

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
CV2009-00488/formerly HCA 1519 of 2000

BETWEEN

REYNOLD KALLOO
TYRONE STEVENSON

Claimants

AND

TIDEWATER MARINE WEST INDIES LIMITED

Defendant

Before: Master Alexander

Appearances:

For the Claimants: Ms Camille Mohan

For the Defendant: Ms Shashi Indarsingh

DECISION

BACKGROUND

1. On the morning of 6th July, 1996 the claimants were working offshore in Columbia, on the MV Hatch Tide, the defendant's workboat, when it struck a submerged natural gas pipeline, causing a violent explosion and fire. The accident resulted in the deaths of 2 of their colleagues and injured 8 other crew members, including the claimants. The claimants are seeking compensation for the injuries they sustained in that accident. On 30th November, 2011 summary judgment was entered by consent against the defendant for the personal injuries, compensation, and consequential losses, medical and other expenses of the claimants. Subsequently, on 13th July, 2012 it was by consent ordered that the defendant do pay the 1st claimant the sum of TT\$384,000.00 as an interim payment pending the final assessment of the 1st claimant's damages and costs of the application in the sum of TT\$2,500.00.

THE EVIDENCE

2. The evidence of the claimants (hereinafter “Reynold Kalloo” and “Tyrone Stevenson”) came in via witness statements, supplemental witness statements, medical reports as well as viva voce evidence and cross examination. Their documentary evidence included:
 - a. Medical report of Dr Ian Hypolite dated 4th June, 2004;
 - b. Medical report of Dr Toby dated 4th January, 2012;
 - c. Medical report of Dr Wesley Dexter Shim dated 23rd June, 2009;
 - d. Witness statement of Reynold Kalloo filed on 12th April, 2011;
 - e. Witness statement of Tyrone Stevenson filed on 12th April, 2011;
 - f. Witness statement of Dr Toby filed on 12th April, 2011
 - g. Supplemental witness statement of Reynold Kalloo filed on 13th February, 2012;
 - h. Further supplemental witness statement of Reynold Kalloo filed on 15th May, 2012;
 - i. Supplemental witness statement of Tyrone Stevenson filed on 13th February, 2012;

There was viva voce evidence and cross examination, **on behalf of Reynold Kalloo and Tyrone Stevenson**, of the following:

- j. Dr Ian Hypolite
 - k. Dr Toby
 - l. Reynold Kalloo
 - m. Tyrone Stevenson
3. The defendant’s evidence (hereinafter “Tidewater”) also came in via witness statements, viva voce evidence and cross examination. The documentary evidence properly before this court, **on behalf of Tidewater**, included:
 - n. Witness statement of Ann Ramesar filed on 30th April, 2011

There was viva voce evidence and cross examination, **on behalf of Tidewater**, as follows:

- o. Ann Ramesar

EXAMINATION OF THE EVIDENCE

A. REYNOLD KALLOO

4. Reynold Kalloo testified that he was working as an assistant engineer on the MV Hatch Tide when around 5:30 a.m. on 6th July, 1996 the explosion occurred, lifting the vessel out of the water. Upon this explosion, the vessel fell back into the water and the ice maker in the mess hall broke loose from the galley wall and flew across the galley, first striking and then pinning him against a door. As the vessel settled back into the water, he claims that the ice maker moved throwing him against the starboard wall of the galley and he fell to the floor. He testified further that this explosion caused him to be forcibly and violently thrown and banged about the vessel and consequently he was severely traumatized.

