

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2008-04393**

**BETWEEN**

**DEXTER SOBERS**

**Claimant**

**AND**

**THE ATTORNEY GENERAL OF  
TRINIDAD AND TOBAGO**

**Defendant**

**Before: Master Margaret Y Mohammed**

**Appearances:**

**Mr. J Daniel for the Claimant**

**Mr. Sieuchand, Ms Jones instructed by Mr. N Smart for the Defendant.**

**DECISION**

1. On November 12, 2006 the claimant was injured by vehicles in a government entourage while he was driving his motor vehicle in a westerly direction along the Priority Bus Route in the vicinity of Angostura. On May 13, 2009 before the Honourable Mr. Justice Stollmeyer (as he then was) by consent the parties entered judgment on liability and time was extended to May 19, 2009 for the defendant to file and serve its defence on quantum. The defendant filed its defence on June 10, 2009 after obtaining permission to do so.
2. In the statement of case, the claimant claimed special damages in the sum of \$20,381.05 and general damages for the injuries he sustained. In the defence on quantum, the defendant called upon the claimant to prove his personal injuries, denied

particulars of the special damages which related to receipts pertaining to the CT Scan in the name of “Daujonae Worrel-Sobers”, and other receipts in the name of “Daujonae Worrel-Sobers” and in the name of “Karen Sobers”. The claimant was the only witness who gave evidence at the assessment in support of the claim. His witness statement was filed on April 22, 2010 (“the witness statement”) and tendered into evidence as “DS”. I will first deal with the claim for special damages.

### **SPECIAL DAMAGES**

3. The particulars pleaded in the statement of case for special damages were :

<b>Particulars</b>	<b>Amount \$</b>
Medical report from Dr David Santana	500.00
MRI report	4,000.00
CT Scan	3,800.00
Medical expenses	1,511.05
Domestic assistance for 6 months @ \$1,500	9,000.00
Police report	50.00
Certified copy	20.00
Transportation	1,500.00
Total Special damages to date	20,381.05

### **THE EVIDENCE**

4. The claimant gave evidence that he paid his neighbour Mr Sheldon Lewis for fuel for his motor vehicle, to take him home from the hospital the day following the accident. He was hospitalised at the Port of Spain General Hospital and he lived in Valencia.
5. The claimant also stated that for 6 months after the accident he was unable to carry out his normal duties and he needed assistance to bathe, cook, clean the house and wash since his wife was also injured in the accident. In this regard, he paid Lucille Brown \$1,500.00 per month to assist in looking after him.

6. In the witness statement the claimant stated that or around April 2008, he visited Dr Santana, an orthopaedic surgeon at Medical Associates in St Joseph for an assessment of his injuries<sup>1</sup>. He stated that he paid \$500.00 for a medical report. The medical report of Dr David Santana dated April 8, 2008 was annexed to the witness statement and marked "B". Under cross examination the claimant contradicted himself and admitted that he visited Dr Santana twice on December 19, 2006 and September 18, 2007 and the receipts dated December 19, 2006 and September 18, 2007 attached to the witness statement in the bundle of the receipts marked "C" in the sums of \$200.00 and \$240.00 respectively were for the visits. He also conceded under cross examination, that there was a duplication of the copies of the receipt for the visit on December 19, 2006 attached to the witness statement.
7. Pursuant to Dr Santana's request that the claimant had an MRI done on his back and neck. He produced a MRI report dated October 1, 2007 which he claimed he paid for and received a receipt. However, the claimant could not recall if he paid using a cheque, credit card or linx and he did not provide a receipt for the sum of \$4,000.00 which he claimed.
8. The claimant also admitted under cross examination that he paid the sum of \$37.50 for a "Medical report – Dr Islam" from the North West Regional Health Authority (this was one of the receipts dated December 1, 2007 attached to the witness statement). However, he produced no such medical report. I will address this later. The claimant also conceded under cross-examination that he had reproduced 2 copies of the same receipt in the documents attached to the witness statement.
9. With respect to the medical expenses in the sum of \$1,511.05 the claimant produced a bundle of receipts which were attached to the witness statement as exhibit "C". When shown the copies of the receipts, the claimant conceded that some of the receipts were

