

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2008-05025

BETWEEN

JENNIFER KALLOO

First Claimant

ROWLAND MOZE

Second Claimant

AND

ELVA PHILLIPS-THOMAS

First Defendant

THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO

Second Defendant

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Before: Master Alexander

Appearances:

For the Claimants: Ms Theresa Hadad and Mr Vikash Indarlallsingh, instructed by  
Messrs Alves Clarke & Co.

For the Second Defendant: Mrs Tinuke Gibbons-Glenn instructed by Ms Avaria Niles

DECISION

**Background**

1. On 2<sup>nd</sup> January, 2005 a huge devil’s ear tree (*enterolobium cyclocarpum*) growing in the Trinidad and Tobago Botanic Gardens fell and crashed onto the roof of a dwelling house occupied by the first claimant (“Jennifer”). At the time, Jennifer, a 55 year old retired flight attendant, was asleep inside her home, when the tree came crashing down, causing its branches and debris from the roof to fall on her, severely injuring her. The tree was growing on neighbouring property, on lands owned by the State. The second claimant (“Dr Moze”) is a medical doctor and the beneficial owner/lessee of the premises at No 3 St Ann’s Gardens, Port of Spain (“the said premises”). Dr Moze resided in a cohabitational relationship with Jennifer on the said premises up to September, 2003 and their dwelling house was one of several houses that stood on lands forming part of the “Botanic Gardens”. The first defendant is the occupier

of one of these houses, adjoining Jennifer's dwelling house, and it was on her property on which the devil's ear tree was growing, with its branches overhanging Jennifer's. The Attorney General is sued as the State has the statutory duty of preserving and maintaining trees on the land occupied by the first defendant, at public expense<sup>1</sup>. It is not in dispute that, as a result of this incident, Jennifer sustained personal injuries and the dwelling house and household items were damaged in the process. This is an assessment for personal injuries suffered by Jennifer and for property damage, which was caused by the negligence or nuisance or breach of statutory duty on the part of the Attorney General and his servants/agents (at the Horticultural Services Division).

### **The evidence**

2. Jennifer avers that from 2<sup>nd</sup> February, 1995 Dr Moze and she became the occupiers of the dwelling house in the "Botanic Gardens" up until September, 2003 when he left and she remained in sole occupation. She was asleep on 2<sup>nd</sup> January, 2005 when the massive tree crashed through the roof of the dwelling house and upon her. She lost consciousness when the tree fell and hit her and, it was only on regaining consciousness, she realized that she was pinned under its limb and that branches, and debris from the roof were covering her body. She was unable to move. She averred further that when the tree fell, it brought down with it the asbestos roofing, rafters, Celotex ceiling and electrical fittings, which all landed on her. It would appear that when the tree fell, it crashed directly into the bedroom where she was asleep, causing damage to the structure of the house, the roof, the ceiling and the fence. She lost several items of personal property and suffered personal injuries, as outlined in her medical reports.
  
3. Dr Moze gave evidence that on the morning of the incident, when he went to the said premises, he observed that the branches, which were overhanging the property, had fallen onto and crashed through part of the roof causing damage to it. He saw branches and other debris from the rooftop littered on the mattress and over the room where Jennifer was sleeping at the time. He also gave evidence of obtaining a quotation for the disposal of the hazardous waste materials and the removal of the asbestos roofing sheets.

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<sup>1</sup> The Botanic Garden's Act Chap 41:03; the Forests Act Chap 66:01

## The Law

### (a) General damages

4. In dealing with compensation for personal injuries, this court is guided by the principles recorded in *Cornilliac v St Louis*<sup>2</sup>. These well-known principles include the nature and extent of the injuries sustained; the nature and gravity of the resulting physical disability; the pain and suffering endured; the loss of amenities suffered and the extent to which the claimant's pecuniary prospects have been materially affected. In considering these principles, the medical evidence takes a pivotal place as well as the evidence of Jennifer as to her pain and suffering and loss of amenities. Of note is that the medical evidence went in by consent so this court now turns to the several reports which spoke to the nature, extent and gravity of the resulting injuries.
  
