IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA NO S-499 of 1995

BETWEEN

KELVIN RAMJASS **Plaintiff**

AND

ALLAN BAHORIE **1st Defendant**
BOODHLAL GOOKOOL **2nd Defendant**
WINSTON JAGROO **3rd Defendant**

****

Before: Master Alexander

Appearances:
For the Plaintiff: **Mr Andre Rajhkumar**
For the 2nd Defendant: **Mr Prakash Maharaj**

REASONS

I. INTRODUCTION

1. This is a matter of some vintage. The claim arose out of an accident which occurred on 17th May, 1991. On that day the plaintiff was a passenger in a maxi taxi registration number HAF 2734 (hereinafter "the maxi") being driven along the SS Erin Road, Quarry Village, Siparia by the first defendant, when it collided with a taxi registration number HAP 1880. The plaintiff's claim is that he sustained severe personal injuries, loss and damage as a result of this accident. At the time of the accident, the plaintiff was 26 years and a labourer. He was admitted to the San Fernando General Hospital (hereinafter "SFGH") on the day of the accident where he was treated and discharged 10 days thereafter on 27th May, 1991.

2. This claim was filed on 27th April, 1995 seeking compensation for damages inclusive of loss of earnings, medical reports, fees and medication, travelling and extra nourishment and toiletries. It is necessary at this stage to set out briefly some facts relative to this claim to put it within the proper perspective as follows:

   i. The second defendant against whom this assessment has proceeded was the owner of HAP 1880 and the third defendant the driver on the date of the accident.

   ii. Judgment in default of defence was entered on 18th March, 1996 against the second defendant (hereinafter "the said default judgment").

   iii. On 3rd December, 2003 when this matter came up for trial before Tam J it was ordered as follows:

      (a) By Consent leave given to discontinue this action against the third defendant with no order as to costs.

      (b) It was also ordered that the plaintiff's claim is dismissed against the first defendant with no order as to costs.

      (c) The issue as to whether the judgment obtained against the second defendant should stand was adjourned.

   iv. On the adjourned date of 12th December, 2003 the court made no order with respect to the said default judgment against the second defendant.

   v. On 9th February, 2010 (some 6 years later) the second defendant filed a summons to set aside the said default judgment and all subsequent proceedings and for leave to defend the action on the grounds that he had sold the vehicle to a third party in 1990 who had informed him of the accident and that it was being handled. No formal transfer of ownership was ever done by the plaintiff at the Licensing Department to this third party who subsequently sold it to another person. The second defendant allegedly had no knowledge of the proceedings until 10th July, 2009 when he received notice of the assessment. It took him a further 7 months to file the application to set aside.

   vi. On 12th April, 2011 when the summons to set aside first came up before this court, the application was refused and the assessment ordered to proceed against the second defendant. The assessment was heard and determined on 3rd October, 2011.

II. PRELIMINARY POINT

3. Counsel for the second defendant raised as a preliminary point the fact that the plaintiff's submissions were served on him out of time on 1st November, 2011. The court was referred to its order directing the plaintiff to file and serve submissions on or before 31st October, 2011. It was submitted that the plaintiff's submissions, which were served out of time, ought to bear no weight.

4. It is noted that the plaintiff's submissions were filed on time on 31st October, 2011. It was served on the following day on attorneys for the second defendant. Does the non-compliance as regards service warrant this court acting to ascribe no weight to the plaintiff's submissions? To my mind, it does not. Clearly the plaintiff was in compliance with the directions for filing and the window within which service was effected does not constitute an inordinate or unreasonable delay so as to require this court to take the step of disregarding it. In fact, no prejudice was suffered by the second defendant in having service effected on the day after it was filed, albeit it was not in compliance with the order of this court. In any event, submissions are for the benefit of the court. The case of ***Mario Narcis*** is instructive in this regard. In the circumstances, this court finds that there is no validity to this point raised by counsel for the second defendant and does not uphold it. I will now proceed to the assessment of the plaintiff's damages.

III. EVIDENCE ON ASSESSMENT

5. In support of the plaintiff's claim for damages, the following pieces of documentary evidence were filed:
   i. Medical report of Dr PM Lal dated 31st March, 1992 from the SFGH;
   ii. Medical report of Dr RR Crichlow, Specialist Consultant, Ophthalmology dated 30th July, 1991 from SFGH; and
   iii. Witness statement of the plaintiff, Kelvin Ramjass filed on 27th May, 2011.

