

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2009-00906

BETWEEN

ROGER GANGADEEN

Claimant

AND

HELEN REYES

First Defendant

MARK DURHAM

Second Defendant

CAPITAL INSURANCE LIMITED

Third Defendant

Before: Master Alexander

Appearances:

For the Claimant:

Mr Rennie Gosine

For the Defendants:

Mr Ravi Pherangee

DECISION

I. INTRODUCTION

1. This assessment relates to an accident that occurred on 18th March, 2007 along the Priority Bus Route involving a maxi taxi registration number HBP 9676 and a private vehicle PBP 6573, driven by the first and second defendants respectively. The claimant was a passenger in the maxi taxi when the collision occurred causing him to sustain personal injuries. By claim form and statement of case filed on 13th March, 2009 the claimant sought compensation for the personal injuries he sustained in that accident. The claimant obtained judgment on 9th November, 2009 against the second and third defendants, by consent on admission of liability in their appearances. Subsequently, Kokaram J on 8th February, 2010 adjourned the assessment of damages before a master. This assessment of damages was conducted pursuant to those orders.

2. No defence was filed in this matter and there was no cross examination at the hearing of the assessment. The claimant contended that as a result, the allegations in the statement of case were undisputed and the defendants were not entitled to be heard on quantum. In ***Andre Marchong v T&TEC & Ors***¹ Jones J stated, “*in accordance with the MI5 investigations case, a failure to comply with the rule entitles the Court to treat the allegations as undisputed.*” On the other hand, the defendants submitted that based on the consent order entered on admission of liability; the fact that in their defences they had indicated they would like to be heard on the issue of quantum and **Part 16 (3) 4 of the Civil Proceedings Rules, 1998** they are entitled to be heard on quantum. It is to be noted that the defendants have not sought to dispute the allegations or to cross examine the witness but elected to put in alternative authorities for consideration by the court. In the circumstances, it is accepted that the allegations in the statement of case are undisputed.

II. THE EVIDENCE:

3. To satisfy the court as to the validity of his claim for damages, the following documents were filed –
- the statement of case filed on 13th March, 2009 with annexure;
 - the claimant’s witness statement filed on 13th June, 2011;
 - the medical report of Dr Ramroop dated 24th March, 2007, and attached to the statement of case and witness summary filed on 13th June, 2011 (hereinafter “the Ramroop report”); and
 - the medical report of Dr Ashraph dated 10th December, 2007, and attached to his witness summary filed on 13th June, 2011 (hereinafter “the Ashraph report”)

The Medical Evidence:

4. According to the Ramroop report, the claimant sustained fractures of his mandible and deep lacerations of his infra-orbital region. On admission to the Eric Williams Medical Sciences Complex (hereinafter “the EWMSC”) on the day of the accident, he underwent open reduction and internal fixation of his fractures and suturing of his deep lacerations under general anaesthesia. On the following day, his jaw was wired shut.

¹ *Andre Marchong v T&TEC & Ors CV2008-04045 at page 7*

5. According to the Ashraph report the claimant who was treated at the EWMSC for a cut under the eye, a broken jaw and lacerations to the right face complained of numbness to the face consequent on the accident. On examination of the claimant on 10th December, 2007 and on review of radiographs, the doctor diagnosed him with a flattened right zygoma; reduced muscle tone causing a lazy eyelid and upper lip; laceration to the face and permanently damaged maxillary branch of the facial nerve. The Ashraph report recommended corrective surgery as follows:

i. Revision of facial scars	=	\$18,550.00
ii. Elevation of zygoma and bone graft	=	\$35,000.00
iii. Anesthetist/theatre	=	<u>\$12,000.00</u>
		<u>\$65,550.00</u>

III. GENERAL DAMAGES:

6. The guidelines of Wooding CJ in *Cornilliac v St Louis*² were applied to assess the general damages in the instant case:

