

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV2013-01190**

**BETWEEN**

**LISA GONSALVES-JOSEPH**

**Claimant**

**AND**

**AGATA SUTTON**

**1<sup>st</sup> Defendant**

**GREGORY SUTTON**

**2<sup>nd</sup> Defendant**

**GTM INSURANCE COMPANY LIMITED**

**3<sup>rd</sup> Defendant**

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**Before: Master Alexander**

**Appearances:**

**For the Claimant: Mr Roger A Ramoutar**

**For the Defendant: Mr Brent Hallpike**

**DECISION**

1. In this matter, damages was awarded in the global amount of \$702,519.88 plus interest and costs. The initial claim was for compensation of \$1,734,955.03 for injuries and consequential losses. The justification for the damages awarded would be explored below, by looking at the quantum applied to each head. First, the background for this award of damages was that Lisa Gonsalves-Joseph (“Lisa”), now 48 years, met with an accident in 2009, while driving her motor vehicle registration number PCD 5665 in a westerly direction along the Churchill Roosevelt Highway, D’Abadie, in the island of Trinidad (“the said highway”). At the time of the accident, she was 40 years, so some 8 years have elapsed without her obtaining closure in this matter. Her journey through the legal system has not been without its own hiccups and the assessment itself was hotly contested, with both sides presenting conflicting medical positions. It fell, therefore, to this court to consider the

evidence presented and differing legal arguments, to arrive at a fair and appropriate quantum for the injuries sustained. In so doing, it was understood that this was the only opportunity for Lisa to recoup compensation for her injuries, given the singular nature of damages, and that it was practically impossible for her to get flawless compensation. While recognizing the challenges in the process, this court's duty was to, as far as money can do so, return Lisa to her pre-accident position.

2. Any claimant seeking to recover compensation of the magnitude being sought by Lisa would be expected to come armed with the medical and other evidence to support his or her claim. Lisa was claiming in excess of TT\$1.7 million for injuries that she alleged were severe but which, on their face, presented as minor to moderate injuries, including trauma, lacerations, bruising, swelling to the right knee, neck, back and other areas of the body. There were no fractures or broken bones; no internal bleeding; no loss of bodily parts and certainly, she was not rendered a cripple by this accident. The evidence presented by both sides was on polar opposite extremes so this court was left to exercise its best judgment in restoring her, through the grant of a pecuniary award, to the position that she would have been in but for the accident. This meant that Lisa could not attract unjust pecuniary enrichment or be left in an impoverished state. Thus, in its deliberations, this court neither allowed itself to be swayed by evidence that served to exaggerate the claim nor acceded to the opposite tug of minimizing the extent of the injuries and/or the resulting disability by making an award that would constitute under compensation. It accepted that while the assessing exercise was not a road to riches story, it was also not about penalizing Lisa for the tort brought to bear upon her by the defendants. The judicious responsibility of this court was to award fair, balanced and adequate compensation, which was derived from an assessment of all the circumstances, the evidence and an application of the law. Before turning to show how Lisa's award for damages was derived, this court will commence with a brief foray into the factual background of this matter, to provide the context for discussing her case.

### **Facts**

3. The collision occurred when a truck registration number TBA 8696, owned by the 1<sup>st</sup> defendant and being driven by the 2<sup>nd</sup> defendant, in the opposite direction to Lisa along the said highway, negligently crossed the median and crashed head-on into her vehicle. At the material time, the 2<sup>nd</sup> defendant was a servant or agent or employee of the 1<sup>st</sup> defendant and so driving with her permission

and knowledge. From this accident, Lisa claimed she sustained serious injuries which were pleaded as severe blunt force trauma to torso, arms and head; lacerations to right knee and right side of neck; facial swelling and bruising with multiple haematomas covering the chest, arms and legs; damage to right knee, chest, back, shoulders and forehead as well as neck and back injuries. The effects of these injuries were pleaded as restricted and limited movement of the upper extremities; headaches; acute tendinitis and bursitis; arthritis of the upper arms, shoulder joints and knees; acute myalgia and emotional and psychological scarring. These injuries were alleged to be so severe that Lisa has for the past 8 years been plunged into unemployed status because of the severely debilitating effects of her pain and suffering.

