

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2010-00606

BETWEEN

YUDHISTRA JADOO

Claimant

AND

DEEWA JAGROOP

First Defendant

KHAMAL JAGESSAR

Second Defendant

CAPITAL INSURANCE COMPANY LIMITED

Co-Defendant

Before: Master Alexander

Appearances:

For the Claimant:

Mr Prem Persad Maharaj

For the Defendants and Co-Defendant:

Mr Anand Rampersad

REASONS

1. Yudhistra Jadoo was driving a motor cycle owned by his employer, Mario's Pizzeria's Limited, along Longdenville Main Road, Chaguanas when the first defendant overtook another vehicle and collided with the motor cycle. The accident occurred on 28th February, 2006 when Yudhistra, a delivery driver, was returning to the Montrose branch of Mario's Pizza Outlet where he worked. The first defendant was driving a truck which came into the path of Yudhistra and the motor cycle, hitting him directly and pitching him forward onto the truck's windscreen before he fell onto the ground with the motor cycle on top of him.

As a result of this accident, he sustained personal injuries and so filed this claim on 19th February, 2010. He obtained judgment by consent entered on 30th June, 2011 before Aboud J for 85% of his claim with damages to be assessed by a master. This assessment took place on 13th January, 2012.

Procedural Point

2. At the assessment, counsel for the defendants and the co-defendant (hereinafter together called “the defendants”) took a procedural point that all the documents referred to in the claimant’s witness statement were not annexed so he could not rely on them. This submission did not find favour with this court for several reasons so was not upheld. First, it is to be noted that these documents were annexed to the statement of case and formed part of the agreed and/or unagreed bundle of documents. It was agreed by both counsel that the documents in the agreed bundle formed part of the evidence. With respect to the documents in the unagreed bundle as referred to in the witness statement, Part 29.5 (e) is instructive. The rules on witness statements do not provide for the annexure of the documents only that witness statements “sufficiently identify any document” referred to and this was done. Further, the claimant filed notices under Part 30, CPR to admit certain documents; and had disclosed all documents to the defendants. To be noted is that the defendants did not serve any notice under Part 28.16, CPR . The documents are deemed to be admitted as to their authenticity.

General Damages

3. The evidence of Yudhistra was not challenged save and apart from the issue of the claimant’s salary. To be noted is that all of the medical reports emanating from the hospital were agreed documents and there was no issue taken as to the nature and extent as well as resulting gravity of the injuries sustained by Yudhistra. For the sake of completeness, however, these issues will be looked at briefly so that a proper foundation is laid for the award to be given by this court. This assessment of damages was informed by the principles of *Cornilliac v St Louis*¹ as examined below:

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

4. The nature and extent of the injuries sustained by Yudhistra are set out in the various medical reports in evidence before this court:

- closed head trauma;
- an open fracture on the right thigh and left leg;
- fracture on the right and left wrist;
- tenderness on the right and abrasions on the left side of the chest;
- chest trauma and lung contusion with respiratory difficulties, managed by Thoracic Surgeon;
- broken upper and lower teeth with bleeding;
- tenderness on mandible;
- abrasions around the neck;
- diffuse swelling of the left face;
- mandibular fracture of the right parasymphysis and left condylar regions and a maxillary dento-alveolar fracture involving the upper incisors;
- 3cm oblique scar to the right lower lip extending down to the chin and connecting to a 4.5cm transverse scar across the lower chin;
- 13cm, 12cm and 4cm vertical hyperpigmented surgical scars to the upper, middle and lower lateral thigh respectively and several small scars about knee and lower leg;
- A 5 x 2.5cm depressed area of hyperpigmented scarring to the mid-medial region;
- Right chest wall showed an irregular scarring of about 3cm in diameter.

5. Following the accident, Yudhistra was seen initially at the Chaguanas health facility before being sent to the Eric Williams Medical Science Complex with a right sided chest tube in site. He had surgery on 2nd March, 2006 where his fractures were reduced and due to post surgery difficulties required re-intubation. He was then operated on again on 16th March, 2006, developed dehiscence over the mandible fixation plate and underwent surgery on 15th August, 2006.

