THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2009-04776

BETWEEN

SHAMSHUDEEN HAITULA Claimant

AND

CHRIS MAHABIR Defendant

CAPITAL INSURANCE LIMITED Co-Defendant

****

Before: Master Alexander

Appearances:
For the Claimant: **Mr Prakash Maharaj**
For the Defendants: **Mr Ravi Pheerangee**

DECISION

I. INTRODUCTION

1. This assessment relates to an accident that occurred along the South Trunk Road, Dow Village in the vicinity of Godineau Bridge on 29th January, 2006. The defendant was attempting to overtake another vehicle travelling ahead of him when he swerved and collided with the said bridge. The claimant was a front seat passenger in the defendant's motor vehicle and as a result of the accident suffered personal injuries, consequential loss and damages.

2. By claim form and statement of case filed on 23rd December, 2009 he sought compensation for the personal injuries he sustained in that accident. Judgment in default of appearance was entered against the defendant on 11th February, 2010. The co-defendant filed an application on 13th April, 2010 to extend the time to put in its defence. Subsequently, on 5th May, 2010 Rajkumar J by consent entered judgment on the issue of liability against the co-defendant and granted permission for the co-defendant to file a defence on quantum. This order is reproduced below:

IT IS HEREBY DECLARED THAT *the co-defendant is liable by virtue of Section 10 of the Motor Vehicles Insurance (Third Party Risks) Act Chapter 48:51 to indemnify the defendant and to pay to the claimant any damages, interest and costs awarded against the defendant.*

AND IT IS ORDERED BY CONSENT THAT:

1. *There be judgment against the co-defendant for any damages, interest and costs assessed against the defendant is found liable to the claimant; and*
2. *The co-defendant do pay the claimant's costs of this application in the sum of one thousand five hundred dollars ($1,500.00).*

IT IS ORDERED THAT:

1. *Leave is hereby granted to the co-defendant to withdraw the application filed on 13th April, 2010; and*
2. *There be no order as to costs.*

IT IS ALSO ORDERED BY CONSENT *that time is hereby extended for filing the co-defendant's defence on quantum on or before 1st June, 2010.*

3. It is critical to note that despite the enlargement of time for the defence, the co-defendant did not file any defence in this matter. The assessment proceeded before Rajkumar J who gave directions in February, 2011 to both parties for the filing and exchange of witness statements and summaries as well as written submissions on quantum together with authorities in support. On 19th October, 2011 Rajkumar J adjourned the assessment hearing before a master. This assessment was conducted pursuant to the above orders.

4. No cross examination took place at the hearing of the assessment on 1st March, 2012, and the co-defendant's rights with respect thereto were confined and/or restricted by the orders of the learned judge. Counsel for the claimant has asked this court to note that the learned judge was of the view that the co-defendant's role should be limited to the provision of case law guidance for the benefit of the court and permission was granted for submissions in that regard, not for the challenge of the claimant's evidence.

II. THE EVIDENCE

5. In support of his claim for damages, the claimant filed the following –
   - the claimant's witness statement filed on 1st April, 2011;
   - the medical report of Dr Ian Persad dated 23rd June, 2008, as attached to the statement of case and witness summary and in respect of which a hearsay notice was filed on 1st April, 2011;
   - witness statements filed on 1st April, 2011 of Feroza Dillah (domestic assistant) and Narine Ramdeen (taxi driver) but which were not relied upon at the assessment, as these witnesses were not called.

The Medical Evidence:

6. According to the medical report of Dr Ian Persad, Orthopaedic Department, San Fernando General Hospital (hereinafter "the Persad report") the claimant sustained the following injuries:
   - Cerebral concussion;
   - Right calcaneum fracture;
   - Left medial maleolus, left talar body fracture;
   - Fracture of left 2nd, 3rd, 4th and 5th metatarsals.

7. The following portion of the Persad report is reproduced hereunder:

He spent 4 days in the hospital and his fractures were treated conservatively in casts for three to four (3-4) months. He was unable to work for approximately twenty (20) months.

He is now back to work doing light duties. He has difficulty wearing steel-tip boots. He has chronic left ankle pain and chronic right subtalar joint pain. His last x-ray in January, 2008 shows well healed fractures, however he now has advanced right subtalar joint osteoarthritis and early left ankle joint osteoarthritis.

He may need surgery if his pain gets worst over time.

His permanent partial disability as a result of these injuries is assessed at thirty percent (30%).