---

<sup>1</sup> Para 11

made out in the name of his son, “Daujonae Sobers” and his wife “Karen Sobers”. After cross-examination by the defendant’s counsel, attorney for the claimant conceded that he was not pursuing the sums which had receipts with the names “Daujonae Sobers” and “Karen Sobers”. These sums totaled \$546.38.

10. Due to the pain from his injuries, the claimant said he took Panadol, Cataflam and Trabilin . He denied ever taking Omez. The claimant produced 2 receipts for medication one from Midtown Pharmacy Ltd dated February 27, 2007 in the sum of \$74.05 and the other from Bhagan’s drugs dated November 22, 2006 for Trabilin, Omez and another item which is not legible from the receipt which totaled \$117.90. In the Bhagan’s Drugs receipt the sum of \$56.25 is for Trabilin, the sum of \$ 63.70 for Omez and sum of \$11.05 for the other item (I note that the claimant produced 2 copies of the same receipt for Midtown Pharmacy).
11. Under cross-examination, the claimant admitted that there are 2 other actions before the court where his wife and son respectively are the claimants seeking damages for their injuries suffered due to the accident.
12. I note that the claimant did not claim any pre-trial loss of earnings and did not lead any evidence for this loss. As a result this was not considered under this item for special damages.

#### **SUBMISSIONS ON SPECIAL DAMAGES**

13. The claimant’s submissions on the sums to be awarded for special damages were as follows:
  - (a) He was not pursuing the sums claimed in receipts which referred to the names “Daujonae Sobers and “ Karen Sobers”.
  - (b) While there were receipts which did not have the claimant’s name, these expenses were reasonably incurred and should be accepted by the court.

- (c) Given the nature of the injuries sustained by the claimant it is not unreasonable to infer that he required assistance for domestic duties and for transportation and therefore the sums claimed should be awarded.

14. In response, the defendant submitted that:

- (a) The court should be cautious in accepting the claimant's evidence since there was little or no material in support of the claims.
- (b) The claimant did not provide any evidence in support of the claim for the MRI report (\$4,000.00), domestic care (\$9,000.00) and transportation by Mr Sheldon Lewis (\$1500.00).
- (c) The claimant failed to provide receipts or viva voce evidence in support of the sums claimed. In this regard, the court ought not to allow the sums for the MRI, and transportation.
- (d) In light of the claimant's injuries it is not unreasonable to allow a sum for domestic assistance for a period of 3 months at the cost of \$1,500.00 per month.
- (e) While the medical report of Dr Santana is accepted by the defendant, only the sums for the 2 visits to Dr Santana ought to be allowed, which totaled the sum of \$420.00.
- (f) There are no endorsements on the receipts from Midtown Pharmacy and Bhagans drugs to indicate if the medication was for the claimant neither was there any prescriptions submitted for the court to draw any nexus between both. In the Bhagans Drugs receipt there is reference to "Omeds" which the claimant admitted under cross examination he was not taking.
- (g) There are 2 other persons, the claimant's son and wife who were also injured in the accident and whom have also filed claims in court. In this regard, the court can on its own motion examine the court records to determine if there is any duplication in the claim for special damages Craven v Smith<sup>2</sup>.

---

<sup>2</sup> (1869) Exchequer at page 146

## **LAW AND ANALYSIS**

15. It is settled law that special damages must be pleaded, particularized and be “strictly” proved<sup>3</sup>. The onus is therefore on the claimant to prove his loss. I will now address each item claimed under special damages.

