

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2015-03899**

**BETWEEN**

**COHEN PHILLIPS**

Claimant

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Defendant

\*\*\*\*\*

**Before: Master Alexander**

**Date of Delivery: 25 October 2021**

**Appearances:**

**For the Claimant: Mr Asaf Hosein instructed by Mr Emile Pollard**

**For the Defendant: Ms Rachael Lyncia Jacob instructed by Mr Ryan Grant**

**DECISION**

**BACKGROUND**

1. This involves a claim by the claimant for damages for personal injuries and losses suffered from a fall on 15 November 2011 because of the defendant's negligence. On the said date, the claimant, an acting sergeant of police, in the employ of the Trinidad and Tobago Police Service ("TTPS"), was on duty at the Tunapuna Police Station. Around 7:00 am, he was descending a flight of stairs when he fell backward down the second flight, landing heavily

on his backside. At the material time, the claimant was descending the staircase from the male dormitory at the station.

2. The claimant alleged that a Maintenance Training and Security (“MTS”) cleaner, Ms Denise Faye-Adams, had thrown a liquid on the steps and/or staircase, to remove blackness from the steps. The cleaner’s act was done without the claimant’s knowledge and without indicating her intention to do so and/or that she had done so, causing his fall and injuries, damages and consequential loss. He claimed that the defendant by its employees and/or servants and/or agents had failed to provide a safe place and safe system of work, by failing to provide competent fellow employees. In effect, the defendant by its negligence caused him to slip on the staircase and to suffer severe personal injuries, damages and consequential loss.
3. The claimant filed proceedings on 13 November 2015 and a re-amended statement of claim on 29 March 2019<sup>1</sup>. On 21 June 2016, the defendant filed its defence, in which it admitted liability but put the claimant to strict proof of his claim. On 26 March 2018, judgment on admission was entered against the defendant and the assessment was ventilated fully before the assessing court. The claim was as follows:

<b>CLAIMS</b>	<b>SUMS CLAIMED</b> <b>\$</b>
Medical expenses Dr Bedaysie	3,500
Physiotherapy	1,800
Loss of acting allowance	11,088
Loss of earnings plus interest at 3%	5,268
General damages	200,000
Handicap in labour market plus interest at 6%	40,000
Future surgery (Dr Mahadeo)	75,000

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<sup>1</sup> The claim form and statement of case were filed on 13 November 2015 and served on 06 January 2016

## EVIDENCE

4. The oral evidence in this matter came from the claimant and Dr Steve Mahadeo but the claimant also relied on documentary evidence by way of hearsay notice, which attached several medical reports from Dr Henry Bedaysie. The defendant brought Mr Curtis Simmons to give evidence on its behalf; and he produced several documents on the loss of income claim of the claimant. There was no contest by the defendant that the fall had occurred and that injuries were sustained, as an admission was made on liability. Further, on 09 August 2016, the claimant was examined by the Medical Board, which recommended that he was medically unfit to work as a police officer on a permanent basis. The TTPS proposes to retire the claimant on the grounds of ill health.

## INJURIES

5. The claimant's injuries were set out in numerous medical reports in evidence. After the accident on 15 November 2011, the claimant was taken to the Eric Williams Medical Science Complex where he received treatment and a prescription for pain.

### 2012 MEDICAL REPORTS

6. The MRI Scan of the lumbar spine, done on 19 January 2012, showed disc desiccation, mild decrease in disc height and posterior annular tear at L3-4 to L5-S1. On 14 February 2012, Dr Henry Bedaysie of the Neurosurgery Department at Westshore Medical Centre saw the claimant for a neurosurgical assessment. In **report dated 07 May 2012**, it was stated that an examination revealed: severe lumbosacral spasms with decreased range of movement, absent ankle jerk, diminished bilateral sensation S1 dermatome and weakness of ankle dorsiflexion. Noting the claimant's complaints of ongoing lower back pain radiating to the lower extremities from the fall on 15 November 2011, he referenced the findings of the MRI Scan of the lumbar spine done on 19 January 2012, which confirmed the claimant's

diagnosis as lumbosacral radiculopathy and vitamin therapy and dietary changes were recommended. Dr Henry Bedaysie saw the claimant again on 23 May 2012 and noted that he was complaining about the recurrence of the pain so he recommended therapy.