IV. GENERAL DAMAGES:

8. This court was guided by the approach of Wooding CJ in ***Cornilliac* v *St Louis***[1] in assessing 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;
    v. The extent to which the plaintiff's pecuniary prospects have been materially affected.

Nature and extent of the injuries sustained

9. Based on the medical evidence, the principal injuries sustained by the claimant were fractures, namely right calcaneum fracture; left medial maleolus, left talar body fracture; left 2nd, 3rd, 4th and 5th metatarsals fracture. He also suffered a cerebral concussion. These fractures were reported to be "well healed fractures" in 2008 in the Persad report, though continuing chronic pain and advanced osteoarthritis of the ankle were noted. This is accepted by this court as the nature and extent of the claimant's injuries.

Pain and suffering endured

10. In his witness statement, the claimant gave evidence that on impact, his head struck the door post and he lost consciousness. He woke up at the San Fernando General Hospital. Almost immediately on regaining consciousness, he began experiencing severe pains all over his body, "*I was feeling very dizzy, sick and very scared. My feet, back, chest and hands were paining me a lot and my face and tongue had cuts.*" At the hospital, he was always in pain and was given a lot of pain medication and injections. It is his evidence also that after he was discharged, this pain continued unabated, "*I was in a lot of pain all the time and I got a lot of headaches. I got a wheelchair to assist me in moving around when I was not lying in my bed. It was difficult and painful transferring myself each time into the wheelchair and I needed assistance to do so ... The pain in my feet and ankles got worse each time the weather got cold.*"

11. He also gave evidence that learning to bear weight on his feet was a painful exercise that made him feel dizzy and sick and resulted in him not standing up for months. The claimant's evidence is that he was eventually able to return to work but he continued to experience ongoing pain and

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

discomfort in his feet on a regular basis. Due to this he was unable to wear his steel-tip boots as required for his job and/or to perform his usual duties at work. In addition, he gave evidence that even driving was painful and a source of grave discomfort. Further, he stated that the simplest act of washing his car caused his feet to hurt and that it took "*a couple of hours for the pain to ease*". As of the date of filing his witness statement, some five years after the accident, the claimant's evidence is that his pain has continued unabated. He describes his experience thus, *"[M]y feet and ankles pain on a daily basis and my toes cramp up in the night. I am unable to move my toes freely or sometimes at all. I get dizzy at nights and sometimes when I sneeze and cough I get pain in my chest and back ... I cannot run or lift heavy objects because my ankles are not able to bear it and when I bend down for long periods I get dizzy*."

12. This claimant has sustained fractures to both feet around his ankle and the bones in his left leg. His evidence is that he has been subjected to chronic pain and suffering as a result, which has been a grave source of discomfort in his life to date. This chronic and continuing pain was documented in the Persad report as being in existence as of 2008, with the possibility of surgery if it continues. There is no evidence before this court as to whether between 2008 and 2012 (as at the date of assessment) this surgery took place. Nevertheless, this court notes that it is the claimant's evidence that his threshold of pain has continued unabated and unmanageable. The claimant did not appear to be embellishing his pain and suffering for this assessing court but as a witness of truth. His evidence is, therefore, accepted.

Loss of amenities suffered

13. As a result of his injuries, the claimant gave evidence that his quality of life has been significantly diminished. Following the accident, whilst he was still hospitalized, he was unable to perform the most basic tasks of brushing his teeth; cleaning himself; standing on his own; using the toilet facilities or even eating. He was assisted in these acts by the nurses and he described this as a very embarrassing experience for him. At home, his mobility was also restricted because of his injuries and resultant pain and discomfort. He found himself in the post-accident period to be unable to participate in the sporting activities of cricket and football; it was also a challenge to drive for long distances and to run or lift heavy objects. He described his post-accident life as a frustrating one, as despite his best efforts he has not been able to resume his normal activities or to enjoy the previous quality of life he had in the pre-accident period. He now sees himself as a burden on his wife and as a man who has lost his vibrancy as a male. He states, "*I am worried as to what will be the future effects of my injuries on the quality of my life as I grow older. The fact that it has been over five years since the*

accident and I am unable to carry on my normal daily life frustrates me." His evidence as to the loss of amenities suffered is accepted by this court.

Nature and gravity of the resulting physical disability

14. The claimant has given evidence in his witness statement that his injuries have had a huge impact on his post-accident quality of life, due to his current disabilities. In the post-accident period, he has sought, obtained and lost jobs because of the resulting physical disabilities that he has to live with. He describes his experience thus, "*[D]ue to my injuries I have struggled to get any sort of employment and the few opportunities that have come along I was not able to hold on to for some reason or the other because of my disabilities from the accident*." He finds driving a challenge; bending for long periods causes him to be dizzy; moving his toes freely poses a problem; and climbing a ladder and lifting heavy objects are acts he can no longer perform. According to his evidence, even jumping from boats to platforms is no longer possible because of the injuries. In fact, he now suffers with advanced osteoarthritis in both feet.

