

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

S690 of 2004

BETWEEN

NAZIHAH MOHAMMED

Plaintiff

AND

JAMID MOHAMMED

First Defendant

AND

JAIRAM BHOLA

Second Defendant

AND

CAPITAL INSURANCE LIMITED

First Co-Defendant

AND

TRINIDAD AND TOBAGO INSURANCE LIMITED (TATIL)

Second Co- Defendant

Before: Master Margaret Y Mohammed

Appearances:

Ms K Jackson for the Plaintiff

Mr R Katwaroo for the First Defendant and First Co-Defendant

Mr R Gosine for the Second Defendant and Second Co-Defendant.

DECISION- ASSESSMENT OF DAMAGES

INTRODUCTION

1. The plaintiff sustained injuries and other loss, from a motor vehicular accident on October 28, 2000, while standing at Number 3 Scale Junction, Barrackpore. The first and second defendants were the owners and drivers of the 2 motor vehicles which were involved in the accident and the first co-defendant and second co-defendant were the respective insurance companies. The court apportioned liability for the plaintiff's injuries 75% against the first defendant and first co-defendant and 25% against the second defendant and second co-defendant. The issues to be determined at the assessment of damages were (a) whether the plaintiff has proven her loss for special damages and if not should she be awarded the sum of \$5000 as nominal damages instead; and (b) what is a fair award to compensate the plaintiff as general damages for her pain and suffering, loss of amenities and loss of pecuniary prospects.
2. The plaintiff has proven her loss as special damages in the sum of \$1,798.80 and I so award with interest at the rate of 6% per annum from October 28, 2000 to September 26, 2012. For the reasons set out hereafter I award the sum of \$100,000 as general damages with interest at the rate of 9% per annum from May 24, 2004 to September 26, 2012. The defendants and co-defendants are to pay the aforesaid damages and costs of the assessment to be taxed in default of agreement certified fit for advocate attorney to be apportioned in the same percentages as liability.

HAS THE PLAINTIFF PROVEN HER CLAIM FOR SPECIAL DAMAGES?

3. The particulars of special damages pleaded were: (a) medical bills and continuing \$3,500; (b) Medication (from accident to present i.e. for 3 years and 3 months at \$500.00 per month and continuing) \$20,000; (c) medical reports \$75.00; (d) certified copy of motor

vehicles registration numbers PAP 5136 and TAE 5848 \$40.00 ; and (e) travelling and continuing \$500.00.

4. It is settled law that special damages must be pleaded, particularized and be “strictly” proved¹ and the burden is therefore on the plaintiff to prove her loss. In **Bonham v Hyde Park Hotel**² which was adopted in **Grant v Motilal Moonan** Bernard CJ had this to say:

“ Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage. It is not enough to write down the particulars, so to speak, throw them at the head of the Court saying ‘this is what I have lost; I ask you to give me these damages.’ They have to prove it”.

5. The nature of the evidence to be adduce to satisfy the court to prove the special damages was recently addressed in **Ramnarine Singh and anor v The Great Northern Insurance Company Limited and Johnson Ansola**³ where Mendonca JA stated at paragraph 97 that:

“ From these cases it seems clear that the absence of evidence to support a plaintiff’s viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff’s claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reasons.”

6. The plaintiff has only provided documentary evidence of \$850.00 for medical bills, \$833.80 for medical expenses, \$75.00 for medical reports and \$40 for certified copies of

¹ Grant v Motilal Moonan Ltd (1988)43 WIR 372 per Bernard CJ

² (1948) 64 TLR 178

³ Civ Appeal No 169 of 2008 and Civ Appeal 121 of 2008

motor vehicles registration numbers PAP 5136 and TAE 5848. In this regard, I am satisfied that these claims have been proven and award the total sum of \$1,798.80.

7. The viva voce evidence in support of the other sums claimed for special damages, for which no documentary evidence, has been provided is limited at best. Kyroon Mohammed, the plaintiff's mother testified at paragraph 47 of her witness statement that:

“ From the date of the accident to today's I have incurred a lot of medical expenses as a result of the said accident. However, Nazihah has destroyed the majority of the receipts in support.”

8. Apart from this evidence being challenged by the defendants, there was no evidence from this witness or any other witness of the quantum spent on medical expenses. This evidence failed to assist the court in determining the appropriate quantum which was expended by the plaintiff for the medication and medical expenses for which no receipts were provided and it is for this reason I have not been satisfied that the other sums claimed as medication and medical expenses have not been proven. Further, there was no evidence adduced to support the claim for travelling for which I make no award.

WHAT IS A FAIR AWARD TO COMPENSATE THE PLAINTIFF AS GENERAL DAMAGES ?

