REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV 2008-03165

BETWEEN

ANTHONY CHIN-A-FAT

Claimant

AND

VALVE COMPONENTS LIMITED

First Defendant

PETROTRIN

Second Defendant

Before the Honourable Mr. Justice Vasheist Kokaram

Date of Delivery: 10th June 2011

Appearances:

Mr. Kevin Ratiram for the Claimant
Mr. Ronnie Bissessar instructed by Ms. Jessica Maicoo for the first Defendant
Mr. Neal Bisnath instructed by Mr. Sherwin Seenath for the second Defendant

ORAL JUDGMENT

1. I note with interest and repeat the judgment of Kangaloo, JA, in ***Thomas v Forde*** [1] when he said and I quote:

   "The assessment of damages for a personal injuries claim should be a straight forward arithmetical exercise. The guidelines which inform a court's decision in this regard are well known; the point of departure invariably being the seminal Court of Appeal case of Cornilliac v St. Louis. However, this area of law has generated vast array of litigation because far too often sight is lost of two fundamental principles: first, that a personal

[1] *Kangaloo, JA, Thomas v Forde Civ App 25 of 2007.*

injury claim must never be viewed as a road to riches and secondly, that the claimant is entitled to fair, not perfect compensation."

2. I understand this to mean that the awards in this jurisdiction unlike other jurisdictions particularly in the United States of America are conservative by nature and secondly that the Claimant must put before the Court, credible and reliable evidence to convince the Court to award him fair compensation. It is fair and not perfect because of the many factors that are incapable of prediction on the true effect that an injury can have on the life of a claimant.

3. With this opening remark I turn to the assessment of damages of the Claimant's injuries sustained at a "blow out" on an oil rig located at the North Soldado Field, on 25th August 2004. The facts surrounding the blow out were set out in my judgment on liability in which I found both the First and Second Defendants liable to pay the Claimant's damages, with Valve Components responsible for 25% (twenty-five percent) and Petrotrin 75% (seventy-five percent).

4. At the assessment of damages the Claimant alone gave evidence. His evidence in chief is found in his witness statement tendered and marked ***ACF1.*** There was no cross examination of this witness. I also take into account that both the Claimant and the second Defendant had filed a witness statement with additional witnesses. Those witnesses however, were not called by the Defendant.

5. From the outset it is noted as a matter of evidence in so far as there is no cross examination as Phipson on Evidence observes:

   "In principle, a party was required to challenge in cross examination the evidence of any witness of the opposing party. If you wish to submit to the court that the evidence should not be accepted on that point, the rule applies in civil cases as it does in the criminal. In principle that rule should not be one of them. If a party has decided not to cross-examine on a particular important point, he will be in difficulties submitting that the evidence should be rejected."

6. In the Statement of Case the Claimant pleaded that as a result of the explosion, he suffered the following injuries:
   a. Dislocated talus

b. Fracture of left fibula
c. Permanent partial disability of 35%
d. Mild bilateral deafness
e. 8.5% binaural hearing handicap
f. He further alleges that he is unable to run and cannot play cricket or football
g. Walks with the assistance of a cane
h. Has difficulty sleeping
i. Has difficult engaging in sexual intercourse
j. Is handicapped on the labour market.

7. In addition to the examination in chief of the Claimant setting out the details of his injury and his resulting disability there are the following medical reports which were entered into evidence and which were annexed to his witness statement:
   a. Medical report of Francis Mulrain dated 23rd May 2006, 27th June 2005, 15th November 2005, 12th January 2006;
   b. Medical report of Dr. Maharaj dated 6th July 2006, 17th June 2005, 2nd May 2006;
   c. Medical report of ENT specialist Naresh Armoogum dated 25th October 2006, 5th July 2006;
   d. Medical report of Marlon Mencia dated 3rd February 2011.

8. For the purposes of this assessment I have identified the main injury sustained by the Claimant as one of a fractured ankle. Mr. Mencia describes it in his report on 3rd February 2011, as a Weber type C fracture dislocation of the left ankle. Mr. Mulrain ascribed a permanent partial disability of that injury of 35% in 2006 and Mr. Mencia as well in 2011. There is a secondary injury of mild deafness which was assessed at 8.5%. Parties agreed that consequent to sustaining his injury, parties agree on the date his employment ceased at the First Defendant and that he was paid workmen's compensation in the sum of $76,010.00.