15. Whilst this court accepts the evidence of the claimant as to his continuing physical disabilities, judicial notice is taken of the Persad report where his fractures were reported to have healed well. There is no evidence before me that this claimant is unable to bear full weight on his feet save and except that their use continue to pain and be a source of discomfort. There is also no evidence that the nature and gravity of the claimant's resulting physical disabilities from his injuries have rendered him effectively unable to return to the labour market. In fact, his evidence is that he has been able to secure jobs which he has either declined (because it would require jumping from boats to platforms that may cause him to hurt his feet) or performed inadequately, leading to his employer being displeased. It is also his evidence that he was a fisherman before the accident when he was younger but attempts to secure such a job have been futile as no boat owner wants to hire him. He has also not been able to get back his pre-accident job with Ramco, which he had lost due to the many days off that he had taken because of his injuries. This court accepts his evidence as to his resulting physical disabilities and that he continues to be challenged by the effects of his injuries.

Extent to which pecuniary prospects have been materially affected

16. The claimant's evidence is that at the time of the accident, he was a lorry man employed with Ramco Industries Limited, where he had earned a weekly salary of $1,100.00 after deductions. His duties then consisted of assisting with sales and maintenance. After the accident, he returned to

work and was given light duties because his injuries prevented him from wearing his steel-tip boots. These light duties involved carrying documents and occasionally driving the company's vehicle. As driving was a challenge for him because of his injuries, he took leave from his job. In August, 2008 he returned to work but as the pain and discomfort continued, he began missing days from work on a regular basis. This led to him being laid off. He had worked on his return for only 3 weeks earning a salary of $1,082.92 to $1,404.67 per week before being laid off. Subsequently, he experienced difficulties securing employment because of his injuries. He gave evidence that sometime in early 2011 he secured a job installing air condition units but had to leave this job because he could not climb a ladder or lift the unit so his performance displeased his employer. There is no evidence before me as to the length of his employment in this job or of any salary earned. He claims to be experiencing challenges securing a job for which he is suited and keeping jobs that require little physical demand on his body. He claims that he has no skills (apart from driving and fishing) or training in any specialized field nor does he have any CXC passes.

17. His injuries have posed a challenge for him to secure and keep himself employed on the local labour market. This evidence is unchallenged and, therefore, accepted. Nevertheless, I note that there is no medical evidence before me that he is medically unfit to resume his pre-accident job or to do any job whatsoever.

V. AUTHORITIES

18. Both parties provided authorities to assist this court with the exercise of assessing the claimant's damages. The awards in these cases involving similar injuries were looked at and adjusted to accommodate the injuries in the case at hand. In this exercise, this court was always mindful that the injuries of the instant claimant and the effects on him would be peculiar to him, and not strictly mirror any of the other cases used for comparative purposes. Thus, it was borne in mind that these cases and their awards were platforms for the assessing exercise. Based on these authorities, counsel for the claimant recommended an award for general damages in the sum of $180,000.00 to $200,000.00 whilst counsel for the defendant and co-defendant suggested as adequate the sum of $55,000.00. I will now turn to the authorities furnished by the parties which are as follows:

(a) <u>The Claimant's Authorities</u>

- ***Persad* v *Bissoon*** [2] where a plaintiff suffered a fracture of the ankle; dislocation to toes; loss of three teeth and injury to the jaw and was awarded the sum of $10,000.00; as adjusted to December 2010 to $183,096.00. Counsel for the claimant in the instant case submitted that the injuries of his client, given that they were fractures to both of his feet as well as a cerebral concussion, were more serious than those of the plaintiff in ***Persad***.

- ***Chan Pong* v *BWIA*** [3] where a plaintiff suffered a comminuted fracture of the right ankle and some loss of amenities and was awarded $4,500.00; as adjusted to December, 2010 to $151,178.00. Counsel for the claimant submitted that the injuries of his client were more serious as they were fractures to both feet and he was immobilized in plaster cast for a longer period than the plaintiff in ***Chan Pong***.