### **2013 MEDICAL REPORTS**

7. Subsequently, in a **report dated 22 February 2013**, Dr Henry Bedaysie noted on examination, he had left upper extremity deficit, and absent reflex lower extremities, so diagnosed him with lumbosacral radiculopathy. The claimant was sent for an urgent MRI Scan of the cervical spine and lumbar spine. In a **report dated 25 March 2013**, Dr Henry Bedaysie stated that another **MRI Scan of the lumbar spine**, done on **18 March 2013**, showed disc desiccation, decrease in disc height and posterior annular tear at L3-4 to L5-S1 levels. He diagnosed the claimant with L3, L4 and L5 radiculopathy and recommended a laminectomy operation at a cost of \$47,500.
  
8. In a **report dated 11 October 2013** by Dr Henry Bedaysie, which followed and incorporated the findings of the repeat MRI Scan above, the claimant was diagnosed with:
  - (i) At L3-4 level - diffuse disc bulge with posterior right paracentral small protrusion and mild superior migration of disc, ligamentum falvum hypertrophy and mild facet arthropathy, causing moderate narrowing of the spinal canal with impingement of right L4 traversing nerve root and mild narrowing of the bilateral neural foramina.
  - (ii) At L4-5 level - diffuse disc bulge with ligamentum falvum hypertrophy and mild facet arthropathy, causing moderate narrowing of the spinal canal with impingement of bilateral L5 traversing nerve roots and mild to moderate narrowing of the bilateral neural foramina.

- (iii) At L5-S1 level - diffuse disc bulge with posterior central protrusion and mild superior migration of disc and facet arthropathy causing mild to moderate narrowing at spinal canal and bilateral neural foramina.

Dr Henry Bedaysie, in this report, diagnosed the claimant with “L3, L4 and L5 radiculopathy”. He recommended a laminectomy operation because of the pains and neurological deficit, revised estimate at \$60,000.

### **2015 AND 2017 MEDICAL REPORTS**

9. Dr Steve Mahadeo, in his **report dated 27 February 2015**, referred to a repeat MRI Scan of the lumbar spine done on 18 February 2015, which revealed:

- (i) At L3-L4 level - an annular tear with herniation of disc material and also ligamentum flavum and facet hypertrophy producing significant spinal canal and lateral recess stenosis.
- (ii) At L4-L5 level - diffuse disc bulge producing bilateral recess stenosis worse on the left.
- (iii) At L5-S1 level – a central annular tear with mild disc protrusion not producing significant spinal canal or lateral recess stenosis.

10. In a medical report by Dr Robert Naidike, police medical officer, dated 06 November 2017 sent to the Secretary Compensation Committee, Ministry of National Security, the claimant was certified as having a “spinal injury” from the fall and ascribed a 25% permanent partial disability. Of note is that during cross-examination, Dr Steve Mahadeo recommended surgical procedures of discectomy and cauterization of the sinu vertebral nerves in the torn annular ligament. The estimated cost was \$75,000 and there was a 75% success rate. The surgery was to alleviate the pain and entailed burning off the nerves. He stated further that the claimant would need three months to recover but will not need

domestic assistance during this period. He confirmed that the claimant could not lift more than 15 pounds or stand for more than thirty minutes.

