

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2017-02427

BETWEEN

LENA RAMESAR

Claimant

AND

CURT DANCLAR

First Defendant

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Defendant

BEFORE MASTER MARTHA ALEXANDER

Date of delivery: January 31, 2022

Appearances:

For the Claimant: Mr Vishnu R Bridgemohan instructed by Messrs Dipnarine Rampersad

For the Defendants: Ms Trisha Ramlogan instructed by Ms Janine Joseph

DECISION

INTRODUCTION

1. The claimant in this matter was a woman police officer with the Trinidad and Tobago Police Service. On August 27, 2013, the claimant was a passenger in motor vehicle registration number PCJ 9130, which was involved in an accident along the Priority Bus Route ("PBR"). PCJ 9130 was a marked police vehicle, which was being driven by the first defendant, the servant and/or agent and/or authorized driver of the second defendant.

2. It would appear that the first defendant was driving in a westerly direction along the PBR, and when he reached near the Maloney traffic lights, the front tyre blew out. This caused the first defendant to lose control of the said vehicle, causing it to skid off the roadway, and collide with a tree before landing in a ditch. The accident had occurred around 1:50 pm and the claimant pleaded that, as a result, she suffered personal injuries, losses and damages.
3. The claimant sought compensation¹ for personal injuries and consequential loss together with interest and costs and obtained judgment on June 11, 2019 for damages. The trial of the assessment of damages proceeded on March 24, 2021.

INJURIES

4. The claimant pleaded cervical, lumbar and thoracic spinal injuries and provided numerous medical reports into evidence, on the strength of which she set out a case for continuing future medical loss. Her amended statement of case identified her injuries, based on MRIs of her spine as follows:
 - Mild cervical spondylotic changes with disc desiccation and anterior osteophytic lipping at the C5/6 level and to a lesser extent at the C6/7 level;
 - A thin low signal line at the anterior superior margin of the C5 vertebral body suggestive of changes secondary to a limbus vertebrae with accessory ossification center;
 - At the C3/4 level there is moderate posterior disc protrusion with focal indentation of the anterior epidural fat and thecal sac by a 5mm (AP) high T2 signal area.

MRI of the lumbar spine and thoracic spine showed:

- A mild lumbar spondylotic changes with mild disc desiccation at the L3/4 and L4/5 levels;

¹ Amended Claim Form and Statement of Case filed on October 03, 2017

- Mild broad base diffuse annular bulge indenting the epidural fat in the anterior spinal canal at the L3/4, L4/5 and L5/S1 levels;
 - A small 4mm low T1/high T2 signal area adjacent to the anterior aspect of the right L4/5 facet joint – a small synovial cyst;
 - The right S1 and S2 nerve roots at the L5/S1 level share a nerve root sleeve consistent with a conjoined nerve root.
 - Compressed disc in the thoracic region causing impingement of the nerve to the upper thoracic cage and the upper abdominal cavity causing pain, tightness and cramping sensation;
 - Severe disc bulge of C4/C5, C6/C7 and L4/L5 and L5/S1;
 - A well-defined 1.2cm high T1 and T2 signal area in the posterior superior aspect of the T7 vertebral body consistent with a vertebral body haemangioma;
5. The claimant pleaded that the injuries outlined above were taken from MRIs done after the accident whilst she was pursuing outpatient treatment from Dr Billy Mohess. She pleaded that she first sought medical care on the date of the accident (i.e. August 27, 2013) at the Arima Health Facility, Accident and Emergency Department where she complained of left sided chest pain, left hip pain and upper back pain. It was unclear if any X-rays or imaging tests were done but she was examined and found to have soft tissue injury so was discharged on medication that evening.
6. She pleaded that, as an outpatient, she sought chiropractic rehabilitative care from Dr Billy Mohess' Clinic on September 30, 2013 where she complained of continuing pain so X-rays of her neck/cervical spine and lumbar spine were done. These revealed severe disc bulges of the C4/C5, C6/C7 and L4/L5 and L5/S1. It was her pleaded case that she was placed on a course of rehabilitative therapy. She was then re-evaluated and an MRI scan showed a compressed disc, causing nerve root impingement to the thoracic cage and upper abdominal cavity. Her case was that she underwent two other phases of therapy, the last to strengthen her entire spine and prevent regress to her previous weakened state. These phases of

therapy spanned over two years and at the end of it, she was assessed with an 80% permanent partial disability.