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

Nature and extent of the injuries sustained

7. The nature and extent of the injuries sustained by the claimant, as detailed by the Ashraph report, were a broken jaw, a lazy lower eyelid and upper lip and facial scars resulting from facial lacerations. The claimant gave a contemporaneous account of the nature and extent of his injuries in his witness statement. According to him, on impact he lost consciousness and when he woke up he tasted blood in his mouth. He then used his camera cellular phone to take a picture of his mouth. He stated, "*I saw the bottom part of my jaw split in two and was bleeding heavily. I also saw a large hole on the right side of my face, just under my eye. The hole was so large I could have put my fist in it. Blood continued to run out my mouth. I started having difficulty breathing. I was coughing a lot. ... I noticed burn marks on my right foot where the radiator on the maxi had touched my foot.*"

² *Cornilliac v St Louis* (1965) 7 WIR 491

8. The claimant's evidence is that he was hospitalized for 1 week following surgery to his jaw and that one tooth was removed in order to insert tablets for his pains through his wired jaw. It is noted, however, that whilst the claimant's evidence was unchallenged, there was no medical evidence as to the alleged burn on his right foot or extracted tooth to facilitate the administering of painkillers. Nevertheless, I accept the undisputed evidence of the claimant as to these injuries.

Pain and suffering endured

9. The claimant's evidence is that he was seated in the front row of passenger seats behind the driver when the collision occurred. He gave no evidence of pains experienced at the collision site. It is his evidence that following the impact, he began experiencing breathing problems and began bleeding profusely through his nose, mouth and throat. Apart from the reference to the administering of pain killer tablets orally through his wired jaw and of the ongoing purchases of painkillers, no evidence as to the extent of his physical pains was provided, save and except that he stated that on return to his employment, "*I would have problems, my eyes would become runny frequently and I would feel pain across my face.*" [emphasis mine]
10. He gave evidence, however, that the injury to his face has left him emotionally scarred and been a source of emotional disturbance and hurt. He describes this pain thus, "*[A]s I got to the Ward I asked for a mirror. When I looked in the mirror my normal face was no longer there. My face was twisted. I felt emotionally disturbed and hurt. I thought I looked like a monster.*" He states further that, "*at present and due to the accident my left eye has a drop, it is lower than my right eye. Since the accident I am very uncomfortable and embarrassed about the way I look. This has affected my confidence level and has caused me to become very subdued and depressed. I wear shades all the time to hide my eyes. I do not leave home without wearing my shades. In 2010 I had to renew my Identification Card and I had to remove my shades. When I looked at my picture I felt ashamed. I avoid using my ID card. Whenever I eat I constantly bite my inner lip because of my missing jaw bone. My right eye has become larger than my left eye because my skin had been pulled through the surgery.*"
11. I had the opportunity at the assessment to see the facial disfigurement of this witness and accept his evidence as presented. It is clear from his evidence, that he suffers unbearable emotional pain and distress because of his facial disfigurement. In fact in the presentation of this claimant's evidence as to his continuing emotional pain and suffering, he did not come across as attempting

to embellish its intensity or exaggerate its impact on his life. This evidence is, therefore, accepted as credible and the claimant a witness of truth.

Loss of amenities suffered

12. The claimant's evidence is that his injuries altered his physical appearance. He states, "*this accident has caused my appearance to change physically. I would like to have my facial appearance corrected. I do not feel comfortable in public. People stare at my appearance. I used to be very confident and positive. I now feel inferior when I am in public.*" The embarrassment and diminished self esteem in public resulting from his disfigurement are accepted. The claimant did not lead any other evidence as to how his distorted facial appearance affects his enjoyment of life and/or that it in anyway contributed to a diminished quality of life.

13. I accept, therefore, that the claimant's injuries have not reduced or rendered him physically incapable of participating in recreational or physical activities or performing the ordinary, everyday human bodily functions, save and except his eating challenges. There is also no evidence as to any untoward effects of his disfigurement on his marriage and it is assumed that this area of his life was not affected.

Nature and gravity of the resulting physical disability

14. Counsel for the claimant submitted that the resulting effects of his injuries are reflected in the discomfort in his gums when chewing; inability to eat hard food; difficulty swallowing; scarring; numbness of face; drooping of his left eye; and the depression and embarrassment from his physical appearance. The claimant's evidence is that the injuries have destroyed his "normal face" and left him looking "like a monster", with a "twisted" face and a sunken left eye. This evidence is accepted. It is also to be noted here that the claimant's injuries are serious but can be surgically corrected.