IV. THE PLAINTIFF'S CASE AS AGAINST THE SECOND DEFENDANT

6. It is the plaintiff's case that he was the front seat and only passenger travelling in the maxi along the SS Erin Road, during inclement weather, when it collided with the second defendant's vehicle, which was being driven then by the third defendant. On impact, he was thrown against the windshield of the maxi shattering it with his forehead, which came into contact with the glass. He was helped out of the maxi, placed on the pavement to lie before being taken to the Siparia Police Station and then subsequently to the SFGH. As a result of the accident, he sustained facial injuries and/or both non-pecuniary and pecuniary losses (as discussed below).

V. APPLICATION OF THE LAW ON GENERAL DAMAGES

7. I was guided by the principles outlined by Wooding CJ in ***Cornilliac v. St. Louis***[1] in assessing quantum as follows:

   (i) The nature and extent of the injuries sustained;
   (ii) The nature and gravity of the resulting physical disability;
   (iii) The pain and suffering which had to be endured;
   (iv) The loss of amenities suffered; and
   (v) The extent to which the plaintiff's pecuniary prospects have been materially affected.

Nature and extent of the injuries sustained

8. Evidence as to the nature and extent of the plaintiff's injuries was provided in the medical reports of Dr RR Crichlow dated 30th July 1991 and Dr PM Lal dated 31st March, 1992. There was no undated medical report in evidence.

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1 *Cornilliac v. St. Louis* (1965) 7 WIR 491

Medical Report of Dr RR Crichlow dated 30th July, 1991 (hereinafter "the Crichlow report")

9. According to the Crichlow report, the plaintiff sustained injuries to his face, nose and both upper eyelids. This report was contemporaneous with the accident and, for clarity, part is reproduced hereunder:

"*The main problem is in the right eye.* ***He sustained a right corneoscleral laceration with prolapsed iris****. He was sutured the same night.* ***The prolapsed iris had to be removed*** *to prevent endophthalmitis.*

Because of marked astigmatism, the vision is poor. The right eye is still inflamed inspite of treatment; hopefully it will settle in the near future.

The prognosis is good, but ***he will never have perfect vision in the right eye again****. When the eye treatment is finished, his damages to the eye and face will be assessed.*" [emphasis mine]

Medical Report of Dr PM Lal dated 31st March, 1992 (hereinafter "the Lal report")

10. The Lal report was done approximately 10 months after the accident and confirmed that the plaintiff had sustained corneoscieral laceration to the right eye and lacerations to his upper eyelids, face and nose. The relevant part of that report is reproduced hereunder:

"*Corneoscieral repair and repair of other lacerations was done on 17.5.91 by Dr RR Crichlow. The patient was discharged from the hospital on 27.5.91 to be followed up in the eye clinic.*

On his last visit to the eye clinic his right eye was quiet. He has astigmatism in his right eye due to corneoscieral laceration. His visual acuity in his right eye after correction with lenses is 20/25 (normal 20/20).

The total permanent disability is assessed as ten percentum (10%) in the right eye and both upper lids." [emphasis mine]

11. It is clear from the Crichlow and Lal reports that the main injury suffered by the plaintiff was to his right eye. Corrective surgery was performed on the plaintiff by Dr Crichlow to repair the cut in his right eye and thereafter the prognosis was astigmatism and a 20/25 visual acuity in his right eye. The plaintiff has given evidence that on the day of the accident, on impact when his forehead crashed into the windshield shattering the glass, he got splinters in both eyes. According to him, "*I felt splinters of glass enter both eyes and I immediately felt really bad burning and pain*

in my head, the bridge of my nose and around both of my eyes. I also felt like gravel was embedded in both eyes but more so in my right eye." It is noted, however, that the medical reports do not refer to any splinters being embedded in or removed from the plaintiff's eyes. Nevertheless, I note the discomfort experienced by the plaintiff in both eyes immediately upon the occurrence of the collision.

12. This court accepts the nature and extent of the injuries sustained by the plaintiff as outlined in the Crichlow and Lal reports above.

The nature and gravity of the resulting physical disability

13. The plaintiff gave evidence in his witness statement that after he was discharged from the hospital, he could not see properly through his right eye and that his vision had become so bad that, "*anything more than a foot and a half in front of me appeared cloudy*". It is also his evidence that after the accident, he suffered from "*an intense itching and scraping feeling*" in his right eye for a few months. Further, sometime on 9th August, 2005 he underwent laser surgery on his right eye.

