

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2007-02813/HCA S-699 of 2004

BETWEEN

PREMNATH JAIKARAN

Claimant

AND

SAISCON LIMITED

Defendant

Before: Master Alexander

Appearances:

For the Claimant: Ms Ramnarine instructed by Mr Shastri Parsad Jnr.

For the Defendant: Mr Ronnie Bissessar instructed by Ms Pavitra Ramharack

DECISION

A. BACKGROUND

1. On the 16th September, 2001 the claimant, Premnath Jaikaran (hereinafter “Premnath”) was taking off the screws from the cap of a barrel, when the entire lid exploded and struck him in his face and right eye. He was in the course of his employment with the defendant (hereinafter “SAISCON”) and lawfully following the instructions of its foreman to cut the barrel cap with a welding torch. The force of the explosion threw him approximately 10 feet away from where he was working, slamming him against a truck on the site. By amended statement of claim filed on 21st August, 2007 he sought damages for personal injuries and consequential losses as a result of the negligence of SAISCON. On 12th April, 2011 Tiwary-Reddy J ordered as follows:
 - i. There will be judgment for the plaintiff for damages for 80% of his claim.
 - ii. Damages will be assessed by the Master in chambers on a date to be fixed by the Registrar.
 - iii. The defendant do pay 80% of the plaintiff's costs of this action.

- iv. The defendant do pay interest on the award of special damages at the rate of 6 % per annum from 16.04.04 to the date of judgment.
- v. The defendant do pay interest on the award of general damages at the rate of 8% per annum from 16.04.04 to the date of judgment.

It is this court's responsibility to assess his damages for the injuries he sustained from that incident.

B. GENERAL DAMAGES

2. An assessing court, when making an award for general damages, is guided by the seminal principles in *Cornilliac v St Louis*.¹ In the conduct of this exercise, I was also cognizant of other case law principles, including that of Kangaloo JA who, in recognizing the wide span of litigation in this area of the law, stated that, "*far too often sight is lost of two fundamental principles: first, 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.*" Given that general damages are incapable of being quantified with any degree of precision, the evidence was examined against the backdrop of these principles on assessment to ensure fair and reasonable compensation to Premnath. I will now turn to the evidence relied on by Premnath in the presentation of his case.

(a) Nature and extent of the injuries sustained

3. The nature and extent of the injuries sustained by Premnath were spelt out in the medical report of the San Fernando General Hospital dated 25th October, 2001. According to that report Premnath sustained, "a large right C-shaped corneo-scleral laceration with loss of lens, vitreous and retina. He also sustained a right upper and lower lid laceration." The extent of his injuries were particularized in his amended statement of claim as follows: loss of consciousness; loss of right eye; resulting problems with vision; difficulty watching television or reading; headaches; embarrassed to go out in public; back pain; pain in knees; lash on forehead; cut to index finger; facial scar; lash to jaw; difficulty eating; large right C-shaped corneo-scleral laceration with loss

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

of lens, vitreous and retina; right upper and lower lid laceration. The minor injuries were by large not supported by the medical evidence.

(b) The nature and gravity of the resulting physical disability

4. The gravity of Premnath's injuries was clear in that his eyeball was removed as noted in the 2001 medical report from the San Fernando General Hospital, "On September 26, 2001 the patient had a right enucleation which was uneventful." He was a teenager (around 16 years) with one eye. A second medical report from the San Fernando General Hospital dated 2nd March, 2004 stated that Premnath "had an eye socket deepening procedure on October 29, 2003 to facilitate the implantation of a prosthetic eye." On 9th February, 2012 the surgery was performed but during a follow up visit with his doctor, Dr Mahabir discovered that he had an infection and required another surgery. This was referred to in the medical report dated 25th April, 2012 by Dr Mahabir. By medical report issued by Dr Trinidad dated 2nd April, 2012 he advised that Premnath had a "blocked R/Nasolacrimal duct ... will require a dacryocystorhinostomy (DCR). The estimated cost is \$15,000.00." The cost of this surgery, as well as the previous one, was incurred by SAISCON. As such, on 9th June, 2012 the said surgery was performed and a tube was left for 3 months to facilitate permanent drainage, as noted in medical report dated 25th April, 2012 by Dr Trinidad. Premnath gave evidence also of experiencing loss of memory and being forgetful but this again was neither supported by the medical evidence nor was it pleaded.