- ***Williams* v *Devonish & Devonish***[4] where a plaintiff who sustained bi-lateral fractures of the right ankle with lateral subluxation of the right ankle joint and a comminuted fracture of the right patella was awarded the sum of $30,000.00; as adjusted to December, 2010 to $110,892.00. This plaintiff was given a permanent partial disability of 10%. Counsel for the claimant submitted that the injuries of his client were more serious as he had sustained multiple fractures, particularly to his left ankle and left metatarsal bones as well as a fractured right calcaneum. Unlike this plaintiff who only had fractures to the right ankle, the claimant at bar suffered fractures to both feet and was given a 30% permanent partial disability.

- ***George Cadogan* v *Goodwin James***[5] where an award of $80,000.00 was made in January, 2005 for a fractured right leg, bruises to the left leg, pain in the neck, and laceration to the head. The claimant received 11 stitches, his leg was in a cast for 6 months, his neck was placed in a brace and he underwent physiotherapy. Adjusted to December 2010, the award is $139,555.00. Counsel for the claimant submitted that the injuries of his client were more serious as they were fractures to both feet and he was immobilized in plaster cast for a longer period than the plaintiff in ***George Cadogan***.

---

2 *Persad* v *Bissoon 2nd Plaintiff* HCA 864 of 1971
3 *Chan Pong* v *BWIA* HCA 309 of 1966
4 *Williams* V *Devonish & Devonish* HCA 913 of 1981
5 *George Cadogan* v *Goodwin James* HCA 1915 of 1997/CA172 of 2004.

(b) <u>The Defendant and Co-Defendant's Authorities</u>

- ***Caines* v *Camacho***[6] where a plaintiff suffered concussion, headaches and blackouts and was awarded the sum of $2,000.00; as adjusted to December, 2010 to $36,619.00. This case is not squarely representative of the facts before this court.

- ***Scobie* v *Nelson***[7] where a plaintiff sustained injuries to his head and left ankle. He was unconscious for a day and his left ankle was placed in a cast for 3 weeks. He complained of headaches and pain in the ankle due to stiffness. He was also unable to tolerate noise after returning to work and was diagnosed 5 years after the accident with post traumatic amnesia and post concussion syndrome. On 19th December, 1995 Master Paray-Durity awarded $42,000.00 for non-pecuniary loss; as adjusted to December, 2010 to $101,472.00.

- ***Kimkaran & Ors v Boodoo & Ors***[8] where a plaintiff sustained a fracture of the right zygomatic molar and injury to the right ankle which was placed in a cast for 6 weeks. There was also bruising of the left big toe, chest, left knee and a fractured right wrist. The plaintiff was unconscious for 10-15 minutes and was diagnosed with post concussion syndrome. On 28th January, 1998 Stollmeyer J (as he then was) awarded the sum of $45,000.00; as adjusted to December, 2010 to $$100,514.00. It is to be noted that these injuries are not squarely on par with those suffered by the instant claimant.

- ***Ramsubhag* v *Persad & Persad***[9] where a plaintiff suffered a right ankle injury; fracture of the right distal fibula; cerebral concussion; post concussion syndrome; tenderness and swelling over the lateral right mallelous; constant headaches and pains in the back and ankle. He was in casts for more than 2 months and had to use crutches. On 7th March, 2003 Tiwary-Reddy J awarded $55,000.00 as general damages; as adjusted to December, 2010 to $98,323.00.

---

6 *Caines* v *Camacho* HCA 1748 of 1970
7 *Scobie* v *Nelson* HCA 1442 of 1994
8 *Kimkaran & Ors v Boodoo & Ors* HCA 1493 of 1996
9 *Ramsubhag* v *Persad & Persad* HCA No 179 of 1992

(b) <u>Other Authorities</u>

19. In ***Thaddeus Bernard*** **v** ***Nixie Quashie***[10] the Court of Appeal warned against merely using updated figures from "**<u>The Lawyer</u>**" in assessing damages and recommended cases which are more recent as a better guide for assessing courts. Adopting this approach, this court reviewed the authorities referred to by the parties as well as others, which deal with injuries of a similar nature that were more recently decided as follows:

- ***Ramroop*** **v** ***Burroughs Welcome & Co Ltd***[11] where an award of $14,000.00 was made for a fracture of both legs; 1.25" shortening of left leg; osteo-arthritis; post-concussion headaches; dizziness; and touch loss; as adjusted to December, 2010 to $211,807.00.

- ***Laurence Ganga and Or*** **v** ***Marlon Kendall and Ors***[12] where Kokaram J awarded $80,000.00 to a 16 year old boy for fractures of the left clavicle, left ramus, tibia and fibula; persistent pain; swelling of hip, leg, shoulder and disability to walk. His injuries affected his work, studies and pre-accident sporting activities.

