

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2007-00903

BETWEEN

ANIL REDS

Claimant

AND

NYAN RATTAN

INSHAN SALIM

Defendants

*****g*****

Before: Master Alexander

Appearances:

Mr Ken Samlal for the Claimant

No Appearance for the First Defendant

DECISION

I. INTRODUCTION:

1. This matter was commenced by claim form and statement of case filed on 20 March, 2007. It involved a claim for damages for assault and battery including aggravated and exemplary damages; interest and costs. It is the claimant's case that he was severely beaten on his face and head, with a steel chain to which a hook was attached, and it caused him to lose an eye and to suffer gross facial disfigurement.

2. On 5th May, 2009 Stollmeyer J (as he then was) ordered as follows:

IT IS HEREBY ORDERED BY CONSENT that:

i. There be judgment for the claimant against the second defendant;

ii. The second defendant to pay to the claimant the agreed sum of \$15,000.00 in damages inclusive of interest and costs;

IT IS HEREBY FURTHER ORDERED that:

iii. There be judgment for the claimant against the first defendant;

iv. Damages to be assessed by a Master.

3. The first defendant was unrepresented both at the trial on liability and the assessment. The assessment of damages was heard by this court on 14th May, 2011 as against the first defendant only.

II. THE CLAIM AS AGAINST THE FIRST DEFENDANT:

4. According to the pleadings, the claimant who is a businessman was at his residence on 23rd March, 2003 when he was attacked, at night, by the defendants who were in the company of four other men. The second defendant administered several slaps to the left side of the claimant's face and the first defendant thereafter severely beat him about his face and head with a steel chain to which a hook was attached. Throughout the attack, he was subjected to foul expletives and threats to the safety of his family and his person. This beating was witnessed by the claimant's wife and his two children. At the time of the incident, the claimant was a thirty one year old man.

III. EVIDENCE ON ASSESSMENT:

5. In support of the claimant's claim for damages, the following pieces of documentary evidence were before this court:
 - i. Witness statement of the claimant;
 - ii. Witness summary of Dr A K Ashraph filed on 8th February, 2011 and the medical report dated 12th December, 2006;
 - iii. Witness summary of Dr Kim Hosein filed on 8th February, 2011 and the medical report dated 25th January, 2007;
 - iv. Witness summary of Dr Hector Gallesmaso filed on 28th February, 2011 and the medical report dated 11th May, 2007.

6. *The Medical Evidence.*

According to the medical evidence relied on by the claimant, as a result of the beating, he sustained gross facial distortion due to bilateral periorbital haematoma and gross oedema of the right eyelid. His right eye was also inferiorly displaced in the socket. As a result, the claimant's right eye was removed on 27th June, 2004 and replaced by a "fake" eye. Following this surgery, he experienced visual problems with his left eye for approximately six months but this problem has since been alleviated.

As outlined above, there were three medical reports from different departments of the Port of Spain General Hospital ("POSGH") as follows:

7. **Medical report dated 12th December, 2006 of Dr A K Ashraph from POSGH**

This medical report covers examinations of the claimant by the Oral and Maxillo-Facial Surgery Department on 24th & 26th March, 2003; 27th June, 2003 and 27th July, 2003 and sets out his injuries as -

- chop wounds mainly to his head and abrasions to his hands and knees;
- gross facial distortion due to bilateral periorbital haematoma;
- gross oedema of the right upper eyelid;
- lacerations of the right forehead, lateral orbit and infraorbital areas;
- right eye was inferiorly displaced in the socket and right eye movement was difficult to ascertain;
- a compound fracture of the right ethmoidal sinus wall extending to the frontal sinus and inferiorly to the orbital floor;
- prolapsed of the orbital contents into the maxillary sinus and the possibility of vitreous haemorrhage.
- the right eye was eviscerated; and
- a reduced sense of smell that may improve or could be permanent.

Surgery was recommended but to be delayed until the prognosis of the eye was more predictable because the procedure may cause further trauma to the eye.