9. **Cornilliac v St Louis** ⁴ has set out the principles which I am to be guided in assessing a claim for general damages namely: (a)The nature and extent of the injuries sustained; (b)The nature and gravity of the resulting physical disability; (c) Pain and suffering; (d) Loss of amenities; and (e)The extent to which pecuniary prospects were affected. Other similar cases are also guidelines for the possible range of an award of damages⁵

⁴ (1966) 7 WIR 491

⁵ Aziz Ahamad v Raghubar 12 WIR 352

The nature and extent of the injuries sustained and the nature and gravity of the resulting physical disability

10. The plaintiff suffered a gash to her forehead and lacerations over various parts of her body. She also suffered with a neck strain. She was hospitalized for approximately 10 days. According to the medical report of Dr Adam dated December 21, 2000 the plaintiff suffered multiple bruises and cuts to her right face, right peri-orbital upper lip, chin and right hand. She did not suffer loss of consciousness and X-rays and CT scan showed right cerebral contusions. Dr Adam diagnosed the plaintiff with post contusion syndrome, a right supra-orbital nerve injury and neck strain one month after the accident. Two months after the accident Dr Adam reported that a repeat CT scan showed a clearing of the contusion and that there were brain softening with post-traumatic changes in the right hemisphere⁶. In his last medical report⁷ on the plaintiff Dr Adam assessed the plaintiff's disability from a neurological position as 30%. Dr Adam's medical report of December 21, 2000 supported the plaintiff's pleading of becoming forgetful and worrisome as a result of her injuries. I accept Dr Adam's findings relating to the plaintiff save and except the plaintiff's failure to suffer a loss of consciousness.
11. Dr Adam's finding of no loss of consciousness was contradicted by the plaintiff who stated that she did not remember the accident nor being in the hospital⁸. This was corroborated by the plaintiff's mother, Kyroon Mohammed⁹ and her father Ogeer Mohammed¹⁰, both of whom gave evidence in support of the plaintiff's claim for damages. Despite this contradiction I accept the plaintiff's evidence and find that she did suffer a loss of consciousness after the accident.
12. Although the plaintiff pleaded possible compound fracture of her right frontal bone and anterior cranial fossa basal skull fracture, the medical reports of Dr Adam dated

⁶ Medical report of Dr Rasheed Adam dated January 17, 2001 tendered into evidence as "RUA 2"

⁷ Medical report of Dr Rasheed Adam dated April 21, 2004 tendered into evidence as "RUA 3"

⁸ Paragraph 4 of witness statement of Nazihah Mohammed filed July 28, 2011

⁹ Paragraph 20 of witness statement of Kyroon Mohammed filed July 28, 2011

¹⁰ Paragraph 17 of witness statement of Ogeer Mohammed filed July 28, 2011.

December 21, 2000, January 17, 2001 and April 21, 2004 failed to confirm any evidence of fractures. In the absence of supporting medical evidence I find that the plaintiff did not suffer any fractures.

13. The plaintiff did not plead any injuries which affected her mental condition. She failed in her attempt to lead evidence of her psychiatric condition and although a witness summary was filed for Dr Karen Ghany, psychiatrist, the latter was not called to give evidence. As such the plaintiff's mental condition was not a factor to be considered by the court in determining a fair award for general damages.
14. During the plaintiff's hospitalization she required assistance with her personal hygiene and to get dressed. After she was discharged the plaintiff still could not attend to her basic needs. Her mother assisted the plaintiff in brushing her teeth, and personal hygiene. This continued for about 5 months i.e. until March 2001 when she resumed classes.
15. The plaintiff was 21 years at the time of the accident and a final student at the School of Accounting and Management completing a degree in Information Systems and Management external to the University of London. Despite the injuries from the accident, the plaintiff was able to pass her final exams in May 2001. By January 2002 she was able to assume duties as a teacher at the ASJA Girls College in Barrackpore which she left shortly thereafter. It is clear that despite the plaintiff's injuries she was able to make a remarkable recovery within a relatively short period of time (October 2000 to May 2001).
16. The plaintiff gave evidence that her drastic weight loss and physical appearance as a result of the lacerations¹¹ made her feel uncomfortable soon after returning to classes. I accept that as a young woman she would have felt some degree of embarrassment but in my opinion this did not have a negative impact on her since she was able to resume classes and successfully complete her final exams.

¹¹ Paragraph 10 of witness statement of Nazihah Mohammed filed July 28, 2011

Pain and suffering

17. The plaintiff endured severe headaches and pain to her neck and shoulders from the date of the accident to present. The intensity of the headaches which she endured on a daily basis prevented her from attending classes for a 5 month period. Although she resumed her classes by the end of 2001¹² she was still having intense headaches which have continued to the date of the assessment. The headaches prevented her from performing simple household chores during the day¹³. Dr Adam noted in his report dated December 21, 2000 that the plaintiff complained of headaches occurring nearly daily lasting minutes to hours from the frontal area to the vertex. He also noted that she had some pain in her neck radiating to the shoulders. She was treated with Stemetil, Panadol and Vitamins. However the plaintiff admitted that despite the headaches she refused to go to the doctors since she was of the view that the doctors did not appreciate her problem¹⁴.