- ***Nimrod Joseph*** **v** ***Roy Joseph and Or***[13] (a recent decision of this court) where a claimant sustained a fractured right tibia and fibula; comminuted intra-articular fracture left distal radius; cerebral concussion; multiple abrasions to both arms, right thigh and left leg; multiple facial lacerations and abrasions with loose incisor tooth. He experienced excruciating pains; difficulty eating solid foods due to the loose incisor tooth; and needed further dental work. The medical report showed that he was likely to develop secondary osteo-arthritic changes at the wrist due to the intra-articular nature of the fracture. He wore a cast on his left forearm for 4 weeks and on his right leg for several months and used crutches for 2 years. He also walked with a pronounced limb. He was unable to perform his pre-accident full-time job of driving or his part-time job of welding. On 24th February, 2012 this court awarded $160,000.00 as general damages.

- ***Natainia Brown*** **v** ***Sigma Car Dealers & Ors***[14] (another recent decision of this court) the claimant sustained injuries to the head, nose, shoulder, hip and ankle including loss of

---

10 *Thaddeus Bernard* v *Nixie Quashie* Civ App No 159 of 1992
11 *Ramroop* v *Burroughs Welcome & Co Ltd* HCA 457 of 1975
12 *Laurence Ganga and Or* v *Marlon Kendall and Ors* HCA S-5 of 2003
13 *Nimrod Joseph* v *Roy Joseph and Or* CV2008-00500
14 *Natainia Brown* v *Sigma Car Dealers & Ors* CV2008-00136

consciousness; neurological deficits; multiple fractures of the ethmoidal, maxillary and sphenoid sinus walls; fractures of the left femur and right ankle; fractures to the right maller talus and nasal bone; fractured right clavicle and frontal bone; bony injuries; and severe recurrent headaches. She too wore a plaster cast below the right knee and had a Steinman pin inserted to the left proximal tibia. She was also the recipient of several blood transfusions; had several corrective surgeries; suffered continuous pain and breathing difficulties; inability to bear weight; chest pains while walking; restricted movement of the right arm; nasal pain and discomfort while sleeping; deformity of the right ankle with difficulty walking; and walked with a limp. On 24th February, 2012 this court awarded $280,000.00 as damages for non-pecuniary loss. Her injuries were more severe and extensive than those of the instant claimant.

VI. OTHER PRINCIPLES

20. In determining the quantum of damages to award to the instant claimant, the authorities (supra) were instrumental as were the principles outlined in ***Cornilliac***. Apart from these, consideration was also given to the particular injuries sustained by the claimant and his pain and suffering. This court also examined the evidence proffered by the claimant in support of his case and the age of the comparative authorities. In addition to these considerations, this court had regard to several other principles of assessment including:

- The adjustments required in accommodating the declining value of the dollar; and that past cases serve only as a guide as noted in ***Aziz Ahamad* v *Raghubar***[15]

- Damages must be "full" and "adequate" and perfect compensation for injuries suffered is not possible. See ***Fair* v *London and North Western Rly Co***[16]

- The comparative approach is a useful but an imperfect one so each claimant's pain and suffering must be assessed on its own unique facts. See ***Peter Seepersad's case***[17]

- The award for damages is a once and for all award.

---

15 Per Wooding CJ in *Aziz Ahamad* v *Raghubar* (1976) 12 WIR @ page 357

16 *Fair* v *London and North Western Rly Co* (1869) 18 WR 66, 21 LT 326

17 *Persad* v *Peter Seepersad & Ors* PC 86 of 2002

- Perfect compensation is not possible so the court should aim to give fair compensation taking into account the circumstances of the case at bar. See the comment by Master Gopeesingh that, "*in awarding the plaintiff damages … 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."* In ***Elease John (an infant)*** **v** ***John Solomon***.[18]

- The claimant is entitled to fair, full and adequate compensation for his injuries. Thus, any award should approximate as closely as possible complete compensation for the injuries he suffered, based on a holistic assessment of all the circumstances of his case. See ***Elva Dick-Nicholas*** **v** ***Jayson Hernandez & Capital Insurance Co.***[19]

- A claimant is not entitled to an enrichment package or one that over-compensates him for his pain and suffering and other non-pecuniary losses. The assessment exercise is not a road to riches fable *but a straightforward arithmetical exercise with known guidelines to inform a court's decision*. See Kangaloo JA in ***Thomas*** **v** ***Ford and Ors***[20] who observed 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.*"