6. It is clear from the medical evidence that Yudhistra has suffered extensive injuries in three major medical categories – oral and maxillofacial injuries; thoracic (chest) injuries and

orthopaedic injuries. The gravity of Yudhistra's resulting physical disability becomes evident by the fact that the right limb is shorter than the left by 2cm; he now walks with a limp and has angular deformities of both wrists. His facial scarring is also permanent but can be improved by corrective surgery resulting in 60-70% reduction at an estimated cost of \$20,000.00. He also has limitation of movement in both wrists and constant pain in his right hip and right knee and occasional pain in his right wrist.

Oral injuries

7. With respect to his oral and maxillofacial injuries, Yudhistra has had several surgeries; suffered post operative distress; sustained displacement of 3 mandibular fractures along the jawbone (causing deformity and misalignment); and had surgical insertion of interdental elastic wires, splints and screws in the fractured sites. He has had his upper and lower jaws wired and a solid metal fixation plate placed on his front chin for immobilization. He was on oral suction equipment to relieve excess saliva fluid as well as a liquid diet for 4-6 weeks. He has also experienced infection, pains and was referred for extraction.

Chest injuries

8. His chest injuries included tenderness and abrasions to the chest and pneumothorax (collection of air outside the lung), resulting in difficulty to breathe on his own (acute pulmonary oedema). There was also lung contusion (bruising); acute respiratory distress syndrome; and a collapsed right lung. He continues to suffer with shortness of breath and intermittent sharp pains in the chest when doing any task requiring exertion such as walking.

Orthopaedic injuries

9. His orthopaedic injuries included fractures to his legs and wrists, resulting in deformity that required surgical intervention and wrist shortening. He has recovered the full range of movements in his right hip and knee joint with pain. The medical evidence on the leg injuries points to all his fractures being healed, with permanent partial limitation of movements at the wrist joints. Subsequently, in May, 2011 he experienced leaking of fluid from hip; broken pin inserted in hip; and an infection that required surgical intervention. Further, he requires an Open Reduction and Internal Fixation of the right mid shaft tibia and

inferior ramus right pubis to deal with the infected bone. Yudhistra's right leg has a 2cm shortening as a result of his several surgical interventions to date. Counsel for Yudhistra submitted that he is forced to have intermittent use of crutches and a wheelchair given the right tibia and compromised pelvic structure, due to the injuries of the right pubis area, which can no longer support his upper body. He also continues to suffer with serious limitations in wrist movement of both upper limbs and as at the date of submissions was still awaiting surgery.

10. There is comprehensive evidence of the pain and suffering Yudhistra has been subjected to and continues to endure. He claims that on impact, he was pinned under the bike with the exhaust burning his left leg and he could not move it off him as his wrists were also in pain. It was also impossible to remove his helmet though he wanted to, because he was stifling in his blood, getting numb and having difficulty breathing. He described the pain throughout his body as being intense and felt he was going to die. He also experienced excruciating pains whilst at the hospital and expressed fear of not being able to walk again.
11. I am satisfied on the evidence that Yudhistra experienced physical, emotional and psychological pain as a result of his injuries. It is his evidence that he spent 2 years at the hospital and still has to go back for treatment and more surgery. His most recent re-admission was in August 2011 for an infection in the bone of the right leg, which had to be cut again. He explains his frustration and pain as he struggles to come to terms with the impact of the injuries on his life thus:

I am back and forth from Mt Hope, having surgery and getting treatment for all of the damage. Sometimes the pain is so bad that I can't walk and I get headaches that feel like my head will bust. Other times I just sit down and wonder what I did to deserve this. I can't even talk to anyone about how I feel inside because deep down I don't want anyone watching me with sympathy because they don't know how much pain I am in and how hard I have to try to smile so I don't worry my family and people concerned about me. Most days I have to struggle, not just with the pain, but with finding a reason to try to get out of bed. I used to really be a different person before this accident and now I have to pretend for the people I care about that I didn't change that much and force to smile and laugh.