8. **Medical report dated 25th January, 2007 of Dr Kim Hosein from POSGH**

This medical report covers examinations of the claimant by the A&E Department, POS during the period he was admitted to Ward 21 (Plastics) until 23rd July, 2003 when he was last seen and sets out his injuries as -

- laceration of the right upper eyelid and several facial lacerations;
- no perforating injury but the anterior chamber of the eye was full of blood obstructing a view of the retina;
- swelling around the eye had gradually reduced but the blood in the eye was taking longer and his vision was only light perception;
- ultrasound of the eye on May, 2003 indicated that the back of the eye was full of blood and a small rupture in the posterior segment but currently there is shrinkage of the eye and he was no longer seeing light;
- removal of the right eye was recommended and was performed on 27th June, 2003;
- by 23rd July, 2003 the right socket was satisfactory;

9. **Medical report dated 11th May, 2007 of Dr Hector Gallemaso from POSGH**

This medical report covers examinations of the claimant by Plastics, Ophthalmology and Maxillofacial doctors, POSGH during the period he was admitted to Ward 21 (Plastics) until 26th March, 2003 when he was last seen. His injuries were reported as -

- multiple focal areas of petechial haemorrhage at the inferior aspect of right frontal lobe with low density change/oedema in the right frontal lobe consistent with contusion;
- by 26th March, 2003 he was noted to be conscious, alert, pupils were equal and reactive to light, no lateralizing sign;
- being stable neurosurgically but complained of occasional headaches.

10. *Continuing Effects of Injuries:*

It is the claimant's evidence via his witness statement that he –

- suffers headaches which persist for several hours, despite the use of pain killers;
- has lost his sense of smell;
- experiences numbness of and is unable to chew on the right side of his jaw;
- has lost his right eye and it was replaced with a “fake” one;

- remains with a disfigured face and as a consequence wears shades, except when sleeping, to prevent straining of the left eye but primarily to hide his disfigured face;
- has become very “jumpy” and reclusive and suffers from insomnia, getting only about four hours sleep on any given night; and
- is required to renew his driver’s permit each year due to the eye injury.

IV. APPLICATION OF THE LAW ON GENERAL DAMAGES:

11. In assessing the quantum of general damages, the court was guided by the approach of Wooding CJ in *Cornilliac v St Louis* (1965) 7 WIR 491 and considered:

- 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;
- v. The extent to which the plaintiff’s pecuniary prospects have been materially affected.

12. *Nature and extent of the injuries sustained*

Evidence of the nature and extent of the injuries sustained by the claimant has been set out in the three medical reports above. This court accepts that the claimant’s injuries were mainly to his head, eyes and face and these were extensive and prolonged. It also accepts that there were abrasions to the hands and knees. The eye injuries culminated in the removal of his right eye. In his witness statement, the claimant’s evidence was that his face was swollen for approximately one month. He also stated that his eyes were bandaged for two days and that on the date following the incident, he could not see from both eyes. He spent about one and a half months at the POSGH and had to return for approximately three weeks for treatment. He has also lost his sense of smell and is unable to chew on the right side as he continues to experience numbness of the jaw. It is also his evidence that he experienced visual problems with his left eye for approximately six months after the removal of his right eye but that this has since been alleviated.

13. *Nature and gravity of the resulting physical disability*

As a result of his injuries the claimant suffered the removal of his right eye and now functions with only one eye. It is the claimant’s evidence that for six months after the removal of his right eye, he

experienced visual problems with his left eye. He still endures severe and prolonged headaches that last for hours. He also remains with a grossly disfigured face. This claimant was a man in the prime of his life. He was thirty years when the incident took place and married with two children. He finds, himself now, in a visually handicapped position having to endure the continuing physical and psychological effects of the eye and facial injuries. This court accepts the claimant's evidence that he faces continuing challenges having to live with one eye, having lost his sense of smell, the numbness to the jaw, the inability to chew on the right side of his mouth and prolonged headaches.

14. *Pain and suffering endured*

Both the medical evidence and the evidence of the claimant confirm that he endured excruciating pain and suffering, both physically and psychologically as a result of the beating. This court accepts the evidence before it that the claimant's pain and suffering with respect to the injury to his knee was initially excruciating and reduced his mobility but that over time i.e. after about two months he was able to walk about. It also accepts that the facial and eye injuries would have caused the claimant tremendous pain. After the injury, the claimant was placed in a ward at the POSGH for one and a half months, with his eyes totally covered for two days. It also accepts that with the removal of his right eye, the pains would have been substantially alleviated but that the headaches have persisted and these are usually intense and prolonged, with little, if any, relief being obtained from painkillers.

