This is so because the fact that the Claimant was injured is not in dispute. Whether he fell forward or backward is neither material nor relevant based on the case put forward by either party.

25. It is not in dispute that members of the housekeeping staff were neither authorized nor trained to move blinds left in the way of their cleaning operations. This was the responsibility of the Banquet Section staff.

26. The Claimant's case is that blinds were used to section off different parts of the restaurant area to give guests privacy during opening hours. When not in use, the blinds had to be removed to allow the House Keeping Staff to clean the restaurant. The restaurant was closed during the night shift when the incident occurred.

27. Under cross-examination, the Claimant was resolute in his answers when asked whether it was not unusual for blinds to be seen in the area to be cleaned. He said "*No. Nothing should be present at that time [3.00am]. It should be clear to clean*". When asked whether it was normal to leave the blinds in the room for the next day service, he said "*No not in the open as it was. It would be more in a corner*". The Defendants' witnesses were also *ad idem* on the point that for the restaurant to be cleaned, the procedure was that blinds were removed.

28. The Claimant's pleadings and evidence are consistent in saying that his supervisor was Kirt Francis. He pleaded that, prior to the incident, he and other staff members complained to Mr. Francis that blinds were not always removed by the Banquet Section Staff. These complaints, he said, were made during nightly meetings before cleaning shifts. It is not in dispute that such meetings took place but Mr. Francis, in his testimony on behalf of the Defendants, denies hearing any complaints about blinds not being removed.

29. There is some support for the fact that such complaints would have been made. The Claimant reiterated the substance of the complaints in a short entry on the Associate's Report Injury Form which he said was given to him by his supervisor after the incident. The Claimant's entry in response to the question "*What could have been done to prevent this injury/near miss*?" stated, "*People should **remember** to not leave thing in the open*" [Sic][Emphasis added]. The Claimant's

use of the word "remember" suggests that he is reminding his employer about something previously discussed.

30. The main plank of the Defence pleaded by the Defendants was another entry made by the Claimant on the Injury Form, in response to "*Describe step by step what led up to the injury/near miss. (Continue on the back if necessary*)". The Claimant's entry was "*When I was mopping and was applemting lo move the blin when it Fell" [Sic].*

31. The Claimant's case was that Kirt Francis, as the supervisor on duty that night, gave him the form to complete at a time when he was in severe pain after the incident. He did the best he could. Kirt Francis, in his oral testimony, denied that he was on duty that night. Instead, another witness for the Defendants, Katheryn Matthews, said she was the supervisor that night and she gave the Claimant the form to complete.

32. The Defendants pleaded that the said report was made contemporaneously and they "*shall rely on same at the trial for its full meaning and effect*." However, under cross-examination, all of the Defendants' witnesses admitted that there was no indication in their witness statements that the Claimant was asked what he meant by the unclear entry. Furthermore, none of the Defendants' witnesses said they saw what happened to the Claimant that night.

33. In the Defendants' submissions, a statement is made that "*The Claimant admitted that if the Court was to construe the word "blin" to be "bin" the sentence would make no sense as there is no reference anywhere in the report that the blind fell on him*". However, there is no indication of such an admission in the Court's record. In fact, the record reflects that the Claimant clearly indicated under cross examination, that in the words "it fell" in the entry in question, "it" refers to the "blind" which fell on him.

34. All the Defendants' witnesses admitted that no investigation was carried out to determine what had transpired with the "blind". Ms. Matthews, though claiming to have been on supervisory duty that night, could not explain anything about the positioning of the "blind" before or after the incident. There was no inspection of the accident scene. Mrs. Ali-Kerr admitted under cross-examination that there were cameras in the restaurant area where the "blind" fell on the Claimant but that no footage of the incident was provided.

35. The other aspect of the Defendants' case that they were not negligent was premised on the Claimant's entry about the "blin". The Defendants treated it as a given fact that the Claimant tried to move a "blind" left in the restaurant while he was cleaning. They contend it was not his role to do so and he was negligent to have attempted it thereby causing his own injury. According to the Defendants' pleadings and the testimony of their witnesses, the standard procedure for cleaners was that, if there is anything left in the area to be cleaned, the cleaner should "*summon the staff from Food and Beverage to remove same from the area to be cleaned or simply clean around the item*".

36. However, under cross examination, two of the three witnesses, Mr. Francis and Mrs Ali-Kerr, admitted that it was standard policy for the restaurant to be clear in order for it to be cleaned by the Claimant and others in the Housekeeping Department. The options of summoning other staff to move items that ought not to have been left to obstruct the proper cleaning of the premises or cleaning around the item left, were mere contingencies for situations where the Defendants fell short in having the area cleared for cleaning.