5. Upon the occurrence of the incident, Jennifer received a blow to the head, leaving her with a laceration to the scalp which required 3 sutures in the left frontal area and generalized bruises over her body<sup>3</sup>. She also suffered an injury to her lower back and right leg. The first report relied on by Jennifer, dated 22<sup>nd</sup> May, 2007, was issued by Dr Steve Mahadeo and documented her medical condition over a period of several visits. He noted her complaints of experiencing: sharp stabbing pains at the top of her head at the site of the scalp laceration; pain around the whole head; dizziness; disorientation; pain in the lower back and along the lateral aspect of the right foot; short term memory loss and problems concentrating. Based on this, Dr Mahadeo made a diagnosis of post-concussion syndrome on her first visit after the tree fell on her. Over successive visits, Dr Mahadeo diagnosed Jennifer with: diminished disc height at L5-S1 levels; paraesthesia in the right foot; lower back pain; persistent headaches; dizziness; short term memory loss; occasional disorientation and problems with concentration. He concluded that she was suffering, at that point, with post-traumatic stress disorder linked to the blow to the head and ordered an MRI scan. Jennifer's injuries were confirmed by Dr Robert Ramcharan<sup>4</sup> who noted that a repeat MRI scan of the brain and spine showed no abnormalities but there was evidence of cervical spondylosis with chronic cervical degenerative disc disease. In reports dated 25<sup>th</sup> March, 2013 and 11<sup>th</sup> January, 2016 Dr Ramcharan noted that she was suffering with post-concussion syndrome with scalp neuralgia from the laceration. Apart from the left scalp laceration which was healed, there were no other neurological deficits, no hemiparesis or weakness. The report on 11<sup>th</sup> January, 2016 also referenced

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<sup>2</sup> *Cornilliac v St Louis* (1965) 7 WIR 491

<sup>3</sup> Report by Dr David Josa, Medical Director, dated 20<sup>th</sup> September, 2007 Westshore Private Hospital

<sup>4</sup> See Medical Report of Dr Ramcharan dated 11<sup>th</sup> January, 2016

her intolerance to extreme heat, throbbing of the facial muscles, insomnia, blurred vision and floaters in her eyes.

6. As to the extent of the resulting disability, Dr Mahadeo stated rather clearly that Jennifer's post-traumatic stress disorder can be, "quite disabling and can go on for an indefinite period". This was confirmed by Dr Ramcharan who concluded that her symptoms may be permanent in nature and included insomnia.
7. As to pain and suffering experienced, both the medical reports and Jennifer's evidence in chief spoke clearly to this aspect. Jennifer described being terrified upon waking up to find herself pinned under a limb of the devil's ear tree, with her leg trapped under the debris from the roof. Her evidence is that she was in immense pain, petrified and that she recalled thinking she had died. The pain was in her back, head and right leg. Despite her pain, she managed to dislodge herself from under the tree and debris and found she was unable to walk, so dragged herself along the floor and across debris to an adjoining room, without any assistance. The pain was excruciating and she realized that it was not only localized in those areas above but also along her entire spine and that she was bleeding from the left side of her head, which felt swollen. She was taken to the Westshore Medical Private Hospital where her wounds were treated and she was kept on a ward for approximately three hours before being discharged. Some six days after being discharged, she went to see a neurosurgeon as she was experiencing sharp pains at the top of her head (where the scalp was lacerated) and in the entire head, dizziness and pain in the lower back and right foot. She was placed on more medication. The pains continued and she described feeling it at the left side of her face and head when she walked. She was also experiencing pain in the calf, numbness, paraesthesia (or pins and needles sensation) and difficulty moving her right leg and right foot.
8. By March, 2005, some two months after the accident, she was experiencing dripping nose, sore throat and pain in her knees and lower back, with the pain in her right foot continuing. Her pains, paraesthesia, dizziness, disorientation and headaches continued into May, 2005 and on a visit to Dr Mahadeo, a stitch from the suture in her scalp was removed. She finds herself in constant pain, which affects her ability to drive or even walk properly and; she avers that whenever she gets the pain in her right foot, she begins to walk with a limp. She claims that she takes medication daily to manage the pain. She claims also that on occasions, the severity and intensity of the headaches and dizziness have caused her to fall.