15. *Loss of amenities suffered*

The claimant's evidence is that as a result of the loss of his eye and scar on his face, he is embarrassed to go out in public and always wears a pair of shades when he does so, unless he is sleeping. This court found it reasonable to accept the claimant's evidence that this disfigurement has affected his ability to socialize as he used to.

In his witness statement he gives evidence as to the continuing effects of the injuries on his relationship with his wife, his children and himself. He suffers from insomnia and lengthy headaches for which medication provides ineffective relief, if any. In his witness statement, he also claims that he has become very nervous and reclusive and that every little noise makes him "jumpy" and that it is now a continuous struggle to hold his relationship with his wife together.

It is also the claimant's submission that stemming from his injuries, his visual challenges hamper his enjoyment and participation of sports with his children. He claims also that he has difficulties keeping up physically with his growing sons. This aspect of the submissions is not accepted by this court as there is insufficient evidence in support of such a claim. In fact, this claim conflicts with the evidence of the claimant provided in his witness statement. At paragraph 21 of the claimant's witness statement, he states that "*I experienced visual problems with my left eye for approximately six (6) months possibly due to the injury to same and or the strain put onto it following the removal of my right eye. After the passage of the six (6) months, the problem alleviated.*" It is also his evidence at paragraph 20 of his witness statement that for approximately two months he experienced excruciating pains to his knee which affected his ability to move around but that the "*knee pains elapsed after the two (2) months and I was able to walk about more*".

There is insufficient evidence furnished to this court of any debilitating physical or visual incapacitation that would negatively affect the playing of sports with his children or keeping up physically with them. Initially, the claimant's injuries may have hampered his playing sports with his children but overtime as his injuries healed and the pains diminished, this loss of amenities would have been substantially reduced, if not eradicated. The claimant, therefore, could have returned to the enjoyment of this aspect of his family life.

16. *Extent to which pecuniary prospects have been materially affected*

The claimant was a business man so did not lead any evidence as to his losses under this head. The lack of empirical evidence as to loss of earnings, if any, or salary at the time of the accident and current salary meant that this court could not reach any conclusive findings on the loss of any pecuniary prospects by the claimant. Based on the evidence before it, this court accepts that the claimant's injuries did not in any significant or material way result in a diminution of his pecuniary prospects. Consequently, this particular limb of the **Cornilliac test** does not apply to this claimant.

V. OTHER GENERAL GUIDING PRINCIPLES ON ASSESSMENT:

17. In determining the compensation to be awarded to the claimant in this matter, the pre-eminent authority relied on by this court was **Cornilliac v St Louis** above. However, this court also had regard to several other guiding principles including:

- (i) The dicta of Lord Woolf MR in **Heil v Rankin** (2000) IPQRQ 187 @Q199 that, “on assessment, the court’s approach involves trying to find the global sum which most accurately in monetary terms reflects or can be regarded as reflecting a fair, reasonable and just figure for the injuries which have been inflicted and the consequences they have ...”
- (ii) Damages should be “full” and “adequate” as stressed in **Fair v London and North Western Ry Co** (1869) 18 WR 66, 21 LT 326. In our jurisdiction, damages are assessed once and for all so, it is the duty of an assessing court to arrive at a global sum that approximates as nearly as possible full compensation for injuries suffered.

- (iii) The recent caution sounded by the Privy Council on the approach to be taken in assessing damages:

*The Board is inclined to wonder, given the passage of time and changes in the value of money since some of the earlier precedents relied on, whether the level of compensatory damages may call for upward revision by the courts of Trinidad and Tobago. (per Lord Bingham in **Subiah v The A. G of T&T** [2008] UKPC)*

- (iv) Further, this court was also cognisant of previous reservations expressed by the Privy Council with respect to the practice in this jurisdiction in determining general damages:

Their Lordships entertain some reservations about the usefulness of resort to awards of damages in cases decided a number of years ago, with the accompanying need to extrapolate the amounts awarded into modern values. It 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 physical injuries one 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 than demonstrate a trend in very rough and general terms.

*(per Lord Carswell in **Seepersad v Theophilus & Capital Ins. Ltd** UKPC 86 of 2002)*

- v. This court also had regard to the words of M A de la Bastide CJ in **Harrinanan v Pariag & Ors** CA No 239 of 1998 @ page 6, to wit that:

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 the factorisation of earlier awards is really immaterial. Awards, once made, must unless, they are upset, be regarded as providing some guidance in any new case.