37. The Defendants' argument against their own liability is further that there is no evidence that the "blind" was unsafe. However, my finding is that the lack of safety of the "blind" itself is not the issue of relevance. It is whether it was safe to leave that movable object in an area, which should have been cleared for cleaning.

38. The un-contradicted case is that the standard practice was to move such blinds to allow for cleaning of the floor. Only as a last resort would cleaners be expected to do a shoddy job by cleaning around objects such as blinds left in place. The obvious result of such an approach would be an unclean area of the floor left unattended to which would be revealed once the blind was later moved. Questions could then be put by the employer to the cleaners as to why the floor was not properly cleaned.

39. In any event, in this case the Claimant's case is not that he tried to move the blind. It is that he was mopping the floor around the blind. He stopped to move a bin. "It", i.e. the blind, fell on him.

40. The particulars of negligence which remained unsatisfactorily addressed by the Defendants were as follows:
    a. Failing to take any or any reasonable care to see that the Claimant would be reasonably safe in using the premises whilst performing his work duties;
    b. Failing to take reasonable care for the Claimant's safety and exposing him to unnecessary risk and injury;
    c. Failing to institute or enforce any or any adequate system of maintenance and inspection of the restaurant where it would be foreseeable that the blind could fall and/or become unsafe for the Claimant and other users of the restaurant;
    d. Failing to give the Claimant any or any adequate or effective warning of the presence of the blind in the restaurant;
    e. Failing to have the relevant staff remove the blind from the restaurant;
    f. Causing or permitting the blinds to be or to become or to remain a danger to the Claimant;
    g. Permitting the Claimant to enter the restaurant and assume duties when they knew or ought to have known that it was unsafe and dangerous for the Claimant to do so;
    h. Failing to place any barrier or warning indicating that it was unsafe for the Claimant to enter the restaurant and assume duties;

i. Failing to discharge the common duty of care to the Claimant and being in breach of the said duty of care.

41. In all the circumstances, the Claimant proved his case as to liability of the Defendants in negligence.

E. Assessment of Damages

42. In assessing general damages for personal injury in this matter, the factors to be considered, as laid down by **Wooding CJ in Cornilliac v St. Louis [1965] 7 WIR 491**, are followed:
    a. The nature and extent of the injuries sustained;
    b. The pain and suffering endured;
    c. The nature and gravity of the resulting disability;
    d. The loss of amenities; and
    e. The loss of pecuniary prospects.

43. The Claimant suffered the following injuries:
    a. Other intervertebral disc displacement, lumbar region - M51.26 (primary) and Other dorsalgia- M54.89 - (medical summary West Indian Neurosciences dated the 4th August 2016 and 16th March 2017 annexed at exhibit "E" to the Claimant's Statement of Case)
    b. Disc degenerative disease at L4-L5 and L5-S 1 levels with mild posterior bulges indenting the foraminal fat - (Medical report of Dr Vijay Kandimalla dated the 4th May 2016 annexed at exhibit "E" of the Claimant's Statement of Case)
    c. Mild grade I retrolisthesis of L5 over S I vertebra and Disc bulge at L4/5 and L5/S1 levels causing mild mass effect over the thecal sac - (Medical Report of Dr Kedar Athawale dated 23 June 2015 annexed at exhibit "E" of the Claimant's Statement of Case)
    d. Chronic Lower Back Pain secondary to Lumbar Spondylosis and Intervertebral disc bulges at L4-L5 and L5-S1 and Permanent partial

disability at 11%- (Medical Report of Dr Godfrey M. Araujo dated the 23rd day of August 2018 and annexed to the Claimant's List of documents as item number 25)

e. Permanent partial disability of 5% due to lower back pain (Medical Report of Mr. Rupert Indar dated 20 April 2016)

44. As a result of these injuries occasioned by the accident in September 2014, the Claimant claims that his pain persists to this date. This is supported by a series of medical reports up to 2018. The Claimant had been receiving treatment from the Defendants' doctors, including physiotherapy up to March 2020. This treatment, the Claimant claims, was abruptly discontinued by the Defendants and Ms Ali-Kerr stated under cross-examination that such stoppage was on the advice of the Defendants' insurers.

45. The Claimant claims he can no longer sit or stand for long periods, lift heavy objects or play with his son. He states that he cannot carry out physical activities which require bending and that the injury has affected his relationship and sexual performance with his common law wife. He states that he feels ashamed that he cannot provide for his family financially.