### **The evidence**

#### Medical

4. The medical evidence pointed to Lisa being treated at 3 hospitals following the accident (Arima, Eric Williams Medical Sciences Complex and POS General Hospital (“POSGH”). This court resorted to the several reports submitted into evidence to assess the nature and extent of her injuries and of any resulting physical disability<sup>1</sup>. In medical report dated 11<sup>th</sup> May, 2010 by Dr Oladapo Igandan, House Officer of the POSGH, it was revealed that she suffered a laceration to the right knee for which she got 13 sutures, blunt chest and abdominal trauma and soft tissue injuries to the chest and abdominal wall. A brain scan, an abdominal ultrasound and a scan of the chest, abdomen and pelvis were all normal and an x-ray of the left hand showed no fractures. On review, she was advised to continue follow up treatment with the orthopaedic clinic for her right knee pain.
  
5. The next medical report was dated 18<sup>th</sup> March, 2013 by Dr Tababa, some 4 years after the accident, and indicated that he had been attending to Lisa from 4<sup>th</sup> June, 2009 to 13<sup>th</sup> January, 2011 (“the Tababa report”). He described her injuries as “severe blunt force trauma to her torso and arms, a head injury accompanied by facial swelling and visible multiple haematomas covering both torso and arms. A wound not yet healed (was) *sic* on the right side of her neck (a laceration indicative of the use of a seatbelt when the accident occurred).” The Tababa report also recorded that Lisa was

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<sup>1</sup> The framework for this assessment was the time honoured principles set out by Wooding CJ in *Cornilliac v St Louis* (1965) 7 WIR 491

suffering from acute tendinitis, bursitis and arthritis of the upper arms, shoulders, joints, knees and acute myalgia. She apparently was in severe pain in the torso, arms, neck, shoulders and knees. The Tababa report followed a letter dated 16<sup>th</sup> January, 2010 penned by Dr Tababa documenting Lisa's injuries as "left side headaches, right knee pain, back pain (upper and lower back), shoulder pain with associated stiffness of neck and chest pain." Counsel for the defendants, Mr Hallpike, was quick to point out the divide between the injuries detailed in the letter and the report, with the latter documenting far more extensive injuries than the former. Mr Hallpike also submitted that the Tababa report presented a prognosis that was different to the one given by the POSGH, which did not mention head injury, haematoma or facial swelling but referenced a normal brain scan. He argued that there was no explanation of how these injuries arose or were connected to the accident and suggested an intervening trauma. This suggestion of intervening trauma was without any evidentiary plank, so was given no weight.

6. In another medical report, this time by Dr Adam dated 7<sup>th</sup> February, 2014, it was stated that on examination on 28<sup>th</sup> June, 2010 she was found to be suffering from low back and neck strain, right shoulder strain and right knee injury, possibly medial meniscus injury. Dr Adam also noted that on examination, Lisa showed discomfort on the head turning to the left and tenderness at the C7 level with diminished mobility in all planes. On review on 12<sup>th</sup> December, 2013 and 3<sup>rd</sup> February, 2014, she continued with neck pain with restriction of movement more on the right and low back pain with diminished mobility and right knee pain with medial joint tenderness. She was advised physiotherapy and recommended to see an orthopaedic surgeon for the knee pain. She was awarded a permanent partial disability of 40% by Dr Adam.
7. Orthopaedic surgeon and specialist, Dr Santana, found mild effusion of the knee, limited range of motion, especially in extension and marked tenderness of the medial joint line, consistent with a medial meniscal injury. It was stated that an MRI was needed to confirm this finding. In medical report dated 2<sup>nd</sup> February, 2015, Dr Santana diagnosed her with thinning of the articular cartilage of the medial femoral condyle and recommended arthroscopic surgery to the right knee; his findings having been confirmed by the recommended MRI scan. He noted that there seemed to be early onset of arthritis with aggravated pain as a result of the knee injury. Though not part of her pleaded case, Dr Santana provided evidence that she now suffered with chondromalacia of the right knee