THE EVIDENCE

7. Three witnesses gave evidence on behalf of the claimant, namely, Mr Curtis Eastman, Mrs Ferzila Ali-Charles, and the claimant herself. She did not call any medical doctors to give evidence but numerous medical reports and receipts were submitted into evidence. Hearsay notices were filed on March 29, 2019 and on March 9, 2020 on behalf of the claimant for numerous documents to be admitted into evidence.

a. LENA RAMESAR

8. The claimant's evidence was that upon being injured, an ambulance took her to the Arima Health Facility where she stayed until 7pm before discharge. Thereafter, at home she was confined to her bed, as she could not move and was in constant pain in the upper and lower regions of her back, her hip and chest. This made it difficult for her to sit or stand for long periods.
9. It was the claimant's evidence that she could no longer sleep comfortably, as she required multiple pillows for support and was unable to stand to shower. Everyday acts such as brushing her teeth, wiping herself or stretching to shampoo her hair became difficult. Given the level of pain and discomfort, she visited several medical professionals for care and attention during 2013 and 2014². As a part of her care package, she received rehabilitative care and long therapy and at some point got an infection that required treatment. Her treatment continued into 2016 and due to the unceasing pain that she was experiencing, laminectomy surgery was recommended at a cost of \$65,000.00.

² Dr Avinash Deonarine on September 01 2013; Dr Paramanand Maharaj; Dr Billy Mohess; Dr Peter Kowlessar on December 11, 2013; Dr Anthony Pierre on May 01, 2014 and Dr Henry Bedaysie July 31, 2014; Dr Vinod Mahabir; Dr Reddy, Dr Aziz, Dr Hayden and Dr Ramcharan

10. It was the claimant's evidence that because she could not take care of herself, she had to hire domestic help for assistance with showering, wiping, cleaning herself, putting on clothes, cooking, cleaning, washing and supervision to brush her teeth. She did not own a vehicle and to get to different places, she had to hire private transportation. She averred to being unable to function as she previously would have and cooking, cleaning and travelling have become a painful burden. She no longer enjoys her hobby of gardening or playing with her grandchildren.

b. MR CURTIS EASTMAN

11. Curtis Eastman stated that the claimant hired him to transport her to various medical appointments during the period August 2013 to May 2015. It was his evidence that he would drive her to and from the police hospital at the St James Barrack, to Dr Deonarine's office located in Arouca, to Medical Associates in St Joseph, to Dr Billy Mohess' office in Arima and to Woodbrook for MRI services. He avowed that each visit would range from half day to sometimes an entire day upon which he would charge her accordingly. Expenses incurred here were pleaded and receipts were produced to support such.

c. MRS FERZILA ALI-CHARLES

12. Ms Ali-Charles stated that she was a housewife who, occasionally, engaged in various trades to earn additional cash. One of those trades was transportation. It was her evidence that she provided transportation services to the claimant during the period of August 2013 to December 2016.

GENERAL DAMAGES

13. The standard analysis used by assessors to determine compensation for personal injuries begins with ***Cornilliac***. These criteria are: (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. The ***Cornilliac*** heads remained in this assessor's contemplation throughout, as the evidence adduced was examined.