(c) Pain and suffering endured

5. Premnath testified that when he woke up in the hospital, he was bleeding from his right eye and experiencing a lot of pain in his forehead, right eye, jaw, back and knees and "*could not stand the pain.*" It was so severe, he was given 3 injections daily as well as painkiller tablets. With the injury to his jaw, he was unable to open his mouth properly; could not eat solid foods for 4 days and consumed only liquids. The injury to his right index finger caused the nail to turn black and fall off, leaving him with a scar. He also testified that on 28th September, 2001 he was in pain following another surgery to remove a growth in his right eye socket. After his discharge from the hospital, the growth came back in his right eye socket and he underwent yet another surgery to remove it. It is his evidence that he had to wear eye patches for approximately 5 months, which he had to change every day, sometimes 3 times per day as his eye socket kept running

water. During that period, he was on a lot of painkillers to ease his pain and suffering. He claims that he was in bed for almost a year; lost a lot of blood; was weak and in constant pain and was dependent on his mother and sister to look after him. At present, he cannot be in the sun without his shades as it causes tremendous pain in his right eye socket. He is also unable to read or watch television for any length of time without pain in the left eye and headaches. In his witness statement he states, “*Presently I still suffer with extreme headaches and pain in my back and both knees as a result of the injury that I suffered in the said accident. Once the rain is falling or looks like it is going to fall I feel pain in my back and knee.*” I note that there has been no claim after August, 2007 for pain medication (see below) and do not accept that his physical pains, if continuing, are ‘extreme’ or of the same degree of intensity as in the initial stages of his injury. Based on the evidence, I concluded that his physical pains have been now largely and/or completely resolved or, at the very least, bearable without external medicinal props.

6. He also gave evidence of his psychological and emotional pain and suffering. According to him, when he learnt at the hospital that his right eye was removed in surgery, he underwent mental stress and discomfort; and was sad and afraid and could not stop thinking about not having his right eye. This evidence is accepted as credible, bearing in mind that he was a teenager at the time of the accident. Of note is the level and intensity of his emotional and psychological pain, as captured in his witness statement, when he states, “***I find it difficult to come to terms with losing my right eye. It makes life challenging. I cannot have fun, work, help my family as I use too before the accident. I am not on the same level with other boys my age when it comes to picking up girls.***” (emphasis mine) He claims that all his siblings (older and younger) are married and it is because of the loss of his eye that he has remained single. He testified further, “*I wear sunglasses called ‘shades’ all the time. I feel embarrassed to take off these shades because **people would stare at me, laugh at me and call me names like ‘one eye’.** I am ashamed to visit certain places and to socialize the way I used to. I cannot bear even to look at myself in the mirror. I now remain at home most of the time.” (emphasis mine) Under cross examination, the mental and emotional suffering and pain to which this teenager was put was made clear. Despite being pressed about the innocuous nature of name calling in small societies such as Trinidad, he remained adamant that its effects were debilitating, frustrating and deeply wounded him. This is accepted.*

(d) *Loss of amenities*

7. Premnath's evidence as to his loss of amenities was fleshed out succinctly in his witness statement, *"I have problems with my eyesight as I now rely on one eye. It is hard for me to tell the height and distance of things like when am walking up and down stairs. When I want to see anything on my right side, I cannot just turn slightly to my right. I have to turn all the way around because of this I cannot play pool, cricket and football as good as I use too. ... Whenever I try playing these games my left eye tend to be on a strain and I start experiencing headaches. I also have fear to play these games as I am afraid that a ball might hit me in my left eye and I might not be able to see again."*
8. Under cross-examination, Premnath gave evidence of the continuing effects of the loss of his eye on the quality of his life post accident. This loss has impacted significantly on his life as a teenager restricting his ability to enjoy the usual sporting and other recreational activities engaged in by teenagers such as going to the beach. It also drastically affected his appeal to the opposite sex. I accepted his evidence and concluded that consequent on the loss of his eye, a normal part of his life as a teenager would have been stolen from him, leaving him depressed, emotionally scarred and unable to freely enjoy ordinary recreational activities. I note also his evidence that he had developed a fear of losing his remaining eye, which further hamstrung his involvement in sporting activities.

