

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV2017-00223**

**BETWEEN**

**VERONICA WILLIAMS BUNBURY**

Claimant

**AND**

**THE UNIVERSITY OF THE WEST INDIES**

Defendant

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**Before: Master Alexander**

**Delivery date: November 6, 2019**

**Appearances:**

**For the Claimant: Mr Yaseen Ahmed instructed by Ms Tara Lutchman**

**For the Defendant: Mr David Alexander instructed by Mr Dave de Peiza**

**DECISION**

**INTRODUCTION**

1. In this matter, the claimant suffered a slipped disc injury while on campus. This morphed into chronic pain, which engaged this assessment, as it had a significant impact on her life. The incident from which everything flowed occurred on January 30, 2013 while the claimant was a full time student, at the

University of the West Indies, St Augustine Campus, pursuing a degree in Food and Food Service. At the time, she was also a lecturer at the Trinidad and Tobago Hospitality Institute in Chaguaramas. On the morning of the incident, she entered the CARDI Building for a food science lecture and proceeded to a seat at the back of the room. It would appear that as she sat on a four-legged chair in the classroom, the legs detached and she fell onto the floor in a sitting position. Despite experiencing immediate pain on the fall, she obtained some painkillers from the Student Health Centre and remained on campus.

### **INJURIES**

2. Based on an MRI dated April 24, 2013, the claimant suffered a disc desiccation and posterior annular tear, for which she was treated by the medical professionals. In a medical report penned by Dr Toby, her injury was described as a posterior lumbar disc herniation or a “slipped disc”<sup>1</sup>. Between the parties, there seemed to be no dispute as to the nature and extent of her injuries. The assessment revolved, therefore, around the pain that ensued from her injury and the impact on her.

### **THE EVIDENCE**

3. The only witness who gave evidence at the assessment was the claimant. Dr Toby was present to give evidence at the assessment but his reports<sup>2</sup> went in by consent. All medical reports documented pain on prolonged standing, based on the history given to Dr Toby by the claimant. Dr Toby concluded that by three and a half years post injury, the pain was now chronic. The claimant led evidence also, which focused largely on her ongoing pain from the injury.

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<sup>1</sup> Medical report dated April 19, 2017 by Dr Toby; in a previous report dated December 13, 2016 the MRI injury was described as a disc desiccation and posterior annular tear

<sup>2</sup> Dr Toby issued reports dated December 13, 2016, April 19, 2017 and October 23, 2017

## **DISCUSSION ON DAMAGES**

### **(a) Nature, extent, and continuing gravity of injuries**

4. The evidence contained in the three medical reports of Dr Toby, which pointed to disc desiccation and posterior annular tear, resulting in severe pain radiating down her lower limbs was accepted. Based on Dr Toby's reports, there was no major physical resulting disability. The claimant remained with constant pain that affected how she functioned, and underwent physiotherapy between January – October 2017, which helped. In the medical reports, Dr Toby noted the complaint of constant back pain on standing and recommended that her duties should involve more sitting, to put less pressure on the spine and that she be exempted from practicals, as this could trigger pain.

### **(b) Pain and suffering**

5. The claimant averred that upon the fall, she experienced severe pain to her lower back, right buttock and right knee. After the fall, she took ordinary painkillers, but experienced pain mainly when walking around campus. At the end of the day on which the incident occurred, the pain failed to dissipate and was particularly strong. Subsequently, she took Flamar X, as prescribed by Dr Ramsaran on the day of the fall, but the pain continued. It was worse on weekends when she had to work on Saturdays, teaching at the Hospitality Institute, and it prevented her from doing housework or other physical activities. After a few weeks, the pain was localized primarily in her lower back and in the right hipbone area. Despite the medication, the pain never went away during February, March and April, 2013 and she obtained a referral to Dr Henry Bedaysie, neurosurgeon.

6. The year 2013, post injury, saw the claimant in the throes of marked pain. She gave evidence that she started to use turmeric sometime in or about April, 2013 to manage her pain in her lower right back. Turmeric never removed her pain but it was useful for pain management. As a result of her pain, she claimed that she was forced to sleep on her left side or on her back, with her leg elevated at about 45 degrees. She stated that she could not sleep on her right side as this increased her pain, as did any kind of bending or moderate lifting. She described this pain as varying along her lower back and for the first half of 2014, it continued unabated. By 2015, however, the pain was more pronounced when she did practical classes, which required her to be engaged in extensive standing, or when she was engaged in housework or other physical activity. In 2016, her pain levels increased. She attributed this to being on her feet for four days per week teaching. At this juncture, the pain was described as significant, manifesting along her back, which worsened upon standing and moving about for long periods. As part of managing her pain, she stopped wearing high heel shoes and now wore only flat shoes. There was a psychological dimension to her pain, which manifested as emotional distress and depression whenever she would contemplate her life.