14. The nature and extent of the injuries sustained by the claimant were not disputed and the court accepted them as pleaded and supported by the numerous medical reports in evidence. It was accepted that she suffered spinal injury, and disc compression that caused an impingement of the nerve of the upper thoracic cage and the upper abdominal cavity, causing pain, tightness and a cramping sensation. Indeed, the parties were not at loggerheads on the reports that spoke to swelling, tenderness and pain in the Cervical Musculature of the Rhomboid, Trapezius and Scalenus; the nerve compression due to the disc compression; and the tension in the neck that created a pulling effect at the base of the skull and to the temple of the forehead³. Further, there was no dispute so the court accepted Dr Bedaysie's findings that her injuries were consistent with C3/4 Radiculopathy and L3/4, L4/5 and L5/S1 Radiculopathy⁴. Dr Bedaysie recommended L3, L4 and L5 Lumbar Laminectomy surgery with discectomy, undercutting facetectomies, foraminotomies and facet rhizotomies as definitive management of the claimant's case. The Arima Health Facility's documented that she suffered with a neurological deficit to the left side of her body and an intracranial lesion⁵. The claimant was diagnosed with severe disc bulge of the L4/L5 and L5/S1 lumbar complex with associated myospasms; and she was awarded an 80% permanent partial disability.

15. The gravity of the resulting physical disability suffered by the claimant finds expression in the 2014 medical reports of Dr Lennox Anthony Pierre⁶. She was said to remain with cervical spondylosis; major vulnerability with the cord at C3 C4 requiring likely surgery; numbness of hands; carpal tunnel syndrome; a cracking of the neck on turning to the left; tingling under the left foot; sensitivity to touch at L5 and needed to wear a neck collar;

³ Dr Billy Mohess report dated October 17, 2014

⁴ Dr Henry Bedaysie's report dated May 16, 2014; see also Dr Ravi Reddy's report dated October 29, 2014 which revealed radiculopathy of the left upper and left lower limbs

⁵ Referral Form dated May 23, 2014

⁶ Reports dated March 28, 2014, May 01, 2014

16. As regards her pain and suffering, the court accepted the claimant's evidence that she has remained in the throes of pain since the accident. The fact that she has been in continuous pain finds support in the medical reports which documented the pains in her neck radiating down the left hand; in her low back and radiating down the left leg; pain in her chest, hip, shoulder blade, back, facet joint pain, ribs and generalized body pains.
17. Evidence of her loss of amenities was accepted. The claimant put forth a case that prior to the accident she was an able bodied, energetic, healthy person, with zest for life, who enjoyed socializing with friends and family. Her injuries resulted in her being unable to engage in social activities to the same extent as before. She has now become anxious, withdrawn and unhappy. She lost her ability to do gardening; could not bend to weed or stand for long periods to water plants, pull the hose or clean the garden. She has lost the ability to play with her grandchildren, as she was unable to lift them. The court did not wholly accept this evidence of inability to enjoy or play with her grandchildren based on not being able to lift them. In the view of the court, the loss of the ability to lift her grandchildren was a huge one but that would not exclude her enjoyment of them or ability to play with them. Some games would be impossible to play but not all fun games. The court accepted that she would have had challenges with cooking, cleaning, travelling and liming.

COMPARATOR CASES

16. This court took into account the cases put forward by both sides.

Claimant's Cases

- i. ***Evans Moreau v The Port Authority***⁷ where a 43 year old received a lash to the head and suffered pain in the neck, radicular symptoms in both arms, cervical spondylosis, cord and nerve compression of C4/5 and C5/6, back

⁷ *Evans Moreau v The Port Authority* CV2006-03958 delivered by Best J on September 29, 2010

pains, weakness in both arms and difficulty in climbing stairs, inability to sit and stand for short periods. The claimant was awarded \$200,000 in 2010.

- ii. ***Kester Hernandez v AG***⁸ where a 19-year-old recruit in training with the Trinidad and Tobago Defence Force sustained injuries in an accident while in the dormitory located at Tetron Barracks, Chaguaramas. He was in the process of lacing up his boots when one of his trainers, pushed a steel locker onto his back causing serious personal injuries. He was awarded an 80% permanent disability to perform his job. He suffered annular disc bulge of the L5/S1 lumbosacral spine, which caused displacement of the traversing left S1 nerve root, L5/S1 radiculopathy and decreased power left ankle dorsiflexion. He experienced spasm in the entire back, cramps in both legs radiating down to the toes, pain in the neck, wrist, groin area and left hand, headaches and difficulty sleeping. He was unable to sit or stand for more than 10-15 minutes and sexual intercourse was painful. He was awarded general damages of \$300,000 in 2013.