- vi. The words of Wooding CJ in ***Aziz Ahamad v Raghubar*** (1976) 12 WIR @ page 357 were also instructive:

... in looking at the past cases it is essential to remember that they serve no more than a guide. They so to speak provide a general standard or judicial consensus, but are nevertheless referable to their own particular facts ... in weighing up all relevant considerations, it should be borne in mind that every decision may have some effect one way or the other in establishing a trend. Indeed past decisions are helpful only when and because they establish a trend.

- vii. The words of Pemberton J in ***Elva Dick-Nicholas v Jayson Hernandez & Capital Insurance Co Ltd*** (unreported) CV2001-01035 @ page 5, paragraph 14 were also instructive:

I made the observation that in arriving at a figure for my consideration under this head, Attorney for Elva put forward separate figures for the individual injuries and totalled them to arrive at the figure that should be awarded. I do not commend this approach. General damages, being incapable of specific calculation, can never be subjected to any arithmetical deduction. Instead a Court has the duty of arriving at a global figure, based on a holistic assessment of all the circumstances of the case and bearing in mind the awards granted for similar injuries. (emphasis mine)

VI. AUTHORITIES ON GENERAL DAMAGES:

18. In looking at awards, both past and recent, on damages, this court was always mindful of the principles enumerated above. Several cases were relied on to determine a just, reasonable and fair award to be made to this particular claimant, bearing in mind the warnings highlighted above. Thus, whilst this court followed the existing practice of comparison and adjustments, it was borne in mind that this approach is not without its flaws and that each case must be assessed on its own peculiar facts.

19. In his submissions, the claimant contends that there is no case directly on par with the injuries in this matter. He, however, relied on several dated cases, which he submitted would be helpful for comparative purposes:

- (i) ***Morris v Point Lisas Steel Products Limited*** HCA S-1336 of 1983 Hosein J in **1989** awarded the sum of seventy thousand dollars (\$70,000.00) for the loss of a right eye. This figure adjusted to 2010, amounts to two hundred and fifty four thousand and seventy dollars (\$254,070.00).
- (ii) ***Rampersad v Mohammed & Ors*** HCA S-1121 of 1998 Tam J in **2001** awarded the sum of one hundred and fifty thousand dollars (\$150,000.00) to an eighteen year old who was blinded in the right eye with some scarring. This figure adjusted to 2010, amounts to two hundred and ninety one thousand seven hundred and thirty dollars (\$291,731.00).
- (iii) ***Smith v Smith*** HCA 136 of 1973 Bourne-Hollands J in **1975** awarded the sum of twenty thousand dollars (\$20,000.00) to a seventeen year old girl for the loss of an eye and facial scarring. This figure adjusted to 2010 amounts to three hundred and fifty four thousand three hundred and sixty six dollars (\$354,366.00).
- (iv) ***Paul v Seepersad & Kagoo*** HCA S-1003 of **1989** Ramlogan J in 1997 awarded the sum of one hundred and sixty thousand dollars (\$160,000.00) for the loss of an eye and facial injuries. This figure adjusted to 2010 amounts to three hundred and sixty two thousand seven hundred and forty one dollars (\$362,741.00).
- (v) ***Balwant v Balwant*** HCA S-1133 of **1986** Best J in 2002 awarded the sum of two hundred and twenty thousand dollars (\$220,000.00) to a thirty four year old housewife who was blinded in the left eye, suffered post concussion syndrome and scalp neuralgia, headaches, fainting and some brain damage. This figure adjusted to 2010 amounts to four hundred and six thousand nine hundred and forty four dollars (\$406,944.00).
- (vi) ***Bhamsingh v Carimbocas*** HCA 1742 of 1971 Braithwaithe J in **1980** awarded the sum of forty five thousand dollars (\$45,000.00) to seventeen year old for loss of sight in one eye and facial scarring. This figure adjusted to 2010 amounts to four hundred and sixty six thousand one hundred and forty nine dollars (\$466,149.00).