## LAW AND ANALYSIS

### GENERAL DAMAGES

11. General damages, in personal injuries matters, are compensatory and not to punish. An assessing court conducts a balancing exercise to arrive at an award of fair compensation, with this principle of fairness being applicable to both parties. In essence, the award must be fair and appropriate for a claimant to receive for the harm caused to him by the negligence of the defendant and fair and reasonable for the defendant to pay for his/its negligence. The aim is not to benefit one party at the expense of the other, so unjust enrichment and/or punishment for commission of the wrong are not to be in the contemplation of an assessing court. It is fitting that the court will contemplate that the claimant has done no wrong but has suffered a wrong at the defendant's hand. He is eligible, therefore, to receive just and appropriate compensation for that which he has suffered. It is also trite law that a claimant is entitled to compensation to put him back in the position that he would have been in prior to the visitation of the civil wrong upon him.<sup>2</sup>

12. Courts sitting to assess the award to a claimant would use the framework principles set out in *Cornilliac v St Louis*<sup>3</sup>. These are well-known considerations for working out the award and include: (i) the nature and extent of the injuries sustained; (ii) the nature and gravity of the resulting physical disability; (iii) the pain and suffering endured; (iv) the loss of amenities suffered and (v) the effect on pecuniary prospects. A holistic view of these considerations shows that they go towards compensation for the claimant's inability to

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<sup>2</sup> *Livingstone v Rawyards Coal Co* [1880] 5 AC 25

<sup>3</sup> *Cornilliac v St Louis* (1965) 7 WIR 491

live life as before; for the inability to enjoy the amenities of life and the inability to earn as before the visitation of the tort<sup>4</sup>. In our jurisdiction, assessments are not determined on the basis of the one hundred compensation principle but on fair, reasonable and appropriate compensation for the wrong suffered.

13. As regards the *Cornilliac* considerations (i) and (ii), I have set out above at paragraphs 5-10 under sub-heading “Injuries” the extent of the claimant’s injuries and that he has been medically boarded. It is not disputed, therefore, that the present claimant has suffered severe injuries that have compromised his ability to continue functioning in his employment with the defendant.
14. The claimant gave evidence of his pain, which he averred is prolonged and continuous. His complaint of a recurrence of the pain led to his doctors recommending vitamin therapy and dietary changes. He averred to experiencing pain on bending and standing for more than half an hour. He averred also to challenges in doing simple physical activities because of his pain. He averred that he suffered psychological and emotional pain on having to pass on the role of the breadwinner of his household to his wife. He supported his evidence of pain and suffering by medical certificates and/or his medical evidence.
15. The claimant pleaded loss of amenities, which the defendant argued he failed to prove and invited the court to disregard this limb. Counsel submitted that the lack of evidence meant that his loss of amenity was either non-existent or insignificant. I disagreed that there was no evidence provided, as he averred that his injury has caused him not to socialize with friends and relatives or even to attend family functions. He averred also to challenges in doing minor physical activities, and that he often has to abort a task halfway to go lie down because of his pain. He averred to no longer being able to enjoy football with the Old Boys Team in Phase 1 Malabar or dancing with his wife. He pleaded that he

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<sup>4</sup> *Baker v Willoughby* [1969] 3 AER 1528

was unable to run or jog but provided no evidence. In my view, the claimant provided ample evidence to support an award for the loss of the pleasures or amenities of life. I rejected the argument of counsel for the defendant that there was no sufficient evidence led, and that I am to assume that this aspect of his loss was minimal or non-existent.

## **COMPARATORS**

16. Counsel for the claimant and defendant recommended general damages of \$200,000 and \$140,000-\$160,000 respectively. Counsel provided several cases, which they submitted would assist with arriving at an appropriate award for pain and suffering and loss of amenities. A few of the cases were not relevant, as they bore little equivalency to the instant matter. There were instances where unreported cases<sup>5</sup> were recommended, without the court being provided with the pleadings or injuries or the rationale for the awards. These proved unhelpful and wasteful of the court's time, which was spent in trying to find out their relevance. These unwritten decisions, where the court was not assisted with their pleadings, rationale or even the order made, were not included in the comparative analysis below, as there was nothing before the court to help with their inclusion. There were other comparators where the injuries were so glaringly different that they too were not helpful in the current exercise<sup>6</sup>. I have listed below those

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<sup>5</sup> *Sundar Gransam v Jason Kennedy & Great Northern Insurance Co*, an unreported decision of Robertson M

