**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2012-04611**

**BETWEEN**

**JONATHAN GARCIA**

Claimant

**AND**

**BRIAN CABRAL**

First Defendant

**CHRISTIAN CABRAL**

Second Defendant

**AND**

**SAGICOR GENERAL INSURANCE INC COMPANY LIMITED**

Third Defendant

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**Before: Master Alexander**

**Appearances:**
**For the Claimant:** **Mr Ken Sagar instructed by Ms Amelia Rampersad-Sagar**
**For the Defendants:** **Mr Anand Singh**

## DECISION

1. This assessment is restricted to two primary issues[1]:
   (a) whether the claimant is entitled to loss of future earnings, and if so what amount; and
   (b) whether the claimant is entitled to loss of earnings, and if so what amount.

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[1] All other issues of special and general damages were settled by the parties.

**THE FACTS**

2. The claimant, Jonathan Garcia (hereinafter "Jonathan"), now **29** years old sustained injuries in an accident on 31st August, 2009, including: compound fractures of the left frontal bone skull; sub dural haematoma in the region of the left parietal area of the brain; scalp neuralgia; minor lacerations of the upper limbs; broken tooth; and major head and upper body trauma. These injuries have left him with several disabilities including: persistent left sided frontal headaches; a thin small film of subdural haematoma in the region of the left parietal area; headaches due to scalp and underlying bone injury; scalp neuralgia which will be aggravated by any compression or irritation of the affected area by headgear (a condition likely to last for an indefinite period); severe headaches and nausea on exposure to chemical fumes at his workplace; short term memory and difficulty in concentration. Based on the medical evidence, any exposure to chemicals at his workplace was likely to aggravate his post traumatic brain dysfunction and alcohol and bright lights will delay recovery and result in persistence of his symptoms.

3. At the time of this accident, Jonathan was employed at Christle Ltd (hereinafter "Christle") as a production/general manager. Christle is a company owned and operated by his father, Christopher Garcia (hereinafter "Mr Garcia"). As production/general manager of the company, Jonathan was paid a monthly salary of $5,000.00, with an extra allowance/salary of approximately $10,000.00 per month, for mixing and blending of chemicals. To do this job, Jonathan was required to wear protective headgear or a face mask. As a result of the accident, Jonathan was unable to wear the protective gear because of severe pains and so could not continue to perform the job of mixing and blending chemicals. He was relegated to the job of a sales person, receiving a salary of $5,000.00 per month less tax of $200.32. His continuing disabilities have resulted in an alleged loss of income of $10,000.00 per month. He has claimed general damages for loss of future earnings on the basis that he is handicapped on the labour market as a result of his injuries. He is also seeking special damages for loss of income for the period 1st September, 2009 to 31st October, 2012 at $10,000.00 per month.

**LOSS OF FUTURE EARNINGS**

4. The defendants have disputed the claim for loss of future earnings but have called no evidence to contradict that given by Jonathan and his witnesses. The medical report dated 6th February, 2013 of Dr Steve Mahadeo confirmed that Jonathan would be unable to wear the headgear for an indefinite period:

> *As a result of the scalp neurological he has been unable to wear protective head gear (sic) which has negatively affected his ability to perform his duties as a Production Manager in a chemical manufacturing plant. THIS CONDITION IS LIKELY TO BE PERMANENT.*

There was no challenge to this report and the defendants called no medical evidence of their own. It was, therefore, evidence that went in unchallenged. Of note further is that as of 9th August, 2013 he was advised by Dr Mahadeo to undergo a future surgical procedure for his continuing scalp neuralgia, with a view to alleviating his pain and suffering. I will now briefly look at the relevant legal principles on pecuniary loss and apply same to Jonathan's evidence in chief and viva voce evidence.

**The Law**

5. The conventional method for determining the issue of loss of prospective earnings is the multiplier/multiplicand approach. Where there are serious uncertainties in discerning the future pattern of earnings so as to justify the use of the multiplier/multiplicand approach in assessing a claimant's loss of future earnings, then the **Blamire** award would be used. The Court of Appeal in a recent decision dealt comprehensively with the law on pecuniary loss of earnings, the relevant part of which is reproduced below. In its judgment delivered by Bereaux JA on 18th December, 2013 in ***Wayne Wills* v *Unilever Caribbean Limited***[2] the award for loss of future earnings was set aside as being too conservative an award for an injury that effectively rendered the appellant/claimant unemployable and a cripple on the labour market. The Court of Appeal felt that the master in that case had given insufficient weight to