requiring arthroscopy and osteochondral autograft transplantation; medial meniscal injury and tenderness at C7 level with diminished mobility on all planes. In a final report dated 20<sup>th</sup> April, 2015 Dr Santana provided the quotation for the surgical procedures in the amount of \$42,000.00. From the evidence, it would appear that Lisa also had a history of Crohn's disease, which would aggravate her pain and suffering.

8. At the defendants' request, Lisa was independently examined by Dr Mencia, consultant orthopaedic surgeon. In a report dated 29<sup>th</sup> June, 2015, he noted that while Dr Santana had indicated that there was thinning of the articular cartilage of the medial femoral condyle, there was no major intra articular derangement. He also stated that there was no effusion in her right knee and no mild muscle wasting. He noted increased sensitivity around her scars and tenderness in the peri patella region. She had a range of movement in her right knee of 0 to 100 degrees with no evidence of meniscal or cruciate ligament pathology. He concluded that her clinical examination was consistent with complex regional pain syndrome, which meant that she was enduring pain out of proportion to what the initial injury would have caused. Dr Mencia did not recommend surgeries, since the negative MRI and complex regional pain syndrome did not support same. He recommended physiotherapy and pain management and assessed her with a 15% ppd.

*Pain and suffering and loss of amenities*

9. As at the assessment, Lisa continued to experience severe pain, particularly in cold weather, in her legs, hip and back. She also had pain in the chest and rib cage area. There was a clear loss of amenities, for she experienced severe limitation of function. For instance, she was unable to participate in any physical activity, gym, hiking, swimming, jogging, photography or other activities such as travelling. She claimed that she got difficulty in walking and did so with a painful limp. She gave evidence that her enjoyment of life (social, family and sexual) had all been severely restricted by her personal injuries and her counsel submitted that the pain and discomfort would only increase with age.

**Defendants' response**

10. Mr Hallpike made heavy weather with every aspect of Lisa's claim, arguing that it was exaggerated and designed to influence an award in excess of a million dollars for non-consequential injuries. He

pointed to her evidence in chief where she claimed that she suffered “pelvic pains”, which did not appear in any report. He submitted that this was intended to cause the defendants to pay a higher quantum. Mr Hallpike also argued that Lisa intentionally exaggerated the symptoms of her injuries to her doctors. This court noted these arguments and accepted that this overstatement of the extent of her injuries in her witness statement may well have been designed to influence its award. It was, however, unable to conclude that she intentionally indulged in a hyperbolic presentation of her symptoms to her medical caregivers, as the evidence was not decisive on this point. Mr Hallpike also asked this court to deem her an unreliable witness based on this and the fact that her insistence that she was wearing a seatbelt was belied by her injuries, which seemingly suggested otherwise. This court declined this prodding by counsel, as it was by no means clear cut that she was not wearing a seatbelt and in fact in one of her medical reports<sup>2</sup>, it was suggested that she presented with lingering injuries that pointed to use of a seatbelt.