14. Counsel for the plaintiff submitted that as a result of the suturing of the facial laceration, the plaintiff remained with permanent facial scars and that he has suffered mental anguish because of the scars on his face.

15. Counsel for the second defendant has submitted that the main resulting disability of the plaintiff's injuries is a reduced vision in his right eye, which is corrected by lenses. Consequently, counsel for the second defendant asked the court to accept that "the plaintiff's vision with his lenses can be said to be relatively normal" and to disregard any other alleged resulting effects as there is no medical evidence to substantiate same.

16. This court accepts the evidence as contained in the Crichlow and Lal reports as to the effects of the plaintiff's injuries. To this end, it is accepted that the plaintiff would never regain perfect vision in his right eye, even after corrective measures have been taken. It also accepts that the plaintiff suffered other consequential effects as stated in his evidence of itching and scratching and that he has had to undergo laser surgery. It is noted also that the main resulting disability surrounded his right eye and both eyelids. There was no evidence before this court as to the

alleged "permanent facial scars" and the resulting mental anguish endured by the plaintiff. The plaintiff's witness statement is silent with respect to any scarring as well as about any continuing mental or emotional anguish being experienced by the plaintiff because of this facial deformity. It is noted that these resulting effects of the plaintiff's injuries were sought to be introduced via the submissions of counsel for the plaintiff only. There was no medical or other evidence before this court in support of his submissions. It is, therefore, wholly disregarded.

Pain and suffering endured

17. Pain is a subjective phenomenon and as such each person's tolerance and/or endurance level will differ and be peculiar to his injuries and circumstances. It is the plaintiff's evidence that immediately upon the accident he felt a "*really bad burning and pain*" in his head, nose bridge and around both eyes. He described this feeling as if gravel was embedded in his eyes but more particularly in his right eye. He goes on to state that he was bleeding from his head and that he kept both eyes closed to minimize any damage. It is his evidence that his "right eye in particular was in really bad pain." This evidence is accepted.

18. The plaintiff gave evidence further that after surgery was performed on his right eye, he was placed on pain medication and a course of penicillin for 7 days thereafter. It is his evidence that after the surgery, he still felt significant pain in his right eye. He states also that the bandage over his right eye had to be changed twice a day and the area around the eye cleaned and fresh ointment applied. He states that after he was discharged, his eye continued hurting and that he had to attend clinic as an outpatient twice per week. It is also his evidence that sunlight causes his eyes to "*hurt and well up*".

19. Counsel for the plaintiff has submitted that the plaintiff has had to endure both physical and mental pain and suffering as a result of his injuries. He also submitted that the plaintiff suffers "mental anguish because of the scars on his face". It was also submitted by the plaintiff's counsel that "[T]he plaintiff suffers from pain in the eyes and experiences dizziness and sometimes blackouts and frequent headaches." It is noted, however, that there was no evidence before this court as to any mental anguish, dizziness, blackouts or frequent re-occurring headaches being suffered by the plaintiff. Both the medical evidence and the plaintiff, in his witness statement, were notably silent in the above regard. No weight is placed,

therefore, on this aspect of the submissions of counsel for the plaintiff as it is a wholly unsubstantiated allegation.

Loss of amenities suffered

20. The plaintiff's evidence is that the continuing effects of his injuries on him have manifested in him suffering a huge loss of amenities. He has described his injuries as causing "*severe hardship*". According to his evidence in his witness statement, pre-accident he enjoyed playing cricket and football with friends every Sunday. He was also a regular attendant at the beach. In the post-accident period and continuing he can no longer engage in these activities. He ascribed the blame for this on his "reduced vision" which he claims does not allow him to properly bat and bowl or see to play football. He also describes the effect of his eye injury on his pastime of reading. This he describes thus, "*I also enjoyed reading as a form of relaxation, but, now I cannot even read smaller words and my right eye would begin to water.*"

21. Counsel for the plaintiff submitted that the plaintiff is entitled to damages for loss of amenities which should aim to compensate him for the loss or reduction of his enjoyment of life. The court was asked to note that following the accident, the plaintiff's injuries have inhibited his ability to pursue activities which he had been able to participate in before and have made previously routine and simple actions difficult and uncomfortable. It was submitted that the ordinary, everyday activities of the plaintiff have now been restricted because of his injuries. It was also submitted that now the plaintiff suffers headaches, dizziness and sometimes blackouts and that he is no longer as physically active as he once enjoyed being. The court was asked to have regard to the fact that now the very simple act of being outdoors in sunlight causes the plaintiff considerable pain in his eyes.