Defendants' Cases

- i. ***Andre Marchong v T&TEC***⁹ where the claimant a 27-year-old was at work and fell from a swivel chair, sustaining injuries. He was diagnosed with lumbar spasm and soft tissue injury. The evidence pointed to him experiencing discomfort, tenderness over the lower spinae erecta muscles just above the iliac crest and loss of lumbar lordosis. There was no neurological deficits in his lower limb and no fractures. Subsequent tests revealed a narrowing of the lateral recess at the L4-L5 with possible impingement of the traversing L5 nerve root and disc degeneration at the L5-S level. The claimant was given a 40% ppd and was awarded general damages of \$60,000 in 2010.

⁸ *Kester Hernandez v AG* CV2011-01821 delivered by Master Alexander on February 15, 2013

⁹ *Andre Marchong v T&TEC* CV2008-04045 delivered by Jones J on May 21, 2010

- ii. ***Lennard Garcia v PLIPDECO***¹⁰ where the claimant, a 60-year-old retired worker, slipped and fell on oil that had spilled onto the floor from a crane at the defendant's workplace, thereby causing him to sustain injuries. He suffered soft tissue injuries to the lower back, right shoulder and right knee and remained with persistent right-sided sciatica and degenerative spinal stenosis at L4-5 and L5-S1 levels. The palm of his left hand was having a triggering of his left middle finger as a result of the injury to the palm; mild prolapses of the L3-L4, L4-L5 and L5-S1 discs; mild spinal canal stenosis at L3-L4, L4-L5 and L5-S1 areas of the discs; and some nerve root entrapment on the left side. The medical evidence pointed to pain when sitting, standing and walking; weakness in his left leg and wasting of his left quadriceps muscle from the nerve being pinched by the prolapsed disc and that he would get moderate to severe lower back pain for the rest of his life. An award was made of \$80,000 in 2013.
- iii. ***Ramesh Sam v Tropical Power Limited***¹¹ where the claimant, a 36-year-old truck driver, was climbing up a ladder at the side of a work 3-ton truck, to pump diesel into a steel tank bolted down on its tray when he fell off sustaining injuries. He suffered from diffuse annular bulging at the L4/L5 level, with narrowing of the lateral recess bilaterally; lumbar disc herniation and severe nerve root impingement; L4-L5 disc bulge; bilateral stenosis causing irritation of the L5 and L4 nerve roots. He also experienced diffused severe tenderness with mild swelling and severe paraspinal muscle spasms; severe restriction of movements at the lower spinal region; mild swelling of the left knee and severe localized tenderness at the medial femoral condyle with mild effusion. There was evidence also of spondylotic changes in the lower lumbar regions. There was evidence that by the time of the assessment, he had healed substantially and was inflating the impacts of his injuries and lingering disabilities. He was awarded general damages of \$75,000 in 2013.

¹⁰ *Lennard Garcia v PLIPDECO* CV 2010-03061 delivered by Master Alexander on September 19, 2013

¹¹ *Ramesh Sam v Tropical Power Limited* CV2008-03126 delivered by Alexander M on May 20, 2013

- iv. ***Ferosa Harold v ADM Import and Export Distributors Limited***¹² where a 44-year-old claimant who went to the defendant's business place slipped on a mixture of blood and water and fell onto the concrete floor suffering injuries. The bloody water was emanating from an unattended trolley on which meat was defrosting. She suffered soft tissue injury to the neck, lumbar spine and left shoulder with mild left neck tenderness over the C6, C7 vertebrae and left base of the neck extending to the top of the left shoulder, with full range of neck and shoulder movements. There was tenderness in the left wrist over the anterior aspect with 80% of full range movements; in the lower back over the L5-S1 vertebrae and left sacroiliac joint with a mild scoliosis curve visible on her thoracolumbar spine; over the adductor muscles of the right thigh, associated with 80% full range of right hip movements; over the anterior aspect of the left knee and left ankle; and over the anterior and lateral aspects of her left foot. She was awarded general damages of \$60,000 in 2015.
- v. ***Carolyn Fleming v AG***¹³ the claimant was sitting on a chair at her desk at work, performing clerical duties when it collapsed beneath her, causing her to fall to the ground, and to suffer injuries on both upper and lower back radiating towards her legs, L4/5 S1 nerve impairment and permanent impairment of 25%. She was awarded general damages of \$80,000.
- vi. ***Dexter Sobers v AG***¹⁴ where a claimant suffered with loss of lumbar lordosis (loss of the curvature of the spine); disc desiccation and annular tear in the L4/5 and L5/S1 levels; diffuse disc bulge with no neural compression; and diffuse disc bulge with small disc protrusion impinging on left S1 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. His power, sensation and