11. As to the evidence of Dr Santana, this was sought to be discredited by Mr Hallpike on the basis that he alone recommended surgical intervention while Dr Mencia and Dr Adam both prescribed physiotherapy. It is accepted that Dr Adam (a neurologist) recommended physiotherapy, but not that he excluded surgery. In fact, he referred Lisa to the specialist in the field (Dr Santana), who was qualified to make such recommendation. And, in his February, 2015 report, Dr Santana noted that physiotherapy over the years did not work or produce much success in Lisa’s case. Mr Hallpike argued that Dr Santana allowed his prognosis to be influenced by Lisa’s complaints and that he failed to conduct tests to confirm her claims, specifically that she was unable to walk. Counsel also submitted that negative inferences should be drawn from Dr Adam’s assessment of her disability at 40% (as against Dr Mencia’s 15%) and Dr Santana’s recommendation of lifelong daily use of arcoxia 120g, a drug with high risks associated with prolonged use. He instead recommended the evidence of Dr Mencia, who was reliable, consistent and unwavering as a witness.
12. In this court’s view, both doctors gave evidence that was helpful to an appreciation of the injuries sustained by Lisa. First, the excessive emphasis placed on the assessed disability was not allowed to influence this court, as this was not workmen’s compensation where such awards hold an elevated

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<sup>2</sup> See Dr Tababa’s report, paragraph 2

position. Secondly, consideration was given to the fact that Dr Santana presented as a candid, independent and forthcoming witness, whose evidence was deemed solidly reliable. There was no indication that, in giving his evidence, he was anything but here to assist this court with its determination, in an independent and impartial manner. Further, it was felt that Dr Santana, more so than Dr Mencia who saw Lisa for a review and report, was more convincing as a witness, having had prolonged control and oversight of her medical care following the accident. His evidence as to surgical intervention was presented objectively and explanation for the requirement scientifically based and validated. His evidence and recommendation were preferred and accepted. Dr Mencia's evidence as to her ability to do sedentary work was not disputed by the other medical professional, so for that purpose was given the requisite weight and so relied on in that context.

### **Discussion**

13. In determining the general damages to award Lisa for her injuries, several authorities were considered. The first set deliberated upon was that presented by Mr Ramoutar, counsel for Lisa, who directed this court to 6 precedents. An examination of these cases gave an insight into why Mr Ramoutar would submit that Lisa was deserving of an elevated award of general damages of \$225,000.00. These cases reflected injuries that were dissimilar from those suffered by Lisa namely fractured ribs, spinal nerve compression, serious torn knee ligaments, scalp neuralgia and post-concussion syndrome. Clearly, Lisa was unable to attract an award of similar ilk, as those injuries were more severe and extensive than hers. It meant that comparatively, Lisa was excluded from the high end award granted in those cases and a magnification of her pain and suffering would not shoot her into that category of award.
  
14. The next set of cases numbered 5 in total and was used by Mr Hallpike to suggest an award of \$60,000.00 for general damages, particularly on the authority of *Ferosa Harold*<sup>3</sup>. A close look at these cases would show that, by large, they dealt with soft tissue injuries and, in most instances, were of lesser severity than Lisa's injuries. It was worth bearing in mind that surgical intervention was recommended in Lisa's case to alleviate her pain and suffering and that her injuries could be distinguished from those presented in the cases supplied by Mr Hallpike. Of interest was that Mr

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<sup>3</sup> *Ferosa Harold v ADM Import and Export Distributors Limited* CV2009-03728 delivered on 17<sup>th</sup> April, 2015

Hallpike submitted that as the defendants' medical witness diagnosed Lisa with complex pain syndrome and prescribed physiotherapy and pain management, not surgeries, this meant that her award should be on the lower end. In the view of this court, both medical witnesses provided meaningful and insightful independent medical evidence, with one having a longer charge of her medical care and the other a singular opportunity to assess and proffer an opinion. Further, there was no serious challenge to or bid by the defendants to undermine the medical evidence of Dr Santana; just a weak attempt to elevate Dr Mencia's evidence as "the epitome of an expert witness" without any justification as to why it should be preferred scientifically. The opinion of Dr Mencia was duly noted and weighed as against all the evidence in this case. In the end, this court pinioned Lisa's award on the quality and standard of her medical evidence, which presented as more independent, impartial and scientific than did the evidence in the case Mr Hallpike relied on (*Ferosa Harold supra*) to get a much reduced award for Lisa.