In her most updated medical report<sup>5</sup>, it appears that the pains are continuing and that she has reached maximum recoverability. The debilitating effects of her injuries have caused her to feel depressed.

9. She testified to suffering a huge loss of amenities following the incident. Initially, she was on medication that caused her to feel drowsy. She was unable to drive or do household activities unassisted. Prior to the incident, she played an active role as an animal rights activist but, as the symptoms from her injuries were enfeebling, she was restricted from continuing in these activities. She now relies on siblings to assist her to maintain her dwelling house and sought to impress upon this court that her injuries have and continue to immensely impact on her quality of life.
10. Jennifer's evidence is that she is no longer able to work at home doing handcrafting mosaics to earn an income because the pain is crippling at times and the medication leaves her drowsy. As handcrafting brought her great satisfaction, her inability to do it has resulted in her suffering from depression. This also has affected her pecuniary prospects (discussed further below).

### **Discussion**

11. This court accepts the medical evidence and that of Jennifer as to the continuing effects of her injuries on her quality of life and that her pains continue and, more particularly, that she has reached maximum recoverability. Also considered is the evidence that prior to this incident, Jennifer had received an injury at work and was experiencing pain in her neck, especially on movements of extension and flexion, and that she was at home, boarded medically unfit<sup>6</sup>. It would appear that there were no neurological deficits found then but a myofascial pain syndrome<sup>7</sup> was diagnosed for which Jennifer was prescribed analgesics and muscle relaxants. I will now turn to the cases to determine what quantum should be awarded to Jennifer for her injuries.

### *Case law*

12. Counsel for Jennifer suggested an award of \$400,000.00 and supplied three cases as a guide to general damages. The first is ***Dalton Andrews v Ramesar Singh***<sup>8</sup> which attracted an award of \$18,000.00 (updated in 2010 to \$104,751.00) as general damages for a moderate to severe brain injury resulting in

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<sup>5</sup> Medical report dated 11<sup>th</sup> January, 2016

<sup>6</sup> See Dr Mahadeo's report dated 22<sup>nd</sup> May, 2007

<sup>7</sup> Also referred to as chronic muscle pain/chronic pain disorder

<sup>8</sup> *Dalton Andrews v Ramesar Singh* HCA-S No 255 of 1983 delivered on 26<sup>th</sup> July, 1984 by Persad Maharaj M

brain dysfunction, consistent with post-concussion syndrome. The plaintiff had shown no abnormal radiological abnormalities but complained of headaches in the frontal region lasting two hours and which were aggravated by the sun; giddiness; forgetfulness; pain in the left shoulder and in the back of the neck. Another case is *Panchu Goberdhan v Rentokil Ltd*<sup>9</sup> where \$25,000.00 was granted as general damages (updated in 2010 to \$172,142.00) for a skull fracture, post-concussion syndrome, possible pre-senile dementia and several lacerations about the hand and neck. The plaintiff also suffered cerebral atrophy, which was moderately severe, giving rise to headaches, dizziness, forgetfulness and difficulty concentrating. The third case is *Hemraj Seemungal v Rawtee Mohess and Anil Beharry*<sup>10</sup> where \$37,000.00 was awarded for general damages (updated in 2010 to \$256,564.00) when a plaintiff was knocked unconscious for two days, experienced pains and constant headaches, dizziness, buzzing of the ears and cracking jaw. After six years, he still suffered from constant headaches for which he took medication, and from forgetfulness. He was diagnosed with cerebral concussion and post-concussion syndrome with headaches and dizziness.

13. On the basis of a comparative analysis of these cases with the one at bar, it was clear that the injuries of Jennifer were less severe than the three cases cited. Jennifer's counsel submitted that despite her injuries being of lesser severity, she should attract a higher award, because of the circumstances of the accident specifically that, it was a tree that fell on her, she was knocked unconscious and her pain and shock from that horrific incident warranted such an award. This argument is rejected outright as incredulous and incapable of serving as a valid basis for doubling an award. This court is obliged only to award a sum that is reasonable, fair and adequate to put Jennifer back in the position that she would have been in before the accident. This is done based on the evidence, past decisions and other guiding principles on assessment. In the instant case, Jennifer did not suffer any fracture to the skull or cerebral atrophy as did the plaintiff in *Panchu Goberdhan (supra)* nor was she unconscious for the length of time as the plaintiff in *Hemraj Seemungal*. She, however, suffered a greater range of symptoms than did the plaintiff in *Panchu Goberdhan (supra)*. On the other hand, it was felt that her injuries, while not a mirror image of those in the case of *Dalton Andrews (supra)*, were more evenly weighted with it. As the effects of her injuries were wider in range, she could attract a slightly higher award. Consideration was also given to the fact that it is now ten years post the incident and that her medical condition is now permanent. At the end of the day, Jennifer did not ask for this tort to "fall" upon her,