¹² *Ferosa Harold v ADM Import and Export Distributors Ltd* CV2009-03728 delivered by Alexander M on April 17, 2015

¹³ *Carolyn Fleming v AG* CV2007-02766 delivered by Alexander M on May 21, 2012

¹⁴ *Dexter Sobers v The Attorney General of T&T* CV2008-04393 delivered on May 27, 2011

reflexes were within normal limits and he was assessed with a 20% permanent partial disability. He was awarded \$80,000 in general damages.

- vii. ***Reshma Choon v Industrial Plant Services Ltd***¹⁵ where for injury to the spine at L5 S1 requiring surgical removal of disc and where there was substantial recovery, an award was made of \$90,000; as adjusted to December 2010 to \$102,841.

17. In our case, the claimant was 51 years old at the time of the accident, received extensive injuries and was awarded an 80% permanent partial disability. The parties did not dispute that she was seriously injured and suffered untold and unrelenting pain and losses. Indeed, this was not a case where the litigation was starved of medical reports and other documentary evidence or that the court found the claimant to lack credibility. The dispute occurred with the quantum, which this court considered would be influenced by the principle of fair and reasonable compensation. Counsel for the defendants suggested, however, that the claimant ought to get an award in the range of \$80,000 to \$95,000 despite the fact that she relied on cases where the awards were higher for less extensive and less severe injuries such as ***Reshma Choon***. There was no justification given for this low range of awards or any explanation as to why a claimant with such severe and debilitating injuries¹⁶ should get a low award. Indeed, the range of awards suggested by counsel for the defendants pitted a claimant with significantly more severe injuries against other claimants with less serious injuries and recommended a lower quantum be given to the more severely injured claimant. The court did not accept this line of reasoning by the defendants' counsel or her authorities on the lower side of the assessment scale. It sat to do justice between the parties, which required the granting of adequate and fair compensation.

18. Having accepted that the present claimant experienced a high level of pain and suffering and that the defendants' comparators were not appropriate or reasonable, little reliance was placed on them. It is not fair, appropriate or reasonable to place cases before an assessing court simply because some of the injuries might be similar.

¹⁵ *Choon v Industrial Plant Services Ltd* CV2006-00574 delivered by Smith J (as he then was) in 2010

¹⁶ Dr Billy Mohess and Dr Ravi Reddy awarded 80% permanent partial disability

That approach will not help an assessor sitting to bring the recipient of a tort back to the position that she would have been in prior to its commission. This claimant received severe injuries from which she suffered excruciating pains and which shrunk her ability to live her life as she previously did. All her injuries must be considered; her pain must be considered and her loss of the enjoyment of life must be taken into account in arriving at an award for general damages. The cases provided by the claimant's counsel offered a better guide but can also be distinguished. In ***Kester Hernandez*** the injuries were more severe, as shown by the level of medical evidence provided, and the disability award was permanent and not partial as in the current case. I have considered the inflationary trends and other principles of assessment and award the claimant \$220,000 for pain and suffering and loss of amenities.