15. A brief examination of the cases presented by both sides will provide the proper context for the final award by this court:

*Cases by Lisa's counsel*

- ***Babwah v Harrinanan & ors*<sup>4</sup>** – where for injury to the left eye; loss of 5 teeth; scarring to face and injury to chest, general damages was awarded of \$65,000.00; updated to 2010 to \$137,196.00.
- ***Baldeo v Prestige Car Rentals Ltd & ors*<sup>5</sup>** – where an 18 year old girl sustained serious knee injury including: ruptured anterior cruciate ligament of the knee; ruptured posterior ligament of the knee; severe damage to the lateral peroneal nerve of the knee; rupture of the medial collateral ligament of the knee; severe pain; major scarring and almost complete instability with the knee unable to bear weight. Her ppd was assessed at 40%; three further surgical operations and rehabilitation were needed and the orthopaedic surgeon stated that she would probably always require a walking stick on the unaffected side and her ambulation would always be limited. She was awarded \$155,000.00; updated to 2010 to \$308,507.00.

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<sup>4</sup> *Babwah v Harrinanan and ors* HCA 136 of 1994 delivered on 19.11.98 by Paray-Durity M (confirmed by CA 239/1998)

<sup>5</sup> *Baldeo v Prestige Car Rentals Ltd & ors* HCA 442 of 2000 delivered on 22.11.00 by Mendonca J

- ***Scully v Xtatic Ltd & ors***<sup>6</sup> – where for serious torn ligaments requiring surgery; a grade 3 strain to the medial collateral ligament and a bone bruise contusion to the tibia, an award of interim damages was made of \$100,000.00; updated to 2010 to \$182,740.00.
- ***Bacchus & Mohammed v Clearance***<sup>7</sup> – where for fractured right tibia and fibula; fractured right ankle and headaches, general damages was awarded of \$20,000.00; updated to 2010 to \$89,546.00.
- ***Osborne v Singh***<sup>8</sup> – where for injury to the chest; fractures of the right 4<sup>th</sup> to 10<sup>th</sup> ribs; trauma to the abdominal wall with residual disabilities, general damages was awarded of \$16,000.00; updated to 2010 to \$71,637.00.
- ***Thomas v Forde, RBTT & NEMWIL***<sup>9</sup> – where for spine L4/5 & L5 S1 nerve compression; soft tissue injury to the buttocks, knees and elbows and 2 fractured ribs, general damages was awarded of \$100,000.00; updated to 2010 to \$117,013.00.

*Cases by the defendants' counsel*

- ***Kent Hector v Indranie Bhagoutie***<sup>10</sup> – where for soft tissue injuries to the chest, neck and shoulder, an award was made of \$19,000.00; updated to 2010 to \$28,110.00.
- ***Dr Emmanuel Griffith v Garth Cunningham***<sup>11</sup> – where for haematomas on the forehead and right side of head, tenderness of the neck and the lumbosacral region, numbness and loss of power in both hands, without any bony injury or neurological deficits, an award was made of \$18,000.00; updated to 2010 to \$35,033.00.
- ***Gillian R Isaac v Shaun Solomon & another***<sup>12</sup> – where for moderate cervical muscle spasms and soft tissue injuries to the cervical and lumbar spine, consistent with whiplash type injury, resulting in neck and back pain over a 3 year period and a 20% ppd, an award was made of \$40,000.00.

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<sup>6</sup> *Scully v Xtatic Ltd & ors* HCA 53 of 2002 delivered on 30.08.02 by Mohammed J

<sup>7</sup> *Bacchus & Mohammed v Clearance (1<sup>st</sup> plaintiff)* HCA 5420 of 1983 delivered on 10.07.87 by Douglin M

<sup>8</sup> *Osborne v Singh* HCA S-752 of 1977 delivered on 23.07.87 by Gopeesingh M

<sup>9</sup> *Thomas v Forde, RBTT & NEMWIL* HCA 2834 of 2002 delivered on 25.09.08 by Sobion M

<sup>10</sup> *Kent Hector v Indranie Bhagoutie* HCA S-1115 of 2000 delivered on 14<sup>th</sup> June, 2006 by Kokaram J