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2 *Wayne Wills* v *Unilever Caribbean Limited* Civ App No 56 of 2009 delivered on 18th December, 2013

the evidence before her and in setting aside the award pronounced, "*Courts must always apply the law as practicably as possible*." In his judgment, Bereaux JA stated:

*[31] Pecuniary loss generally forms the principal head of damage in personal injury actions. It consists primarily of pre-trial earnings and prospective loss of earnings commonly called loss of future earnings. As* ***McGregor on Damages 18th Edition*** *states at paragraph 35-056, "the function of the pecuniary heads of loss is to ensure that the claimant recovers, subject to the rules of remoteness and mitigation, full compensation for the loss that he has suffered". The general method of assessment is the well known multiplier/multiplicand method applied by taking the amount which the claimant has been prevented by injury from earning in the future (multiplicand) and multiplying it by the number of years during which he was expected to earn it (multiplier).*

*[32] The multiplicand is calculated by "using the figure of the claimant's present annual earnings less the amount he can now earn annually". See* ***McGregor on Damages (supra)*** *at paragraph 35-065 at page 1336. The multiplier is discounted to take account of the fact the claimant is being paid all of the earnings at once rather than over time as would ordinarily occur. The question is whether Wills' employability calls the conventional approach into question such that I should make a* ***Blamire*** *award.*

*[33] In my judgment Mr. Ramkersingh is correct that Wills is effectively "crippled" on the labour market. He cannot, in light of the fresh medical evidence, do manual labour. He cannot bend or lift anything above fifty pounds. Further I am not at all certain of what form of sedentary labour he can perform at all given that he cannot sit for more than half an hour at any given time. Mr. Ramkersingh further submitted that given that Wills is effectively crippled in the labour market, the figure of sixty four thousand nine hundred and thirty-four dollars and forty cents ($64,934.40) should be used as the multiplicand. Mr. McQuilken's submissions however are that there is no medical evidence to suggest that he cannot work at all. At best the evidence is that he is unable to find a job and for it is this reason that a* ***Blamire*** *award should be made.*

*[34]* ***Courts must always apply the law as practicably as possible.*** *I agree with Mr. Ramkersingh that Wills is effectively unemployable. Mr. McQuilken submitted, attractively, that, as a second alternative, the sum of of sixty four thousand nine hundred and thirty-four dollars and forty cents ($64,934.40) should be discounted by thirty-five (35%) to take account of the disability found by Dr Mencia*

*and to use a multiplier which is also heavily discounted to take account not only of the uncertainties of life and the fact that he is in receipt of a lump sum but also of the uncertainties with respect to his employability. He suggests a multiplier of 4-6.*

*[35] The submission is attractive but I do not accept it. Wills can no longer do manual labour. He is a "career" manual labourer. There is no evidence of his academic qualifications but given his predilection to manual labour, it is unlikely that he has any significant academic qualifications. He certainly has not attested to any. He is not suited even for the health and safety field in which he sought to re-train. Any re-training to a sedentary job is hardly likely at this stage. Self employment is the better option but the likelihood of it given that he was a former plumber by trade is remote without further re-training. It is highly unlikely he can perform any sedentary job with satisfaction. He is unable to sit for long periods – 1 ½ hour at best. The medical evidence does not say whether his sitting ability will improve. I very much doubt that it will. In this regard I refer to Dr. Mencia's report of his examination of Mr. Wills which he conducted on 14th March 2011. He listed Mr. Wills' present complaints as "persistent severe lower back pain present both during day and night. The pain ranges from 5-9 on a visual analog pain scale with maximum value of 10. The pain is described as being made worse with activity, particularly standing or sitting and even when supine. There is minimal relief with non-steroidal anti-inflammatory drugs". I cannot conceive of any sedentary job to which he is suited given the complaints. Neither can I conceive of any business that will employ him, short of a charity. In my judgment the injury has rendered Wills unemployable. I shall therefore refuse Mr. McQuilken's attractive offer to employ a* ***Blamire*** *approach. I do not consider that there are any imponderables in this case given my conclusion. I shall approach the award in the conventional manner of using the multiplier/multiplicand.* [emphasis mine]