Special Damages

9. Counsel for the Claimant argued that the Claimant's evidence has not been subject to cross examination and therefore should be accepted in its totality by the Court in making its assessment. Attorney for the Second Defendant however submitted that as the Claimant has

failed to discharge the strict standard of proof of special damages in proving his lost wages or his alternative income he would not be entitled to any special damages at all, taking into account the payment of workmen's compensation.

10. I agree that in an assessment of damages the Claimant cannot throw figures at the head of the Court with the expectation that the Court will make an award in kind. *See **Bonham Carter v Hyde Park Hotel***[2] and the authority *of* ***Gillian Roxanne Isaac v Shaun Solomon and anor.***[3]

11. However without derogating from that salutary rule that the Claimant must strictly prove his special damages I accept equally two principles of importance: first that the degree of strictness depends on what is reasonable in the circumstances ***Uris Grant v Motilal Moonan Ltd and Frank Rampersad***[4] and ***Mohammed v Furness Trinidad Limited***[5] and second where there is no challenge to prima facie evidence of damages incurred then the same can amount to proof depending on the particular circumstances of the case. ***Richardson v Kiss Baking Company Limited.***[6]

12. The Claimant has claimed the sums of $2,410.00 for Doctor Visits and Medical Reports and $1,700.00 for transportation.

13. I am of the view that both expenses were reasonably incurred as a result of the injury having regard to the necessity to seek treatment and transportation due to decreased mobility. There is prima facie evidence before me which is unchallenged in the form of the documentary evidence.

14. I therefore award those sums in special damages for Doctor Visits and Medical Reports and Transportation.

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[2] *Bonham Carter v Hyde Park Hotel [1948] 64 TLR*
[3] *Gillian Roxanne Isaac v Shaun Solomon and anor CV2007- 04400.*
[4] *Uris Grant v Motilal Moonan Ltd and Frank Rampersad CA No. 162 of 1985*
[5] *Mohammed v Furness Trinidad Limited CA Civ. 46/1993*
[6] *Richardson v Kiss Baking Company Limited HCA 696/1996.*

Loss of Earnings

15. The Claimant is entitled to his pre trial loss of earnings. See Kangaloo JA in ***Theophilus Persad v Peter Seepersad and Capital Insurance Limited***[7] and in the Court of Appeal judgement of ***Mario's Pizzeria Ltd v Hardeo Ramjit***[8]**.**

16. The accident occurred on 25th August 2005 and the period I will assess pre trial loss is from date of injury to 10th June 2011.

17. In terms of salary there is prima facie evidence of earnings at the rate of $2,924.00 a fortnight or $5,848.00 per month or a net figure of $3,386.00. See ***Peter v Theophilus.***[9]

18. The Claimant was 100% incapacitated up to April 2006. I therefore award figures in the sum of $3,386.00 by 8 months $27,088.00.

19. The unchallenged evidence is that from the date of termination the Claimant has not found full time employment. However he has found private jobs as a technician with an average income of $2,500.00. However, the Claimant has a duty to put before this Court proper evidence as to his wages. Nevertheless, I will still make my assessment based on that sum as asserted by him. On the period of April 2006 to June 2011 for a period of sixty-two (62) months I have assessed his net salary at $3,386.00. From April 2006 he was not 100% incapacitated. He was, having regard to his income earning capacity, even though at a disadvantage on the labour market, still capable of earning an income. I do take into account his limited mobility, with the use of the cane and medical evidence demonstrating his decreased opportunities on the labour market. However they do not demonstrate a total incapacity and there is no reason advanced medically why the Claimant cannot obtain alternative employment which does not require stress and use of the lower limb as observed by his doctors. Furthermore, there is no evidence at all of a search for suitable alternative employment.

20. In Mr. Mencia's report he observes as follows:

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[7] *Kangaloo JA, Theophilus Persad v Peter Seepersad and Capital Insurance Limited Civ. App 136 of 2000*
[8] *Mario's Pizzeria Ltd v Hardeo Ramjit CA 146 of 2003.*
[9] *See 7*

"Mr. Chin-a-Fat sustained a sever fracture/dislocation of his left ankle following indirect trauma on the 25th August, 2004. His treatment has been satisfactory using standard orthopaedic techniques. He has developed post traumatic arthritis at the ankle joint with narrowing of the joint space as well as a synostosis (cross-union) of the distal tibio-fibula joint which now limits his range of movement and affects his ability to ambulate comfortably. Radiological changes far exceed the clinical picture in Mr. Chin-a-Fat's case and this is not unusual in ankle arthritis. Based on the description of his job related activities I do not recommend that he returns to that level of physical activities as this in my opinion would accelerate the already present arthritis at the ankle and subtalar joint. If his ankle continues to be painful and progressively deteriorates with time which is the likely course of events, he may require an ankle arthrodesis or indeed a more extensive procedure with fusion of the subtalar joint. At present I assess his permanent/partial disability at thirty-five (35%) percent."