<sup>6</sup> *Gail Lovell v Amanda Ramsawak & Ors* CV2013-04657 where a claimant suffered serious multiple injuries in an accident on 15 January 2012. These included: fractures to the right 6<sup>th</sup> to 9<sup>th</sup> ribs, a collapsed lung; cervical spinal injury; right pulmonary contusions; blunt chest trauma with right haemothorax; right abdominal trauma; right forehead injury; chipped tooth in the right lower jaw and multiple lacerations to forehead, right heel, right arm, and right and left legs. There was extensive and major scarring to diverse areas of her body, pains in the chest and rib areas and emotional and psychological trauma. See also, *Reynold Kalloo and Tyrone Stevenson v Tidewater Marine West Indies Limited* where following an explosion aboard a ship, the first claimant suffered spinal injury, post-traumatic stress syndrome, depression, insomnia, loss of sexual performance, severe loss of hearing, loss of sight, cervical pain, lumbar pain, and headaches stemming from the explosion and fire incident. His PTSD entailed flashbacks to the incident, marked insomnia, hyper excitability, emotional numbing, social withdrawal with feelings of depression, and marked sexual dysfunction, which led to self-medication through alcoholism. The court noted that the physical pain was "miniscule" unlike his mental trauma and awarded \$130,000.00.



comparators that I have found helpful, even where in some instances the injuries were more severe:

- ***Kester Hernandez v AG***<sup>7</sup> where a 19 year old suffered severe spinal injuries at his workplace and was awarded 80% permanent partial disability to perform his job. He suffered an annular disc bulge of the L5/S1 lumbosacral spine causing displacement of the traversing left S1 nerve root, L5/S1 radiculopathy and decreased power left ankle dorsiflexion. He experienced spasms in his entire back, cramps in both legs radiating down to the toes, pain in the neck, headaches, difficulty sleeping, lancinating pain in the left hand and pain in waist and groin area. He could not sit or stand for more than 10-15 minutes. He was awarded \$300,000 for pain and suffering.
- ***Clarence Vialva v Klint Ryan***<sup>8</sup> where the claimant suffered from a post-concussion syndrome; mild disc bulge at L3/4 level; diffused disc bulge at L4/5 causing stenosis of central spinal canal and narrowing of bilateral neural foramina; mild disc bulge at L5/S1 indenting anterior epidural fat with no significant narrowing of bilateral neural foramina. Surgery was recommended of the L4 laminectomy and L4/5 discectomy and he was assessed with a 40% permanent partial disability; and awarded \$275,000 in general damages.
- ***Calvin Dipnarine v Attorney General***<sup>9</sup> where for lumbosacral spasms with decreased range of movements, diminished sensation bilateral S1 dermatomes, L5/S1 radiculopathy and spondylolisthesis, neurological deficit and corrective surgery with the insertion of two pedicle screws in L5 and two screws in sacrum plus two connecting rods. The claimant experienced loss of libido, inability to stand, sit or walk for long periods of time and inability to engage in sports and exercise and was awarded \$200,000.
- ***Wayne Wills v Unilever Caribbean Limited***<sup>10</sup> delivered on February 26, 2010 a claimant suffered an acute lumbar strain, and a L4/L5 disc herniation that necessitated surgery two and a half months after injury. Immediately following the injury, the claimant suffered pain in the neck

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<sup>7</sup> *Kester Hernandez v Attorney General* CV2011-01821 delivered on February 15, 2013

<sup>8</sup> *Clarence Vialva v Klint Ryan* CV2009-01066 delivered on January 8, 2013

<sup>9</sup> *Calvin Dipnarine v Attorney General* CV2008-03944 delivered by Mohammed M in 2012

<sup>10</sup> *Wayne Wills v Unilever Caribbean Limited* CV2007-04748; Civil Appeal No 56 of 2009

and along the left side of his body, which intensified over the next few days. After surgery, the claimant progressed well but had some episodes of pain including one severe spasm. His prognosis was continued intermittent pain. The claimant experienced an inability to play football and hockey, to have regular sexual intercourse or sweep and was in pain up to the date of hearing. Initially, his award was \$75,000, which the Court of Appeal upgraded to \$200,000.