6. It is clear from the learning above that any determination of the issues at hand will rest heavily on the evidence before this court. It is also accepted that Jonathan is required to prove his claim of loss of future earnings and that he is a handicap on the labour market. It is my view that Jonathan's situation differs significantly from that of the claimant in ***Wills*** **(supra)** in that he (Jonathan) is "handicapped" in the performance of a particular type of job. Jonathan is not unemployable or a virtual cripple on the labour market. He is not handicapped across the board; his injuries have simply rendered him incapable of mixing chemicals and may have reduced his current earnings. There is no sufficient evidence before this court that he will be

permanently unable to earn income above his current level of $5,000.00. There is no evidence or issue introduced of re-training and none of his academic qualifications. Further, I cannot say if there is any proclivity on his part to function in a different area or of his medical suitability for working in other fields that will earn him a comparable income as the one lost, but it would appear that there is some handicap in doing the mixing of chemicals. I bear in mind that his treatment is still ongoing, including future surgery for which he has been compensated. I will now turn to the evidence brought in support of his claim to being effectively handicapped on the labour market.

**THE EVIDENCE**

**Jonathan's evidence**

7. In the instant case, Jonathan testified that the mixing and blending of the chemicals for the production of goods was one of his main duties. He was paid $10,000.00 per month as an allowance/salary for this particular duty. This sum was separate and apart from his $5,000.00 per month salary. The chemicals he mixed were used in solvent cement for hot and cold pipes and fittings and for the various preparation fluids and other cleaning and industrial chemicals. To mix the chemicals, he needed to wear protective headgear to prevent him from inhaling the toxic fumes. He testified that when he attempted to resume work, some five months after the accident, he found that he could not mix the chemicals as he was unable to wear the required headgear because of severe headaches and nausea. Consequently, he could not carry on working and was placed on continued sick leave by Dr Mahadeo to avoid aggravation of the scalp neuralgia and other symptoms. He stated further:

*I attempted to resume work again on another occasion but was unable to do so as wearing the facial mask and the head gear (sic) aggravated my symptoms and caused me headaches. I also was unable at this time to focus for long period (sic) of time and was unable to undertake other duties in the workplace as I had impaired short term memory. My social life was also affected as I was unable to focus on conversations for a significant period.*

8. He eventually returned to work in September, 2010 but still could not wear the headgear. He was, therefore, unable to continue as general/production manager and was given the job of a salesman, a position he currently holds. For this new job he is being paid $5,000.00 less tax of

$200.32. As a result, he has lost $10,000.00 per month. He provided cheques dated 13th January, 2009 to 2nd September, 2009 to support his claim that he made approximately $10,000.00 per month in addition to his monthly salary of $5,000.00. He sought to mitigate his damages and/or reduce his losses by seeking employment at Parts World Ltd and Arkall Trading Company Ltd in November, 2010 but the salary he was offered was similar to his present salary and he decided to stay in his present employment. He has provided no corroborating evidence of this.

9. He has described the incapacity caused by his pains that is preventing him from wearing the protective headgear as follows:

*In November 2010 I continued to suffer from frontal headaches. In or around that time, I visited Dr. Esack who prescribed Topamax. However I took medication for a month and still did not feel better. The headaches actually became worst at times.*

*In January 2011, Mr. Mahadeo began to administer injections to my scalp to help ease my pain. As I still continue to have persistent left sided frontal headaches, I still visit Mr. Steve Mahadeo regularly and he prescribes the necessary pain medication and gives me the steroid injections to my scalp for the relief from scalp neuralgia at the site of the compound fracture. The pain is constant and sometimes unbearable. I also still continue to suffer from impairment of short term memory and have problems with concentration.*

He claimed that despite his pains and other challenges:

*In 2012 I attempted on two occasions to mix the chemicals at Christle as I wanted to resume my former position and receive the additional salary for same. However, I was still unable to do so as I again suffered excruciating pain when I attempted to wear the head gear (sic) and facial mask.*

10. I find that as a witness, Jonathan was not always forthright with this court and his recall was not pristine clear. In that regard, I bore in mind the nature of his injuries and that he has continued to suffer from the impairments of short term memory and with concentration problems. As regards his claim that he was earning an additional income and could no longer

do so because of his injuries, he was adamant and unflinching in the giving of this evidence. To my mind, he presented as a credible and convincing witness in terms of this and his evidence was accepted. In support of this is the evidence of Dr Mahadeo via his report that the use of the headgear (an essential part of mixing chemicals) is now no longer possible and this position is permanent. No independent evidence was called to rebut this; and I bore in mind that all reports were agreed so went into evidence unchallenged.