(a) **Transportation cost**

Although the claimant claimed the sum of \$1,500.00 for transportation expenses, he failed to provide any evidence for the said sum paid or to call Mr Sheldon Lewis to give viva voce evidence in support of his claim. In light of the sum claimed I am of the view that the claimant ought to have evidence to support this claim either in writing or by calling Mr Lewis to give evidence. In the absence of either I am not prepared to allow this amount.

(b) **Domestic assistance**

The claimant did not provide any evidence of these payments which he made neither did he call Ms Brown to give evidence on his behalf. While it may have been reasonable for the claimant to employ someone to assist him given the nature of his injuries, in the absence of any evidence to support this claim, I am hesitant to allow the sum claimed .

(c) **Medical report from Dr Santana MRI report and CT Scan**

In light of the evidence, I am prepared to allow the sums for the 2 visits to Dr Santana which total \$420, but I am not prepared to allow the claim for the MRI report and the CT scan since I have no evidence to support that the sums claimed were paid.

(d) **Medical expenses**

In the circumstances, based on the evidence before me I will allow the sums of \$74.05 and \$56.25.

---

<sup>3</sup> Grant v Motilal Moonan Ltd (1988)43 WIR 372 per Bernard CJ

(e) Police report and certified copy

The claimant did not provide any evidence in support of these sums and the defendant's attorney did not object to them. These are relatively minor sums and given the nature of the case, these standard sums were not unreasonably incurred. In the circumstances, I will allow the sums of \$50.00 and \$20.00 respectively.

16. Accordingly, I award the total sum of \$620.30 as special damages.

**GENERAL DAMAGES**

17. I am guided by the principles in **Cornilliac v St Louis**<sup>4</sup> in assessing the claimant's 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;
- (e) The extent to which pecuniary prospects were affected.

Other similar cases are also guidelines for the possible range of an award of damages<sup>5</sup>. I will now examine the evidence under these headings.

***Nature and extent of the injuries sustained and resulting in physical disability***

18. In support of his injuries, the claimant produced a medical certificate of Dr Santana dated April 8, 2008. This doctor was not called to give evidence and there was no objection to the report by attorney for the defendant. According to this report, the claimant sustained the following injuries:

- Loss of lumbar lordosis.

---

<sup>4</sup> (1966) 7 WIR 491

<sup>5</sup> Aziz Ahamad v Raghubar 12 WIR 352

- Disc desiccation and annular tear at L4/5 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.

19. Dr Santana also stated that the claimant experienced back pain, which radiated down the left leg following the accident. Upon examination, Dr Santana found that the claimant's "straight leg raising was greater than 90 degree bilaterally, with a negative sciatic stretch test. Power, sensation and reflexes were within normal limits".

20. It was Dr Santana's opinion that the aforesaid findings were consistent with the claimant's complaints of "left-sided sciatica" and he recommended spinal surgery if the claimant's symptoms failed to improve. In April 2008, Dr Santana assessed the claimant's permanent partial disability at 20% "if the present status quo is accepted".

21. I note that the claimant has not pursued any claim for spinal surgery. Further, there is no updated medical report on the present condition of the claimant to determine if there was any change in "the status quo" of the claimant since April 2008.

### ***Pain and suffering***

22. Based on the evidence of the claimant at the time of the accident his entire body was slammed onto the steering wheel and jammed against the dashboard and the driver's seat. He could not move and felt "stinging" pain from his neck to waist. Blood was dripping from his head onto his face and it was difficult for him to breathe. When the police officers lifted him out of his car he was in extreme pain since they had to twist his body to get him out of the car. He was placed on the road to lie where he experienced excruciating pain. His chest felt heavy with each breath. His heart was throbbing, he felt dizzy and confused. He was discharged the following day from the hospital although he



was still in extreme and unbearable pain. His chest felt soft and weak and breathing was difficult and uncomfortable. The claimant also stated that during “that year” which I infer to mean 2007, he continued to experience severe pain in his lower back and neck. Even 4 years after the accident the claimant stated he still experiences pain when he engages in sexual intercourse.