46. In relation to pecuniary prospects, the Claimant was dismissed from his job at the Defendants' establishment due to the injuries suffered. It is not disputed that the Defendants did not offer the Claimant any alternative lighter duties but elected to dismiss him.

47. The Claimant claims he has since been unable to retain steady work. He never went beyond the level of CXC O'levels in which he obtained two passes in English and Geography. Counsel for the Claimant submits that the Claimant has worked most of his adult life in manual labour-intensive fields.

48. The Claimant cites the case of **CV 2012-00398 John Boneo v Point Lisas Terminals Limited and Point Lisas Industrial Port Development Corporation Ltd (PLIPDECO)**

as a comparator in which an award of $140,000.00 was made in general damages for an injury to the claimant's back due to a fall at his workplace. The claimant in that matter was diagnosed with having "L5 S1, nerve root irritation secondary to low back strain on lumbar spondylosis".

49. This, Counsel for the Claimant submits, is highly comparable to the diagnosis of the Claimant in these proceedings who was assessed as having "Chronic Lower Back Pain secondary to Lumbar Spondylosis and Intervertebral disc bulges at L4-L5 and L5-S1 levels" per the report of Dr. Godfrey M. Araujo dated 23 August 2018.

50. Counsel for the Defendants submits that an award of $90,000 is more suitable in the present case citing several decisions involving similar injuries to the Claimant's – **Ravi Dabideen v Century Eslon Ltd CV2010-02916; Gerard Antrobus v Port Authority of Trinidad and Tobago CV2009-00726; Carolyn Fleming v AG CV2007-02766; Kenny Toussaint v Tiger Tanks Unlimited & Bankers Insurance Company of Trinidad and Tobago Ltd CV2014-00513; Dexter Sobers v AG CV2008-04393; Jamal Mohammed v Port Authority CV2011-01833; Marcel Benjamin v Lennox Petroleum Services Limited CV2011-02393; Kurlene Pierre v Miles Almandoz & Company Limited; Errol Antoine Trinidad and Tobago Insurance Limited CV2008-04558**.

51. Indeed, the cases of **Antrobus** ($90,000 awarded in 2012) and **Dabideen** ($100,000 awarded in 2012) do bear some similarity to the present Claimant's circumstances in relation to the nature of the injury, pain experienced and reduced capacity to work.
52. However, in both **Kenny Toussaint** & **Marcel Benjamin,** the court made findings based on the evidence that the claimants' pain and injuries were not as severe as portrayed and awards of $90,000 in general damages were made in 2016 and 2014 respectively. In **Dexter Sobers**, the award of $80,000 was made in circumstances where the claimant experienced excruciating pain on the day of the accident and the following day when he was discharged from hospital. His pain continued but gradually decreased over a period of 18 months. His ability to move around as time

passed improved. These cases are dissimilar and less severe than the present Claimant's experience.

53. It is also notable that the **Kurlene Pierre** High Court decision was overturned on appeal, the Court of Appeal being of the view that the award of $70,000 in general damages for the appellant's injuries, pain and suffering and loss of amenities was inordinately low and therefore, an award in the sum of $110,000.00 would be more appropriate.

54. The injury in that case was slightly more severe than that in the present case. The claimant was assessed at 15% permanent partial disability. In that case, there also was a noted absence of up-to-date medical reports of the claimant's condition which left the Master to guess the appellant's medical condition at the date of the assessment. The Court of Appeal, however, increased the award owing to the fact that all the medical reports supported the claimant's complaints of pain and prescribed medication to her, and that it was accepted that the claimant would live with moderate pain at best.

55. In **Carolyn Fleming**, the court, in making an award of $80,000 in 2012, considered the dicta of Master Basdeo Persad Maharaj in **Elisha Sohan v Henry Hackett HCA 513 of 1978** which also mirrors the circumstances in the present case:

    "[T]he injury itself is not a serious injury in that it is not dangerous to life but it is serious enough to cause the Plaintiff persistent pain and the injury will be permanent; it will affect the Plaintiff's living."

56. In the circumstances of the present case, having no evidence to the contrary, it is accepted that the Claimant's pain and suffering persists to date, affecting his ability to perform certain tasks generally involved in the manual labour he is accustomed to doing. Further, there is no evidence to contradict the Claimant's loss of ability to perform any physical activities that require bending and lifting. This is weighed against the permanent partial disability rating being relatively low at 5% in making an award of $100,000 in general damages.

Loss of Earnings

57. The Claimant claims loss of earnings from the date his employment with the Defendants was terminated (20 May 2016) to the date of filing this claim (30 August 2018). He claims his salary of $28.50 per hour for an 8-hour work day, 5 days a week. This is calculated at $4,560 per month which equals $127,680 for the 28-month period.