- ***Roger Rampersad v T&TEC***<sup>11</sup> where there was degenerative changes in the back at the L5/S1 levels; post-traumatic syndrome; scalp neuralgia; lower back and neck strain and erectile dysfunction and the claimant was awarded \$155,000 for pain and suffering.
- ***John Boneo v Point Lisas Terminals Limited and PLIPDECO***<sup>12</sup> where for a back injury from a fall at work and a diagnosis of L5-S1, nerve root irritation secondary to low back strain on lumbar spondylosis and an award was made of \$140,000.
- ***Brandon Salina v Winfred Ramnath and Ors***<sup>13</sup> where a passenger, in a two vehicle head-on collision who was thrown through a front windscreen onto the opposite side of the roadway from the vehicle in which he was travelling, presented with left shoulder and abdominal pains. An examination of him found tenderness anteriorly over the right and left hip; skin abrasion on his right leg, scalp and left elbow; and a minor laceration on his right hand, which was sutured. Some three years later, medical reports pointed to ongoing back pains, swollen knees, headaches, dizziness, memory loss, inability to sleep on his back and locking of the knees. Four years after the accident, there was a diagnosis of foramina stenosis at the L5-S1 level and recommended surgery to relieve the nerve compression. An MRI of the lumbar spine revealed minimal scoliotic curvature of the lumbar spine with convexity to the right. There was on the L2-L3-4 levels, there was mild diffuse disc bulge causing mild indentation on the thecal sac and mild narrowing of bilateral neural foramina; on the L4-5 level - diffuse disc bulge causing mild narrowing of the spinal canal and bilateral neural foramina. On the L5-LS1 level, there was diffuse bulge with facet arthropathy causing mild narrowing of the spinal canal and moderate

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<sup>11</sup> *Roger Rampersad v T&TEC* HCA S-923 of 1999 delivered by Alexander M on 28 September 2012

<sup>12</sup> *John Boneo v Pt Lisas Terminals Ltd & PLIPDECO* CV2012-00398 delivered by Gobin J on 06 September 2013

<sup>13</sup> *Brandon Salina v Winfred Ramnath and Ors* CV2013-03876 delivered by Alexander M on 04 October 2017

narrowing of bilateral neural foramina (R>L). Arthroscopic surgery to his right knee was recommended and he was ascribed a 30% permanent partial disability. The claimant was awarded \$120,000 for pain and suffering.

- ***Darryl Damian Abraham v AG***<sup>14</sup> where the claimant suffered mild diffuse annular disc bulge at L3-4; mild left neural foramina stenosis; nerve roots irritation at L3-4 and L4-5 and diffuse annular disc bulge with focal disc protrusion at L4-5. There was also nerve root compression, lumbosacral spasm with decreased range of movement and absent medial hamstring jerk. The results were decreased ankle reflex, diminished sensation bilateral L5 dermatome, weakness of right ankle dorsiflexion, moderate spondylotic changes and osteopathic lipping L4-5 and an award was made of \$123,536.98.
- ***Dayal Moonsammy v Rolly Ramdhanie & Capital Insurance***<sup>15</sup> where the plaintiff suffered an injury to the L4/5 and L5 S1; with pain in right hip and lower back and had surgery with an uneventful recovery. He was assessed as having recovered less than 50% of the L4 and L5 nerves. He was awarded \$75,000; as adjusted to December 2010 to \$121,102.
- ***Marchong v T&TEC***<sup>16</sup> involving soft tissue injury and lumbar spasm which resulted in some narrowing of the lateral recess at L4-L5 with possible impingement of the traversing L5 nerve root and early disc desiccation at the L5/S1 level. He was awarded \$60,000.
- ***Dexter Sobers v AG***<sup>17</sup> involving loss of lumbar lordosis, disc desiccation and annular tear at L4/% and L5/S1 levels; diffuse disc bulge with posterior central propensity indenting thecal sac with no neural compression, diffuse disc bulge with propensity to left and posterior left paracentral small disc protrusion impinging on left S1 traversing nerve root. He experienced back pains radiating down the left leg; his straight leg raising was greater than 90 degrees bilaterally, with a negative sciatic stretch test; but his power, sensation and reflexes were within normal limits. He was ascribed a 20% permanent partial disability and awarded \$80,000.