21. Even with his diminished earning capacity up to the date of the trial assessment I must also give credit for the sum of $2,500.00 earned by him and the payment of $76,010.00 as workmen's compensation. I have therefore calculated the pre-trial loss at $3,720.00.

22. Special damages are in the sums of $2,410.00, $1,700.00 & $3,720.00 = 7,830.00.

General damages

23. There are two components: Pain suffering and loss of amenities and loss of future earnings. For pain suffering and loss of amenities, I have applied the 'Cornilliac' principles:
    i. The nature and extent of injuries sustained
    ii. The nature and gravity of resulting physical disability
    iii. Pain and suffering
    iv. The effect of the pecuniary prospects

24. I have considered the comparable award referred to me by both parties. I have found the following cases particularly helpful and there are some more recent awards in: ***Johnson Ansola v Ramnarine Singh, Ganesh Roopnarine and the Great Northern Insurance***

Company Limited[10], Kimkaran & Ors v Boodoo & Ors[11], Cindy Kanhai v Miguel Mohammed & Ors[12].

25. Having regard to those cases and the injuries explained in the witness statement of the Claimant, I will ascribe a range of awards of this injury at $75,000.00 to $150,000.00.

26. I have examined the medical reports and the witness statements. I have considered both the ankle injury and damage to the ear. I have considered the immediate pain and physical injuries sustained at the explosion. The resulting disability is limited mainly to the ankle injury with subsidiary injury to the ear. The claim of decreased sexual intercourse is unsubstantiated by the medical reports.

27. I will award general damages for pain and suffering in the sum of $105,000.00.

Loss of future earnings

28. So far as the loss of future earnings is concerned the Claimant is entitled to loss of future earnings and not loss of earning capacity. That distinction is noted Kangaloo JA, judgment in **Munroe Thomas v RBTT[13]**. I am of the view that the promotional prospects on the evidence as stated in the witness statement are speculative and I do not factor that in this award.

29. But the fact remains, that the medical evidence demonstrates that he could resume work, although not in the field in which he was first employed. I would adopt the approach of **Munroe Thomas.** I am not satisfied with the medical evidence as demonstrated that he is unemployable. To the contrary the latest report implies that he is fit to work in other activities. I know this restriction has impeded on his ability to work, but I have no details as to what that work entails or how his disability was affected. I have no evidence of his attempt to find work.

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[10] *Johnson Ansola v Ramnarine Singh, Ganesh Roopnarine and the Great Northern Insurance Company Limited HCA 3487/ 2003*

[11] *Kimkaran & Ors v Boodoo & Ors HCA 1493/ 1996*

[12] *Cindy Kanhai v Miguel Mohammed & Ors CV 2010-01087*

[13] *Munroe Thomas v Malachi Ford; RBTT Bank Limited C.A.CIV.25/2007*

30. I admit that in using the lump sum figure it is an arbitrary sum. However, it is the best that I can do in the circumstances. I will award a lump sum of $80,000.00.

31. The award therefore is as follows:
    a. Special damages in the sum of $7,830.00 which is the culmination of $2,410.00, $1,700.00 and $3,720.00.
    b. General Damages $105,000.00
    c. Future loss of earnings $80,000.00

32. With regard to interest: I have applied 6% on the general damages from the date of filing the writ to the first of January 2008.

33. The special damages interest runs from the date of the accident. On special damages the award in $7,830.00 with 6% per annum on that sum from the date of the accident to the 1st January 2008 and 4% thereafter to the date of judgment. In relation to general damages the sum of $185,000.00. The interest will run on the sum of $105,000.00, that is the award of pain and suffering and loss of amenities at a rate of 12% per annum from the date of filing the writ, 1st January 2008 and 7% thereafter to the date of judgment.

34. Costs to be paid by the Defendants to the Claimant on the prescribed scale to be quantified by this Court in default of agreement.

35. This is the general order I have given and based on the findings on liability the award will be split between both Defendants in the payment of this sum. I will leave it up to the parties to work out prescribed costs. If there is a difficulty in quantifying you can return to the Court.

36. The order is stayed pending the determination of the Appeal.

Vasheist Kokaram

Judge