22. On the other hand, counsel for the defendant submitted that there is no medical evidence to support the claim that the plaintiff can no longer perform his normal daily activities or to play sports such as cricket as he contends he cannot do. The court was asked to note further that there is no medical evidence that the sunlight affects the plaintiff's eye or that he cannot read smaller words.

23. I accept that the plaintiff's injuries have resulted in him suffering certain loss of amenities. I do not accept the submissions of counsel for the plaintiff, however, that he experiences dizziness, blackouts and headaches as there was no evidence in support of this. Given the injury to his right eye, I accept the plaintiff's evidence as to his diminished enjoyment and restrictions in playing the sports of cricket and football, for which proper vision will provide a distinct advantage. I also note the second defendant's submissions that there is no medical evidence as to the effects of sunlight on the plaintiff's eye. It is the plaintiff's evidence that it affects him being in the sunlight and that reading fine prints causes his right eye to leak water. I do not find this assertion of the plaintiff to be unbelievable, given the nature of his injuries. I, therefore, accept this evidence that as a result of the injury to his right eye he continues to experience challenges with his vision and the use to which he puts this eye.

Extent to which pecuniary prospects have been materially affected

24. The plaintiff sought in his witness statement to set out the extent to which his pecuniary prospects have been materially affected. According to him, he was a permanent labourer employed with W E Whiteman & Company Limited Siparia when the accident happened. He claims now that his pecuniary prospects have been affected as he is no longer able to earn a salary given his injuries. It is noted, however, that in his statement of claim he claimed loss of earnings for a fixed period of two months viz from 17th May, 1991 to 17th July, 1991. The claim itself was filed in April, 1995. This court notes the substantial deviation from his pleadings and the evidence in his witness statement. This claim for loss of earnings will be discussed below.

VI. OTHER PRINCIPLES

25. Apart from the ***Cornilliac*** principles, several other principles emanating from the case law were taken into account in determining the damages to be awarded in the instant case. First, this court accepts that perfect compensation is hardly possible in determining quantum. Further, this court was always mindful that the resort by any assessing court to comparing the damages awarded in previous cases, usually dated authorities, to approximate a modern award, "*is an inexact science and one which should be exercised with some caution, the more so when it is important to ensure that in comparing awards of damages for personal injuries is comparing like with like. The methodology of using*

comparisons is sound, but when they are of some antiquity such comparisons can do no more that demonstrate a trend in very rough and general terms."[2]

26. In the above regard, this court accepted the approach recommended by the court in the ***Harrinanan v Pariag & ors case***[3] to wit, "*I would recommend that the more traditional method of using cases that are relatively recent as the benchmarks by which to determine what is a proper award of general damages in a particular case. Whether those awards have been arrived at as a result of factorization of earlier awards is really immaterial. Awards, once made, must unless, they are upset, be regarded as providing some guidance in any new case."*

27. This court also bore in mind that it is important to consider the effect of inflation on the value of the dollar; the economic situation in Trinidad and Tobago and that this is a once and for all award. In addition, I also balanced this against the two principles posited by Kangaloo JA in ***Munroe Thomas* v *Malachi Ford and ors***[4] that, "*a personal injury claim must never be viewed as a road to riches and secondly, that a claimant is entitled to fair, not perfect compensation.*"

28. Additionally, I note that the fundamental purpose of damages is compensatory; it was designed to compensate for an established loss. Damages are not to provide a gratuitous benefit to an aggrieved party, so any likely award must be linked directly to the loss sustained. See Lord Jauncey in ***Ruxley Electronics and Construction Ltd case***[5]***.***

29. Finally, this court bore in mind that this is a claim for injuries to the right eye resulting in reduced and/or imperfect vision in that eye and not the loss of an eye, which usually would attract a higher award.