- The inherent dangers in using adjusted awards as commented upon in 1998 by Stollmeyer J (as he then was) thus, "*[W]hile I accept that awards should be 'adjusted' over time in an effort to preserve at least some element of purchasing power, there is, I think, something of an inherent danger in merely adjusting awards using what has been described as a 'straight line method' because it would appear that this method results in older decisions yielding higher sums on adjustment than amounts awarded in cases more recently decided*." ***Deokie Kimkaram & Sintra Boodoo*** **v** ***Sakaldip Boodoo & Samodee Contractors LImited***.[21]

21. Having examined the cases and principles cited above as well as all the circumstances of this peculiar case, this court formed the view that an award in the region of $150,000.00 would be a fair and adequate measure of compensation for this claimant's pain and suffering and loss of amenities.

---

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

19 *Elva Dick-Nicholas* v *Jayson Hernandez & Capital Insurance Co.* (unreported) CV2001-01035 at page 5, para. 14.

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

21 *Deokie Kimkaram & Or* v *Sakaldip Boodoo & Or* HCA S-1493 of 1996 page 26 decision delivered in January 1998

VII. LOSS OF EARNING CAPACITY

22. Counsel for the claimant submitted that this is an appropriate case to attract an award for loss of earning capacity as the claimant has sustained a significant reduction in his earning capacity. The court was asked to note that at the age of 36 years, this claimant has difficulty wearing steel tips boots and/or retaining any job which is strenuous to his body. He has also been ascribed a 30% permanent partial disability. Based on the decision in ***Persad* v *Peter Seepersad & Ors*** (supra) where future loss of earnings was awarded, it was submitted that a sum in the vicinity of $30,000.00 to $50,000.00 would be reasonable rather than to adopt a multiplier/multiplicand approach.

23. Whilst this claimant's injuries may have resulted in a reduced earning capacity, there is insufficient evidence before this court to determine this conclusively. In this regard, it is noted that there is no updated evidence of the current medical condition of the claimant, the Persad report being dated some 3 years ago. There is also no medical evidence that he is unfit to work or is likely to suffer a diminished earning capacity and as such no award is made under this head.

VIII. SPECIAL DAMAGES:

24. Special damages are monetary losses sustained by a claimant up to the trial date. As a rule, it must be specifically pleaded, particularized and proven.[22] See ***British Transport Commission* v *Gourley*[23]**. This principle has been confirmed and incorporated locally as seen in several decisions emanating from the High Court and Court of Appeal. See ***Christopher Lucas* v *Boodram*[24]**.

25. The effect of this rule is that all out-of pocket expenses and loss of earnings incurred down to the date of trial, which are capable of substantially exact calculation, must be pleaded and proved. It is unlike general damages which the law implies so is not required to be pleaded specially. See ***Grant* v *Motilal Moonan Limited and Rampersad*[25]**, which states 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*". In the case of ***Bonham Carter* v *Hyde Park Hotel*[26]**, which was adopted into the

---

22 Per Kangaloo 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.

23 *British Transport Commission* v *Gourley* [1956] AC 185

24 *Christopher Lucas* v *Boodram* CA No 10 of 1982

25 *Grant v Motilal Moonan Limited and Rampersad* Civ. App. No. 162 of 1985 per Bernard CJ, at pg 5

26 *Bonham Carter* v *Hyde Park Hotel* (1948) 64 T.L.R. 178

local jurisdiction in the ***Moonan Case***, the learned Chief Justice opined, "*[P]laintiffs 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.***[27]

26. In addition to the above outlined principles, this court noted the words of Pemberton J in ***Elva-Dick Nicholas* v *Jayson Hernandez and Capital Insurance Limited***[28] 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.*" Thus, in the absence of documentary proof for any head of special damages, it would be disallowed.

- **Transportation Expenses**

27. The claimant claimed travelling expenses to SFGH in the sum of $1,650.00 in his statement of case and provides receipts in support thereto. This claim is allowed in the sum of **$1,650.00**.

- **Domestic Expenses**

28. In his statement of case, the claimant claimed $25,950.00 for cost of domestic assistance and annexed receipts in support thereto. As this claim was substantiated by the necessary documentary evidence, it was allowed in the sum of **$25,950.00**.

- **Medical Expenses, Certified Copy and Police Report**

29. In his statement of claim, the claimant claims the sums of $500.00 for medical expenses and continuing; $150.00 for certified copy; and $50.00 for a police report but provided no receipts or any other documentary evidence to substantiate these claims. These claims were, therefore, wholly disallowed.