**Mr Christopher Garcia's evidence**

11. Mr Garcia testified that he is the managing director of Christle, a chemical manufacturing plant with strict safety policies for mixing of chemicals. Jonathan did in fact mix chemicals at Christle and was paid an extra $10,000.00 for this but this sum varied depending on how many batches he mixed. This extra income was paid via separate cheques issued by the company or personally from Mr Garcia, who would be reimbursed by the company. Some of these cheques were in evidence as well as copies of salary slips taken from the company's wages book showing Jonathan's basic wages and deductions. Under cross examination, Mr Garcia admitted that Christle did not deduct any income tax from Jonathan's extra monthly earnings and that the company paid it. He testified that Jonathan had to earn the extra allowance by working at mixing the chemicals or settle for a reduced income. Hence after his injuries, when he could no longer wear the headgear, he was relegated to the position of a sales person earning $5,000.00 only. I did not find Mr Garcia to be the most consistent or forthright of witnesses and his explanations for certain inconsistencies demonstrated his impatience or a clear reluctance to answer certain questions posed. I was not convinced by his explanation for Jonathan's extra salary not being taxed but accepted Jonathan collected it. In my view, however, that part of his evidence corroborating Jonathan's claim as to the mixing of chemicals and the extra income was unshaken during cross examination.

12. Counsel for the defendants has asked that the whole of Mr Garcia's evidence not be accepted. He submitted that the production records and cheque payment vouchers were not brought to corroborate this claim or to explain the purposes of the cheques or differences in the yearly tally that do not support the claim of exactly $10,000.00 per month being earned. He suggested that the court should draw adverse inferences on the non-production of these

records and the failure of Jonathan to call co-workers or the accountant to validate his earnings. He has taken issue also with the fact that some of the cheques presented were from Mr Garcia personally and not the company, so could not assist Jonathan in establishing any loss of income. Further, the evidence showed that the company paid Jonathan's personal expenses and commitments for house and car mortgages before and after the accident. These payments were not linked to any production of chemicals and continued after the accident. Counsel submitted that the payments by cheques were a continuation or extension of an accounting convenience for Jonathan and not dependent on the mixing of chemicals by him.

13. While the arguments of counsel for the defendants were attractive, I could not accede to them. In my view the omission to call these witnesses was not necessarily fatal to Jonathan's case as he has brought his employer and owner of the company as well as contemporaneous documents in support of his case. The documentary evidence and that of his witness, Mr Garcia, supported his claim that he was earning this extra allowance of $10,000.00. I bore in mind that Mr Garcia's evidence was that whilst he had used personal cheques on occasions to pay Jonathan, the company always reimbursed him what was expended. Mr Garcia also explained that although a tally of the cheques for a year may show the payment was at times under or more than the $10,000.00 per month, this was because the cheques would be issued for different amounts depending on the batches mixed. It was unfortunate that the production records to corroborate this were not presented. Nevertheless, in my view, this was a family company, owned and operated by Jonathan's father, and I do not see how payments towards Jonathan's mortgage and vehicle by the company, when he was recuperating from his injuries, constituted proof that he was not employed in the mixing of chemicals or was not being paid an additional allowance/salary for same. I find that while all the company's records were not produced, there was sufficient documentary evidence that Jonathan was earning an additional income from his job of mixing chemicals at Christle. How the actual payment was being made and the declarations to the Inland Revenue Department were to my mind different issues. However, before working out the damages due to Jonathan for his loss of future earnings, if any, I must address this issue of taxes. To this I will now turn.

**LIABILITY TO PAY TAXES**

14. It would appear that the extra $10,000.00 earned by Jonathan was not taxed. Liability to pay taxes is usually taken into account in assessing damages for loss of earnings, as part of the contingencies of life, which reduces the final figure by a percentage. Thus, in the landmark case of ***Theophilus Persad & Ors* v *Peter Seepersad***[3] the Court of Appeal upheld a deduction of 25% to take account of taxes, holidays, sickness and other contingencies. In similar vein is the case of ***British Transport Commission* v *Gourley***[4] where a plaintiff in an action for personal injuries claimed inter alia for loss of earnings and the House of Lords held that the principle of *restitution in integrum* required that the plaintiff receive only his net loss and accordingly his liability to tax must be taken into account in assessing damages for loss of earnings.

