

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-03959

BETWEEN

JENNIFER WARD

**(Substituted for Tex Ward, deceased pursuant to the
Order of Master Margaret Y Mohammed made on the 26th of July, 2011)**

Claimant

AND

THE WATER AND SEWERAGE AUTHORITY

Defendant

Before : Master Margaret Y Mohammed

Appearances:

Ms Camille Mohan for the claimant

Mr Roger Bartley for the defendant

REASONS- ASSESSMENT OF DAMAGES

Introduction

1. Tex Ward was an employee of the defendant who fell off a chair when attempting to sit while at work. He was injured from the fall and his employer, the defendant failed to compensate him for his injuries. This action was instituted to recover his compensation. Fortunately, Mr Ward successfully obtained a judgment in default of defence. Unfortunately he passed away before he could reap the fruits of his judgment in circumstances unrelated to the instant action. It therefore fell on his wife's shoulders, Jennifer Ward ("Mrs Ward"), the substituted claimant to prove Mr Ward's loss. Mr Ward sought compensation for his loss of earnings, nurse's aide, medical expenses and general damages for his pain and suffering.

2. The issues addressed on the substantive claim were (1) what was the appropriate measure of damages to compensate Mr Ward for his pain and suffering (2) what was the appropriate award for Mr Ward's loss of earnings; and (3) whether Mr Ward had proven his claim for nurse's aide and medical expenses. I also had to assess cost of the defendant's notice of application on evidential objections.
3. For the reasons set out hereafter, I assessed Mr Ward's general damages in the sum of \$ 150,000.00 and his loss of earnings in the sum of \$335,700.00. The claims for nurse's aide and medical expenses were not proven resulting in no award being made. Cost of the defendant's evidential objections were assessed in the sum of \$1,500.00.

What was an appropriate award for Mr Ward's general damages?

4. The factors which I considered in arriving at the global sum awarded as general damages were set out by Wooding CJ in **Cornilliac v St Louis**¹ as (a) the nature and extent of the injuries sustained (b) the nature and gravity of the resulting physical disability (c) the pain and suffering endured (d) the loss of amenities suffered and (e) the effect on pecuniary prospect.

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

According to the evidence of Dr Rasheed Adam, Mr Ward suffered the following injuries:

- Thoracic disc involvement
- Spinal cord compression
- Permanent partial disability of 80%
- Erectile dysfunction

(b) The pain and suffering endured

There was no evidence with respect to any pain which Mr Ward endured resulting from his injury.

¹ (1965) 7 WIR 491

(c) Loss of amenities

According to Mrs Ward before the accident her husband was a very active man. After work he would tend his garden consisting of 2 lots of land where he planted peas and corn. He reared pigs and fished in the sea. Mr Ward also cooked meals for the family. After he sustained the injury he ceased all these activities, but with assistance, he was able to resume cooking.

(d) Effect on pecuniary prospects

Dr Adam assessed Mr Ward's permanent partial disability at 80%. The claimant was unable to return to his job as a systems operator after the accident.

5. The only medical evidence in support of Mr Ward's claim for general damages came from Dr Rasheed Adam. There were also certain reports from the Eric Williams Science Medical Complex, attached to the witness statement of Mrs Ward which were not contested by the defendant. The medical evidence was very limited. Dr Adam was forthright and clear in his explanation and I was satisfied that after Mr Ward fell of his chair he injured his back and exhibited signs of erectile dysfunction in early 2005.
6. While Dr Adam assessed Mr Ward's permanent partial disability at 80%, this assessment did not assist Mr Ward's case significantly since I was guided by Kangaloo JA in **Persad v Seepersad** ² on the type of information in the medical reports which would be useful to the courts such as:

“ an explanation of the effect of injuries on a person's earning capacity in words as opposed to figures would be of greater use to the Courts in their assessment of damages at common law..... that doctors set out in their reports, together with the basis for their conclusions, their opinion on how the injury suffered is likely to affect the lifestyle and earning capacity of the injured Plaintiff, and leave percentages of incapacity for Workmen's Compensation cases.”
7. I noted also that there was no reference in the medical report of Dr Adam that Mr Ward was diabetic or suffering with other ailments as alleged by Mrs Ward.
8. Coupled with the limited medical evidence, while Jennifer Ward tried her best, she was not well placed to assist the court on the details of Mr Ward's pain as a result of the injury. Although her evidence was limited I accepted it bore some consistency with Dr Adam's medical assessment.