(e) *Loss of pecuniary prospects*

9. Owing to the loss of his right eye, Premnath testified that he is unable to maintain permanent employment as a welder/straightener/painter, the trades in which he has working experience. His evidence paints a picture of a frustrated and challenging working life where doing his learnt trade was rendered impossible by the loss of his eye. Despite his injury, he sought employment in different fields on the labour market but his pain and suffering caused him not to keep the jobs. His evidence is that he was often late for work, did not go at all or found he could not work an 8 hour shift and had to go home. Consequently, on numerous occasions he either was fired or left the job. It is his evidence that he currently works as a painter, whenever he can, despite the fact that the fumes in the paint irritates his eye causing tremendous pain and runny water. I find it commendable that despite his loss of an eye and the resultant challenges, he

continues to work when he can. The evidence as to any loss of earnings and/or incapacitation on the labour market is discussed below.

C. CASE LAW

10. Counsel for Premnath is seeking on his behalf an award of general damages in the sum of \$500,000.00 - \$600,000.00 in reliance on 2 main authorities. The first is *Anil Reds v Nyan Rattan and Inshan Salim*² a decision emanating from this court where following a severe beating with a steel chain, to which a hook was attached, a 30 year old claimant/businessman suffered extensive injuries including the loss of his eye. The beating had taken place at his home, in the presence of his wife and children at the hands of a van load of village thugs. The injuries sustained by the claimant in *Anil Reds* included: loss of an eye which had to be replaced with a prosthetic eye; loss of his sense of smell; loss of the ability to chew on the right side of his jaw; numbness on the right side of his jaw; headaches; gross facial disfigurement; insomnia; “jumpiness” causing him to become reclusive and always wearing a shades (except when sleeping); and the burden of being mandated to renew his driver’s permit each year because of the eye injury. The medical evidence also pointed to chop wounds to his head; abrasions to his hands and knees; swollen face for about 1 month; and hospitalization for 1 ½ months. This court awarded him \$320,000.00 in July, 2011.

11. In the view of this court, the injuries in *Anil Reds* were substantially more extensive and serious than those in the instant case. In *Anil Reds*, the claimant had suffered a brutal and horrific beating, with a steel chain and a hook, to his head, face and body, which left him with gross, facial distortions and erased his sense of smell. Whilst Premnath too has facial scarring and suffered the loss of an eye, the global effects of his injuries are not comparable to the claimant in *Anil Reds* and are to be distinguished. Of note is that Premnath has testified that he drives motor cars and actually got his permit after the accident. There is no evidence of any requirement to renew his licence yearly, though he has testified that he is uncomfortable driving long distances because of having to constantly wipe water running from his right eye socket. Driving in the night is also challenging because of the reflection of lights from oncoming

² *Anil Reds v Nyan Rattan and Inshan Salim* CV2007-00903

vehicles. Thus, I accept that Premnath's injuries are serious and he is deserving of fair and just compensation but find that the sum effects are not on par with the overall severity of those sustained by the claimant in *Anil Reds* and for these reasons adjusted his award accordingly.

12. The second authority relied on is *Racquel Rampersad v Shaffick Mohammed and Ors*³ where Tam J in 2001 awarded \$150,000.00 to an eighteen year old who was blinded in the right eye with some scarring. She also suffered laceration to her right eyelid; a puncture wound to her right ear; multiple lacerations to the forehead and eventually the loss of her right eye. The award was made for pain and suffering, loss of amenities inclusive of a nominal award for disability on the job market. This figure adjusted to 2010 amounts to \$291,731.00. To my mind, Premnath's injuries are generally comparable to those in *Racquel Rampersad*. The award in *Racquel Rampersad* was used as a yardstick to gauge the award to be made in the instant case, bearing in mind the principles enunciated in *Peter Seepersad*⁴ and other cases as to the effects of merely extrapolating from dated cases to make comparisons, as well as the issues of inflation and the declining dollar value in conducting these assessments.

13. Counsel also relied on the several cases referred to in *Anil Reds*, the most relevant of which are depicted below:

- *Morris v Point Lisas Steel Products Limited*⁵ where Hosein J in 1989 awarded the sum of \$70,000.00 for the loss of a right eye. This figure adjusted to 2010, amounts to \$254,070.00.
- *Smith v Smith*⁶ where Bourne-Hollands J in 1975 awarded the sum of \$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 \$354,366.00.
- *Paul v Seepersad & Kagoo*⁷ where Ramlogan J in 1997 awarded the sum of \$160,000.00 for the loss of an eye and facial injuries. This figure adjusted to 2010 amounts to \$362,741.00.