12. He was the sole breadwinner in his family but now, *“I am like a cripple and I can’t even lie down without pain. I try not to be a burden to anyone, but it is depressing to know that I am one now.”* He lives now with facial scarring, angular deformities of the wrists and unbearable bodily pains all of which cause him emotional and psychological pain. He also lives in fear of a likely amputation, which he claims he has been told to prepare himself for. It is clear from his evidence in chief that Yudhistra’s life was drastically altered as a result of the accident.
13. Yudhistra’s injuries have impacted negatively on his marital relationship and family life as his wife took the children and left him. He states, *“[T]he last two years were especially hard on my marriage and my wife couldn’t cope with my depression and took the children and left me and I had to beg for her to come back and to understand that the frustration I was in and the constant pain was what had me like that. Based on conversation I had with my wife and counseling with our priest, I appreciated that I had changed so much in my mood and how I looked at everything that sometimes my wife felt that I wasn’t the man she married, because I am so depressed and don’t even look forward to getting up in the morning.”* It is also his evidence that prior to the accident he was a physically normal healthy man and in good shape. Now he walks with crutches and has evidence of scarring to live with.
14. Yudhistra claims that his pecuniary prospects have been materially affected. He has not been able to work since the accident and is unable to compete or find a job on the open market, given his health challenges. He is thus seeking loss of earnings and/or loss of earning capacity. From the evidence, I accept that Yudhistra is likely to face challenges on the open market and is entitled to loss of earnings (discussed below).

The case law and principles

15. Counsel for Yudhistra provided several authorities for consideration by the court on the separate injuries sustained. The adjusted awards in the cases for jaw and teeth injuries ranged from \$62,615.00 to \$286,211.00. I was guided here by the case of ***Ramjit v Mario Pizzeria Ltd***² where Master Sobion awarded to a 49 year old claimant the sum of \$161,470.00 for fracture of a cheekbone with poor alignment, diplopia, inability to chew, restricted mouth

² *Ramjit v Mario Pizzeria Ltd* HCA 359/2001

opening and numbness as well as leg injury with fractured tibia and right instep. I note, however, that the claimant at bar had more extensive and severe injuries than in *Ramjit*. Another useful authority was *Ramnarace v Boodoosingh*³ where in 2001 Bereaux J awarded \$286,211.00 to a 24 year old plaintiff who remained in hospital for 2 ½ weeks; unable to eat for a period of 3 months; lost front teeth; could not eat or chew on the right side; had a fractured mandible (from shot in jaw); dental avulsion and fractures; deformity of the angle of mouth and lower lip; narrowed mouth; scarring; broken jaw; facial injuries and fractures knee cap. Whilst these injuries were severe, again I am of the view that the injuries of the claimant at bar are more severe and extensive.

16. With respect to the hand injuries, there were several authorities referred to with none being on par with the instant claimant's injuries. The range of awards as adjusted was between \$56,902.00 and \$154,172.00 for less severe injuries than those sustained by the claimant. For the leg injuries counsel referred to 3 cases, the closest to the instant claimant's injuries being *Ramroop v Burroughs*⁴ where the adjusted award was \$153,039.00 for fractures of both legs; 1.25 inch shortening of left leg; osteo-arthritis; post-concussion syndrome; headaches, dizziness and tooth loss.

17. I accept that the instant matter involves multiple injuries and I must be cognizant of this when making the award for compensation. I turn now to the authorities supplied by the defendants, which included *Ramroop* (supra). The most instructive of these cases were:

- **Suresh v Mangroo**⁵ – where Gopeesingh M awarded \$25,000.00 for multiple fractures of both legs; knee deformities; slight differences in length; partial deafness; buzzing in head as adjusted to December 2010 to \$116,230.00. The injuries in this case, however, were still not as extensive as those sustained by Yudhistra.

³ *Ramnarace v Boodoosingh* HCA 503/1999

⁴ *Ramroop v Burroughs* HCA 457/1975

⁵ *Suresh v Mangroo* HCA 3474/1983

- **Samaroo v Montano**⁶ – where Best M awarded \$22,000.00 for a fractured right femur; shortening of leg by 2.5cm; nose injury as adjusted to December, 2010 to \$93,112.00.
- **Seedan v Marchack**⁷ – where Eddo J awarded \$25,000.00 for a fractured jaw, femur and humerus with leg shortening as adjusted to December, 2010 to \$196,718.00.
- **Ramlochan v Ramsarad**⁸ – where Maharaj J awarded \$20,000.00 for fractures of both legs, with shortening of a leg; scarring of both legs and a fracture of left collar bone as adjusted to December, 2010 to \$178,964.00.
- **Caribbean Molasses Co (Trinidad) Ltd v Ganness**⁹ – where the Court of Appeal awarded \$30,000.00 for fractures of right fibula, femur and tibia; loss of movement in knee and 3” shortening as adjusted to December, 2010 to \$195,959.00.