5. From this blast, he sustained multiple injuries including spinal injury; post traumatic stress syndrome; depression; insomnia; loss of sexual performance; loss of hearing; cervical pain; lumbar pain and headaches. Since the explosion, *“I kept recalling the horrors of the accident, could not sleep, had headaches, had difficulty in listening and hearing, had difficulty in reading, my vision became blurred, could not walk without a cane, had to keep my neck in a brace, lost my ability to perform sexually, became depressed and worried about my inability to care for myself and family and resorted to drinking.”* The medical evidence was largely supportive of his injuries and their resulting effects as claimed and is examined below:

Dr Ian Hypolite

6. Dr Hypolite is a medical doctor and psychiatrist by specialty, attached for approximately 18 years to the St Ann’s Mental Hospital. He has provided a medical report dated 4th June, 2004. He testified that he has been treating Reynold Kalloo since 16th September, 1996, some 2 months after the explosion, for injuries received to his back and right leg and for which he was in prolonged treatment. This treatment was on a consistent basis between 1996 and 2004 but he last saw him in 2009. In his report, he provides a comprehensive statement of his medical findings which are reproduced hereunder:

Mr. Kalloo exhibited features of Post Traumatic Stress Disorder: flashbacks to the incident, marked insomnia, hyper excitability, emotional numbing, social withdrawal and feelings of depression. He also

experienced marked sexual dysfunction and had begun to consume copious amounts of alcohol as a form of self medication.

I commenced treatment with medication as well as group and individual therapy. Mr. Kalloo's condition had become chronic by the time I saw him, probably as a result of the time lapse between the incident and the commencement of treatment. Although Mr. Kalloo showed good progress as far as the core symptoms of his illness was concerned, he developed other inappropriate behaviour. His indulgence in alcohol was exacerbated by a gambling habit. Mr. Kalloo was not prone to either vice prior to the accident. A diabetic, Mr. Kalloo's drinking worsened his clinical condition.

Continued therapy has led to elimination of both vices. Mr. Kalloo however still reacts adversely to traumatic incidents in any part of the world. These incidents would not necessarily be related to maritime events.

Dr David Toby

7. Dr Toby has provided prolonged treatment to Reynold Kalloo since 1996. In a report dated 24th June, 2009 he states that after a 6 year period following the last review of Reynold Kalloo, "At first glance he had aged considerably and appeared to have a stooped gait." He listed Reynold Kalloo's medical history when he had presented after the explosion as severe hearing loss; bilateral cataracts and retinal detachment leading to significant loss of sight; no sex life; inability to sit or stand for long periods; and difficulty in bending. He concluded that Reynold Kalloo's quality of life had decreased considerably and by then had reached 'Maximum Medical Improvement' and after 13 years would not get better. He was ascribed a permanent partial disability of 40%.

Dr Wesley Dexter Shim

8. Dr Wesley Dexter Shim first saw Reynold Kalloo on 19th November, 1996, some 4 months after the explosion. In a report dated 23rd June, 2009 that spoke to Reynold Kalloo's hearing loss, he stated that when he first presented:

He had suffered a bilateral moderate sensori-neural hearing loss at 4000 Hz with bilateral continuous high frequency tinnitus. This was diagnosed as a Noise Induced Hearing Loss with Tinnitus and was considered to be permanent and a disability of 10-20%.

On the 1st June 2009 I again reviewed Mr Kalloo and he was found to still complain of his tinnitus, his hearing loss has become worse as his hearing in the high tones have slowly dropped due to his diabetes. The hearing loss due to the noise exposure has compounded the loss due to his diabetes. His present hearing disability due to both disorders is 30%. [emphasis mine]