Extent to which pecuniary prospects have been materially affected

15. The claimant's evidence is that he was unable to work for about 3 months following the accident and so suffered loss of earnings (discussed below). It is clear from his evidence though that after that period, he was able to return to work thus his pecuniary prospects have not been materially affected over the long haul. This evidence is accepted.

IV. AUTHORITIES

16. Several authorities have been provided to assist with assessing damages in this matter as follows:

- ***Ramnarace v Boodoosingh***³ where on 6th July, 2001 Bereaux J (as he then was) awarded \$150,000.00, inclusive of aggravated damages, to a claimant who had sustained a gunshot wound to the mouth resulting in compound fractures of the right mandible; dental avulsion and fractures; loss of several teeth; extensive scarring to the right face; deformity of the angle of the mouth and lower lip; narrowing of the aperture of the mouth; loss of buccal sulcus in the right lower jaw area. This sum as adjusted to December, 2010 is **\$286,211.00**.
- ***Hosein v Cromarty***⁴ where on 14th May, 1982 des Iles J awarded \$30,000.00 for a broken jaw; facial injuries and fractured knee cap; as adjusted to December, 2010 to **\$236,061.00**.
- ***Mohammed v Bellamy & Ors***⁵ where on 25th May, 2009 Rampersad J awarded a plaintiff \$150,000.00 for facial scarring; a seriously damaged eyelid requiring skin graft; 3 chipped incisors; 2 fractured ribs; ruptured spleen; debilitating knee pain; self consciousness about appearance making socializing difficult; as adjusted to December, 2010 to **\$171,293.00**.
- ***Ramjit v Mario's Pizzeria Ltd***⁶ where on 15th November, 2006 the Court of Appeal comprising Justices of Appeal Kangaloo, Mendonca and Weekes awarded \$100,000.00 for a fracture of the cheekbone with poor alignment; diplopia (double vision); inability to chew; restricted mouth opening and numbness; leg injury with fractured tibia and right instep; as adjusted to December, 2010 to **\$161,470.00**.
- ***Bullock v AG & Ors***⁷ where Paray-Durity awarded \$130,000.00, inclusive of aggravated damages, to a prisoner/claimant who was assaulted by 4 prison officers and suffered facial and other injuries requiring his jaw to be wired and causing loss of 6 teeth after delayed medical attention; as adjusted to December, 2010 to **\$150,263.00**.

³ *Ramnarace v Boodoosingh* HCA S-503 of 1999

⁴ *Hosein v Cromarty* HCA 1703 of 1973

⁵ *Mohammed v Bellamy & Ors* HCA 11 of 2002

⁶ *Ramjit v Mario's Pizzeria Ltd* Civ App 146 of 2003/HCA 359 of 2001

⁷ *Bullock v AG & Ors* CV2007-01766

- ***Gunness v Lalbeharry*⁸** where on 11th March, 1985 the Court of Appeal awarded \$20,000.00 plus \$4,185.00 for reconstructive surgery for a serious jaw injury; post concussion syndrome; headaches; irritability; depression and disfigurement; as adjusted to December, 2010 to **\$110,731.00**.
- ***Dupont v Wilson*⁹** where on 17th July, 1975 Maharaj J awarded \$6,000.00 for a fracture of the jaw and laceration of the lip; as adjusted to December, 2010 to **\$107,483.00**.
- ***Kissoon v Lalla*¹⁰** where on 12th February, 1977 des Iles J awarded \$7,000.00 for extensive injuries to the head and face resulting in marked scarring, blurring of vision of the left eye; inability to open the mouth fully; facial asymmetry; headaches; residual flattening of two facial bones; as adjusted to December, 2010 to **\$106,446.00**.
- ***Gosine v Gorie 2nd Plaintiff*¹¹** where on 6th March, 1975 des Iles J awarded \$4,000.00 for an injury to the right eye; dimness of vision and blurring; as adjusted to December, 2010 to **\$73,630.00**.
- ***Bacchus v Jennings*¹²** where on 18th June, 1972 Hassanali J awarded \$1,500.00 for a lacerated face; as adjusted to December, 2010 to **\$38,867.00**.
- ***Sudama v Baldeosingh*¹³** where on 23rd May, 1979 Bernard J awarded \$12,000.00 for fractures of several facial bones which mal-united; fracture of collar bone; fractures of upper and lower jaws; partial amputation of right index finger; difficulty in opening and closing mouth; as adjusted to December, 2010 to **\$144,088.00**.
- ***Mungal v Gangadeen*¹⁴** where on 20th March, 1975 Maharaj J awarded \$12,000.00 for a fracture of the frontal bone and loss of sense of smell; as adjusted to December, 2010 to **\$64,426.00**.