20. I also considered the cases of:

- (i) ***Hackett v Shirkissoon***¹ where Warner J in **1978** awarded the sum of twenty thousand dollars for a right eye injury; scars on right side of the face and a dislocated right shoulder. Adjusted to 2010, this amounts to two hundred and fifty eight thousand and seventy one dollars (\$258,071.00).
- (ii) ***Haneiph v Greenidge***² where des Iles J in **1974** awarded the sum of twelve thousand dollars for the loss of a right eye. Adjusted to 2010, this amounts to two hundred and fifty thousand four hundred and fifty nine dollars (\$250,459.00).

21. The character of the act that produced the injuries is, in the mind of this court, to be strongly condemned. In a civilised society, there can be advanced no justification for the inflicting of such a brutal beating on the claimant, at his home, under the cover of darkness and in the presence of his wife and children. In deciding the proper award for general damages, all the principles and cases cited above were considered. To arrive at the quantum of damages to be awarded, this court has taken into account: the injuries sustained by the claimant; the pain and suffering endured during and after the vicious beating; the evidence before the court; the age of the authorities and the adjustments required to accommodate the declining value of the dollar.

22. In the circumstances, this court makes the following order for general damages:

- (i) General Damages - \$320,000.00

VII. SPECIAL DAMAGES:

23. Special damages are pecuniary losses, which are capable of being calculated as at the date of assessment, unlike general damages which are not precisely calculable. The distinction between special and general damages was recently stated by Kangaloo JA in ***Mario's Pizzeria Ltd v Hardeo Ramjit*** CA 146 of 2003 thus, "*the general rule is that general damages are such as the law will presume to be the direct natural or probable consequences of the action complained of while special damages are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are*

¹ HCA 1273 of 1976

² HCA 966 of 1970

exceptional in their character and therefore, they must be claimed specially and proved strictly.”³ (emphasis mine)

24. The foundational guiding principle relied on by this court in determining the award under this limb is that special damages must be specifically pleaded, particularised and strictly proved at an assessment.⁴
25. This approach was stated by Lord Goddard CJ in ***Bonham Carter v Hyde Park Hotel*** to wit that parties “*must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the court saying ‘this is what I have lost; I ask you to give me these damages’. They have to prove it.*”⁵
26. It is critical to note, however, that there is a measure of flexibility in the degree of proof required for special damages. This was confirmed by the Court of Appeal in the case of ***Uris Grant v Motilal Moonan*** CA 162 of 1995. In that case, the Learned Chief Justice C Bernard, whilst agreeing with the principle that special damages, if sought, ought to be pleaded, particularised and strictly proved noted that the degree of ‘strictness’ required would depend on the particular circumstances of the case, “*the method and/or sufficiency of proof of special damage must depend on the particular circumstances of the case.*”
27. It is also instructive to note the Bowen LJ dictum which was applied in the ***Uris Grant case*** supra and cited with approval by Archie J (as he then was) in ***Anand Rampersad v Willies Ice Cream Ltd*** CA 20 of 2002 to wit that, “*the character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much **certainty and particularity must be insisted on in proof of damage as is reasonable**, having regard to the circumstances and 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.**”⁶ (emphasis mine)*

³ See also Lord MacNaughten’s comments in ***Stroms Bruks Aktie Bolag v Hutchinson*** (1905 AC 515, 525-526.

⁴ This position was recently reiterated by des Vignes J in CV2007-04400 ***Gillian Roxanne Isaac v Shaun Solomon & Motor and General Insurance Company Limited***, paragraphs 6 & 7.

⁵ ***Bonham Carter v Hyde Park Hotel*** [1948] 64 TLR at page 178 as applied by The Learned Chief Justice C Bernard in ***Uris Grant v Motilal Moonan Limited and Frank Rampersad*** CVA No 162 of 1985

⁶ ***Ratcliffe v Evans*** [1892 2] QB 524.

28. On the issue of proof of special damages, the authors of McGregor on Damages citing the Bowen LJ dictum above stated that in proof as with pleading, “*the courts are realistic and accept that the particularity must be tailored to the facts.*” 14th edition, para 1528, p 1020(emphasis mine).