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<sup>9</sup> *Panchu Goberdhan v Rentokil Ltd & anor* HCA No 3135A of 1979 delivered on 6<sup>th</sup> January, 1983 by Warner J

<sup>10</sup> *Hemraj Seemungal v Rawtee Mohess & anor* HCA S-2092 of 1987 delivered on 19<sup>th</sup> March, 1993 by Paray-Durity M

as she slept in the sanctuary of her home and deserves compensation that is fair for the injuries sustained.

14. There were also several other cases<sup>11</sup> recommended for consideration by this court, most of which attracted high-end awards because of the severity and extensiveness of the injuries. This court found three of these cases to be of greater relevance than the others including *Balwant v Balwant*<sup>12</sup> where the plaintiff suffered post-concussion syndrome, scalp neuralgia, headaches, some brain damage and was blinded in one eye and was awarded \$220,000.00 (updated in 2010 to \$406,944.00). Another is *Ian Sieunarine v Doc's Engineering Works (1992) Ltd*<sup>13</sup> where a plaintiff was struck on his head by concrete rubble from a wall that was being demolished and had emergency craniectomy surgery (bone removed) for a left temporal haematoma and a compound fracture of the left temporal bone. He suffered from persistent dizziness, forgetfulness, poor concentration, personality change, noise intolerance, blurred vision, slurred speech and impotence since the accident. He was diagnosed with a depressed skull fracture and post traumatic syndrome. He was severely impaired by the injury and was unable to work, pursue further studies or engage in sports, his hobbies or social activities. His eyes were crossed because of the brain dysfunction and he was assessed with a permanent partial disability of 70%. He was awarded \$200,000.00 in general damages in May, 2005 (updated in 2010 to \$322,650.00). Finally, there was the recent case of *Clarence Vialva v Klint Ryan*<sup>14</sup> where a claimant suffered scalp laceration and injury to the lumbosacral spine (requiring surgery), diffuse disc bulge, post-concussion syndrome and decreased short term memory when his stationary vehicle was rear-ended in a highway accident. He suffered continuous neurological deficits, headaches, lower back pains, including pains on being unable to stand or sit for long periods, decreased left ankle jerk and diminished sensation left S1 dermatome. He was assessed with a 40% permanent partial disability and could not continue to work as a watchman, nor do household chores such as sweeping. He was awarded general damages of \$275,000.00 in January, 2013.

15. This court has considered all the cases suggested as a guide and concluded that the injuries suffered by Jennifer do not entitle her to the high end award sought by her counsel of \$400,000.00 in the range of

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<sup>11</sup> *Mohammed v Maraj* HCA No 1262 of 1977; *Ian Gonzales v Scaffolding Manufacturers (Trinidad) Limited et al* CV2009-03527; *Nicholas Celestine v Vishnu Ramlakhan* CV2007-03889 and *Yudhistris Jadoo v Deeva Jagroop et al* CV2010-00606

<sup>12</sup> *Balwant v Balwant* HCA S-1133 of 1986 delivered on 11<sup>th</sup> January, 2002 by Best J

<sup>13</sup> *Ian Sieunarine v Doc's Engineering Works (1992) Ltd* HCA No 2387 of 2000 delivered on 24<sup>th</sup> May, 2005 by Rajnauth-Lee J

<sup>14</sup> *Clarence Vialva v Klint Ryan* CV2009-01066

*Balwant (supra)* where there was brain damage and blindness in one eye or even *Ian Sieunarine (supra)*, where there was brain dysfunction and fractures. Jennifer also did not require surgical procedures as in *Clarence Vialva (supra)*. In the mind of this court, it would be reasonable and fair to award Jennifer for her pain and suffering and loss of amenities, the sum of \$175,000.00.