23. The claimant also gave evidence that after he was discharged from the hospital in November 2006, he continued to receive treatment as an outpatient of Mt Hope Hospital and he attended physiotherapy two times per week.

### ***Loss of amenities***

24. The claimant stated that as a result of the accident, for a period of 6 months afterwards he was not able to carry out his “normal duties” in the house and he was unable to look after himself. He therefore needed assistance to bathe, cook, clean the house, wash his clothes as his wife “was injured as well”. He also stated that he paid Sheldon Lewis to transport him to his physiotherapy sessions and to “run personal errands” such as to pay his bills since he did not have his car as it was totally wrecked. His evidence was that he still experienced pain in sexual intercourse 4 years after the accident and he is unable to carry out any labouring jobs that he did prior to the accident, including cutting grass around his home and his neighbour’s yard. He also stated that he is a plumber by trade, he did odd jobs for friends and relatives and that he is no longer an outgoing person.

### ***Effect on pecuniary prospects***

25. The only evidence which the claimant gave with respect to not being able to work was that he was unable to carry out any labouring jobs that he did prior to the accident

including cutting the grass around his home and his neighbour's yard. He also stated that he was a plumber by trade and he did odd jobs for friends and relatives.

#### **SUBMISSIONS ON GENERAL DAMAGES**

26. With respect to the claim for general damages, the claimant's attorney submitted that:

- (a) The claimant was forthright in his evidence.
- (b) This accident occurred in November, 2006 which caused the claimant to suffer injuries to his back, leg and lumbar that still continues to affect him at present.
- (c) As a result of the injuries, the claimant has suffered pain and hardship in his professional and personal life. The claimant is unable to stand for a long time and perform aspects of his job. With respect to his personal life, his intimate relationship with his spouse has been adversely affected.
- (d) The medical evidence was unchallenged by the attorneys for the defendant.
- (e) In light of the sums awarded for similar injuries in **Pemberton v Hi Lo Food Stores**<sup>6</sup> and **Anne Marie Redman v Hillary Samlal**<sup>7</sup> the sum of \$140,000. is a reasonable sum to be awarded for general damages.

27. In response, the defendant's attorney submitted that:

- (a) The court should be quite cautious in accepting the claimant's evidence since there was little or no material in support of the claims.

---

<sup>6</sup> HCA S 6039 of 1988

<sup>7</sup> CV 2007-02664

- (b) There is no evidence to indicate the claimant's occupation. The only evidence is at paragraph 15 of the witness statement which stated that the claimant was a plumber by trade and he did odd jobs for friend and relatives. That is the extent of the evidence for loss of future earnings and loss of earning capacity and the court cannot make a finding based on this limited information.
- (c) There is no evidence on any future surgery apart from the April 2008 medical report and no sum should be allowed for this.
- (d) In addition to the 2 cases referred to by the claimant's attorney, the defendant's attorney also referred the court to the following cases: **PTSC v Sookhoo**<sup>8</sup>; **Peter Seepersad v Theophilus Persad and anor**<sup>9</sup>; **Thomas v Forde and anor**<sup>10</sup>; **Donna Bisdeshi v The AG**<sup>11</sup>; **Wayne Mills v Unilever Caribbean Ltd**<sup>12</sup> where awards were made for similar injuries.
- (e) Due to the nature of the injuries involved the sum to be awarded for general damages should be between a range of \$75,000- \$85,000.

### **LAW AND ANALYSIS**

28. In analyzing the evidence I have considered the following factors in arriving at an award for damages for the injuries sustained by the claimant in the accident:

- (a) At the time of the accident and sometime in 2008 the claimant experienced back, back, neck, leg and chest pains. I accept that this pain affected the claimant's ability to carry out his "normal duties at home" and he needed assistance to bathe, cook,

---

<sup>8</sup> Civ Appeal 21/93

<sup>9</sup> Civ Appeal No.136 of 2000 and Civ Appeal 137 of 2000

<sup>10</sup> HCA 2384 of 2002

<sup>11</sup> HCA 1918 of 1999

<sup>12</sup> CV 2007-04748

clean the house and wash his clothes. However, due to the paucity of evidence in this regard, I am not certain if he required assistance for 6 months but I will address this later.