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<sup>14</sup> *Darryl Damian Abraham v AG* CV2011-03101 delivered by Rahim J on 26 September 2013

<sup>15</sup> *Dayal Moonsammy v Rolly Ramdhanie & Capital Insurance* HCA 2316 of 2001/CA No 62 of 2003

<sup>16</sup> *Marchong v T&TEC* CV2008-04045 delivered by Jones J (as she then was) on May 2010

<sup>17</sup> *Dexter Sobers v AG* CV2008-04393 delivered by Mohammed M (as she then was) in May 2011

- ***Ann Marie Redman v Hillary Samuel***<sup>18</sup> involving disc desiccation at L3-4, L4-5 and L5-S1 and at L3-4 and L4-5 levels, there was a mild posterior annular disc bulge indenting the epidural fat in the anterior spinal cord. There was also L3 and L4 nerve root irritation i.e. the disc was bulging inwards and pressing on the nerve in the area of the spinal cord. The claimant experienced severe pain; spent one week at the hospital; suffered severe spasm of the legs and decreased sensation in the right leg and was awarded \$65,000.
- ***Carolyn Fleming v AG***<sup>19</sup> involving L4/L5 S1 nerve root impairment; ligament injury causing instability to the lower back or lumbar spine; intermittent pains on both upper and lower back radiating towards legs; and an inability to sit for long periods or to lift or push items. She was ascribed a permanent impairment of 25% and awarded \$80,000.
- ***Gerard Antrobus v Port Authority of Trinidad and Tobago***<sup>20</sup> where the claimant suffered a lumbar disc protrusions; foraminal compromise; diffuse disc bulges L2/3, L3/4 and L4/5; L5/S1 diffuse disc bulge with small posterior right para central protrusion and facial hypertrophy causing compromise of the bilateral foramina. There was mild effusion in the both facet points; small extradural juxta facet synovial cyst on the left side and nerve compression. He had ongoing lower back pains and was awarded \$90,000.
- ***Lennard Garcia v Point Lisas Industrial Port Development Corporation Limited***<sup>21</sup> where a 60 year old claimant sustained injuries twice; initially from a fall after slipping on some oil at the defendant's workplace and then at the hospital when he was dropped from a stretcher. His injuries were to his upper right shoulder, left palm, soft tissue injuries to his back and right knee; persistent right-sided sciatica; degenerative spinal stenosis at L4-5 and L5-S1 levels. He experienced daily lower back pain, which was radiating down his left leg to his knee posteriorly, and there was triggering of the left middle finger in his left palm. He also had mild prolapses of the L3-4, L4-L5 and L5-S1 discs; mild spinal canal stenosis at L3-L4, L4-L5 and L5-S1 areas of the discs; some nerve root entrapment on the left side; pain when sitting, standing and walking;

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<sup>18</sup> *Ann Marie Redman v Hillary Samuel* CV2007-02662 delivered by Stollmeyer J (as he then was) in July 2009

<sup>19</sup> *Carolyn Fleming v AG* CV2007-02766 delivered on 21 May 2012 by Alexander M

<sup>20</sup> *Gerard Antrobus v Port Authority of Trinidad and Tobago* CV2009-00726 delivered on 25 September 2012

<sup>21</sup> *Lennard Garcia v PLIPDECO* CV2010-03061 delivered by Alexander M on September 19, 2013

weakness in his left leg and wasting of his left quadriceps muscle from the nerve being pinched by the prolapsed disc. Medical evidence pointed to the claimant getting moderate to severe lower back pain for the rest of his life with the only means of relief being analgesia and if he loses weight. He was awarded \$80,000 in 2013.