15. In the present case, the issue arose as to Jonathan's liability to pay taxes from a different angle. Under cross examination, it came out that Jonathan's TD-4 slips for the period 2009 to 2011 revealed that as regards his salary (both pre and post accident) **he had declared to the Inland Revenue Department** that he made only $5,000.00 per month. This was consistent with the salary slips that Jonathan produced into evidence. The clear and irrefutable evidence being that Jonathan was not paying any income tax on his $5,000.00 salary or the $10,000.00 allowance/salary. Mr Garcia (his employer/father) gave evidence that the taxes for the extra monthly allowance of $10,000.00 were actually being paid by the company, based on the advice of his accountant, whose age and dementia prevented him from being called to give that evidence. To my mind, company tax and the requirement of an individual to pay tax on his income are neither similar devices nor can they be substituted for one another, so as to enable a person to evade his statutory responsibility. I, therefore, rejected Mr Garcia's attempted justification in its entirety. It is an employer's responsibility to deduct income taxes from its employees' earnings but in the absence of this, an individual must ensure he pays his dues and/or make truthful declarations about his emoluments. A proper look at the contemporaneous documents presented showed that Jonathan, whose total earnings amounted to $15,000.00, was in fact not paying any income taxes on this income. His TD-4

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3 *Theophilus Persad & Ors* v *Peter Seepersad* Civ App No 136 of 2000

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

Slips for 2009, 2010 and 2011 showed that the $200.32 being deducted from his salary monthly related to NIS contributions and health surcharge, which were his statutory responsibilities. The $5,000.00 salary that was declared was not subject to deductions for taxes as provided in law. The $10,000.00 extra salary was treated by the company as a non-taxable allowance and not declared.

16. It was unclear from the evidence how the $10,000.00 that Jonathan was earning monthly became a non-taxable allowance. The regime for what constitutes taxable and non-taxable allowances is under the remit of the Inland Revenue Department and there was no evidence before me or requirement for me to make a determination on this. In my view, Mr Garcia's record keeping/accounting system was either not the best or was designed to be a masterpiece of a financial device. What I have found from the documentary and viva voce evidence was that Jonathan paid no income taxes from his $5,000.00 salary (contrary to the submissions of his counsel) or from the extra $10,000.00 he earned monthly as income. In my view, this is an issue that should interest the relevant State organ, which in this case is the Inland Revenue Department, and I am ordering that a copy of this judgment be sent to that body.

**ANALYSIS**

17. As regards this assessment, I am required to look at the full earnings of the injured party and arrive at the appropriate and fair compensation for all that he has lost, subject to the requisite deductions for contingencies. This was a clear case where Jonathan's declared income of $5,000.00 was found as of a fact to be an understatement or under-representation of his full monthly earnings. I considered if Jonathan must now be estopped by this declaration from claiming loss of future earnings. I have found as a fact that Jonathan earned approximately an extra $10,000.00 monthly. How this income was passed to Jonathan through the company's books was, in my view, outside the scope of my responsibility to police and exact recompense. Having accepted that his monthly earnings were more than the $5,000.00, and that it was outside my remit to penalize him for any likely breaches of the taxation law, I concluded that there was nothing to debar me from assessing his damages based on the global sum earned on a monthly basis. To this end, I disagreed with counsel for the defendants that I should have regard only to the $5,000.00 he earned and not the additional allowance/salary because of

insufficiency of proof and his failure to introduce certain documents (production records) into evidence. In my view, an absence of full and/or comprehensive evidence to support a claimant's viva voce evidence on special damages is not automatically conclusive against him but one factor to consider, particularly if a court is to reject unchallenged evidence[5]. Further, the poor record keeping of his employer was not sufficient to negative Jonathan's right to compensation for loss of future earnings but it should be calculated along specific guidelines. In my judgment, Jonathan worked for and would have continued earning the sum of $15,000.00 **at least** had he not been injured in the accident. This conclusion was arrived at based on several factors:

- The evidence from Jonathan, his employer (Mr Garcia) and his doctor pointed to a clear inability to continue performing the job of mixing the chemicals that would have earned him the extra allowance.
- The medical evidence that Jonathan's condition could last indefinitely.
- His inability to mix chemicals and so earn the additional income was linked directly to the injuries he had sustained in the accident.
- His skill of mixing chemicals was one which he would most likely have continued employing to earn income for the rest of his life, had he not sustained the injuries.
- His injuries having effectively and permanently deprived him of continuing to use this skill for financial gains, he has suffered a loss.
- The documentary evidence in the form of cheques showed that he earned monthly this extra allowance/salary.