GENERAL DAMAGES

9. The *Cornilliac*¹ principles were used as a guide in assessing the damages in this matter. The nature and extent of the injuries suffered by Reynold Kalloo as well as the gravity of the resulting physical disabilities were comprehensively spelt out in the medical reports and are accepted. Dr Hypolite also confirmed in his viva voce evidence that Reynold Kalloo was suffering from Post Traumatic Syndrome which manifested in symptoms such as flashbacks, insomnia, hyper excitability, numbness, social withdrawal and depression. Under cross examination, he forcefully maintained that Reynold Kalloo was consuming copious amounts of alcohol, as a way of medicating himself and that the accident was the trigger. He states that as there was a 2 month lapse between the accident and when Reynold Kalloo first sought his assistance, it would have rendered the post-traumatic stress disorder **chronic**. When pressed under cross examination, he maintained that Reynold Kalloo suffered with chronic post traumatic syndrome, *“The chronicity would have started in 1996, once a certain period of time elapsed between the incident and his seeing me his condition became chronic so at that stage it would have been defined as chronic post-traumatic stress disorder and therefore I was treating a chronic post-traumatic stress disorder.”*
10. He insisted that as Reynold Kalloo, *“continued to be treated some of those symptoms dissipated”* but, *“he still reacted adversely to traumatic incidents in any part of the world. In other words it was not a situation where he was entirely quote unquote ‘cured’ he would still be prone to react in a particular way in which normal*

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

people would not react by virtue of his incident in 1996.” What Reynold Kalloo is continually forced to suffer are “*mini relapses*” due to various triggers, whether it is from a maritime accident anywhere in the globe or the anniversary date of the explosion or simply from watching a movie such as *Titanic*. Under cross examination, he was adamant that despite treatment some of the symptoms, “*essentially stuck on and were difficult to eradicate.*” There was also evidence from the doctor that Reynold Kalloo developed a gambling habit and misused alcohol consequent on his injuries. In my view, there was no credible challenge to this evidence and his testimony was unshaken under cross examination. This evidence was accepted.

11. Apart from the chronic post traumatic syndrome, the evidence points to Reynold Kalloo facing continuing mobility challenges linked to the blast injury. The gravity of the resulting physical disabilities of Reynold Kalloo (mobility and otherwise) was clear from the medical evidence of Dr Hypolite as presented above. This too was depicted in the medical report of Dr Toby who noted that after 13 years Reynold Kalloo’s quality of life had diminished considerably, with no likelihood of improvement. The continuing disabilities faced by Reynold Kalloo from his injuries were described further by Dr Toby in his oral testimony. Dr Toby stated that Reynold Kalloo was referred to him in July, 1996 with a blast injury and with generalized muscular pain; severe hearing loss; and difficulty with neck muscles (not inserted in the report), difficulty walking and with general movements. He described him as being, “*always in lots of pain. His mobility was lost, his hearing was lost ... he had cataracts and he was unable to sit or stand for long periods and he had difficulty even in bending although he was stooped ... he had a great difficulty in coping with everything psychologically.*”

12. During the cross examination, it became clear that Dr Toby’s findings were based largely on complaints from Reynold Kalloo, without being supported by independent assessment conducted by him. In this regard, I noted his insistence that he treated him symptomatically (based on his complaints) and that he referred him to other practitioners to treat complaints that fell outside the scope of his specialty. In a report dated 4th January, 2012 he confirmed that Reynold Kalloo was psychologically in great distress; walked with a stoop and his general movement was affected. It was stated therein that he was so heavily dependent on medication; he had developed stomach ulcers for which he required gastrointestinal

intervention. At this review, it was found that he had generalized spinal pain radiating down his legs and up into the left upper limb causing significant debility; he was unable to sit, stand, play sports, exercise or even take walks. He concluded that he was still in need of long term physiotherapy at a yearly cost of \$60,000.00. Under cross examination, he admitted to his continuing psychological deficits but that he treated Reynold Kalloo for general soft tissue injury up until 2004 and did not see him again until 2009.

13. It is clear that Dr Toby's evidence pointed largely to Reynold Kalloo having suffered muscular pains and/or soft tissue injury. Counsel for Tidewater has asked this court to note that Dr Toby's 2009 report contains no independent examination nor findings save to record Reynold Kalloo's complaints and that he has supplied no evidence as to any continuing effects of the injury but has described it as no more than a back pain. This court so noted. Dr Toby's evidence that Reynold Kalloo was treated by him mainly for general soft tissue injury up until 2004 is accepted. Also noted from the evidence is that Reynold Kalloo suffered with continuing psychological deficits and emotional trauma post injury.