- ***Kenny Toussaint v Tiger Tanks Unlimited***<sup>22</sup> where \$90,000 was awarded for lower back injuries, where lumbar laminectomy with L3-L4, L4-L5 discectomy surgery was advised.

### **ANALYSIS OF COMPARATORS**

17. To my mind, the case of ***Kester Hernandez*** is distinguishable on the basis of greater severity of injuries and debilitating effects. This is borne out in the differences in the disability award. While there are similarities in the areas where the injury occurred and diagnoses, ***Kester Hernandez's*** injuries were more debilitating, rendering him almost comatose in his ability to function in any environment. Despite the differences, I still found ***Kester Hernandez*** a useful comparator, which effectively capped the level of award that our claimant could recover. I considered and found the cases of ***Clarence Vialva*** and that of ***Calvin Dipnarine*** to be helpful comparators and felt that the instant claimant could attract an award in those ranges. I considered what would fair and reasonable compensation be in the circumstances. To this end, I considered the case of ***Brandon Salina***, which counsel for the defendant alleged did not document that claimant's specific injuries. This argument was rejected, given that the medical reports were set out in full in that case. To my mind, the injuries in ***Brandon Salina*** and the one in the instant case equate closely, and I felt that the awards could be aligned safely with each other. I bore in mind, however, that the claimant in ***Brandon Salina*** was recommended to have the addition arthroscopic knee surgery but that his disability was 30% permanent partial disability. Also considered in making the comparative analysis was the declining value of the dollar and that the present claimant could fairly attract a sum that was higher than that given

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<sup>22</sup> *Kenny Toussaint v Tiger Tanks Unlimited* CV2014-00513 delivered by Rajkumar J on April 2016

to **Brandon Salina**. There were several cases that were recommended where the awards were under \$100,000 and while the injuries were similar, some were dated and/or related to injuries that were not as severe as the present case: see **Marchong** and **Carolyn Fleming**. Following a thorough comparative analysis of all the cases recommended, it was felt that an award closer to **Wayne Wills** would do justice in the instant case. In **Wayne Wills**, the injuries though somewhat similar did result in more severe disabilities, which meant that our claimant could attract a slightly lower award. In my opinion, the cases of **Wayne Wills, Roger Rampersad, Brandon Salina, Darryl Damian Abraham, Calvin Dipnarine** and **Clarence Vialva** were proper comparators. In the circumstances, I found it appropriate to make an award of \$185,000.

### **SPECIAL DAMAGES**

18. It is trite law that special damages must be strictly pleaded and particularized, with each item to state its amounts and value, and then be proved strictly: see **Mohammed v Furness**<sup>23</sup>. This requirement does not bar an assessing court from making an award on the viva voce evidence presented; but best practices would be for strict pleading and proof of such losses. The Court of Appeal cautioned assessors to view a lack of documentary evidence, where evidence is unchallenged, cautiously; accepting or rejecting oral evidence as proof only if there is cogent reason for so doing<sup>24</sup>. I now turn to the special damages:

- i. Loss of Earnings*
- ii. Loss of acting allowances and*
- iii. Loss of promotional prospects*

19. The claimant claimed \$5,268 as loss of earnings and \$11,088 as loss of acting allowances. The evidence of acting superintendent Curtis Simmons supported the loss of the acting allowances in the sum as claimed, and counsel for the defendant supported this award.

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<sup>23</sup> *Mohammed v Furness* CA Civ 46 of 1993

<sup>24</sup> *Great Northern Insurance Company* Civ App 121 of 2008

As to the loss of earnings claimed, the claimant's evidence was that his salary never stopped at any point up to him being medically boarded. Acting superintendent Simmons confirmed this evidence and verified that the claimant had received his full salary, as his leave was classified as injury leave with full pay. Generally, a claimant would be entitled to his actual loss of earnings together with increases up to the date of trial and/or until his date of retirement: see *Cookson v Knowles*<sup>25</sup>, as adopted in *Ramesh Harry v Jattan Jonathan*<sup>26</sup>. The claimant maintained his claim of \$5,268 loss of earnings on the basis that he was made to retire on medical grounds, fourteen days prior to his date of retirement, and suffered a loss earnings of about a half of his monthly salary, which was \$10,536. This evidence was not impugned by the defendant and does not conflict with the evidence that he was paid full salary up to the date of being medically boarded.