**(b) Special Damages**

16. Claims for special damages were made for medical expenses, loss of earnings, property damage (real and personal) and an asbestos report. These claims were pleaded in the statement of case and vigorously pursued at the assessment. It is accepted that special damages must be pleaded, particularized and proved to be obtained.

*(a) Medical expenses*

17. Jennifer pleaded that she incurred medical expenses as a result of her injuries from the accident to the date of assessment in the sum of \$12,047.47. She provided documentary proof in the form of receipts and insurance benefit statements, which show the expenses incurred. She is allowed to recover the sum of \$12,047.37 as proved.

*(b) Loss of earnings*

18. In her statement of case, Jennifer pleaded loss of earnings in the sum of \$240,960.00 and gave evidence that sometime in or around 1999 at the age of 48, she was boarded medically unfit from her job as a flight attendant with BWIA. She was, therefore, “relatively well” at the time of the accident and pointed to the medical report of Dr Ramcharan dated 25<sup>th</sup> March, 2013 to that effect. According to her evidence, after leaving BWIA she continued to earn an income doing handcrafting at home. She earned approximately \$1,500.00 per month which, when questioned by the court, she admitted was not fixed but varied from month to month. She also admitted from the witness box that she was unable to produce any receipts to substantiate this claim. Following the accident, she was no longer able to work at home doing handcrafting mosaics and *papier mache* to earn an income. It appears that her pain is crippling at times and the medication leaves her drowsy. This has affected her pecuniary prospects and she is seeking to recover loss of earnings from the 2<sup>nd</sup> January, 2005 to the date of assessment at \$1,500.00 per month.

19. Cases are, of course, decided on the evidence called. In the instant case, this claim is one that is substantially capable of proof, whether in the form of documentary evidence or through corroboration. As a witness, Jennifer could have been more forthright and convincing by bringing the requisite evidence to substantiate this claim. Instead, Jennifer simply stated that she was unable to continue with her handcrafting. Her medical evidence pointed only to her condition being “permanent”, describing it as “disabling” and likely to go on for “an indefinite period” but was silent as to her ability to continue doing handcrafting. This court was, therefore, without any direct medical assistance in determining if Jennifer could or could not continue doing her handcrafting. Counsel for Jennifer sought to rely on a recent decision of this court *Hamid Mohammed v Allan Bullock & ors*<sup>15</sup> where the claimant was self-employed and the medical evidence pointed to 100% permanent disability from future employment and there was some limited evidence of how his earnings were expended, but there was no documentary evidence of earnings. A global sum was awarded for loss of earnings in that matter. Counsel submitted further that Jennifer is entitled to recover \$214,500.00 for loss of earnings despite her failure to prove this loss, since the medical evidence supports her claim that she has lost pecuniary prospects. Counsel also referred to the Court of Appeal decision of *Singh v Johnson Ansola*<sup>16</sup> which established that unchallenged evidence should not be rejected if there is no cogent reason for so doing.
20. Taking a fair view of Jennifer’s evidence, she is not entitled to recover any sum for loss of earnings as her medical evidence was mute as to her ability to do any form of work. Jennifer’s case is also to be distinguished from that of *Hamid Mohammed (supra)* where there was evidentiary thinness as to loss of earnings but at least the medical evidence spoke directly to and supported the total permanent disability of that claimant from his employment. Further, there is no explanation provided by Jennifer for the paucity of documentary evidence customary in a claim of this kind. In the view of this court, Jennifer could have called evidence to corroborate her claim that she earned income from her handcrafting and that this income came in monthly. She could have provided bank statements or summoned customers or other witnesses who could have attested to her involvement in handcrafting for financial reward. She could have produced pictures of her work or even given some form of evidence as to where or to whom she sold her pieces and of the costing so that this court would have had some reference point to aid with this assessment. Instead, she chose to bring no evidence but to provide a fixed monthly income which, she admitted to this court, was subject to variation on a monthly

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<sup>15</sup> *Hamid Mohammed v Allan Bullock & ors* CV2012-01932

<sup>16</sup> *Singh v Johnson Ansola* Civ Appeal No 169 of 2008 and 121 of 2008 per Mendonca JA at para. 97

basis. There was no evidence as to how this sum varied monthly and whether her earnings, if so, were greatly reduced or increased in some months and why this was so and/or if she had a regular clientele or depended on persons walking in to purchase. There was not a modicum of evidence of any income earned from this pastime and this court was at a loss as to how she was able to come up with a fixed income and the basis for this. This is unacceptable and more especially so as her medical evidence does not speak to her earning capacity prior to or after the tree fell on her or whether she was totally or even partially handicapped from earning income through handcrafting. This claim is denied outright for a failure to prove same.