18. On the basis of the authorities above, counsel for the defendants suggested the sum of \$215,000.00 for general damages whilst counsel for Yudhistra is seeking between \$500,000.00 to \$750,000.00. I have considered all the authorities provided by both sides as well as the injuries suffered by Yudhistra. I am of the view that the sums being sought by counsel for Yudhistra are exorbitant and out of range of the possible awards to be given for the multiple injuries that he sustained. Whilst I do appreciate that Yudhistra has sustained extensive and debilitating injuries and that the cases supplied were not identical to or even closely reflective of his injuries, it is my view that the purpose of this award is not designed to facilitate over-compensation but to compensate for an established loss. He must be fairly compensated for his injuries, pain and suffering – he sustained multiple injuries to jaw, teeth, wrists, chest, legs and has been left scarred both physically and psychologically. The task of the assessing court is always challenging as it sits to ensure full and complete compensation is awarded but this is even more so in a case like the instant one at bar, where the injured presents with multiple injuries and clearly faces continuing medical treatment, pain and agony. There is no magic wand to be waved to ensure compensation brings complete resolution to Yudhistra, as his

⁶ *Samaroo v Montano* HCA153/1983

⁷ *Seedan v Marchack* HCA 375/1975

⁸ *Ramlochan v Ramsarad* HCA 2680/1973

⁹ *Caribbean Molasses Co (Trinidad) Ltd v Ganness* CA Civ 7 of 1979

life will no doubt always and forever be changed by this accident. I bear in mind, however, that it is a one off award and that I must be fair and ensure it is an adequate one, given the loss sustained.

19. To assist me in this exercise, I sought guidance from a more recent decision of Master Paray-Durity in a multiple injuries case *Kanhai v Mohammed & Ors*¹⁰ delivered on 27th June 2008 where the award as adjusted to December 2010 was \$309,622.00 for a 17 year old woman who suffered fractures of tibiae and fibulae of both legs, surgeries, legs of different lengths, continuing pain and a scarred leg. Again, I was cognizant of the fact that the injuries in *Kanhai* were still not as severe as Yudhistra's so was minded to adjust his award accordingly.
20. Apart from that case, I also referred to 2 more dated cases which provided useful comparative guidance. The case of *Millar v Montes de Oca*¹¹ (2nd plaintiff) where the award for a serious fracture of the femur, fractured ribs, multiple puncture wounds of the forehead, lacerated knee, 0.75" shortening of the leg and scarring as adjusted to December, 2010 was \$358,276.00. Also the case of *Williams v Matasaran*¹² where the award to a plaintiff who had lost consciousness, suffered serious injury to both legs, was immobilized in bed for 6 weeks, got bed sores, was unable to walk unaided for 7 months, had brain dysfunction, headaches and noise sensitivity as adjusted to December, 2010 was \$274,110.00.
21. In the circumstances of this case, and considering all the authorities above as well as the uniqueness of Yudhistra's injuries, I was minded to award as a reasonable compensation the sum of \$310,000.00.

¹⁰ *Kanhai v Mohammed & Ors* CV 2006-01087

¹¹ *Millar v Montes de Oca* (2nd plaintiff) HCA 1740 of 1971

¹² *Williams v Matasaran* HCA S-353 of 2001

Special Damages

22. Transportation

The sum of \$4,350.00 was claimed as travelling expenses and documentary evidence was provided in the form of receipts, in support of this claim. Counsel for the defendants submitted that as the maker of the receipts is deceased and despite the hearsay notice, the probative value of these documents cannot be challenged. Counsel also submitted that the claimant did not state how he came about these receipts so it must be assumed that he received early advice to keep a record of expenses 6 years ago. Further, the evidence in respect of transportation expenses is insubstantial and the sum being claimed is unreasonable so should be disallowed and a substituted sum of \$2,000.00 be allowed as reasonable.

It is not in dispute that the maker of the receipts is now deceased and that the requisite hearsay notice has been filed by the claimant with respect to this claim. I am, therefore, satisfied that it is a reasonable expense given the nature of the injuries in this case and am prepared to allow same in terms of the documentary proof furnished. Transportation cost is, therefore, allowed in the sum of \$4,350.00.

23. Medical Expenses

- **Dr Pierre and medical report \$500.00**
- **Dr Ramkissoon \$700.00**
- **Medicines and supplies \$905.75**

These claims have either been supported by the necessary documentary evidence and/or is reasonable so are allowed.