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2 Per Lord Carswell in *Seepersad* v *Theophilus Persad & Capital Inc. Ltd.* [2004] UKPC 19

3 M A de la Bastide in *Harrinanan v Pariag & ors* CA No 239 of 1998 at page 6

4 *Munroe Thomas* v *Malachi Ford and ors* Civil App 25 of 2007

5 Per Lord Jauncey in *Ruxley Electronics and Construction Ltd v Forsyth; Laddingford Enclosures Ltd v Forsyth* [1995] 3 All ER 268

VII. AUTHORITIES ON GENERAL DAMAGES

30. Several authorities were furnished to this court to assist in the exercise of assessing the plaintiff's damages as follows:

(i) ***Gaffoor* v *Gopaulchan***[6] where a plaintiff suffered facial injuries in a vehicular accident, lost most of his sight in his right eye and was left with blurred vision in that eye. He also endured considerable pain and developed facial scars, which plastic surgery could not totally eliminate. In addition, it was in evidence in that case that the plaintiff was experiencing difficulties driving at night; could not stay out in the sun because of the glare and could no longer engage in football or cricket. He was forced also to wear contact lens. This plaintiff was awarded **$120,000.00**. On appeal Kangaloo JA stated that:

*The award of $120,000.00 appears to be outside the trend of awards for injuries such as those suffered by the respondent … It is understandable that he suffers ill effects of the damage to his eye and the scarring of his face, but he is not in the same position or even nearly the same as an eighteen year old girl who has lost all vision in one eye nor a middle aged man who has had to have an eye removed from the socket. For this reason the award of $120,000 is inordinately high. The respondent's injuries however do appear to be slightly more serious than those in the Yvette Richardson's case … Looking at the case in the round and taking into consideration the trend of awards for similar injuries I would think that the sum of **$80,000.00** is a more reasonable measure of compensation for the respondent.*[7]

This sum as adjusted to December 2010 amounts to **$134,102.00**. I am of the view that the injuries of this plaintiff are more severe than in the instant case at bar. In the ***Gaffoor case*** above there was reduced vision in the two eyes (as opposed to one eye as in the instant case), scarring and right eyelid hanging over the eye. I note further that in any case, the award in ***Gaffoor*** was reduced by the Court of Appeal.

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6 *Gaffoor* v *Gopaulchan* HCA No 3026 of 1997

7 Ibid page 9

(ii) ***Balwant* v *Balwant***[8] where Best J in **2002** awarded the sum of $220,000.00 to a 34 year old housewife who was blinded in the left eye from injuries sustained in a vehicular accident. In the collision, she had struck her head on the dashboard and was rendered unconscious. She had also sustained a slight cut on her left forehead; a swollen and painful neck and was unable to see clearly in her left eye. It was her evidence that she experienced pain in her left eye, left side of her head and neck. She also suffered post concussion syndrome and scalp neuralgia; headaches; fainting and some brain damage. The evidence showed that there could be no improvement of the clinical blindness to her left eye. This figure adjusted to December 2010 amounts to **$406,944.00**.

It is noted that the injuries suffered by the plaintiff above are substantially more severe than those sustained by the instant plaintiff at bar.

(iii) ***Rampersad* v *Mohammed, Tall and Mohammed***[9] where Tam J in **2001** awarded the sum of **$150,000.00** to an eighteen year old female plaintiff who was blinded in the right eye with some scarring from an accident. Medical examination showed a visual acuity of light perception in her right eye with a horizontal corneoscleral laceration extending across the cornea to the temporal equator. There was vitreous loss and loss of the lens and blood in the posterior segment of the eye. There was also a laceration of her right lower eyelid and a puncture wound of the pinna of her right eye. She also suffered multiple lacerations to her forehead and became permanently blind in her right eye. She had difficulties going along with her everyday life and was disabled in the labour market. This sum as adjusted to December 2010 was **$291,731.00**.

The injuries in this case are also more severe than the instant plaintiff's injuries. As such, this case does not provide a proper comparative guide for determining the damages at hand.

(iv) ***Richardson & Ors* v *Kiss Baking Company Limited***[10] where the female plaintiff sustained a penetrating injury to her right eye with multiple scarring on the cornea and

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8 *Balwant* v *Balwant* HCA S-1133
9 *Rampersad* v *Mohammed & Ors* HCA S-1121 of 1998
10 *Richardson & Ors* v *Kiss Baking Company Limited* HCA No 696 of 1996

sclera and damages to the iris. There were fragments of glass embedded in the cornea that could not be removed and she suffered long standing debris in the eyes some 5 years afterwards when she was seen by Dr Mitchell. She also suffered reduced vision and defect in her right eye with the vision being 6/12; the left eye was normal. Some 18 months after the accident she resumed normal household chores, though she continued to experience discomfort and visual impairment in the eye. Jamadar J (as he then was) in January 2000 made an award of $55,000.00; as adjusted to December 2010 to **$112,176.00**.