³ *Rampersad v Mohammed and Ors* HCA S-1121 of 1998

⁴ *Peter Seepersad v Persad and another* [2004] UKPC 19

⁵ *Morris v Point Lisas Steel Products Limited* HCA S-1336 of 1983

⁶ *Smith v Smith* HCA 136 of 1973

⁷ *Paul v Seepersad & Kagoo* HCA S-1003 of 1989

- ***Bhamsingh v Carimbocas***⁸ where Braithwaite J in **1980** awarded the sum of \$45,000.00 to a seventeen year old for loss of sight in one eye and facial scarring. This figure adjusted to 2010 amounts to \$466,149.00.

14. Counsel for SAISCON argued, however, that there were other more appropriate cases to use as benchmarks for the general damages' award to Premnath and suggested 2 which span the higher and lower extremities for similar injuries. The first is the ***Racquel Rampersad case*** (supra) as representative of a higher end award and the second is ***Ramsaran Balkaran v A1 Construction Limited***⁹ another decision of this court where a plaintiff who had fallen off a scaffolding suffered a fracture of the floor of the right eye; haemorrhage behind it; and damage to the optic nerve in the right eye, which led to irreversible blindness. The plaintiff was awarded \$120,000.00 for general damages. In that case, the evidence in support of the claim for general damages was found wanting as seen in the comment of the court to wit, "*There is a pattern of failure by the plaintiff to provide the requisite evidence to assist this assessing court to fairly assess his damages and losses in this matter.*"¹⁰ ***Ramsaran Balkaran*** is distinguished, therefore, from the one at bar, where there was updated medical evidence in support of Premnath's claim. The suggestion of counsel for SAISCON of \$175,000.00 as appropriate general damages for Premnath, on the basis that Premnath's injuries come closest to ***Ramsaran Balkaran*** is rejected outright, as being against the weight of evidence and on the lower side of the compensatory scale. To my mind, Premnath's injuries were slightly more extensive than the plaintiff in ***Ramsaran Balkaran*** including a lash to the jaw that made eating difficult and came closest to those in ***Racquel Rampersad***.

15. In the instant case, Premnath was hospitalized for 12 days and continues to suffer the indignity of a removed eye and an empty eye socket that runs water, affecting him in the conduct of his ordinary activities such as driving and socializing. This is a young man whose whole life was blasted into another direction when that barrel exploded and who, as at the date of the assessment, continues to suffer the indignity of an eye socket that functions like a dripping

⁸ *Bhamsingh v Carimbocas* HCA 1742 of 1971

⁹ *Ramsaran Balkaran v A1 Construction Limited* HCAS-1306 of 1998

¹⁰ Ibid page 4

faucet. He now finds himself the butt of ridicule and name calling by insensitive peers and though there can be no perfect compensation to be had for such emotional suffering and scarring, he is entitled to a sum that would fairly and adequately compensate him for his physical and emotional pain and suffering. In so doing, I bear in mind the time-honoured principle that an award of damages should as nearly as possible put him in the same position as he would have been in if he had not sustained the wrong for which he is to be compensated. I also bear in mind that whilst his injuries are not comparable to the claimant in *Anil Reds*; they are serious and debilitating enough to invite this assessing court to ensure a fair and just compensatory award. After considering the several authorities, some dated, and the ‘inexact science’¹¹ of comparative analysis, as well as the other guiding principles on assessments, particularly the dicta of Stollmeyer J (as he then was) on the effects of relying on dated decisions which tend to yield higher sums on adjustment than recently decided cases,¹² I concluded that an appropriate award for pain and suffering and loss of amenities in the instant case would be \$250,000.00.

D. SPECIAL DAMAGES

16. In his August, 2007 amended statement of case, Premnath pleads special damages as follows:

	\$
i. Cost of medical report from SFGH	- 37.50
ii. Cost of 125 eye patches at \$2.00 each	- 250.00
iii. Cost of 35 tubes of Teramisin at \$32.00 per tube	- 1,120.00
iv. Cost of 19 shades at \$45.00 each	- 855.00
v. Medication and continuing	- 60.00
vi. Loss of earnings from 16 th September, 2001 to 17 th November, 2002 at 1,820.00 per month	- 25,480.00
vii. Cost of 19 trips to SFGH at \$100.00 per trip	- 1,900.00
viii. Cost of 1 visit to Dr Mahabir at Surgi Med Clinic (inclusive of fees and travelling)	- <u>500.00</u>
	<u>30,202.50</u>