24. Loss of earnings

The claimant has pleaded that he has been unable to work since the accident and/or to compete or find a job on the open market. I am satisfied that given the level of disability, it would be a challenge to find work on the open job market. Counsel for the claimant claims his loss of earnings is in the sum of \$216,000.00 up to the date of submissions and thereafter at \$204,000.00. In evidence was the fact that he was a delivery driver at Mario's Pizzeria Limited at Montrose, Chaguanas from 19th October, 2003 at a weekly salary of \$430.00 and

80% of all delivery charges (not reflected on pay slips but paid in cash). He states further that his weekly salary varies according to the number of hours worked per week and on public holidays he was paid twice the unit salary. He exhibits 25 pay slips for the period 29th July, 2005 to 23rd February, 2006. His payslips show his average weekly pay exceeds \$430.00 to the sum of \$445.00 or \$1,780.00 and that his salary increased from \$9.00 to \$9.75 from 12th August, 2005. His evidence is he earned a monthly salary of \$3,000.00 then but would be more now i.e. \$150.00 - \$200.00 from Monday to Thursday and \$250.00 - \$300.00 from Friday to Sunday.

25. Counsel for the defendants asked for this claim to be disallowed on the grounds of insufficiency of pleadings as well as the job letter from Mario's which was not agreed or the subject of a hearsay notice and given that the maker was not called. Whilst counsel's argument is procedurally sound, I note that the claimant has also provided other documentary evidence in support of this claim inclusive of pay slips as well as his own evidence in chief. I am satisfied with the evidence as pleaded and the particularity given in his witness statement and am prepared to allow loss of earnings in light of what has been proved. Thus, with respect to the 80% delivery charges, I find that this is not sufficiently proved and so would not be allowed. I am also not satisfied on the evidence that this claimant worked 7 days per week or there was sufficiency of proof as to the weekend salary. I accept a salary of \$1,780.00 per month. To this sum, I make a deduction of 25% for holidays, sickness and other contingencies of life:

Multiplicand \$1,780.00 x 12 = \$21,360.00

Less 25% = \$16,020.00 per year

Loss of earnings from 28th Feb 2006 – 19th Oct 2012 = 105,411.60

Special damages would be awarded in the total sum of **\$111,867.35**.

26. Loss of Future Earnings

The claimant claims \$204,000.00 as loss of future earnings, suggesting a multiplier of 17 and further a deduction of 2/3 of this salary for family expenses. This court notes the lack of evidence directly proving that the claimant earned or would have earned \$3,000.00 per month and accepts the claimant's salary as \$1,780.00 per month. Whilst I accept that the claimant's injuries may prevent him from returning to his employment as a delivery driver, I am not satisfied on the evidence that Yudhistra is 100% incapable of making a living. Further, I accept that whilst he may be able to find another job; it would be a challenge due to the effects of the injuries suffered in the accident. To my mind, the claimant now faces a considerable disability in the competitive labour market in seeking an alternative job. I accept, therefore, that there is an existing and permanent reduction in his ability to earn a living; a reality that this claimant is going to have to live with for the rest of his working life. I have accepted the claimant's annual earning as \$21,360.00 to which I have applied a deduction of 25% for taxes and other statutory deductions, and a further deduction of one-third for living expenses. Further, I am minded to use a multiplier of 16. The multiplicand to be used in this calculation is \$10,680 per annum. I find it reasonable to allow as future loss of earnings the sum of \$170,880.00 (\$10,680.00 x 16).

27. Future Facial Surgery

The claimant claims \$20,000.00 for future facial surgery for scarring. The need for this surgery is supported by the medical evidence and the sum is reasonable so is allowed.

28. It is ordered that the defendants and co-defendant do pay to the claimant 85% of his claim as follows:

- i. General damages for pain and suffering and loss of amenities in the sum of \$263,500.00 with interest at the rate of 8% per annum from 1st March, 2010 to 19th October, 2012;
- ii. Special damages in the sum of \$95,087.25 with interest at the rate of 5% per annum from 25th February, 2006 to 19th October, 2012;
- iii. Loss of future earnings in the sum of \$145,248.00.
- iv. Future surgery in the sum of \$17,000.00

- v. Costs as assessed in the sum of \$43,759.28.
- vi. Stay of execution 28 days.

Dated 19th October, 2012

Martha Alexander
Master

Kimberly Romany
Judicial Research Assistant