- (b) I am satisfied that as a result of his continuing pain and discomfort he visited Dr Santana to seek medical attention on 2 occasions on December 19, 2006 and September 18, 2007.
- (c) I also accept the claimant's evidence that to relieve the pain from the date of the accident to sometime in 2008, he took painkillers but there is no evidence if or when he took them. Based on the limited evidence before me, it is not unreasonable for me to conclude that his pain diminished during 2008 and by now his condition ought to have improved even further. I am of the view that if the claimant's condition is as bad as he says, he would have continued to seek medical attention either from Dr Santana or the Mt Hope hospital.
- (d) Dr Santana's report in April 2008 stated that "should his symptoms fail to improve, he may need spinal surgery." There is no evidence of further medical attention, additional medical reports or the need for spinal surgery. I note that the claimant has not pursued any claim for spinal surgery and in this regard, it is not considered.
- (e) Further, without the benefit or oral testimony of Dr Santana I am left to determine on a balance of probabilities if the claimant has suffered the resulting physical disability which Dr Santana has described. As stated previously, there is no evidence to support a claim for spinal surgery. The permanent partial disability of 20% assessed in April 2008 has not been reviewed by any doctor and it is not unreasonable for me to conclude that the claimant's condition has improved.

- (f) The claimant's did not state what activities he engaged in as an "outgoing person". I note that the reason he paid for personal errands was because he did not have his car, *not* because he was unable to do the errands himself.
- (g) It is puzzling to me that although the claimant was first attended to at the Port of Spain General Hospital on the date of the accident, and he admitted that he paid for a medical report from that hospital, (a copy of the receipt was dated December 1, 2006 "for medical report – Dr Islam" which was endorsed as collected on January 22, 2007) that this report was not attached as one of the claimant's medical reports in this matter without any explanation. It is therefore reasonable for me to conclude that this claimant has not been forthright with the court on the medical evidence which he has presented.
- (h) The claimant also gave evidence that after he was discharged from the hospital in November 2006 he continued to receive treatment as outpatient of Mt Hope Hospital and he attended physiotherapy two times per week. In the absence of any report from the Mt Hope Hospital with details of the type of treatment, the days he attended, the names of the physiotherapists, the type of exercise programme which he was put on, I attach no weight to this evidence.

29. In the recent Court of Appeal decision of **Munroe Thomas v Malachi Ford and ors**<sup>13</sup> Kangaloo JA observed that "an injured litigant must provide the court with all the relevant medical evidence to assist in the computation of damages to which he is entitled." The said judge in an earlier decision<sup>14</sup> provided guidance 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

---

<sup>13</sup> Civ Appeal 25 of 2007

<sup>14</sup> Civ Appeal No 136 & 137 of 2000 Persad v Seepersad

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."

30. These words have gone unnoticed and it appears to me that the practice frown upon by the learned judge has continued. In this regard, Dr Santana's reference in his report that "if the present status quo is accepted, a permanent partial disability of twenty (20%) percent is assigned" renders little assistance to me in assessing the award I should make to the claimant.

31. I note that some of the authorities cited by the attorneys are not recent. The Privy Council in **Seepersad v Persad**<sup>15</sup> indicated its reservation on the practice of relying on older decisions and using an adjustment formula to arrive at an unlikely award. I will now consider the following cases:

(a) **Pemberton v Hi Lo Food Stores**<sup>16</sup>. This was a decision of Master Paray -Durity in April, 1995 where the plaintiff was awarded \$85,000 for damages severe injuries to the plaintiff's back, head, shoulder and right leg. The plaintiff was hospitalized on at least 2 occasions. On the second occasion he was put in a plaster of paris cast from his neck to lower waist. He spent 11 days in the hospital and the cast remained on him for 5 months. He needed 2-3 persons to assist him in moving around.