¹¹ *Seepersad v Persad and anor* [2004] 64 WIR

¹² *Deokie Kimkaran and Sintra Boodoo v Sakaldip Boodoo & anor* HCA S-1493 of 1996

In addition, a claim for a prosthetic eye was made in the sum of **\$42,000.00** but was paid by way of interim payment by SAISCON. It fell, therefore, to Premnath to justify the special damages to which he claims he is entitled. I turn now to his evidence particularly any documents in support, bearing in mind the degree of strictness of proof for this head of damages¹³.

17. Premnath notably has not supplied this court with any documentary evidence of his claims at (i); (ii); (iii); (iv); (v); (vii) and (viii) in the sum of **\$4,723.00** [his claim at (vi) for loss of earnings is discussed below]. Further, his counsel, apart from stating that he should be awarded the sum as claimed, was silent as to the reasons for the failure to furnish the necessary documentary proof. To my mind, this is the classic case of just listing the usual heads of special damages with some likely figures and genuflecting before the assessing court in the hope that some award may be made. But this is not how special damages are proven. A Claimant is required to bring his receipts, bills and any other documentary evidence in support of his claim. There is no reason advanced for the absence of proof and I do not see why same could not have been obtained. Of further concern is the fact that after August, 2007, there seems to be no additional cost incurred for medication despite Premnath's evidence of continuing pain in his back and knee and "extreme headaches". If this were so, why has this not translated into some evidence of purchases of painkillers? Litigants approaching an assessing court must come prepared to prove what they are claiming has been spent and not expect that on their say so, awards for special damages would be made. In the circumstances, I am constrained to disallow these claims save the sum of \$37.50 that counsel for SAISCON has agreed for the medical report, despite the lack of proof.

Loss of Earnings from 16th September, 2001 to 17th November, 2002

18. Premnath claims loss of earnings in the sum of **\$25,480.00** from 16th September, 2001 to 17th November, 2002 at \$1,820.00 per month. His evidence is that he started back to work in the year 2004 at Solid Waste Management Company Limited for a year as a Supervisor, recording vehicles entering the compound to offload garbage. In this job, he worked for 5 days per week on a shift basis. He described his challenges thus, "*because I was so frustrated because the pain in my*

¹³ *Top Hat Yachts Limited v Evelyn Petersen & Ors* CV2006-03677

right eye and the water running from my eye which prevented me from doing my work properly, I started feeling depressed and did not feel like working. There was a point when I had stopped going to work and whenever I did I left early and because of this I was fired.” Subsequently, about 3 weeks later he got a job as a labourer doing manual road paving with SIS for 3 months before being transferred out as he was experiencing pain in his eye working in the sun. He states, *“I was unable to work a complete week and my employer used to quarrel that I was not reliable.”* It is his evidence that he was transferred to do straightening and welding but after the first 2 weeks, *“I started to get real pain in my eye and was only able to work for two days in a week for about a few months. When the pain was unbearable I stopped working because I had gotten an infection and was treated at the San Fernando General Hospital. When I felt better I returned to work for about four months until I started having the same problems and left again.”* Subsequently he got a job as a painter with Junior Sammy Contractors, where he worked casually 4 to 5 days a week for \$25.00 per hour from 7 a.m. to 4 p.m. He was suspended from this job after approximately 2 weeks because of frequent absences, *“I usually have to take time off because the fumes from the paint irritate my eyes and prevents (sic) me from working a full day.”*

19. His evidence in his witness statement as to his loss of earnings was lacking in sufficient particularity, consisting mainly of detailed accounts as to how the pain in his eye impacted on his attendance and/or regularity and resulted in him being unable to keep a job. Of note is that it detailed his working life from the year 2004 but was silent with respect to the period for which he claims loss of earnings (16th September 2001 to 17th November, 2002) as well as the period leading up to 2004. I note also the lack of documentary evidence such as pay slips or letters from past and /or current employers or even colleagues confirming his challenges in keeping a job. There is no evidence in his witness statement that he had resumed work after 17th November, 2002 or as to what happened between 17th November, 2002 and 2004, when he allegedly resumed working. His witness statement is also silent with respect to specific dates, such as for his suspension whilst working at Junior Sammy Contractors and/or if it was suspension with or without pay. He even seemed unsure as to the exact period of this alleged suspension. He merely states that whilst working as a painter with Junior Sammy Contractors, *“I was once suspended for about two weeks because I was staying home frequently because of pain in my eye.”* (emphasis mine) In areas of deficiencies in his witness statement, his viva voce evidence painted a different picture. It showed him earning increasingly high wages from 2004 to present. He