⁸ *Gunness v Lalbeharry* Civ App 41 of 1980

⁹ *Dupont v Wilson* HCA No 3307 of 1974

¹⁰ *Kissoon v Lalla* HCA No 411 of 1977

¹¹ *Gosine v Gorie 2nd Plaintiff* HCA No S-191 of 1974

¹² *Bacchus v Jennings* HCA 219 of 1973

¹³ *Sudama v Baldeosingh* HCA No 621 of 1973

¹⁴ *Mungal v Gangadeen* HCA 897 of 1974

- ***Blizzard v Bucchan 4th Plaintiff***⁴⁵ where on 15th April, 1983 Persaud J awarded \$5,000.00 for severe laceration to the left side of the face; fracture of the orbit; and double vision; as adjusted to December, 2010 to **\$33,699.00**.

17. Whilst the above authorities were instrumental in guiding this court to a fair and adequate compensation for injuries sustained by the claimant at bar, it was observed that in some cases the awards were on the lower side and not squarely representative of the present injuries. Thus, the awards in the ***Blizzard case***, ***Mungal case***, ***Bacchus case*** and ***Gosine case*** and the injuries to which they refer were not particularly helpful in this comparative assessment exercise. On the other hand, I found that the instant claimant's injuries fell somewhere between those in the ***Ramnarace case*** (supra) and the recently decided case of ***Mohammed v Bellamy*** and, as such these awards provided some useful guidance in assessing the current damages. Whilst in my view the injuries in the ***Ramnarace case*** were more extensive and serious than those of the present claimant, there were sufficient similarities with the instant matter. With respect to the case of ***Mohammed v Bellamy*** on the other hand, the injuries were more diverse but I considered the injuries of the present claimant to be just slightly more serious and his disability likely to have a greater resultant impact on his life.

18. Bearing the case law above in mind, I also considered several other guiding principles such as the age of the comparative authorities and the adjustments required in accommodating the declining value of the dollar. Further, I was always aware that whilst the recommended approach in this jurisdiction is that of the comparative method, the injuries in the case at hand and the emotional toll on the claimant would be peculiar to him.

19. In making the determination on an appropriate award, therefore, I borne in mind the warning issued by the Privy Council in ***Peter Seepersad's case*** on the use of comparative awards; that the claimant is entitled to full and adequate compensation for his injuries but not to be unjustly enriched and that perfect compensation is hardly possible, even after a holistic assessment of all the circumstances in a given case. In this regard, the comments of Kangaloo JA in ***Thomas v Ford and Ors***¹⁶ 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*” are duly noted and applied.

¹⁵ *Blizzard v Bucchan 4th Plaintiff* HCA 1001 of 1975

¹⁶ *Thomas v Ford and Ors* Civ App 25 of 2007 at page 28 per Kangaloo JA

20. Moreover, I wish to associate myself with the words of Gopeesingh M in *Elease John (an infant) v John Solomon*¹⁷ who observed that, “*in awarding the plaintiff damages under this head of her claim I must not attempt to award perfect compensation but that ‘damages should be assessed so as to give the plaintiff an amount which was fair compensation in all the circumstances’ and that ‘damages were an award of a single sum, and though heads of compensation might be regarded separately as aids to reaching a just amount, yet merely to assess amounts under these heads and to award the aggregate of the items so assessed might in such cases as the present, lead to error’* – See: *Fletcher v Autocar Transporters Ltd (1968) 1 All ER 726*.”
21. Having examined the cases cited above, the circumstances of this particular case and the many guiding principles, I find that a reasonable award for general damages would be **\$220,000.00**.