14. There was also injury to Reynold Kalloo's ear, described by Dr Toby as "severe hearing loss" but not so confirmed by Dr Shim. Dr Shim described this hearing loss as mild to moderate or what he called "*cocktail party deafness*", which he said affected Reynold Kalloo in a crowded room but ought not to affect him in a quiet room with direct conversation. Further, under cross examination Dr Shim confirmed that Reynold Kalloo experienced a constant high frequency ringing in the ear as he had suffered a bilateral moderate sensory neural hearing loss at 4000 hertz. By 2009 the hearing loss had gotten worse which Dr Shim felt was related to his diabetic condition and increased age.

15. I accept the medical evidence of Reynold Kalloo's ear injury being mild to moderate with some continuing effects as well as the exacerbating effects of age and his diabetic condition on same. I also accept that his post traumatic stress syndrome is chronic and is triggered by specific incidents or events and that he would have experienced depression and emotional turmoil following the horrific explosion. To my mind, he is entitled to compensation for physical as well as emotional and psychological pain and trauma. In this regard, the medicals

as well as his evidence as to his pain and suffering (physical and psychological) would have been instrumental in determining this quantum. I now turn to examining his evidence as to his pain and suffering.

16. Reynold Kalloo has given minuscule evidence of physical pain but testified that on the occurrence of the explosion he was “*severely traumatized*” and “*kept recalling the horrors of the accident*”. He described the emotional, psychological and other effects of this explosion on him thus, “*could not sleep, had headaches, could not walk without a cane, had to keep my neck in a brace, lost my ability to perform sexually, became depressed and worried about my inability to care for myself and family and resorted to drinking.*” I note also that Reynold Kalloo suffered with cervical and lumbar pains and accept that he would have endured severe trauma and nervous shock following the blast.

17. Reynold Kalloo has testified further that he experiences sexual dysfunction and in fact has “no sex life”. It is accepted that this would have affected his family life but he has given no evidence of the actual impact of this on him or as to his loss of amenities. Further, whilst his loss of hearing and blurred vision would have negatively affected his social life to some extent, he has also given no evidence of this impact. In the absence of this evidence or some concrete examples, this court was hesitant to project or assume how much of his social life was stultified, if at all.

CASE LAW

18. Counsel for the claimants has submitted as reasonable for their pain and suffering and loss of amenities the following:

- | | | | |
|------|------------------|---|--------------|
| (i) | Reynold Kalloo | - | \$250,000.00 |
| (ii) | Tyrone Stevenson | - | \$150,000.00 |

To this end, counsel has provided two cases to assist this court with arriving at the appropriate awards:

- ***Deosahai Bidaisee & ors v Ramdial Transport Ltd and Dheal Ramberan***² where in a judgment delivered on 20th June, 2008 Rajkumar J awarded as general damages the sum of \$250,000.00 to the third Plaintiff who was bedridden from June 3rd 2001 to April 21st 2002 after sustaining multiple fractures of the right hip; fracture of the right femur; abrasions to the forehead and tenderness of the patella.
- ***Johnson Ansola v Ramnarine Singh, Ganesh Roopnarine and The Great Northern Insurance Company Limited***³ where in a judgment delivered on 3^{0th} June, 2008 Rajkumar J awarded as general damages the sum of \$150,000.00 to a plaintiff who suffered a right shoulder dislocation; a severe comminuted compound fracture of the right lower tibia and fibula; and a right talar dislocation.

Given these injuries, these cases provided little assistance with the instant exercise of which this court is charged.