18. I have no reason to doubt that the plaintiff suffered pain in her neck and shoulder at the time of the accident and shortly thereafter. I also accept that this plaintiff suffered with headaches from the date of the accident to the date of the assessment. However I am of the view that the intensity of the pain in her neck and shoulders and the headaches must have diminished over the years since the plaintiff was able to still write and pass her final exams. In my view if the intensity of her pain in her neck and shoulders and headaches were not reduced then the plaintiff would have continued seeking medical attention to alleviate her pain and or continue taking medication for relief.

Loss of amenities

19. The evidence to demonstrate any loss of amenities by the plaintiff as a result of her injuries was very limited. The plaintiff stated that :

¹² Paragraph 15 of witness statement of Nazihah Mohammed filed July 28, 2011

¹³ Paragraph 6 of witness statement of Nazihah Mohammed filed July 28, 2011

¹⁴ Paragraph 20 of the witness statement of Nazihah Mohammed filed July 28, 2011

“ My quality of life have greatly changed, prior to the said accident I used to accompany my parents to the grocery and the store but now I do not feel like leaving the house. I used to assist with the household chores and cooking but no longer feel like helping out. I do not visit and or go out with my friends nor do I drive¹⁵. ”

20. The plaintiff’s father, Ogeer Mohammed gave evidence that:

“Nazihah before the accident often socialized with her friend such as, going to the beach, going to Cinema and visiting her friends’ homes. Her friend also visited her home. She has now withdrawn herself from those activities and confines herself to her room whenever her friends visit her.”

21. The plaintiff’s mother Kyroon Mohammed corroborates this evidence at paragraph 44 of her witness statement which states:

“ Prior to the said accident my daughter was an outgoing, loving and caring person. She went out with friends and drove the family car. She helped me to keep the house tidy and assisted me at the grocery.”

22. However the aforesaid evidence was not supported by the medical evidence of Dr Adam and as such I attach no weight to it.

The extent to which pecuniary prospects were affected

23. The plaintiff was a student at the time of the accident. She assumed duties as a teacher at the ASJA Girls College in January 2002 when she was 23 years old but resigned shortly thereafter. There was no evidence of the plaintiff’s income during the period she was employed as a teacher. There was no medical evidence from Dr Adam which suggested that as a result of the plaintiff’s injuries she is incapable of working and/or

¹⁵ Paragraph 22 of witness statement of Nazihah Mohammed filed July 28, 2011

medically unfit to work. The plaintiff has a BSc in Information Technology. The evidence of the plaintiff is she has chosen not to return to work. There was no evidence to suggest that this plaintiff is totally incapacitated in the job market. In the circumstances, the plaintiff has failed to persuade me that she is entitled to any loss under this heading.

24. In arriving at an award for the plaintiff's general damages for pain and suffering and loss of amenities I have considered the awards made in the authorities referred to me by the parties where the claimant/ plaintiff suffered similar injuries such as **Seemungal v Mohess & Beharry**¹⁶ ; **Mitchell v Quested**¹⁷ ; **Goberdhan v Rentokil Ltd**¹⁸ ; **Caines v Camacho**¹⁹ and **Nanan v Archer**²⁰. These cases were of some vintage with the most recent **Seemungal** being some 19 years old. In all these cases the injuries suffered were far more severe than in the instant case. Bearing in mind the evidence and the present purchasing power of the dollar I am of the opinion that an award of \$100,000 is appropriate as fair compensation for this plaintiff.

ORDER

25. The plaintiff's special damages are assessed in the sum of \$1,798.80 with interest at 6% per annum from October 28, 2000 to September 26, 2012.

26. The plaintiff's general damages are assessed in the sum of \$100,000 with interest at 9% per annum from May 21, 2004 to September 26, 2012.

27. The defendants to pay the plaintiff's costs of the assessment to be taxed in default of agreement certified fit for advocate attorney.

¹⁶ S092/87

¹⁷ 2157/69

¹⁸ 3135A/79

¹⁹ 1748/70

²⁰ S191/84

28. The aforesaid sums of damages and costs are to be paid to the plaintiff in the percentage apportioned by the Honourable Mr Justice Shah on the order of liability of November 22, 2006 namely 75% to be paid by the first defendant and first co-defendant and 25% to be paid by the second defendant and second co-defendant.

Dated this 26 September, 2012

Margaret Y Mohammed
Master (Ag)