also confirmed under cross examination that at Junior Sammy Contractors, he did straightening, welding and painting (not painting alone) on a permanent (not casual) basis, with regular and/or long working hours (and not *ad hoc* as claimed). There is no evidence of him being dismissed or suspended for a lack of competence or inability associated with his injuries but because of an indifferent work ethic.

20. In evidence also is a letter dated 31st January, 2001 from SAISCON Limited stating that Premnath is employed as a labourer earning \$65.00 per day. There is no indication in this document as to how many days per week he works or of his weekly, fortnightly or monthly earnings or whether he is paid for any day off taken. Premnath's evidence, however, is that he earned monthly \$1,820.00 from which it could be inferred that he worked 7 days per week. Of note is Premnath's viva voce evidence to wit that he did not work (earn salary) for about a year after the accident. However, of further note is Premnath's admission under cross examination:

Q After the accident in 2011 you were earning \$65.00 per day, you agree Saiscon continued to pay your salary?

A No

Q My instructions are Saiscon continued to pay your salary for a 6 month period after the accident?

A Just one second, yeah that is correct sorry.

Q In addition have you received workmen compensation?

A After that I received \$2,000.00

Q From 16th September, 2001 my instructions are you were paid salary for 6 months from that day, you agree?

A Yes

21. Based on the above evidence, Premnath is entitled only to 6 months salary and I am prepared only to allow loss of earnings for this period at \$65.00 per day. Further, whilst Premnath would like this court to believe that he worked full weeks and months, earning a fixed monthly sum of \$1,820.00, I was not so convinced. In making this award I, therefore, take into account the contingencies of life and deduct 15% from this sum. Loss of earnings is allowed in the sum of **\$9,282.00** to which is added the sum of \$37.50 agreed to by counsel for SAISCON for the medical report to give special damages in the sum of **\$9,319.50**.

Loss of Future Earnings

22. Counsel for Premnath has proposed that the sum of \$436,800.00 be awarded as loss of future earnings based on the multiplier/multiplicand method. He rests his submissions on the Privy Council decision of *Seepersad v Persad* (supra) as well as *Riki Rampersad v Trinidad Contracting Limited*¹⁴. In *Raki Rampersad* the plaintiff had suffered the loss of a left arm due to extensive crush injury from shoulder to elbow by a conveyor belt and there was medical recommendation of amputation and replacement with a prosthetic arm to increase functionality. Mohammed M (as she then was) awarded loss of future earnings based on her findings that the plaintiff was now seriously disadvantaged on the labour market; he can no longer earn his pre-accident salary; there was no likelihood of the injury impacting his life expectancy but given his limitations in education and training, his options of future employment were very limited. In the present case, Premnath has not demonstrated to me that he is unable to work and/or to find gainful employment. In fact it is clear, based on his evidence that he continues to obtain employment but is challenged in keeping same owing to his desultory work ethic. He claims this is due to his continuing pain and runny eye socket as well as the emotional toll of having 'one eye' and the mental distress that he is put to as a result. Whilst I remain unconvinced of any serious 'continuing' pain, I do accept that his eye socket continues to spring water and this poses certain functional limitations. I bear in mind, however, that this will be surgically corrected once work on the shell (of the prosthetic eye) is completed.
23. What is also clear from the evidence and is accepted is that he remains emotionally handicapped and scarred by the loss of his right eye. There is no issue of impact on his life expectancy from this injury or of him being 'seriously' and continuously disadvantaged on the labour market. I was prepared to accept only that his emotional and psychological scars and challenges from the loss of the eye did interfere with his work ethic but bear in mind that even this too would be minimized upon completion of the surgical intervention with respect to the prosthetic eye. In making an award for loss of future earnings, a court must be satisfied that a claimant has in fact suffered losses or will suffer continuing losses on the labour market. I am not so satisfied. To this end, I find it necessary here to detail aspects of his viva voce evidence which highlight

¹⁴ *Riki Rampersad v Trinidad Contracting Limited* HCA S-1348 of 2003

(under cross examination) certain discrepancies and inconsistencies with his witness statement and reveal he has certain challenges with truthfulness¹⁵:

Q Do you do private jobs?