19. On the other hand, counsel for the defendant has submitted that given the evidence of the claimants' doctors, reasonable awards for their pain and suffering and loss of amenities are:

- (iii) Reynold Kalloo - \$40,000.00 - \$60,000.00
- (iv) Tyrone Stevenson - \$10,000.00

In support of this submission, counsel has referred the court to several cases as a guide to determining the quantum as follows:

- ***Sudan v Carter & Jardine & Thom***⁴ where in 1992 a plaintiff who sustained a perforated ear-drum; displacement of three bones in the inner ear and 25% hearing loss was awarded \$39,500.00; as adjusted to December, 2010 to \$120,785.00.
- ***Roopnarine v Moze East Coast***⁵ where in 1995 a plaintiff who suffered a perforated ear-drum; hearing loss and loss of balance was awarded \$20,000.00; as adjusted to December, 2010 to \$48,622.00.

² *Deosahai Bidaisee & ors v Ramdial Transport Ltd and Dheal Ramberan* HCA 2541 of 2002

³ *Johnson Ansola v Ramnarine Singh, Ganesh Roopnarine and The Great Northern Insurance Co Ltd* HCA 3487/2003

⁴ *Sudan v Carter & Jardine & Thom* HCA No 1735 of 1990 (taken from the Lawyer Vol 8 No 2)

⁵ *Roopnarine v Moze East Coast* HCA No S-996 of 1990

- ***Seerjattan, Kissoon and Boodoo v Campbell***⁶ where in a judgment delivered on 29th January, 1986 a plaintiff who suffered a perforated ear-drum; partial deafness; giddiness; headaches and intolerance to noise was awarded \$10,000.00; as adjusted to December, 2010 to \$52,184.00.
- ***Damien Moreno v Anthony Brusco and ors***⁷ where in a judgment delivered on 7th October, 2009 by Rampersad J a plaintiff who had suffered cerebral concussion; cervical muscular spasms; facial lacerations; post concussion syndrome; thoracic spine strain; pain in upper back and neck was awarded \$35,000.00.
- ***Hyacinth Valere Culley v Krishna Gajadhar & Ors***⁸ where in a judgment of this court delivered on 20th January, 2012 a claimant who complained of pain in several parts of the body, including the lumbar spine, left iliac fosse, left hip, Achilles tendon, left arm, muscular swelling of posterior aspect of thigh, muscle spasm, dysfunctional uterine bleeding, swelling and tenderness of the knee joint, difficulty raising leg off the ground on walking and nervous reaction was awarded \$70,000.00.

20. All the cases supplied by the defendant's counsel were thoroughly considered and were found not to be exactly on par with the present case. Further, there were dated authorities save for the more recent cases of ***Damien Moreno (supra)*** and that of ***Hyacinth Valere Culley (supra)*** and were all capable of being distinguished from the case at bar. In the ***Sudan case (supra)*** the updated award for an ear injury that included a perforated ear-drum, displacement of bones in the inner ear and 25% hearing loss was \$120,785.00. Reynold Kalloo's ear injury, however, was mild to moderate but he presented with other injuries including chronic post traumatic syndrome, depression and psychological trauma from the blast that continue to affect him. To my mind, his injuries were more extensive than the plaintiff in ***Sudan***. Similarly, the injuries suffered by the plaintiffs in the cases of ***Roopnarine*** and that of ***Seerjattan*** were also not as extensive and debilitating as the present claimant and were distinguished on that basis.