<sup>11</sup> *Dr Emmanuel Griffith v Garth Cunningham* HCA 839 of 1998 delivered on 23<sup>rd</sup> January, 2001 by Smith J

<sup>12</sup> *Gillian R Isaac v Shaun Solomon & Motor and General Insurance Co Ltd* CV2007-04400 delivered on 17<sup>th</sup> December, 2009 by des Vignes J

- ***Molly Gaffar v Bertram Padmore***<sup>13</sup> – where for tenderness of the lumbar spine, right sacro-iliac region and buttock; pain in the right hip, left ankle and right knee due to patella-femoral friction and assessed with 35% ppd, an award was made of \$20,000.00; updated to 2010 to \$40,976.00.
- ***Ferosa Harold v ADM Import and Export Distributors Limited (supra)*** – where for soft tissue injury to the neck, lumbar spine and left shoulder and a ppd assessed at 60%, an award was made of \$60,000.00. The claimant suffered with daily pains that affected every facet of her life. She could not sit in one position for too long, walk upstairs or perform domestic duties of cooking and washing wares. In that case, the court was not satisfied on the medical evidence that she was disabled to the extent claimed and actually found the doctor’s evidence was not independent, objective or scientific but presented as a repetition of the claimant’s complaints. The court also expressed concerns about that claimant’s credibility.

16. It is fitting at this point to consider the submission of Mr Hallpike that Lisa suffered a variety of soft tissue injuries, with no evidence of fractures or broken bones but with lasting effects of pain similar to the claimants in 3 of the cases cited above: ***Gillian R Isaac, Molly Gaffar*** and ***Ferosa Harold***. This court accepted that Lisa did not sustain any fractures. It also accepted that she was suffering with complex regional pain syndrome which, as Dr Mencia explained in detail to this court, served to make her pains worse than when she initially sustained the injuries. Also accepted was that following the accident, Lisa suffered a knee injury, which was consistent with a medial meniscal injury. At least 2 doctors mentioned this, namely Dr Adam and Dr Santana, and 1 recommended arthroscopic surgery. The fact that Dr Mencia did not recommend surgery, but pain management and physiotherapy, was an opinion that was considered seriously. In the end, this court elected to abide by the professional expertise of Lisa’s attending doctor in making the call for surgical intervention to alleviate her pain and suffering. Having considered all the cases; the medical evidence; Lisa’s pain and suffering as well as the principles on assessments, it was found to be reasonable and fair to award \$90,000.00 for general damages.

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<sup>13</sup> *Molly Gaffar v Bertram Padmore* HCA S-953 of 1997 delivered on 1<sup>st</sup> December, 1999 by Bereaux J

### **Special damages**

17. Lisa pleaded and particularized special damages, which covered medical bills, vehicle wrecking fee, transportation, police report, loss of personal items (watch, chain, CD collection, pants and top) and loss of earnings. Mr Hallpike took issue with the sum claimed and the lack of full documentary proof, submitting that the defendants were only prepared to accept the sum of \$11,966.70 which reflected the receipts provided. The sum of \$10,646.50 is allowed for medical expenses and wrecking fee, as supported by the receipts in evidence.