29. It is clear from the learning that whilst special damages ought to be specifically pleaded and proved, there should be no rigidity in the application of this formula, and the ‘strictness’ to be applied in any given case should be tempered by or ‘tailored to the peculiar facts and circumstances’ before the court. In this regard, this court wants to reiterate and associate itself with the words of Archie J (as he then was) on this issue:

It is well accepted that special damages must be specifically pleaded and proven. However with regard to the degree of strictness required, the law appears less certain. The authorities show that the degree of strictness depends on what is reasonable in the circumstances. Terms such as “having regard to the circumstances”, “nature of the acts themselves”, “tailored to the facts”, “nature of the item” and “reasonable to require” have been used to express the fact that a rigid formula does not and ought not to exist in this aspect of the law. (emphasis mine)

30. Archie J (as he then was) emphasised that the approach adopted in cases such as *Uris Grant* supra should not be understood “*as derogating in any way from the principle that the plaintiff must prove any special damages claimed*”. However, he noted that in instances where the issue of special damages involved proof for items of smaller value, then “a lesser degree of strictness would apply” and in the absence of any evidence to the contrary, a judicial officer would be entitled to accept a ‘reasonable’ figure.⁷

31. In the instant case, the holistic sum claimed for special damages was five thousand eight hundred and eight dollars and forty five cents, which is broken down as follows:

SPECIAL DAMAGES CLAIMED	TOTAL SUMS CLAIMED
MEDICAL BILLS	\$4,508.45
TRANSPORTATION	\$1,300.00
TOTAL	\$5,808.45

⁷ Archie J (as he then was) cautioned that “*a judicial officer assessing damages is not to assume the role of adjuster or estimator*” but a claimant must by means of evidence led show the “basis” upon which his claim is made and that it was not simply plucked out of the air.

32. *Medical Bills*

In his statement of claim, the claimant claimed medical expenses for:

- (a) CT brain/sinus scans from Queen's Park CT Centre, in support of which an invoice # 6906 dated 25th March, 2003 and receipt #5704 for the sum of \$1,600.00 was provided.
- (b) Scan from Caribbean Eye Institute, in support of which a receipt # 44566 dated 28th April, 2003 in the sum of \$500.00 was provided.
- (c) Test and fitting visits from Ferreira Optical Limited, with respect to an artificial eye, in the sum of \$600.00, for which there was no documentary evidence in support.
- (d) Payment for a prosthetic eye to Ferreira Optical Limited, in support of which a receipt # 474495 dated 25th July, 2003 in the sum of \$1,000.00 was provided.
- (e) Consultation fees paid to Dr Bruno, in support of which a receipt dated 23rd May, 2003 in the sum of \$200.00 was provided.
- (f) A camera test done by Dr Bruno at an alleged cost of \$300.00, for which there was no documentary evidence in support.
- (g) Prescription drugs purchased from The Family Medicine Centre Ltd in the global sum of \$1,208.45, in support of which a letter dated 13th March, 2007, issued under the hands of the Director/Pharmacist, certifying the drugs were supplied over the period 2nd April, 2003 to 3rd October, 2003 was provided.

The claims at (a), (b), (d), (e) and (g) were substantiated by the requisite evidence so were allowed.

33. The claims at (c) and (f) were pleaded in the statement of case and it was indicated thereon that receipts in support would be provided. Evidence in support of the claims at (c) and (f) was not supplied to this court. In the opinion of this court, receipts could have been obtained for these claims and the onus was on the claimant to provide same. There is, however, no reason proffered for the claimant's failure to obtain the necessary documentary evidence in support of these claims. There is also, no evidence to contradict these claims as the first defendant has refused to participate in the assessment. Whilst there lies no automatic right of recovery by a claimant for whatever he claims as special damages and the rule requires him to prove his losses, these claims were not unreasonable in the context of the injuries sustained. The claimant would have had to make the visit for a fitting of his artificial eye and the camera test was also reasonably foreseeable given the injuries. Further, it is trite law that a claimant is entitled to recover any costs reasonably incurred in

an attempt to mitigate his losses, including any medical expenses that have been reasonably incurred or will be reasonably incurred.⁸ These claims were, however, not pursued by the claimant.

34. *Transportation Costs*

In his statement of claim, transportation expenses were claimed from Chaguanas to Port of Spain General Hospital and back in the sum of \$100.00 per day, in the global sum of \$1,300.00. Receipts to substantiate these expenses were not provided. The sums claimed were calculated by reference to the claimant's clinic dates as evidenced by copies of his clinic card, which were before this court. In the opinion of this court, the sums claimed were reasonable and the documentary evidence in the form of copies of his clinic cards was sufficient to award the sums claimed. The transportation expenses were allowed in their entirety.