⁶ *Seerjattan, Kissoon and Boodoo v Campbell* HCA 782 of 1975

⁷ *Damien Moreno v Anthony Brusco and ors* HCA No 3130 of 2004

⁸ *Hyacinth Valere Culley v Krishna Gajadhar & Ors* CV2007-00363

21. Further, in the two most recent cases supplied by the defendant's counsel (*Damien Moreno* and *Hyacinth Valere Culley*) the injuries were clearly not representative of the current factual scenario, particularly the latter. The plaintiff in *Damien Moreno* did sustain post traumatic syndrome but there was no evidence as to the chronicity of this condition as well as complaints of neck pain.
22. I have found that the combination of injuries suffered by the claimant at bar were debilitating and extensive. Apart from the physical injuries (soft tissue injury) I considered that his post traumatic syndrome had reached the stage of chronicity, with him being subjected to "mini-relapses" based on certain triggers; the mild to moderate ear injury/hearing loss; spinal injury; social withdrawal and depression; insomnia; hyper-excitability; emotional numbing; loss of sexual performance; injuries to back and neck; neck pain; cervical pain; lumbar pain and headaches. This claimant was not only affected physically, he continues to live with the psychological and emotional impact of the blast on his life and is entitled to be adequately and fairly compensated for his injuries. For these reasons, the suggested award of the defendant's counsel was deemed to be on the lower end of the compensatory scale and incapable of doing justice for the injuries sustained by this claimant.
23. I also reject the defendant's counsel submission that this court would be unable to assess damages for pain and suffering and loss of amenities because of the alleged lack of evidence in the witness statement of Reynold Kalloo. As stated above, the evidence is threadbare but not non-existent and whilst this court would have been greater assisted with more information, there was sufficient evidence to reach a reasonable determination on quantum. This is a claimant who has not returned to his life as he knew it prior to the blast – he remains with both physical and mental challenges, pain and suffering. Whilst damages are not designed as a pecuniary fix for life, an assessing court must ensure an injured person is not left worse off because of the accident. Bearing in mind the principle that the compensation should as nearly as possible put Reynold Kalloo 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 awarded the sum of **\$130,000.00** for pain and suffering and loss of amenities.

Examination of the Evidence

B. TYRONE STEVENSON

24. Tyrone Stevenson testified that he was a cook/steward aboard the MV Hatch Tide when the explosion occurred on 6th July, 1996. On that morning, he was on the alley way and was thrown against the steps and threshold of the hatch from the galley to the deck and landed on his left hip and side. Consequent on this, he sustained injuries including a large laceration on the waist; body injuries and 2 hernias. These injuries were not detailed in any medical report before this court. Of note is that there is no pleading in the statement of claim or evidence of contemporaneous diagnosis of hernias. There was also no witness called to substantiate this medical claim. The claimant sought to introduce through his evidence a medical report of Dr Charles Ebuelue dated 12th May, 2009 and a CT Scan Report dated 10th May, 2010 signed by Dr Colin Premdass, without calling either one of the doctors as witnesses. Of note further is that he has failed to provide any evidence whatsoever as to his pain and suffering; loss of amenities and/or any continuing disabilities.

25. Counsel for the defendant has asked this court to treat this claim as one for minor injuries or alternatively reject it outright as lacking proper independent medical evidence or to make an award not exceeding \$10,000.00. Counsel for Tyrone Stevenson relying on ***Johnson Ansola v Ramnarine Singh and Ors***⁹ submitted that he is entitled to \$150,000.00 for nervous shock, pain and suffering and loss of amenities. I have found no such evidence of personal injuries to Tyrone Stevenson but turned to the cases submitted by counsel for Tidewater hereunder:

- ***Dalsingh v Knight***¹⁰ where on 5th March, 1982 a plaintiff was awarded \$750.00 for a blow to the forehead; abrasions to the chest and bruised ribs; as adjusted to December, 2010 to \$5,997.00.
- ***Jamurat v Azis Ahamad Ltd***¹¹ where on 10th April, 1975 a plaintiff was awarded \$250.00 for tenderness to his neck and lower back; as adjusted to December, 2010 to \$4,561.00.

⁹ *Johnson Ansola v Ramnarine Singh and Ors* HCA 3487/2003/CA 169 of 2008

¹⁰ *Dalsingh v Knight* HCA No 1035 of 1975

26. In arriving at a proper quantum for Tyrone Stevenson, I considered the evidence before me, which to my mind was insufficient to properly and fairly assess his compensation. It is not in dispute that he was present when the explosion occurred but the extent of his injuries, if any, simply was not proved. In his pleadings, he claims tenderness to the left kidney and blood in the urine and, in his witness statement, he refers to laceration and hernias. Whilst I can accept that he may have sustained some injuries, in the absence of medical evidence I could not say or assess same. To my mind, if he had received any serious injuries, he would have brought the necessary evidence. I find unacceptable also the suggestion of counsel for Tyrone Stevenson that counsel for the other side can check with the Tidewater's attending doctor (Dr Stephen Millar) to substantiate this claim. In the circumstances, I am prepared only to assess any likely injuries suffered as minor and award the sum of \$10,000.00 as compensation thereto.