² Civ Appeal No 136 &137 of 2000

9. Counsel for the claimant submitted the following authorities for the court's consideration : **Taitt v Rampersad, McClean & TATIL**³; **Trinidad Transport Enterprise Limited v Layne**⁴ and **Deyalsingh v Mayor of Port of Spain**⁵. The only case with some similar injuries to the instant was **Taitt** where the sum of \$125,000.00 was awarded in June 2008 to the claimant who had a severe cervical cord injury, disc herniation with root involvement and frozen shoulder, loss of grip causing inability to drive and erectile dysfunction. The injuries sustained by Mr Ward in my view were not as severe as the injuries in **Taitt**.
10. Having regard to the aforesaid an appropriate award in the sum of \$150,000.00 was adequate in the circumstances.

What was an appropriate award for Mr Ward's loss of earnings?

11. Mr Ward claimed the sum of \$10,000.00 per month from October 2006 to February 2009 and continuing. He passed away in July 2010. I therefore considered his claim for loss of earnings for the period October 2006 to July 2010 which was 45 months. Mrs Ward provided Mr Ward's payslip for August 2004, March 2005, January 2006, May 2006 and November 2006. It was undisputed from the few selective payslips provided that Mr Ward's basic monthly salary was \$7,460.00. I did not accept the claim for overtime income for the following reasons:
- While Mrs Ward insisted that Mr Ward earned overtime income between \$2,000.00 to \$4,000.00 per month this was not substantiated by the selective payslips.
 - Mr Ward did not earn overtime for each month of the year. In any event there were only 2 payslips which provided any information on Mr Ward's overtime income ie August 2004 and March 2005 .
 - There was no explanation by Mrs Ward for the wide disparity in the number of overtime hours Mr Ward worked per month or for him not earning overtime in certain months.
12. Further, based on the evidence I found that it was inconsistent for Mr Ward to be working the overtime period claimed by Mrs Ward and still have time to tend to his garden, rear pigs and fish. Given the evidence I was not persuaded to award overtime

³ HCA 1052 of 2006

⁴ CA10 of 1971 decision delivered in 1972

⁵ HCA 2341 of 1979 delivered in November 1980

in this case. I awarded loss of earnings for the period October 2006 to July 2010 in the sum of \$335,700.00.

Did Mrs Ward prove the claim for nurse aide and medical expenses?

13. The pleaded claim for nurse's aide was \$100.00 per day from January 2005 to February 2009 and continuing. However there was no evidence by Mrs Ward in support of this claim. I therefore made no such award.
14. The claim for medical expenses and continuing was \$13,000.00. Mrs Ward admitted that the medical costs incurred at private medical institutions were paid for and some of them incurred at the public medical institution. However she provided no bills or receipts in support of the sum claimed. Instead she exhibited the reports/documents which indicated that tests were done and she provided an explanation that the said receipts were misplaced. While I accepted that documentary evidence was not conclusive in proving a plea for special damages I did not make an award for this claim because there was no documentary or viva voce evidence to assist the court in determining if the entire or part of the sum claimed was expended.

What costs were to be awarded for the defendant's evidential objections?

15. At the hearing of the defendant's notice of evidential objections filed on October 31, 2011 at the request of both Counsel the issue of the costs of the application was reserved until the conclusion of the assessment of damages. At that hearing I granted the defendant permission to withdraw its evidential objection with respect to paragraphs 6, 8 and 9 of the witness statement of Dr Rasheed Adam and paragraphs 6,8 and 9 of the witness statement of Mrs Ward. The other parts of the report of Dr Adam remained. In essence the claimant successfully defended the said application. I therefore assessed the claimant's costs in the sum of \$1500.00.

Conclusion

- (a) The defendant to pay the costs of the application filed on October 31, 2011 assessed in the sum of \$1,500.00
- (b) Special damages are assessed in the sum of \$335,000 with interest at the rate of 3% per annum from December 19, 2004 to September 26, 2012.

- (c) General damages are assessed in the sum of \$150,000.00 with interest at the rate of 6% per annum from October 14, 2008 to September 26, 2012.
- (d) Prescribed costs.
- (e) Stay of execution of 28 days.

Dated this 12th day of December 2012

Margaret Y Mohammed

Master (Ag)