- **Loss of Earnings as a Lorryman with RAMCO -**

30. The claimant has claimed loss of earnings as a lorryman, with RAMCO Industries Limited from 29th January, 2006 to present at a monthly net rate of $4,400.00. Counsel for the claimant has submitted-

    (i) payslips showing that the claimant earned a weekly salary of at least $1,124.50;

---

27 *Jefford* v *Gee* [1970] 2 Q.B. 130

28 *Elva-Dick Nicholas* v *Jayson Hernandez and Capital Insurance Limited* CV2006-01035 at pages 6-7

(ii) that the Persad report stated that the claimant was not able to work for 20 months, and on return was given light duties and still was unable to cope with his pre-accident job, so left after 3 weeks;

(iii) the claimant subsequently returned to his job a second time but was laid off because his injuries forced him to take days off;

(iv) that the claimant got a job assisting to install air conditioning units for about 2 months but left because his employer was displeased with the performance of his duties; and

(v) that the claimant ought to be allowed his claim for loss of earnings subject to any deductions for the periods during which he did actually work.

31. This court has several concerns with the presentation of the claimant's claim for loss of earnings. There were some obvious inconsistencies and contradictions with the claimant's evidence, his submissions and the Persad report. Notably that:

(i) the witness statement states he worked for 3 weeks when he returned to his job on the second occasion in the post-accident period (not on the first occasion as stated in his submissions).

(ii) on 23rd June, 2008 the Persad report indicates clearly that the claimant was "unable to work for approximately twenty (20) months," but his payslips were dated August, 2007. A strict mathematical calculation will show that between the date of the accident on 29th January, 2006 and the date of the first payslip 8th August, 2007, only 18 months had elapsed. Yet in his witness statement, the claimant gave evidence that he did not work for 20 months after the accident and when he returned (no date given) he could not wear his steel boots or perform his usual duties so was given "light duties". He was forced to take leave from his job because of the pain he was experiencing.

32. This court has no evidence before it as to –

(i) the actual date of resumption of duties;

(ii) when he was allegedly given "light duties";

(iii) the length of time he was able to work doing such duties;

(iv) whether he was paid for the period during which he took leave and then returned to his job; and

(v) whether he was a permanent or temporary or seasonal employee.

33. His evidence is that pre-accident he earned a weekly salary of $1,100.00 after deductions as a lorryman with RAMCO, assisting with sales and maintenance. The payslips annexed to his statement of case show a net weekly salary range that varied from $1,082.92 to $1,404.67. Further, there is no job letter in evidence or witness statement from his employer or anyone in RAMCO confirming that he was employed there full time or otherwise and/or detailing his challenges in retaining his employment. Further, this court takes note of the marked absence of any documentary evidence from his employer as to the claimant being assigned "light duties" and that his payslips refer to him doing sales and/or maintenance (his pre-accident job).

34. The claimant's evidence is that he again returned to work in August 2008 (this is after the date of the Persad report) and worked for 3 weeks, for which he has annexed payslips. An examination of those payslips showed that they were dated **8th August, 2007** for a net income of $1,181.42; **15th August, 2007** for a net income of $1,082.92; and **29th August, 2007** for a net income of $1,404.67 as a sales helper/maintenance in the first instance and for maintenance duties in the two other instances. The claimant had clearly returned to work before the 20 month period in which his counsel submitted that he was allegedly unable to work. It was on the second occasion when he resumed work in August, 2008 that his employer allegedly got displeased with his performance and "laid him off". There was no letter of termination exhibited in support of this or payslips as alleged in his witness statement and submissions for this period. The annexed payslips refer (as stated above) to August 2007.

35. It is noted also that he gave evidence of declining a job offer because he was required to jump from boats to platforms, which he could not do. Additionally, he claims that sometime in the beginning of 2011 he secured a job to assist in installing air condition units and "*had to leave the job because I could not climb a ladder, lift the units and be of any substantial assistance and my employer got displeased with my performance very quickly*." There was no evidence as to the length of time he kept this alternative job and/or of the salary earned. However, his counsel submitted that he kept this job for about 2 months but was silent as to the salary earned. Was his salary more than that earned in his pre-accident employment? Can the claimant's counsel through submissions put into evidence the missing links in the evidence of the claimant? This court is now on the basis of this dearth of evidence asked to estimate a sum for loss of earnings.