**(c) Loss of amenities**

7. The claimant averred that she suffered loss of amenities, which she linked directly to her ongoing pain. She stated that after work or class, she would return home with an aching back, unable to do housework, such as sweeping, mopping, washing, cleaning windows, or other physical activity. Her pain caused her to stop going for long walks in Chaguaramas and around the Queen's Park Savannah, which was a regular pastime before the accident. She became dependent on her husband and daughter to do housework, as she was unable to do the levels she had done prior to her injury. She alleged that her sexual

relationship with her husband was affected, but as there was no medical evidence that addressed this, this was disregarded. She also claimed that teaching her practical classes, which involved long periods of standing, bending and moving about, aggravated her lower back pain, significantly increasing it. Throughout 2016, she was unable to participate in fundraisers and other social events at work. The claimant averred that the pain had an emotional and psychological impact on her, as she developed feelings of uncertainty about her future health and physical capabilities and wellbeing.

**(d) Effect on pecuniary prospects**

8. The claimant provided no evidence to show that her pecuniary prospects were affected by her condition. In fact, she succeeded in obtaining her degree and continued her job teaching full time at the Hospitality Institute, Chaguaramas.

**CASES**

9. Counsel for the parties have directed this court to a few cases, which they submitted would assist with a fair disposition on quantum. These included:
  - ***Theresa Daly v The Attorney General***<sup>3</sup> where a 63 year old claimant, who fell down 8 flights of steps in a public building while working as a cleaner, suffered swelling and an edema in the quadratus lumborum musculature. She suffered with limitations to flexion 50%, extension 50%, rotation (R&L) 65% and lateral bending 50%; and disc bulge of the L4/L5, L5/S1 lumbar complex with associated myospasms. She was awarded \$80,000.00 in general damages.
  - ***Racquel Burroughs v Guardian Life of the Caribbean Limited***<sup>4</sup> where a claimant, who fell off a chair at work, suffered tenderness and stiffness

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<sup>3</sup> *Theresa Daly v The Attorney General* CV2010-05291 delivered on June 06, 2016

<sup>4</sup> *Burroughs v Guardian Life of the Caribbean* CV2011-04315 delivered on May 17, 2017

to the neck; cervical tenderness C4 to C7; mild L2/L3 and L5/S1 disc bulge. The main continuing effect was patella pain, but her neck and back pains, which also persisted, resulted in restrictions in ambulation and social activities. She was ascribed a 50% permanent partial disability for this pain. For the tenderness along her whole spine and neck, along with restriction of neck movement, she was given a 25% permanent partial disability. By ten months post injury, she was still experiencing pain, approaching maximum medical improvement, and was now in a chronic state. She was awarded \$78,000.00 for general damages.

- ***Betty James v The Attorney General***<sup>5</sup> where a claimant who was a police trainee suffered injuries while descending a flight of stairs for which she underwent surgery. She was diagnosed as having a ligament injury that eventually resulted in an injury to her back, namely lumbar disc prolapsed and lumbar root nerve compression. The court found that it was more than a simple ligament injury. She suffered lower back and ankle pain, which was so severe she was unable to walk, sleep or stand in comfort. She also could not stand for long periods of time, bend, lift objects or carry out routine tasks without pain and discomfort. She could not run or walk with speed and suffered hip pain. She also suffered spinal complications. As a result, her pains affected her enjoyment of dancing, playing netball and sexual intimacy. The trial judge found that the pain and suffering increased overtime gradually becoming substantial to the point of being unbearable at times. She was awarded \$100,000.00 as general damages (reduced by a 20% contribution).
- ***Dexter Sobers v The Attorney General***<sup>6</sup> where a claimant suffered loss of lumbar lordosis, disc desiccation and an annular tear at L4/5 and L5/S1

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<sup>5</sup> *Betty James v The Attorney General* CV2010-05009 delivered on April 22, 2015

<sup>6</sup> *Dexter Sobers v The Attorney General* CV2008-04393 delivered on May 27, 2011

levels. He also suffered a 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 the left S1 traversing nerve root. He was hospitalized for one day. The claimant experienced back pains radiating down the left leg, his straight leg raising was greater than 90 degrees bilaterally, with negative sciatic stretch test, power sensation and reflexes were within normal limits and 20% permanent partial disability. It was Dr Santana's opinion that the injuries were consistent with his complaints of "left-sided sciatica" for which he recommended surgery if the symptoms did not improve. For six months after the accident, he was unable to look after himself, needed assistance to bathe, cook, clean the house and wash. The claimant was awarded \$80,000.00.