#### *Transportation*

17.1 Mr Hallpike referenced Lisa's claim for transportation and, in particular, a receipt that was attached to the statement of claim in the sum of \$4,300.00 issued by Dennison John Tours and Transport Service Centre. According to this receipt, Lisa was transported to the POSGH on 8 occasions between March, 2009 to August, 2009 and to the offices of a doctor in Montrose, Chaguanas on 23 occasions between 2009 and 2011. He pointed out the conflict with this and the medical report from POSGH, where it was stated that Lisa was warded from 28<sup>th</sup> March, 2009 and discharged on 2<sup>nd</sup> April, 2009 and was next seen in clinic on 20<sup>th</sup> May, 2009. The report from the POSGH did not mention any other visit to that institution and Mr Hallpike submitted that the defendants were prepared to only allow 3 trips to the POSGH at \$200.00 per round trip. As regards the claim for transportation to the "Montrose doctor", Mr Hallpike stated that this was presumed to be Dr Tababa and that while Lisa's receipt was for trips to his office from 24<sup>th</sup> March, 2009, Dr Tababa certified in his report that he attended to her from 4<sup>th</sup> June, 2009. Given that the transportation receipts conflicted with the doctor's evidence, the court was asked to infer that she was being treated for unrelated injuries from those sustained in the accident. He was only prepared to allow transportation to Dr Tababa's office for 19 trips at \$100.00 per trip. He asked this court to allow transportation of \$2,500.00. Given the discrepancies and the failure of Lisa to corroborate this evidence, transportation was allowed in the sum of \$2,500.00.

#### *Personal items*

17.2 Lisa sought to recover loss of personal items in the sum of \$4,725.00 but Mr Hallpike objected on the grounds that she provided no proof of either the original existence or loss of these items as a result of the vehicular accident. This court was minded to agree with this argument. While it was

accepted that she would have lost the clothes in which she was attired at the time of the accident, she was required to provide some evidence of ownership of the watch and gold chain and/or an estimate of the replacement cost of these items, at the very least. This court was also at a loss as to what constituted the replacement cost of 1 CD collection and how it was derived. This failure was not accepted and she was denied this claim to that extent. She was allowed to recover the estimated cost of her clothes in the sum of \$275.00.

Loss of earnings

17.3 Lisa was employed as an acting Case Management Officer III at the Judiciary of Trinidad and Tobago, assigned to the Family Court earning \$5,910.00 monthly before tax. After the accident, she was put on extended sick leave, causing her to incur an overpayment of salary for the period 18.07.09 to 31.05.10, which she was required to repay. Documentary proof of this overpayment and demand for repayment was provided. She sought to recover \$509,148.38 as follows:

Overpayment from 18.07.09 – 31.05.10	=	\$52,713.38
Salary from June, 2010 to June, 2017 at \$5,910.00 monthly	=	\$456,435.00
Total LOE	=	\$509,148.38

17.4 Mr Hallpike took issue with this claim submitting that it was passing strange that Lisa would leave her job at the Judiciary to take up alternative employment in a job that required more mobility, considering her injuries. As to her claim for overpayment of salary, Mr Hallpike stiffly resisted same on the ground of double recovery. He submitted that there resided no duty on the part of the defendants to reimburse Lisa for overpaid salary, unless and until proof of repayment was provided. The court was asked to deny this claim. Mr Hallpike also submitted that the defendants would not agree to loss of earnings from June, 2010 (the last month in which she was paid salary by the Judiciary) to March, 2012 which is the final month before she gained employment with SAGICOR. He pointed to the fact that she had voluntarily resigned from the Judiciary, when she was advised to seek part-time employment. He argued that she had failed to mitigate her losses.

17.5 In the view of this court, Lisa was entitled to loss of earnings for the period she was out of a job and not receiving a salary. This would be from March, 2012. According to Mr Hallpike, she gave evidence that she worked from April, 2012 to May, 2013 as an insurance agent before stopping work

permanently. In fact, her evidence was that she did this job for 4 months. Her medical evidence was that she could do part time employment or an easier job. This was not defined. This court was prepared to allow her loss of earnings up to the assessment, on a partial loss basis, taking into account the 4 months of alternative employment. She was allowed to recover loss of earnings including overpayment of \$52,713.38, for which documentary proof was provided, less 50% for contingencies as follows:

Salary from March, 2012 to June, 2017 at \$5,910.00 monthly	=	\$372,330.00
Less 50% contingencies	=	\$186,165.00
Total LOE	=	\$186,165.00