(b) **PTSC v Sookhoo**<sup>17</sup>. This was a decision of the Court of Appeal in 1998 where the respondent was awarded \$36,000 for damages in 1998 for a herniated disc lesion at L5/S1 with nerve compression. The respondent suffered severe pain up to the time of the appeal and dysfunction in sexual intercourse.

---

<sup>15</sup> (2004) 64 WIR 378 (PC)

<sup>16</sup> HCA S6036 of 1988

<sup>17</sup> Civ Appeal 21 of 1993

(c) **Theophilus Persad and anor v Peter Seepersad**<sup>18</sup>. In February 2002 the Court of Appeal awarded the appellant \$75,000 for a spinal injury involving L5 S1 disc herniation and a wedge fracture at the T12/L1 level. The appellant was hospitalized for 6 days following the accident. He was placed in a cervical collar. He suffered moderate to severe pain and stiffness with depressed reflexes and paresthesia in both feet. The award was not disturbed by the Privy Council.

(d) **Munroe Thomas v Malachi Forde and ors.**<sup>19</sup> This was a decision of Master Sobion in September 2008 where the plaintiff was awarded \$ 100,000 for soft tissue injury to the right buttock, fractures to 2 ribs, bruised elbows and knees which caused bleeding, nerve compression in the spine which caused low back pain and paresthesia or pins and needles in the leg. The plaintiff was not hospitalized but underwent surgery in 2004 to relieve the nerve compression. This award was undisturbed by the Court of Appeal<sup>20</sup>.

(e) **Donna Bideshi v The Attorney General of Trinidad and Tobago**<sup>21</sup>. This was a decision of Master Sobion in December 2008 where the plaintiff was awarded \$90,000 general damages. The plaintiff's injuries from the accident were fractured ribs, a fractured mandible and lower back pain from L5/S1 disc prolapsed. The plaintiff was treated at the hospital for the fractured ribs with analgesics and she underwent surgery for the fractured mandible 4 days after the accident. She was on a liquid diet after the surgery.

(f) **Ann Marie Redman v Hillary Samuel**<sup>22</sup> This was a decision of Stollmeyer J in July 2009 where \$65,000 awarded for general damages. The injuries sustained by the

---

<sup>18</sup> Civ Appeal 136 of 2000 and Civ Appeal 137 of 2000

<sup>19</sup> HCA 2834 of 2002

<sup>20</sup> Civ Appeal 25 of 2007

<sup>21</sup> HCA 1918 of 1999

<sup>22</sup> CV 2007-02664

claimant were disc dessication at L3-4, L4-5 and L5-S1. The disc at L4-L5 was bulging inwards and pressing on the nerve in that area of the spinal canal. The claimant also suffered from severe spasm of the legs, severe pain and decreased sensation in the right leg. The claimant was hospitalized on 3 occasions.

**(g) Wayne Wills v Unilever Caribbean Ltd**<sup>23</sup> This was a decision of Master Sobion in February 2010 where the sum of \$75,000 was awarded as general damages. The injuries sustained by the claimant were acute lumbar strain which caused back pain. He suffered L4/5 disc herniation that required surgery which was done 2 ½ months after the injury with follow up treatment of physiotherapy and aquatherapy. The claimant was diagnosed with a permanent partial disability of 20% and he never resumed his job.

32. In the instant case the claimant experienced excruciating pain on the day of the accident and the following day when he was discharged from hospital. His pain continued though it gradually decreased over a period of 18 months. He was hospitalized for only 1 day and did not undergo any surgery. His ability to move around as time passed improved.