35. In the circumstances, this court makes the following order for special damages.

(i) Special Damages - \$5,808.45

VIII. INTEREST:

36. The issue of the proper rate of interest that should be applied to the award for damages has been gaining increased attention in the local courts. There is a great deal of fluidity in the rates of interest that are being applied by local lending institutions. Consequently, the law is itself in a state of flux. This can be linked directly to the instability in the international and local financial architecture, following the recent global financial meltdown.

37. Section 25 of the Supreme Court of Judicature Act Chap. 4:01 states:

In any proceedings tried in any Court of record for recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment, but nothing in this section -

(a) shall authorise the giving of interest upon interest;

(b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

(c) shall affect the damages recoverable for the dishonour of a bill of exchange.

⁸ *Roberts v Roberts* (1960) Times 11 March.

38. There are some decisions where the interest rates are being adjusted downwards, with the rationale being advanced that interest on prime lending rates has fallen. This is confirmed by Shah J in *Sandra Juman v PC Abbot #11999 and the AG of T&T* HCA No S-490 of 2001. This was also in issue in *Debbie Mohammed v Archibald Bellamy, The AG of T&T and Ramnarine Sookdeo* where Devindra Rampersad J relying on the decisions in two unreported local cases⁹ awarded a pro-rated interest on special damages in the sum of 3% per annum from 12th January 1998 to 28th September, 2000 and thereafter 6% per annum until the date of judgment. An interest rate of 12% per annum was awarded on the general damages from the date of filing of the statement of claim to the date of judgment.
39. Prior to the global financial meltdown, the conventional rate¹⁰ of interest used in personal injuries cases was 12% on general damages from the date of service of the claim to judgment and 6% for special damages from the date of the accident to the date of judgment.¹¹ Statutory interest of 12% was then applied to this sum.
40. This precedent was set in HCA No 442 of 2000 *Angel Baldeo v Prestige Car Rentals* by Mendonca J (as he then was) who awarded 12% interest for damages for personal injuries. In dealing with the issue of interest to be awarded on damages, the learned Mendonca J (as he then was) opined:

With respect to the interest on the damages awarded the conventional rate adopted in personal injury cases where there is no evidence of current lending or other rates of interest, as in this case, is 6% on general damages and 3% on special damages. The conventional rates seem to have been derived from the fact that the Remedies of Creditors Act Chap 8:09 stipulates a rate of 6% on judgment debts. It was deemed appropriate to award that rate on general damages from the date of service of the writ and half that rate on special damages from the date of the accident ... The Remedies of Creditors Act has been amended by the Supreme Court of Judicature (Amendment) Act 2000 (the Act) which increase the interest on judgment debts to 12% per annum. The Act also introduces a new section (Section 25A) into the Supreme Court of Judicature Act Chap 4:01 which also provides that judgment debts shall carry the rate of 12% per annum and gives the Minister of Finance the power by order, subject to a negative

⁹ Caribbean Molasses Co. (T&T) Ltd v Gunpat Guinness (unreported) CA Civ No 7 of 1989 and CA No 93 of **1998 Battoo Brothers Ltd v Kassie and Leavitt** (unreported)

¹⁰ This is derived from the Remedies of Creditors Act Chap. 8:09. This Act was amended by the Supreme Court of Judicature Amendment Act 2000 which increased the rate of interest on judgment debts to 12% per annum.

¹¹ CA No 93 of **1998 Battoo Brothers Ltd v Kassie and Leavitt** as well as HCA 442 of 2000 **Baldeo v Prestige Car Rentals**.

*resolution of Parliament to vary the rate. It therefore seems to me now appropriate to vary the conventional rate of interest on awards of damages in personal injuries cases to 12% on general damages and in the normal case where special damage accrue throughout the period at half that rate on special damages from the date of the accident (COA No 70 of 1977 **Pampallone v The Royal Bank Trust Company (Trinidad Limited)**).*

41. Shah J in **Sandra Juman supra** which involved an appeal of his decision to refuse to award interest on the general damages to the plaintiff at the rate of 12% on the basis that he erred in law stated, “*Erred in law? What law? There is no statutory law and no rule of court that orders 12% on judgments from the date of the offence.*” Further, in commenting on the decision of Mendonca J (as he then was), Shah J pointed to the fact that the world today is on the brink of a financial meltdown and used this to justify his decision not to award the conventional 12% interest on damages:

It should be carefully noted that both the Remedies of Creditors Act and the Judicature Act both legislate for interest after judgment – Mendonca J exercised his discretion. It therefore seems to me necessary and appropriate to vary the conventional rate. Raising the rate in 2000 to 12% when this was the usual rate given by Trust Companies and other financial institutions is acceptable. But 2000 is not 2008 or 2009. Today the world is on the brink of financial meltdown. Governments have had to rescue banks, financial institutions and trust companies from financial disaster both in Trinidad and Tobago and the wider world. No country has been immune. Where in the world does any financial institution now give 12%?”

42. Des Vignes J in CV 2008-04009 **Sean Wallace v The Attorney General of T&T** also examined the issue of the proper rate of interest to be awarded by courts in the current global financial meltdown. Accordingly, des Vignes J on a review of various authorities found that the interest rates awarded by courts moved from 12% to 6%. He also noted that prime lending rates were dropped to 9.9% with effect from 5th October, 2009 by a leading bank in this country and accordingly applied a 9% interest rate. Des Vignes J in commenting on this award noted that given the decline in interest rates, this itself may not be an accurate current figure.

43. Attorney for the claimant submitted information on interest rates from Intercommercial Bank Limited (a local banking institution) as at 1st April, 2011 as follows:

BANK FACILITY	INTEREST RATE
CASH SECURED LOANS	8.75% APR
CAR LOANS	9.00% APR
MORTGAGES	8.75% APR
UNSECURED LOANS	12.75% APR

On the basis of this and recent local decisions, attorney for the claimant submitted that an interest rate of 9% should be awarded on general damages from the date of service of the claim form to the date of judgment and 12% thereafter and on special damages, a rate of 6% from the date of the accident to judgment and 12% thereafter until payment.

44. The proper rate of interest to be awarded for damages in such matters is within the discretion of the courts. Each case must be determined on its own peculiar facts and circumstances and on the basis of the evidence before it. The fluidity in the interest rates currently being applied by lending institutions is a relevant consideration but the requisite evidence must be placed before the court. In the *Sean Wallace* case above, des Vignes J had evidence before him that interest rates had dropped in 2009 and on that basis adjusted the interest awarded downwards to 9%. In the *Debbie Mohammed* case Rampersad J applied the usual interest rate on general damages but pro-rated the interest rate for special damages. The current fluidity in the rates of interest being applied by local banking institutions must be applied with some caution to matters before the court.
45. To arrive at a proper interest rate to be applied in the instant case, this court considered *inter alia* that:
- this matter was filed in 2007;
 - there was limited evidence before it as to the current interest rates at lending institutions and none as at the time of the filing and/or service of the claim;
 - the first defendant has staunchly refused to defend this matter and had it been determined earlier, the claimant may have been awarded the usual interest rate for such matters;¹²
 - judicial officers have been awarding rates of interest ranging along the continuum of 12% - 6% on general damages and 6% - 3% on special damages; and

¹² Supreme Court of Judicature (Amendment) Act 2000 which increased the rate of interest on judgment debts on general damages from 6% to 12% with effect from 28th September, 2000.

- the information provided by the claimant's attorney from Intercommercial Bank Limited points to interest rates ranging from 8.75% APR to 12.75% APR.

46. This court, therefore, finds no justification for the award of a lower interest rate in this matter and accordingly exercised its discretion to award the conventional interest rate, which it considers in all the circumstances of this case to be fair, just and reasonable.

CONCLUSION

47. It is thus the order of this court that:

The first defendant do pay to the claimant -

- (i) general damages in the sum of three hundred and twenty thousand dollars (\$320,000.00) with interest at the rate of 12% per annum from 22nd March, 2007 to 21st July, 2011.
- (ii) special damages in the sum of five thousand eight hundred and eight dollars and forty five cents (\$5,808.45) with interest at the rate of 6% per annum from 23rd March, 2003 to 21st July, 2011.
- (iii) assessed costs in the sum of fifty four thousand and eighty dollars and eighty-five cents \$54,080.85.
- (iv) stay of execution of 28 days.

Dated 21st July, 2011

Martha Alexander
Master of the High Court (Ag)