V. SPECIAL DAMAGES:

22. Special damages are out-of-pocket losses sustained by a claimant up to the date of trial and which have resulted directly from the defendants’ negligence. It is trite law that special damages must be specifically claimed and proven. See *Mario’s Pizzeria Ltd v Hardeo Ramjit*.¹⁸ It is unlike general damages which the law implies and which is not required to be specially pleaded. See *Grant v Motilal Moonan Limited and Rampersad*¹⁹ where it is stated that, “... a party claiming damages must prove its case, and to justify an award of these damages he must satisfy the Court both as to the fact of damage and its amount”.
23. In the case of *Bonham Carter v. Hyde Park Hotel* (1948) 64 T.L.R. 178, which was adopted into the local jurisdiction in the *Moonan Case*, the learned Chief Justice opined, “[Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the Court saying ‘this is what I have lost; I ask you to give me these damages’. They have to prove it”. See also the case of *Jefford v. Gee* [1970] 2 Q.B. 130.

¹⁷ *Elease John (an infant) v John Solomon* HCA 919 of 1979

¹⁸ Per Kangeloo JA in *Mario’s Pizzeria Ltd v Hardeo Ramjit* CA 146 of 2003. See Lord MacNaughten’s comments in *Stroms Bruks Aktie Bolag v Hutchinson* (1905 AC 515, 525-526).

¹⁹ *Grant v Motilal Moonan Ltd and Rampersad* Civ App # 162 of 1985 per Bernard CJ, at pg 5.

24. In *Sookdaye Babwah v Dennis Harrinanan & Ors*²⁰ the type of proof and the nature of evidence and pleading required for a claim of special damages to be validly constituted were identified as being inclusive of bills or receipts and any other documentary evidence to provide the court with sufficient particularity of the losses being claimed. It is not enough to list the loss and say to an assessing court that this is the extent of the loss resulting from the injuries and the expenses incurred. The assessing exercise is not a game of hop scotch; a claimant is required to come armed with full and proper documentary proof to support his claim. Thus, where documentary evidence is lacking an assessing court seeking to determine the validity of a claimant's claim would, on the sole basis of uncorroborated viva voce evidence, be hesitant to allow same. In this regard, I also found instructive the comments of Pemberton J in *Elva-Dick Nicholas v Jayson Hernandez and Capital Insurance Limited*²¹ that, "[I]t is clear that the mere enumeration of alleged losses is insufficient proof and the Court would be restrained to deny compensation for items of damage not proven by way of proper documentation, for instance the production of receipts or invoices." Further, in another matter Pemberton J stated, the duty to plead has not been changed by the Civil Proceedings Rules 1998 (as amended), but fortified. A party must plead his case fully. See *Top Hat Yachts Limited v Evelyn Petersen & Ors*²² In the circumstances of the instant case, where receipts could reasonably have been obtained and the claimant neglected to furnish same, I have adopted the approach of Pemberton J and the position espoused by her on the need to fully plead and prove one's case and so disallowed the claim.

25. The instant claimant has claimed special damages in the global sum of \$23,461.00, which is examined below.

- **Medical and Dental Expenses**

26. In his statement of claim, the sum of \$5,209.53 was claimed for medical reports, pain killers and ointments as well as dental expenses. Some copies of receipts were attached to the statement of case but most of the copies were not easily deciphered save and except the total sum of \$300.68. There were no receipts for the medical services or of Dr Ashraph, though it is accepted that he would have had to pay for the medical report. Such receipts are easily available and the failure of the claimant to produce same or proper documentary evidence pertaining to purchases of medication or other medical services resulted in this claim being disallowed. I note, however,

²⁰ *Sookdaye Babwah v Dennis Harrinanan & Ors* HCA S-136 of 1994

²¹ *Elva-Dick Nicholas v Jayson Hernandez and Capital Insurance Limited* CV2006-01035.