36. It bears repeating here that special damages must not only be pleaded but particularized and proven. This means it is critical that assessing courts are provided with the requisite documentary evidence in support of special damages, and not mere heads of damages claimed with the expectation that once itemized they should be awarded. A court sitting to assess special damages should not be left to estimate a sum to award for a head of special damage claimed, without proper documentary evidence or in the face of missing pieces of evidence. The evidence of the claimant's salary earned in all his jobs and the exact length of time he was able to secure employment are within the sole purview of the claimant or his counsel, not this court. A party seeking compensation for special damages must come armed with the requisite documentary proof or be prepared to be denied compensation. Assessing courts do not possess a crystal ball from which can be gleaned the specifics of a claimant's claim – it is the responsibility of the claimant to present the receipts, bills, letters and other documentary evidence in support of his claim. It is also insufficient for him to seek to rely on the fact that his evidence is unchallenged as the reason for not presenting full evidence. Loss of earnings is capable of "substantially exact calculation."

37. In this case, the claimant failed to apprise this court fully of all the details on his loss of earnings. It is noted that the claimant has failed to claim a specific sum for loss of earnings, even in his submissions, throwing it at the feet of the court to make the determination. In his statement of case, the claim for loss of earnings was pleaded as a continuing claim of approximately $4,400.00 per month after tax. The evidence in support of this contradicts this sum as claimed. On return to work, he earned a weekly net salary that ranged from $1,082.92 to $1,404.67. Nevertheless, this court accepts that he would have sustained some loss of earnings and in the circumstances is prepared, despite the insufficient evidence before it, to make an order for loss of earnings based on a weekly salary of $1,082.92 for a limited period (see below).

38. In determining loss of earnings, this court took into account –

- the insufficiency of the evidence to determine what happened after he received his alleged last payslip from RAMCO on 29th August, 2007;
- the absence of any payslips for the 3 weeks in August 2008, when he allegedly did work;
- the lack of documentary evidence in support of his claim that he either left the job or was laid off; and
- there lack of evidence as to the actual length of time he was employed in other jobs or the remuneration received therefrom.

39. In the circumstances, this court is not prepared to award compensation for any further period claimed for loss of earnings beyond the date of the first payslip. In fact, this court notes that counsel for the claimant has submitted that the claimant was actually able to work for "about 2 months" installing air condition units in early 2011. This directly contradicts the claimant's evidence that he was unable to work in this job because of the lifting and climbing of ladders. He clearly was able to do it for some 2 months or more as there was no evidence before me that speaks to the exact length of employment with this company. Based on the Persad report, there is no reason why the claimant was unable to seek a job on the labour market nor was he declared medically unfit. It bears reiterating here that it is the claimant's, "*undoubted obligation to plead and particularise any item of damage which represents out-of-pocket expenses or loss of earnings, incurred prior to the trial, and which is capable of substantially exact calculation. Such damage is commonly referred to as special damage or special damages but is no more than an example of damage which is 'special' in the sense that fairness to the defendant requires that it be pleaded."* See ***Charmaine Bernard* v *Seebalack***.[29]

40. Taking into account the vicissitudes of life, the imponderables of illness and vacation leave this court awards the claimant loss of earnings from 29th January, 2006 for the period of 18 months (i.e. date of first payslip/8th August 2007) at $4,331.68 per month amounting to the global sum of **$77,970.24**.

IX. INTEREST:

41. As a rule, interest is separate and apart from any award on damages and operates more like an additional benefit given to a successful claimant. Further, interest is discretionary and is given for being kept out of money which ought to have been paid, and not as compensation for the damages done. This court has elected to apply an interest rate on the awards granted to this claimant on the guidance of ***Jefford* v *Gee***[30] and **section 25 of the Supreme Court of Judicature Act**.[31]

---

29 *Charmaine Bernard* v *Seebalack*, PC No 0033 of 2009 @ page 7.
30 *Jefford* v *Gee [1970] 2 WLR 702 per Lord Denning MR at 709 G.*
31 *Sandra Juman* v *PC Abbot #11999 and the AG of T&T* HCA No S-490 of 2001

X. CONCLUSION

42. IT IS HEREBY ORDERED that the defendant and co-defendant do pay to the claimant –

(i) General damages in the sum of $150,000.00 with interest at the rate of 8% per annum from 23rd December, 2009 to 16th March, 2012.

(ii) Special damages in the sum of $105,570.24 with interest at the rate of 6% per annum from 29th January, 2006 to 16th March, 2012.

(iii) Costs on the prescribed basis in the sum of $47,057.02.

(iv) Stay of execution of 28 days.

Dated 16th March, 2012

Martha Alexander
Master of the High Court (Ag)