SPECIAL DAMAGES

19. So much has been stated and re-stated about special damages that failure to rehash known principles can be easily excused¹⁷. It was considered necessary only to state at this point that special damages would arise as a direct result of the accident and not cover any fanciful expenses that are unrelated or not pleaded. To determine the award for special damages, documentary proof was important but a fair court would also be mindful about how it should approach the degree of strictness it would require¹⁸.

a. Loss of Earnings

20. The claimant claimed that prior to the accident she was a woman police corporal, earning a monthly salary of \$13,631 (net \$10,536). She supported this claim with a letter dated February 13, 2017 from the Trinidad and Tobago Police Service at the hand of the commissioner of police. She then pleaded that, as a result of the accident, she lost \$329,250 in earnings for the period April 2014 to January 2017 at \$13,631 per month. She submitted one salary slip for January 31, 2017 showing

¹⁷ *Mario Pizzeria Limited v Hardeo Ramjit*¹⁷ CA 156 of 2003 where Kangaloo JA described special damages as those which the law will not infer from the accident but must be claimed specifically and proved strictly

¹⁸ *Anand Rampersad v Willies Ice Cream* CA Civil 20/2002

that she earned salary for January 2017. This was in clear contradiction of her claim for loss of salary for the month of January 2017. Based on the evidence, any loss of earnings would have been up to early December 2016 and not as pleaded up to January 2017. In her evidence, she admitted that she actually received salary from December 07, 2016 until her retirement in August 17, 2017. She stated that her loss of salary would be for the period April 2014 to December 07, 2016. However, the documentary evidence contradicted this statement.

21. There was evidence that during her sick leave period, she received two letters from her employer advising that she had been on continuous sick leave and her salary will cease from April 30, 2014. By this evidence, it was taken to mean that her actual loss of earnings would have commenced from **May 01, 2014 to December 06, 2016**, since she confirmed a resumption of salary payments from December 07, 2016.

22. There was some conflict in the evidence given during cross-examination and, pointing to this, counsel for the defendants argued that this claim was not properly proven so should be dismissed. This argument was rejected, as unreasonable, unfair and against the weight of the evidence. The claimant stated clearly that she was paid from December 07, 2016 to August 17, 2017 i.e. retirement date. There was evidence also that the claimant decided to retire on August 17, 2017. However, being aware that she had 171 vacations days still to be used, she proceeded on vacation leave from August 07, 2016 to August 17, 2017 prior to her retirement. She did not receive her salary from May 01, 2014 to December 06, 2016 and remained employed with the police service during that period. During the period of her employment with the police service, she should have continued earning her monthly salary up to the date of her compulsory retirement on August 17, 2017. She would be entitled to loss of earnings from May 2014 to December 06, 2016 at a net monthly salary of \$10,536 i.e. 31 months and 6 days. Loss of earnings is awarded in the sum of \$328,655.22.

b. Transportation

23. The claimant gave evidence that she did not own a vehicle and she required transport to go to various doctors and hospitals, therapy, pharmacies and to deliver her sick leave certificates at work.
24. The claimant claimed that she utilized the services of Mr Curtis Eastman during the period of August 2013 to May 2015 and spent a total of \$16,200 during this period. Mr Eastman confirmed that he transported the claimant to various medical hospitals for her medical appointments, to private doctors and to the police hospital. Both the claimant and Mr Eastman confirmed that he was paid for his services and receipts were issued. These receipts were examined and found to be detailed, containing *inter alia* a description of the transportation service provided, the date and the signature of Mr Eastman. She is awarded \$16,200 for transportation provided by Curtis Eastman.
25. Evidence was provided also that the claimant utilized the services of Mrs Ferzila Ali-Charles during the period August 2013 to December 2016 to transport her to physiotherapy. The claimant averred that she spent a total of \$65,850 during this period for transportation and Mrs Ferzila Ali-Charles gave evidence that the claimant paid for this service and provided receipts. The defendants' counsel made heavy weather of the claimant's failure to warn them about this claim, which effectively deprived them of knowing that part of the case they had to answer. Counsel for the claimant asked that although the rule requiring special damages to be pleaded, specifically, was not followed, this failure did not prejudice the defendants and the sum should be allowed. This invite by counsel to ignore the rule on special damages was declined graciously by this court. Even more unacceptable was counsel's argument that the failure to plead and to particularize this claim was cured by proof through receipts. That has never been the rule on special damages and it was difficult to understand how counsel could justify a claim that was without a legal platform. Counsel also argued that the sum could be awarded as the defendants did not serve a notice to admit requiring the claimant to prove the authenticity of the receipts at trial: **Rule 28.18 CPR.**

Accordingly, counsel submitted that the defendants must be deemed as having admitted the authenticity of the receipts. This court rejected the attempt to justify a claim that was not pleaded by pointing to an omission of the defendants to challenge receipts. The defendants' omission simply did not absolve the claimant from abiding by the rule as to special damages.