*(c) Property damage*

21. The claim for property damage is two-pronged in nature; that is for real (dwelling house) and for personal property (personal items). As to her claim for damage to her dwelling house, her evidence is that the roof of the house was damaged when the tree fell on it. This is accepted. She gave evidence also that upon a testing of a sample of the roofing material by Caribbean Industrial Institute (CARIRI) asbestos was found and she provided a copy of this report. She initially installed a temporary roof and now seeks to recover the cost of repairing the damage to the roof incurred to date as well as the expenses to be incurred in replacing the roof. The schedule of these expenses is as follows:

<b>ITEMS OF EXPENSE</b>	<b>COST</b>	<b>EVIDENCE</b>
Temporary repairs	\$33,097.59	Receipts Nos. 1-29
Estimate for asbestos removal Green Engineering Ltd dated 12.02.2014	\$48,990.00	Estimate No 30
Estimate for reinstating roof Lifetime Roofing Limited dated 21.03.1014	\$119,401.36	Estimate No 31
Quotation for installing and replacing carpet, Carpet Center dated 23.12.2008	\$3,601.59	Quotation No 32

22. Jennifer filed a hearsay notice in respect of these estimates and is entitled to recover for the damage done to the roof of her dwelling house, which is assessed by reference to the cost of repairs. Based on the case law, she is entitled also to the cost of replacing the roof measured as at the date of the inquiry

into the damages<sup>17</sup>. She has provided the requisite documentary evidence which went in unchallenged. However, on close perusal of her claim for temporary repairs in the sum of \$33,097.59 it was found that the first 2 items listed in the schedule (Thomas Peake & Co delivery note dated 20<sup>th</sup> July, 1999 and Pat's Metal Construction receipt dated 4<sup>th</sup> April, 2004) totalling \$7,200.00 actually pre-dated the accident so would not be allowed. She is disentitled also from recovering under the head of "temporary repairs" a sum for purchase of a new bed and mattress for which a receipt was provided from Comfort Zone in the sum of \$1,591.60. These are personal items for which a claim has also been made so should have been subsumed under that heading. She is entitled to recover only \$25,305.94. It was considered, further, whether Jennifer should be entitled to recover the cost of the asbestos removal as her claim was not for negligent construction of the roof. In the view of this court, the asbestos removal only became necessary as a consequence of the damage done to the roof and actually resulted in increasing the replacement cost and should be recoverable. She is allowed to recover the cost of temporary repairs of \$25,305.94 as well as the sum of \$171,992.95 for future expenses (i.e. replacement of roof (\$119,401.36), carpet (\$3,601.59) and asbestos (\$48,990.00)).

23. She also gave evidence that several of her personal effects and items were destroyed and/or damaged to the extent that they could not be repaired. She provided a detailed list of destroyed items and her estimate for the cost of replacing them. Apart from the receipt for the bed and mattress from Comfort Zone (which is allowed) she failed to provide quotations for replacement of these items. These items include two AC units, two bedroom carpets, two Lasko fans, two side table lamps, a kennel cab for dogs/cats, a mahogany chest of drawers, mahogany bed mattress and spring, clothing, bookshelf, books, water tank and 12-14 feet stand, computer, printer, Sony portable CD player, drapery for two bedrooms, curtain rods for four windows, fifteen clay and five concrete plant pots, collectibles (ornaments, crystals, wall plates, eight pairs of shoes, two wicker mahogany chairs and silk flowers in five ornamental pots). Of note is that the claim for the two bedroom carpets (\$6,000.00) for which there was no receipt seemed to be a duplication of the claim above for the removal and replacement of carpet or, at the very least, was not properly differentiated or justified. That cost of \$6,000.00 was removed from the sum allowed to be recouped under personal property damage. She also provided an invoice dated 18<sup>th</sup> March, 2005 from Comfort Zone for a single mattress and a twin bunk bed in the sum of \$1,591.00; there was no quotation or invoice evidencing purchase for the other items being claimed. Her counsel relied on the