A No

Q You sure of that?

A Yes

Q You've never considered doing private jobs?

A No

Q My instructions are that you do a lot of private jobs at your home?

A Not in working hours, during the time if I was at home,

Q So you are saying since you have been working at Junior Sammy you have not done any private jobs?

A Not too sure

Q When was the last time you did a private job?

A I can't remember

Q Was it this year? [2012]

A No

Q You know what a private job is?

A Yes

Q I am suggesting that outside of Junior Sammy hours, you do a fair amount of private jobs?

A Yea not at home

Q Then where?

A At work or sometime a worker want something done and talk to the boss and I do it at work.

Q These jobs are done after 4:00 p.m.?

A Yes

Q You are paid for doing this?

A Yes sir

Q Can you recall the last time you did one of these private jobs?

A Last year November, 2011

¹⁵ His viva voce evidence shows extreme reluctance to admit to private jobs and the income derived. It was clear that he intended to mislead this court by understating his true income.

Q November, 2011?

A Yes

Q So your evidence is, over the last year you've done private jobs at your employer's place?

A Yes

Q How much you got for the last job?

A Four of us each got \$500.00

Q Before November, 2011 any other job you recall?

A Yes we did an Almera for Mr Kia, the supervisor.

Q How much did he give you?

A We didn't charge him.

Q I am suggesting to you that you have been doing private jobs and continue to even after November, 2011?

A Not true.

24. Based on the evidence before me, it is clear that Premnath has neither suffered any real loss of earnings in his chosen occupation as a painter/straightener/welder nor has he demonstrated that he is likely to suffer any such continuing losses. The evidence in fact points to him earning an increased wage level of now up to \$200.00 per day (unlike his pre-accident salary of \$65.00 per day) as well as extra sums earned after working hours doing private jobs. Further, the removed eye does not prevent him from securing jobs in his pre-accident field according to his own evidence. In fact, he has been able to secure a driver's licence and, but for the slight discomfort of the runny eye socket, is able to perform this function. I concluded that as Premnath's experience and competencies increase in his chosen field, not only is his future earnings likely to increase but so too also his potential for greater earnings from private jobs. I was also not prepared to accept his counsel's assertion, without any evidentiary backing, that had Premnath not sustained this injury, he would now be trading on his own or earning even a higher salary rate than he now attracts. I have no evidence of this nor was I prepared to descend into the arena where such assumptions are made. My findings are that Premnath is able to work and clearly has been doing so 1 year after the accident; there is absolutely no evidence of any continuing loss of earnings attributable to his injuries or likely to occur in the future; there is also a complete dearth of evidence that his injuries have placed him at a disadvantage

and/or he will lose his job more readily than his able-bodied competitors. I find as a fact also that his pre-accident income has increased and there was no evidence of workers, in his field in 2001, who now attract a higher wage than he currently does. Based on the insufficiency of the evidence presented, I concluded that Premnath having failed to make out a proper case that he is entitled to any future loss of earnings has disintitiled himself thereto. In those circumstances, I make no award for loss of future earnings.

Future Surgery

25. Dr Mahabir in his viva voce evidence has confirmed that Premnath requires a change in the prosthetic shell every 10 – 15 years at a cost of \$20,000.00 at today's prices. Based on this evidence, the sum of \$20,000.00 is allowed for future surgery.

Order

26. It is ordered that the defendant do pay to the claimant 80% of his claim and costs as follows:

- i. General damages in the sum of **\$200,000.00** (being 80% of \$250,000.00) with interest at the rate of 8% per annum from 16th April, 2004 to 13th May, 2013;
- ii. Special damages in the sum of **\$7,455.60** (being 80% of **\$9,319.50**) with interest at the rate of 6% per annum from 16th April, 2004 to 13th May, 2013;
- iii. Future surgery in the sum of **\$16,000.00** (being 80% of \$20,000.00).
- iv. Costs as assessed in the sum of **\$58,839.37**;
- v. Stay of execution of 28 days.

27. It is also ordered that the sum of \$2,000.00 received in workman's compensation is to be deducted from the damages payable.

Dated 13th May, 2013

Martha Alexander
Master