- ***Vidya Jaglal v The University of the West Indies and another***<sup>7</sup> where a claimant suffered spasms of the para-vertebral muscles of the cervical spine with some varying degrees of nerve root irritation in the upper limbs. She also had neck pains radiating into the arms with varying severity, muscle spasms in the neck requiring medication, chronic pain necessitating long-term use of muscle relaxants and was prone to periods of relapse associated with long periods of sitting. That claimant was unable to perform household chores, had difficulty playing with her children, could not clean her yard and had to cease working as a masseuse. She was awarded \$60,000.00 as general damages.

10. Having considered all the cases provided by counsel, this court was of the view that the claimant's injury and ongoing impact were aligned with the cases of

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<sup>7</sup> *Vidya Jaglal v The University of the West Indies and The Attorney General of T&T* CV2016-00599 delivered on May 22, 2018 by Rahim J

*Theresa Daly, Vidya Jaglal* and *Dexter Sobers* though not exactly on par. These cases proved very useful in assisting this court with the quantum, with the *Vidya Jaglal* and *Dexter Sobers* cases being particularly influential. Her award would thus be plugged in the ranges of awards in those cases. Consideration was given to the ongoing pain experienced by the claimant and that her challenge with it related to extensive periods of standing. The submission of counsel for the defendant that the claimant at bar exaggerated her pain and consequently her loss of amenities was not accepted. In fact, the evidence supported that she was in pain. Indeed, as a witness, the claimant presented as a truth teller and this court could find no hint of deception or manipulation in her evidence that would have led it to disbelieve her averments. At the end of the day, it was accepted that it was a simple injury but that it affected the claimant's life and she deserved to be compensated for her pain. To this end, this court bore in mind that the claimant initially used Panadol, an over-the-counter painkiller, to treat her pain before purchasing Flamar X, prescribed by Dr Ramsaran. Subsequently, she managed the pain with turmeric, so it might have been consistent but was not unbearable. She endured such pain for several years after the incident and it would have been intrusive and affected her daily routine but it was manageable pain. Accepted also was that the pain would have been worse at some times and on the performance of certain bodily movement namely standing for long periods. It was also pain that she would likely have to live with and manage for the rest of her life. Consideration was also given to the fact that the injury suffered did not require surgery and while the severity of her pain would have declined post-injury, she remained with the challenges on prolonged standing. Thus, it was felt that a fair and reasonable award would be \$60,250.00 for general damages.



### **SPECIAL DAMAGES**

11. The defendant accepted liability to pay special damages of \$17,734.00. On calculation, the claimant's special damages claim amounted to \$17,829.53 plus the cost of the attendance of Dr Toby, which she sought to recover in the sum of \$8,000.00. However, the cost of Dr Toby's attendance was a matter of contention before this court. The sole issue was whether the claimant should be awarded Dr Toby's cost, which fell outside the ambit of prescribed costs. It appeared that on April 3, 2019, the date of the assessment, there was a miscommunication between counsel for the parties about the doctor's attendance. On one hand, counsel for the claimant submitted that the defendant should have indicated to them and the court, at a reasonable time that the evidence of Dr Toby was undisputed. This would have avoided the unnecessary attendance of Dr Toby at the assessment. On the other hand, counsel for the defendant argued that the claimant's failure to serve a pre-action protocol letter ought to result in the claimant paying all or part of the defendant's costs for the assessment.<sup>8</sup> Essentially, counsel for the defendant advanced that the claimant's non-compliance with practice directions resulted in unnecessary litigation and the matter could have been settled given that liability was admitted.
  
12. In the view of the court, both parties bore some fault for the conduct of this matter. To resolve the current issue, the court opted to adopt a fair and balanced approach in the circumstances. It was considered that the matter having reached assessment, the claimant would have required Dr Toby to prove her case. Further, Dr Toby, who was called to give evidence, made himself available at the assessment, and remained until relieved by the court. It was

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<sup>8</sup> The Civil Proceedings Rules 1998, as amended, Practice Direction 1.4

accepted that the miscommunication between counsel as to Dr Toby's attendance came too late to avoid his attendance, so this court felt that he was entitled to his fee or part thereof. He would have had to make arrangements to attend the assessment and the miscommunication was no fault of his. Consideration was also given to the submission of counsel for the defendant as to the failure of the claimant to comply with the pre-action protocols. However, Dr Toby had availed himself for cross-examination so should not be deprived of his cost of attendance or at least part thereof. Dr Toby would be allowed the sum of \$6,000.00 for his attendance, which was added to the receipted amounts of other items of special damages to give a total of \$23,829.53.

**ORDER**

13. It is ordered that the defendant do pay the claimant as follows:
- i. General damages in the sum of \$60,250.00 with interest at the rate of 2.5% per annum from March 02, 2017 to November 06, 2019;
  - ii. Special damages in the sum of \$23,829.53 with interest at the rate of 1.5% per annum from January 30, 2013 to November 06, 2019;
  - iii. Costs as assessed in the sum of \$12,159.34.
  - iv. Stay of execution of twenty-eight days.

**Martha Alexander**

**Master**