26. This claim for transportation provided by Mrs Ali-Charles was huge and it was expected that it would have been pleaded, particularized and proved. It was incumbent on the claimant to follow the rule on special damages, and in this particular context where the sums were exorbitant this failure to do so would have had a huge impact on the case to be answered. The claimant had two bites at the cherry in the filing of her claim and it was expected that at the point of the amended claim, she would have gotten it correct. It was unacceptable that counsel for the claimant would so glibly dismiss a pleading requirement by saying to this court that proof was provided so a pleading could be omitted and the award made. Proof alone, without a pleading and the giving of proper particulars of a claim for special damages, would not prepare a defendant for the case he has to answer. Litigants and their attorneys should know better than to ambush defendants at the assessment with proof of a "claim" that was not particularized, especially when the sum was exorbitant and knowledge of it would have been in the possession of the claimant at least when the amended claim was filed. This sum is denied for lack of proper pleading/particulars.

c. Domestic Work

27. The claimant claimed, particularized and provided cogent evidence via receipts for the domestic services of both Kathy Joseph and Melissa Hosein Phillip. The defendants agreed that the claim was proved satisfactorily in the sum of \$49,000.

d. General Maintenance

28. The claimant made a claim for general maintenance work and provided receipts in the sum of \$31,500. During cross-examination, the claimant seemed confused when questioned about the services provided by Mr Neptune. She stated that he

came to work in her yard for two weeks and would whacker one day and spray another, which she then clarified by saying he worked “for ten days for the month’s work.” She also seemed uncertain about what this “general maintenance work” in the yard involved as she was not at home. When asked about why she required someone to clean or do general maintenance of her yard every day for two weeks, she was unable to give a clear answer saying only, “that was the case I was not paying much attention.”

29. This court had serious concerns with this claim and was not satisfied that it was reasonable or justifiable on the evidence. The uncertainty demonstrated in her responses to clear questions from the court suggested that it was a manufactured claim. She appeared to be almost unaware that she had claimed such an exorbitant sum and that she would be questioned on it. The receipts covered 21 months from April 2014 to December 2015. In the court’s view, the sum claimed for general maintenance work was inflated and the defendants stated that a reasonable award for general maintenance was \$9,000 for six months. In the court’s view, a sum of \$500 per month for the period claimed would be reasonable. The claimant is awarded \$10,500 for general maintenance work.

e. Medical Expenses

30. The claimant has provided receipts for the monies expended on doctors’ visits in the sum of \$9,300, which was allowed. She also claimed cervical traction therapy of \$12,000 for which an invoice was provided. During cross-examination, she admitted that Police Administration paid for this expense. It was disallowed.

f. Decompression Therapy

31. The claimant made a claim for decompression therapy in the sum of \$51,300 and \$73,300, which totalled \$124,600. She provided proof and is awarded \$124,600.

g. Future Loss (Surgery)

32. The claimant made a claim for future surgery, which was supported by an invoice issued by Dr Bedaysie in the sum of \$61,500, as his estimated surgeon’s fees and

for the use of his nerve conduction machine. Another invoice detailed the cost for the operating theatre, drugs, bed etc. in the sum of \$21,000. Future surgery is allowed in the sum of \$82,500.

DISPOSITION

33. It is ordered that the defendants do pay to the claimant as follows:
- a) General damages in the sum of \$220,000 with interest at the rate of 2.5% per annum from July 17, 2017 to January 31, 2022.
 - b) Special damages in the sum of \$538,255.22 with interest at the rate of 1.25% per annum from August 27, 2013 to January 31, 2022.
 - c) Future surgery in the sum of \$82,500
 - d) Costs in the sum of \$101,170.94.

Martha Alexander

Master of the High Court

MARTHA ALEXANDER
MASTER OF THE SUPREME COURT OF
TRINIDAD AND TOBAGO