SPECIAL DAMAGES

27. Both Reynold Kalloo and Tyrone Stevenson are seeking compensation for loss of pecuniary prospects as well as other entitlement to compensation for special damages. These are detailed below:

Medical Expenses

REYNOLD KALLOO

TYRONE STEVENSON

28. Reynold Kalloo claims medical expenses from September, 2002 in the sum of \$35,037.30 and has annexed bills in support. This sum is allowed.

Tyrone Stevenson claims unreimbursed medical expenses in the sum of \$2,250.00 and has provided receipts in support. This claim is allowed.

Loss of Earnings

REYNOLD KALLOO

29. Reynold Kalloo claims pre-assessment loss of earnings in the sum of \$1,763,750.00 from 6th July, 1996 to 5th April, 2012. He gave evidence that at the time of the accident he was 47 years of age and earning \$9,000.00 per month (fortnightly \$4,500.00 and annually \$108,000.00). He exhibited several cheques from Tidewater showing this sum. After the accident, he was paid 6 times by Tidewater from July – September, 1996 in the total sum of \$27,000.00 (amounting to 3 months salary). He testified further that he was also paid workmen’s compensation¹² from October, 1996 to October, 2002 in the total sum of \$256,725.00. He also received a monthly disability assistance grant of \$1,300.00 for the period September, 2008 – December, 2011 in the total sum of \$52,000.00 from the Ministry of the People and Social Development. He testified further that he received a monthly disablement pension from National Insurance Board (NIB) from October, 1999 – May, 2010. As he was a contributor, any sums received cannot be deductible from his loss of earnings or damages.¹³
30. It must be mentioned that Tidewater has contested the sums claimed by Reynold Kalloo. It was submitted that after the accident, Tidewater paid Reynold Kalloo the full term of the 3 month contract by fortnightly cheques of \$4,500.00 per month but these payments were for a specific short term period contract and does not evidence Reynold Kalloo’s earnings prior to that contract. Its witness, Ann Ramesar testified that Reynold Kalloo’s net earnings 12 months prior to the accident amounted to \$33,618.75 or a monthly average of \$4,584.38. This sum was reflected as the average monthly earning of Reynold Kalloo in the workmen’s compensation agreement signed by him. He was paid workmen’s compensation representing 2/3 of his monthly earnings or \$3,056.00 per month up to April, 2004 and disability payments from NIB of \$286.00 per month which was increased to \$1,800.00 per month in 2008. The sum stated in the workmen’s compensation agreement (\$4,584.38) is accepted by this court as his monthly earnings to be used in the calculation of his loss of earnings.

¹² In *Te&TEC v Keith Singh* CA 180 of 2008 the Court of Appeal held that this sum is deductible from damages due for future earnings.

¹³ *Te&TEC v Keith Singh* (supra)

31. The court was asked to note that there was no evidence of the claimant's age of retirement but as at assessment he would be 62 years and 63 within a month thereafter (being born on 14th July, 1949). In determining age of retirement, the court was asked to consider *Roger Phillip v Gulf Marine Service and anor* where Mohammed M concluded that in the absence of evidence of likely retirement age, given the high risk nature of the job of an ordinary sailor, it was reasonable to deduce that such a hazardous profession would not allow for retirement at 65 years. Counsel for Tidewater submitted that a reasonable retirement age for Reynold Kalloo was 60 years, particularly given his medical condition of diabetes. I have no independent medical evidence as to how his diabetes would affect him post 60 years (if at all) or if he would have continued to work on the seas past 60. To my mind, considerations affecting retirement vary among professions and in the case of contractual workers at sea it would be reasonable to assume that physical health may affect same. There being no evidence that Reynold Kalloo would not have remained until 65 years, I was prepared to allow him the 2 years to retirement. He is allowed loss of earnings as follows:

LOE 6th July, 1996 – 5th April, 2012 @ \$4,584.38 per month

189 months x \$4,584.38 = \$866,447.82

- 25% for contingencies of life = \$216,611.96

- Salary received = \$27,000.00

- Disability assistance Grant = \$52,000.00

TOTAL LOE = \$570,835.86

FUTURE LOSS OF EARNINGS

32. Reynold Kalloo who was born on 14th July, 1949 was 63 years as at 14th July, 2012 and claims future loss of earnings in the sum of \$253,500.00, which he arrived at by deducting his annual loss of income from disability assistance grant and multiplying this by his remaining working life span of 2 years. This would, therefore, be calculated as (\$4,584.38 x 12) - \$15,000.00 = \$40,012.56 x 2 years. As his workmen's compensation exceeds this sum, it was conceded that he is not entitled to any award for future loss of earnings.

FUTURE MEDICAL EXPENSES

33. Reynold Kalloo claims cost of future medical treatment in the sum of \$60,000.00 per annum for 2 ½ years until retirement. Based on the medical evidence of Dr Toby, he is allowed this claim for 2 years in the sum of \$120,000.00.

Loss of Earnings

TYRONE STEVENSON

34. Tyrone Stevenson claims loss of earnings in the sum of \$939,600.00 from July, 1999 to June, 2008 on the basis that he was not able to work during that period due to hernias. He gave evidence that at the time of the accident he was earning a daily wage of \$290.00 (monthly \$8,700.00) and was paid up to October, 1996. He exhibited Tidewater payment invoices which supported this. To substantiate his claim with respect to the hernias, he sought to rely on evidence that is not before this court. Counsel submitted that he suffered a loss of income due to the hernias sustained as a result of the blast and was deemed medically unfit to work by Tidewater's doctor, Stephen Millar. He only resumed work in July, 2008 on surgical correction of the hernias. It was submitted that such information would be in Tidewater's knowledge and records and the company can confirm it. To my mind, there is no valid basis for this claim for loss of pecuniary prospect. It is also not the proper course for introducing such evidence. Certainly I am unable to conclude on the basis of counsel's submission and Tyrone Stevenson's pronouncement as to hernias that he received any injuries that would render him unfit for work. I, therefore, accepted the Tidewater's evidence that Tyrone Stevenson was paid for the full term of his 3 month contract from July – October, 1996 and workmen's compensation in the sum of \$3,642.65. He is not awarded any sums for loss of earnings on the basis that same has not been proven.

ORDER

35. It is ordered that the defendant do pay:

The First Claimant (Reynold Kalloo) -

- i. General damages in the sum of **\$130,000.00** with interest at the rate of 8% per annum from 26th June, 2000 to 17th September, 2013;
- ii. Special damages in the sum of **\$605,873.16** with interest at the rate of 6% per annum from 6th July, 1996 to 17th September, 2013;
- iii. Future medical expenses in the sum of **\$120,000.00**.

The Second Claimant (Tyrone Stevenson) -

- iv. General damages in the sum of **\$10,000.00** with interest at the rate of 8% per annum from 26th June, 2000 to 17th September, 2013;
- v. Special damages in the sum of **\$2,250.00** with interest at the rate of 6% per annum from 6th July, 1996 to 17th September, 2013;

36. It is also ordered that:

- vi. The Interim Payment of **\$384,000.00** made by the defendant to the first claimant (Reynold Kalloo) be deducted from the sums received by him as damages.
- vii. The defendant do pay costs of the assessment in the global sum of **\$77,436.91**;
- viii. Stay of execution of 42 days.

Dated 17th September, 2013

Martha Alexander
Master