58. The Defendants' submission in response is based on failure to mitigate loss – **British Westinghouse Co. v Underground Ry [1912] AC 673**. The Defendants argue that the Claimant has not shown that he made real/sufficient efforts to find alternate employment commensurate with his capabilities.

59. The Claimant avers that he worked at a hardware for approximately 7 days and at a wholesale establishment for 4 days but had to leave both due to his inability to stand for long periods or do any lifting. He also states that he worked at a carwash belonging to a family friend for a period of 5 to 6 months. He states that he left the carwash when a murder took place on the premises and did not return for fear of his life.

60. Essentially, the Claimant has demonstrated attempts to find alternate employment. Indeed with the Claimant's qualifications and experience mainly in manual labour, it will be difficult but not impossible to find work that matches his abilities. Thus far, the Claimant has had to hope for understanding employers and favours from relatives to accommodate his disability. However, he has satisfied the court that during this period he made commendable attempts. It is notable that the Defendants themselves, though presumably employing a wide range of persons for different roles, either made no attempt or were unable to find another role for this Claimant.

61. Therefore, for the period from the date of the incident to the filing of the claim, the amount claimed less the amounts earned during those periods of work will be awarded:

a. Hardware: $150 per day for 7 days - $1050
b. Wholesale place: $160 per day for 4 days - $640
c. Car Wash: *estimated* $150 per day for 6 months - $18,000

TOTAL **- $ 19,690**

62. Therefore an award of $107,990 will be made to represent the loss of earnings of the Claimant.

Future Loss of Earnings

63. The Claimant claims future loss of earnings on a multiplier/multiplicand basis using a multiplicand of 16. This multiplicand is submitted instead of the remaining 28 working years of the Claimant to give allowance for the contingencies of life that may occur. This amounts to an award of $875,520.

64. The Defendants submit that a **Blamire** award is appropriate in the present circumstances i.e. a global approach to making an award for future earnings given the number of imponderables in the circumstances of the case – **Blamire v South Cumbria Health Authority [1993] PIQR Q1 CA**. They suggest a lumpsum of $70,000.

65. Although it has been determined that the Claimant's job prospects have been diminished by his disability, the mildness of the disability rating, the lack of up-to-date medical information, the potential for the Claimant's pain to decrease over time and the likelihood of Claimant's finding appropriate employment in the future must be taken into account. The fact that the Claimant has in fact been able to perform certain tasks in the car wash shows his ability to work is not entirely lost. Although the Claimant reasonably reduced the multiplicand, an award in the amount of the Claimant's full working salary cannot be awarded.

66. With dedicated efforts at securing a livelihood, the Claimant ought to be able to find work in the future that takes his abilities into account. However, in the likely event that this proves difficult or takes some time, the Defendants, having failed

in their duty to the Claimant, ought to make some compensation for these difficulties.

67. An award of 10% of the Claimant's salary for the period suggested by the Claimant in the total sum of $87,552 is considered to be adequate as compensation for future loss of earnings.

Future Medical Care

68. The Claimant has not made any submission on future medical care required. In his Statement of Case, future medical expenses were stated to be "a long period of physiotherapy at a cost to be determined". The Claimant, since the last assessment by Dr Araujo in 2018, underwent numerous physiotherapy sessions up until May 2020. There is no medical evidence to support any future medical expense in this regard from the Claimant. No award will be made under this head.

F. Conclusion

69. Based on the foregoing analysis, the Claimant has proven his case that the Defendants were liable for the injuries he sustained on the job on September 2014. The Defendants breached their duty of care to their employee, the Claimant, when they failed to provide a safe system of work on the night in question by failing to have the appropriate persons remove the blind/bar back from the area that the Claimant was instructed to clean.

70. As a result, the Claimant sustained injuries and loss and he has proven that he will continue to be impacted by these injuries to some extent. The Claimant's pain, suffering, loss of amenities and permanent partial disability of 5% are supported by the medical reports produced.

71. **It is hereby ordered** that the Defendants compensate the Claimant in the following amounts:

a. The sum of $100,000 in general damages for pain and suffering and loss of amenities with interest of 2.5% from the date of filing the claim to the date of Judgment;
b. The sum of $107,990 in special damages for loss of earnings with interest of 2.5% from the date of filing the claim to the date of Judgment;
c. The sum of $87,552 in damages for future loss of earnings;
d. Costs on the prescribed basis in the amount of $52,309.26;
e. Stay of execution for forty-two (42) days.

E J D. Honeywell
.....

Eleanor Donaldson-Honeywell

Judge