The reduced vision is comparable to that of the instant plaintiff though more severe. However, the effects of this plaintiff's injuries were more severe than those of the instant plaintiff.

(v) ***Dadd* v *Hub Travel Limited***[11] where the plaintiff sustained a severe injury to his right eye and required permanent contact lens which gave him visual acuity of 6/24 in that eye. The medical evidence showed numerous small partial and full thickness corneal lacerations with multiple glass fragments embedded in the cornea and loss of corneal tissue. There was also lens rupture and vitreous prolapsed, with traumatic hyphema. He was hospitalized for 3 weeks during which time he suffered intense pain. In July 1988 Best J made an award of $24,000.00; as adjusted to December, 2010 to **$102,179.00**.

The injuries in this case related to both eyes (one in which there was near total blindness) so were more severe than those of the plaintiff at bar.

(vi) ***Gosine* v *Gorie***[12] where a plaintiff suffered injury to the right eye; dimness of vision; severe headaches and bruising of the forehead, cheek, chin, shoulder and left leg. Her principal injury was a ½" skin deep laceration above the right eye and haematoma of the right eye with damage to the sclera (the outermost membrane of the eyeball). In March, 1975 Iles J made an award of $4,000.00; as adjusted to December 2010 to **$73,630.00**.

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11 *Dadd* v *Hub Travel Limited* HCA 974 of 1985

12 *Gosine* v *Gorie* HCA S-191 of 1974

Counsel for the second defendant submitted that the injuries in this case were the most similar to the instant facts and the court should view this as the most appropriate guide.

31. Whilst this court was guided by the quantum of general damages awarded in the above cases, it also bore in mind that they were not squarely representative of the present facts. The comparative assessing exercise being an inexact science, consideration was also given to the injuries sustained by the plaintiff; his pain and suffering endured; and the evidence before the court in arriving at what was a fair and adequate compensation for the instant plaintiff. In the circumstances, this court formed the opinion that any award to the instant plaintiff should fall between the award in ***Gosine*** **v** ***Gorie*** (supra) and that rendered in ***Gaffoor*** **v** ***Gopaulchan*** (supra). In the circumstances, this court finds as appropriate an award of **$85,000.00** , which it deems as fair and adequate compensation for the instant plaintiff for his pain and suffering and loss of amenities.

VIII. SPECIAL DAMAGES

32. The particulars pleaded in the statement of case for special damages were not all pursued at the assessment. Below are the items and sums claimed and pursued in special damages:

PARTICULARS	**AMOUNT**
2 Medical reports at $37.50 each	$ 75.00
Cost of medication	$ 169.75
Removal of stitches	$ 150.00
Cost of laser surgery	$1,400.00
Fees – Dr Terrence Allan	$ 250.00
Fees – Dr K Roopnarine	$ 160.00
Medical Report	$ 37.50
Travelling from hospital by taxi at $10,00 per day on 56 occasions and continuing	$5,600.00
Loss of earnings at $243.00 per week as a Labourer from 17/5/91 to 17/7/91	$1,944.00
TOTAL	**$9,786.25**

33. It is a well established rule that special damages up to the date of trial must be pleaded, particularized and "strictly" proved. See ***Grant* v *Motilal Moonan Ltd***[13]. This position was reaffirmed in ***Rampersad* v *Willies Ice-Cream Ltd.***[14] The burden is, therefore, the plaintiff's to prove his losses. Where a plaintiff fails to plead and particularize his special damages, they cannot be recovered. See ***Ilkiw v Samuels***.[15] In instances where the plaintiff has not been able to prove his losses, they are disallowed (as discussed below).

34. Medical reports

The plaintiff claims the sum of $75.00 for 2 medical reports obtained from the SFGH at $37.50 each. The medical reports were in evidence before the court but there were no receipts tendered in support of this claim. This sum is disallowed.

35. Cost of medication

The plaintiff claims the sum of $169.75 for cost of medication. This claim was pleaded in his statement of case as "cost of medication to date and continuing" in the sum of $1,000.00. Counsel for the second defendant submitted that this is a claim for costs of continuing medication, which was not pleaded so should be disallowed. It was also submitted that the expenses of $169.75 were incurred several years after the accident and as no claim was made initially for continuing medication, it ought not to be awarded. The submission of counsel for the second defendant was rejected as there was in fact a claim for the cost of medication and continuing on the statement of claim. Further, the plaintiff provided documentary evidence to substantiate this claim in the form of two receipts from Horace Drugs dated 10th August, 2005 in the sum of $80.00 for eye drop and 17th March 2010 in the sum of $89.75 for eye solution. This sum is allowed in the sum of **$169.75** as claimed and proven.