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<sup>17</sup> *Ward v Cannock Chase District Council* [1986] Ch 546

case of *Uris Grant v Motilal Moonan Limited and Frank Rampersad*<sup>18</sup> where the Court of Appeal held that a similarly detailed list of lost personal items done on the day of the accident was strong prima facie evidence of the fact of the loss of those articles and the cost of their replacement at the time. The words of the Court of Appeal are instructive to wit:

*The appellant did call prima facie evidence of her replacement costs the fact of which, as I said was unchallenged. At this stage, I must pose the question whether in this country it is unreasonable, in a case of this kind, for a person to be unable to produce bills for clothing, groceries, watches, kitchen utensils, furniture and/ or other electrical appliance and/ or for that matter to remember the time of purchase. To my mind, this is clearly in the negative and to expect or insist upon this is to resort to the "vainest pedantry."*

Counsel asked that the sum as claimed be allowed as the evidence was unchallenged. In the instant case, there was no evidence as to when the list was made and no pro-forma invoices verifying the cost of the various items provided. It was a wide range of items for which Jennifer seeks compensation and, in the view of this court, it was not unreasonable, given the nature of this accident, that such damage would have been done. Given the variety of damaged items, the sums sought were deemed reasonable and bearing in mind the learning in *Uris Grant (supra)* this claim is allowed in the sum of \$65,927.20.

### **Loss of Future Earnings**

24. Jennifer claims future loss of earnings which her counsel argues should be awarded in the lump sum of \$50,000.00. Her evidence is that she is now in her late 60's but would have continued working doing her handicraft. Her medical evidence speaks to her pain being permanent and disabling, but not directly to her inability to continue working from home, whether totally or partially. As a rule, the highest level of proof is required to sustain a claim for future loss of earnings. This means that Jennifer's claim must be pinioned on solid medical evidence, if it is to stand. The case law has made it clear that a claimant has to demonstrate that the nature of the injury made her incapable of doing the job she was previously performing or, for that matter, any other form of work whatsoever. Where it rendered her unable to do her prior job but did not preclude her from doing other work, it is necessary to show that in order to mitigate this loss. In discharging this burden of proving total handicap, she must supply the court with a comprehensive report justifying such a finding<sup>19</sup>. In the present case, the medical evidence was

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<sup>18</sup> *Uris Grant v Motilal Moonan Limited and Frank Rampersad* Civil Appeal No 162 of 1985

<sup>19</sup> *Paraboo v SM Jaleel Company Ltd* Civil App No 110 of 2001

woefully inadequate and lacking in specificity in speaking to Jennifer's future loss of pecuniary prospects. In the view of this court, it was found to be neither strong nor supportive of any such claim and so is denied for lack of proof.

### **Order**

25. It is ordered that the second defendant do pay the claimants as follows:

#### **To the First Claimant (Jennifer)**

- i. General damages for pain and suffering and loss of amenities in the sum of **\$175,000.00** with interest at the rate of 2.5% per annum from 31<sup>st</sup> December, 2008 (date of service on 2<sup>nd</sup> defendant) to 22<sup>nd</sup> March, 2017;
- ii. Special damages in the sum of **\$77,974.57** with interest at the rate of 2.5% per annum from 2<sup>nd</sup> January, 2005 to 22<sup>nd</sup> March, 2017;

#### **To the First and Second Claimants (Jennifer and Dr Moze)**

- iii. Damages for repairs to dwelling house in the sum of **\$25,305.94** with interest at the rate of 2.5% per annum from 2<sup>nd</sup> January, 2005 to 22<sup>nd</sup> March, 2017;
- iv. Damages for future replacement expenses (roof, carpet and asbestos) in the sum of **\$171,992.95**.
- v. Costs as assessed in the sum of **\$43,700.47**.

Dated 22<sup>nd</sup> March, 2017

**Martha Alexander**

**Master**