20. The claimant also received pension of \$72,303.30 per annum and a gratuity of \$301,263.75. He also received an unstated sum of monies from the Compensation Committee of the TTPS. The evidence was that the first set of promotions were made on the revised Order of Merit List 61/2019 where thirty-six officers were promoted from corporals to sergeants. A chronological list of priority candidates, eligible for promotion from corporal to sergeant, was generated out of court action on 26 March 2019. At that time, he was retired on 28 March 2019 on the grounds of ill-health, and was not a serving member of the TTPS to be eligible for promotion to the rank of Sergeant. The claimant's evidence was that his retirement age/date would have been 11 April 2019, which means that he would not have been a serving member of the TTPS to be eligible for promotion to the rank of sergeant had he not retired on the grounds of ill-health. He is not allowed to recover any sum for loss of promotional prospects; but can recover \$16,356 for loss of acting allowances and fourteen days loss of earnings.

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<sup>25</sup> *Cookson v Knowles* [1978] 2 AER at page 604

<sup>26</sup> *Ramesh Harry v Jattan Jonathan and Another* HCA S1050 of 1988

**iv. Medical expenses and physiotherapy**

21. The documentary evidence supported his claims for \$3,500 in medical expenses and \$1,800 for physiotherapy. He is allowed to recover both sums.

**v. Loss of future earnings/Handicap on the labour market**

22. The claimant sought \$40,000 for being handicapped on the labour market on insufficient evidence. He pleaded that he wanted to continue working in the security industry after his retirement but provided no evidence of job offers or business plans to set up his own private enterprise. He failed also to provide any evidence of his unsuitability for any work, or his inability to work in alternative employment. He stated that he made enquiries of unnamed security firms who refused to hire him because of his injury. He averred also that he was disappointed that he could not return to active duty as a police officer since he was medically boarded from the service. Counsel for the claimant asked for a **Blamire award**<sup>27</sup> under this head. I was concerned with the thin evidence under this head but accepted that after retirement, he likely could have continued working in the security field had he not been injured. I also did not find it as unreasonable to award \$30,000 for handicap on the labour market.

**vi. Future surgery**

23. Dr Steve Mahadeo recommended a surgical procedure, with a 75% success rate, at the estimated cost of \$75,000 to be done at a private medical facility. He confirmed that the procedure is available at the public health institutions but there is a waiting period involved. Counsel for the defendant argued that the claimant has made no attempt to secure the surgery publicly in the nine years since his injury. On this basis, counsel argued that surgery was not a priority and it could be inferred that his symptoms were manageable. She pointed to the monies he already had received in gratuity as capable of

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<sup>27</sup> *Blamire v South Cumbria Health Authority* [1993] 2 PIQR Q1



covering the surgery and to view his failure to have the surgery negatively against him and as establishing that it was not a priority or even necessary to manage or reduce the pain from his injury. This argument was not accepted, as the medical evidence stated it was necessary. He is allowed to recover the cost of future surgery in the sum of \$75,000.

## **DISPOSITION ORDER**

24. It is ordered that the defendant do pay to the claimant as follows:

- i. General damages in the sum of \$185,000 with interest at the rate of 2.5% per annum from 28 December 2015 to 25 October 2021.
- ii. Special damages in the sum of \$21,656 with interest at the rate of 1.25% per annum from 15 November 2011 to 25 October 2021.
- iii. Handicap on the labour market in the lump sum of \$30,000.
- iv. Future surgery in the sum of \$75,000.
- v. Costs in the prescribed sum of \$55,632.74.

**Martha Alexander**  
**Master of the High Court**

**MARTHA ALEXANDER**  
**MASTER OF THE SUPREME COURT OF**  
**TRINIDAD AND TOBAGO**