36. Removal of stitches

The plaintiff claimed the sum of $150.00 for the removal of stitches by Dr Allan. The receipt for this medical service was dated 2nd June, 2005 in the sum of $150.00. Counsel for the second

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13 *Grant* v *Motilal Moonan Ltd* (1988) 43 WIR 372 per Bernard CJ
14 *Rampersad* v *Willies Ice-Cream Ltd* Civ-App 20 of 2002
15 *Ilkiw v Samuels* [1963] 1 WLR 991 per Diplock LJ

defendant submitted that this is a claim for medical expenses which was not pleaded. The court was reminded that it was trite law that same must be pleaded and particularized and in the face of the default of such pleadings by the plaintiff the claim ought not to be allowed. This is accepted. **Order 18 rule 12 (16) of the Supreme Court Practice 1997 (White Book)** clearly states that such a claim unless pleaded and particularized cannot be recovered. It was also submitted that the evidence as to the doctor performing this procedure was struck out from the plaintiff's witness statement so was not strictly proven by the plaintiff. Thus, this expense ought not to be awarded as no proper foundation was laid in support of same by the plaintiff.

It is to be noted that the evidence as to the medical services rendered by Dr Allan was only struck off in part, in so far as it related to what the plaintiff was told by the doctor. This court accepts nevertheless that this claim was not pleaded and that a claim for medical expenses is required to be strictly pleaded. Further, at no time did the plaintiff seek to amend his pleadings to include it. It is, therefore, wholly disallowed.

37. Cost of laser surgery and doctors' fees

In his witness statement, the plaintiff claims the sum of $1,400.00 for the cost of laser surgery as well as the sums of $250.00 and $160.00 as fees for Dr Allan and Dr Roopnarine respectively. Receipts dated 29th September, 200 in the sum of $100.00 issued by Dr Allan and dated 20th April, 2006 in the sum of $160.00 for professional services rendered by Dr Roopnarine were annexed to the plaintiff's witness statement. This court accepts the submissions of counsel for the second defendant that this is also a claim for medical expenses which is required to be pleaded and that it was not. It is, therefore, disallowed.

38. Cost of medical report of Dr Ben Hyatoola

The sum of $37.50 is claimed as the cost of a medical report prepared by Dr Hyatoola. This report was struck out of the witness statement. In addition, there was no receipt tendered into evidence in support of this claim. It is, therefore, disallowed.

39. Travelling

The sum of $5,600.00 was claimed as travelling expenses by taxi at $10.00 per day on 56 occasions. Counsel for the second defendant submitted that there was an error in calculation

of this sum and that it should in fact read $560.00. This submission is accepted. In this regard, consideration is given to the dictum of Archie J (as he then was) in ***Anand Rampersad* v *Willies Ice Cream Ltd***[16] that, "*As much certainty and particularity must be insisted on in proof of damage as is reasonable, having regard to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry*." This claim is reasonable and is thus allowed in the sum of **$560.00**.

40. Loss of earnings

The plaintiff claimed loss of earnings for 2 months at the rate of $243.00 per week. There is insufficient evidence before this court to support the claim of $243.00 earned each week. In fact, the plaintiff's pay slips show that his weekly earnings ranged from $176.20 to $192.20 to $289.03 per week. In the circumstances, the claim of loss of earnings is allowed in the sum of $176.20 per week for 2 months in the global sum of **$1,409.60**.

IX. CONCLUSION

41. It is thus the order of this court that the second defendant do pay to the plaintiff:

i. General damages in the sum of $85,000.00 with interest at the rate of 6% per annum from 27th April, 1995 to 16th March, 2012;

ii. Special damages in the sum of $2,139.35 with interest at the rate of 3% per annum from 17th May, 1991 to16th March, 2012;

iii. Costs of the assessment to be taxed by the Registrar in default of agreement.

iv. Stay of execution of 28 days.

Dated 16th March, 2012

Martha Alexander
Master of the High Court (Ag)

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16 *Anand Rampersad* v *Willies Ice Cream Ltd* CA 20 of 2002