18. On the evidence, I find that post-accident, Jonathan has found himself employed as a salesperson at Christle, coordinating house sales for a few hours per day and assisting in office administration, earning the reduced salary of $5,000.00. Given that Jonathan has lost the opportunity to earn the extra allowance, I find that his pecuniary prospects have been negatively affected. I find also he is entitled to compensation for loss of future earnings. His loss, however, unlike that of the claimant in ***Wills*** **(supra)** who was effectively a "cripple" on the labour market, was restricted to the use of a specific skill to do a particular type of job.

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5 *Ramnarine Singh* v *Johnson Ansola* Civil Appeal No 169 of 2008 delivered on 5th April, 2012

Jonathan, as at the date of assessment, was clearly unemployable in the skill of mixing chemicals. He, however, was working, though earning a much reduced income than pre-accident. I thus applied the learning in ***PTSC* v *Neerahoo Sookhoo***[6] and deemed this loss as partial, not total. Any loss of future earnings would, therefore, be assessed on a partial loss basis. Having accepted this, I could find no real uncertainty as to the likely pattern of Jonathan's future earnings. He would have continued mixing chemicals and earning the extra salary but for the injuries. In my view, any probability that Jonathan's income would fall or fluctuate could be accounted for by finding an average and making an adjustment in using the multiplier/multiplicand, which is the acceptable approach set out in the case law[7]. I accepted the fluctuating loss average salary is $8,000.00 (as suggested by counsel for Jonathan). Bearing this in mind as well as that this loss was on a partial loss basis, I discounted this by 40% for holidays, sickness, taxes and other contingencies to give an annual multiplicand of $57,600.00 ($4,800.00 monthly). I consider that a fair multiplier would be 10. In arriving at this, I considered that while Jonathan was **29** years and could have worked until 65 years, he was still earning an income. His disability was also not across the board but job specific. He was also required to undertake future surgery to treat his continuing medical conditions with a view to alleviating or reducing same. In the face of a lack of evidence of likely retraining or academic qualifications and given the partial nature of his handicap, I find it appropriate to choose this reduced multiplier. He is awarded $576,000.00 as loss of future earnings.

**LOSS OF EARNINGS**

19. The law on loss of earnings simply mandates that whatever is claimed must be proven. Documentary evidence is usually required for such claims to be allowed, as reaffirmed by the Court of Appeal recently in ***Edwards* v *Namalco Construction & Ors***[8]. This rule, however, must not be applied in an inflexible and robotic way as the aim is to ensure justice is done. There are instances when viva voce evidence from credible and reliable witnesses of truth have influenced courts to make the award for loss of earnings, especially in instances where the paper proof may be difficult to come by. Generally, however, a claimant is required to

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6 *PTSC* v *Neerahoo Sookhoo* Civ App No 21 of 1993 delivered on 20th February, 1998 by Hamel-Smith JA

7 See *Ramnarine Singh* supra

8 *Dennis Peter Edwards* v *Namalco Construction Services Limited & Guardian General Insurance Co* Civ App 28 of 2011

bring his proof to support his claim. Jonathan has claimed loss of earnings of $10,000.00 from the date of the accident to assessment and I accepted that this must be proved. There is no claim for loss of the basic salary of $5,000.00 and the evidence (TD-4 Slips 2009 to 2011) indicated that he received full remuneration after the accident. Having accepted the evidence above that he did indeed earn the $10,000.00 as an extra allowance/salary, it was now left to determine if he was not paid this sum after the accident and up to the assessment. The evidence was clear that he was not paid any extra allowance as corroborated by Mr Garcia who was adamant that if Jonathan could not mix the chemicals, he would not receive the salary for doing so. Based on the documentary and other evidence in support of this claim, I am prepared to allow him loss of pre-trial earnings subject to a 40% discount for taxes, holidays, sickness and other contingencies of life given the partial basis of his loss as shown below:

From date of accident 1st September, 2009 to 14th November, 2013 (assessment) – 4.21 years
$8,000.00 x 12 x 4.21 = $404,160.00
Less discount of 40% = $161,664.00
TOTAL LOE = **$242,496.00**

20. It is ordered that the defendants do pay to the claimant:
    i. Loss of earnings in the sum of **$242,496.00** with interest at the rate of 4% per annum from 31st August, 2009 to today's date.
    ii. Loss of future earnings in the sum of **$576,000.00.**
    iii. Costs as assessed in the sum of **$55,460.00.**
    iv. Stay of execution of 42 days.

21. It is also ordered that the Registrar of the Supreme Court do forward a copy of this judgment to the Commissioner of Inland Revenue, Inland Revenue Department, Port of Spain for his records and to take any necessary action he deems fit.

Dated 20th February, 2014

**Martha Alexander**
**Master**