²² *Top Hat Yachts Limited v Evelyn Petersen & Ors* CV2006-3677

that the defendants have indicated their willingness to meet these costs in the sum of \$1,000.00. This claim is, therefore, allowed in the sum of **\$1,000.00**.

- **Domestic Expenses**

27. The claimant claims the sum of \$3,000.00 for cost of domestic assistance for 2 months. This claim was not substantiated by any documentary evidence. In his witness statement, he gave evidence that he hired one Ms Sandra Nandlal to look after him and paid her \$1,500.00 per month. Counsel for the claimant has submitted that the evidence was unchallenged so the claim should be allowed in its entirety. Given the lack of documentary evidence to support this claim; the failure to call this witness to give evidence on his behalf or to file a witness statement for her and the fact that this loss could easily have been proved, this claim is disallowed.

- **Transportation Expenses**

28. In his statement of claim, he claimed the sum of \$1,500.00 for transportation costs. This claim was pleaded and particularized but not substantiated by the requisite documentary evidence. Annexed to the statement of claim was a detailed handwritten account of the dates of the claimant's clinic appointments and the public transportation costs to get there. Detailed also were the dates when private vehicles were hired, with the names of drivers and car registration numbers and sums paid. There was no explanation provided for the non-availability of receipts from these named drivers of hired vehicles. In my view, these receipts could have been obtained and made available to the assessing court. As it was the claimant's responsibility to furnish the necessary proof for his pleaded case, all sums claimed with respect to hired vehicles for which no receipts were provided are disallowed. With respect to the sums claimed for use of public transportation, I am of the view that in a small society such as ours it is hardly possible to secure receipts for these expenses. Further, these sums claimed were reasonable and highly probable. In the circumstances, I am minded to allow transportation costs in the sum of **\$600.00**.

- **Loss of Earnings as an Estate Constable**

29. Loss of earnings incurred down to the date of trial is an out-of-pocket expense that is capable of substantially exact calculation so must be pleaded and proved. In his witness statement and statement of claim, he pleads loss of earnings as an Estate Constable with IMJIN Security Services Ltd at the rate of \$2,288.25 per fortnight for 3 months, which amounts to the sum of \$13,729.50. In support thereof he annexes a copy of a job letter dated 10th April, 2007 and his

pay sheet record for the period 2nd September, 2006 to 16th March, 2007 showing his earnings as an Estate Constable. Counsel for the claimant has submitted that given that his evidence was unchallenged and the documents went into evidence without objections, the court must give the documents their full weight.

30. It is my view that the claimant has satisfied his duty to set out the case to be met by the defendants from up front and used his pleadings to delineate the boundaries of his case and the issues and extent of the dispute between them. Whilst I accept the defendants' right to be put on guard as to the full compensation being claimed, it is my view that sufficient notice of this claim was given and that the claim itself is reasonable. The claimant is entitled to his compensation and this claim is allowed in the sum of **\$13,729.50**.

VI. FUTURE SURGERY

31. The claimant claims the sum of \$65,550.00 for costs of future surgery. This claim is supported by the medical report of Dr Ashraph and is allowed in the sum as claimed.

VII. CONCLUSION

32. It is thus the order of this court that the 2nd and 3rd defendants do pay to the claimant –
- (i) General damages in the sum of \$220,000.00 with interest at the rate of 9% per annum from 13th March, 2009 to 29th March, 2012.
 - (ii) Special damages in the sum of \$15,329.50 with interest at the rate of 6% per annum from 18th March, 2007 to 29th March, 2012.
 - (iii) Costs of future surgery in the sum of \$65,550.00, which said sum does not attract an award of interest.
 - (iv) Costs on the prescribed basis in the sum of \$51,587.95.
 - (v) Stay of execution of 28 days.

Dated 29th March, 2012

Martha Alexander
Master of the High Court (Ag)