### **Future loss of earnings**

- 18 Mr Ramoutar submitted that Lisa was still disabled so was continuing to lose income. He suggested the use of a multiplier of 9 and recommended a grant of \$586,845.00. On the other hand, Mr Hallpike advanced that there was no basis for such an award and if one was made it should be heavily discounted, as the evidence supported an ability to work in a job that will at least pay a minimum wage. This court accepted that based on the medical evidence, Lisa was able to work in an office or a desk-based job, similar to what she did previously, for half day.
- 19 It has been established that to cross the threshold for an award of loss of future earnings, Lisa was required to demonstrate a continuing loss of earnings linked to the accident.<sup>14</sup> She needed to show also that she was handicapped on the labour market or so limited in her physical capabilities that there was no type of work she could do. On the present facts, Lisa made a decision to stop working on her own volition and ostensibly on the basis that she had no other choice but to resign because of her injuries. She also attempted to gain employment at several alternative jobs including as a part time insurance agent with SAGICOR Life Inc but again because of her injuries, she was unable to continue and remained unemployed. She failed to bring the medical proof in support of her claim to be unable to work at these alternative jobs. In court, her medical evidence did not disqualify her permanently from all employment but rather supported limited employment, possibly desk-based or in an office. It would appear that medical doctors for both parties agreed that she could only be expected to work half day

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<sup>14</sup> *Munroe Thomas* Civil Appeal No 25 of 2007 paragraph 8

or at most 4 hours at a sedentary type (or desk) job. In the circumstances, this court accepted that her injuries had affected her ability to earn in her former job in the same manner that she did prior to her injuries and have effectively rendered her a semi-handicap on the labour market. The evidence, however, was insufficient to convince this court that she was completely unemployable. She was at least the victim of partial disability. Given that she could at least work for half day, this court was prepared to accept Mr Ramoutar's submission to use the traditional method of determining this award; deducted 50% for contingencies, to reflect her partial loss and used a multiplier of 7:

Yearly salary \$70,920.00 x 7 years	=	\$496,440.00
Less 50%	=	\$248,220.00
Total FLOE	=	\$248,220.00

### **Future medical care**

20 The evidence was that Lisa was currently on the painkiller tablets arcoxia, 1 per day at \$24.77 each, and 1 omeprazole at \$4.40 each. Her daily cost of medication was \$29.17 and the yearly sum would be \$10,647.00. The need for painkillers was conceded by the defendants' medical witness but Mr Hallpike argued that arcoxia cost \$5.95 per pill, based on his enquires. He provided no hard evidence of this cost and this court, unfortunately for Mr Hallpike, refused to operate by word of mouth or on guesswork. Lisa's counsel asked that a multiplier of 10 be used to give the sum of \$106,470.00 and to adopt the approach of the Privy Council in *Peter Seepersad*<sup>15</sup> and award \$100,000.00. Then, Dr Santana provided an estimate of \$42,000.00 for the arthroscopy and osteochondral autograft transplantation. The defendants argued that these surgeries would not be necessary or should be obtained free at the general hospital. His arguments were not accepted. Lisa was allowed to recover \$70,000.00 for future medication and \$42,000.00 for surgeries.

### **Order**

- 21 It was ordered that the defendants do pay to the claimant (Lisa):
- i. General damages in the sum of \$90,000.00 with interest at the rate of 2% per annum from 22<sup>nd</sup> March, 2013 to 4<sup>th</sup> October, 2017;

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<sup>15</sup> *Peter Seepersad v T Francis & Capital Insurance Ltd* UKPC No 83 of 2002

- ii. Special damages in the sum of \$252,299.88 with interest at the rate of 2% per annum from 22<sup>nd</sup> March, 2009 to 4<sup>th</sup> October, 2017;
- iii. Loss of future earnings in the sum of \$248,220.00;
- iv. Future medical care in the sum of \$112,000.00;
- v. Costs as assessed in the sum of \$49,790.80;
- vi. Stay of execution 48 days.

Dated 4<sup>th</sup> October, 2017

**Martha Alexander**

**Master**