33. Having regard to my assessment of the claimant's evidence, the aforesaid awards for similar injuries and bearing in mind inflationary trends, I am of the view that a reasonable range for the injuries sustained by the claimant is between \$75,000 to \$90,000 and that a sum of \$80,000 to be a fair award for damages for non-economic loss.

***Loss of pecuniary prospects, future earning capacity and future surgery***

34. In **Munroe Thomas**<sup>24</sup> Kangaloo JA drew a distinction between loss of future earnings and loss of earning capacity. An award for loss of earning capacity as stated by Browne

---

<sup>23</sup> CV 2007-04748

<sup>24</sup> Civ Appeal 25 of 2007



LJ in **Moeliker v A Reyrolle and Co Ltd** only arises where the claimant is employed at the date of the trial but there is a substantial or real risk that he may lose this employment at some future time and may as a result of the injury be at a disadvantage in getting another job or an equally well paid job.

35. In the instant case, the claimant's evidence is "it has been four years since the accident and I still experience pain in my lower back and neck....I am unable to carry out labouring jobs that I did prior to the accident including cutting the grass around my home and my neighbor's yard, usual maintenance around the house. I am also a plumber by trade. I used to do odd jobs for friend and relatives. I am unable to do this anymore". It is therefore clear to me from the evidence that the claimant was not employed at the date of the hearing of the assessment. In the circumstances, since the first condition in **Moeliker** has not been satisfied I will now consider if an award for loss of earning capacity can be made .

36. An award for loss of future earnings can be made if the claimant demonstrates that there is a continuing loss of earnings which is attributable to the accident<sup>25</sup>. Where there are evidential uncertainties which prevent a court from using the multiplier/multiplicand method to assess damages for loss of future earnings the courts have disregarded this conventional approach and arrived at a lump sum figure to compensate the claimant for his future loss of earnings (**Blamire v South Cumbria Health Authority**)<sup>26</sup>.

37. In order to prove loss of pecuniary prospects the claimant has to show that the injury was of such a nature that it rendered him incapable of performing his duties as a plumber, or any other form of work whatsoever. If it rendered him incapable of performing as a plumber but did not prevent him from doing other work it, was necessary to show that in order to mitigate his loss. In discharging this onus, the medical

---

<sup>25</sup> Civ Appeal 25/2007 Munroe Thomas v Malachi Forde and ors.

<sup>26</sup> (1993)P.I.Q.R.Q1,C.A

evidence as to the nature of the injury and the residual effect that the injury may have had on the claimant's ability to work is critical<sup>27</sup>.

38. The evidence from the claimant for loss of pecuniary prospects and future earning capacity is very bare. There was no evidence of the age of the claimant at the time of the accident, of the amount he earned from his various sources of income, how much he would have earned if he had not been injured as well as to the likely future pattern of his earnings. In my view this is not "evidential uncertainties" but evidential deficiencies which cannot be cured by the court plucking a figure out of the air. In the circumstances, I make no award under this head.

39. Similarly, in the absence of an updated medical report on the claimant's condition I am also unable to assess the cost of any future surgery.

#### **INTEREST**

40. The claimant's attorney submitted that interest on the award for general damages be at the rate of 12% per annum from the date of the filing of the claim to judgment and the rate of 6% per annum from the date of the accident to judgment for special damages.

41. In response, the attorney for the defendant submitted that the court has the discretion under the Supreme Court of Judicature Act to make the appropriate award for interest. He submitted that the common law position as set out in **Jefford v Gee**<sup>28</sup> is the award of interest is to compensate the litigant in personal injuries cases "for being kept out of money which ought to have been paid to him". In this regard, if the awards are updated to 2011, the update would have taken the compensation into account ( **Elease John and anor. v John Solomon**)<sup>29</sup>. In the circumstances, any award of interest of general

---

<sup>27</sup> CV A 110/2001 Seudath Parahoo v SM Jaleel & Co Ltd, Hamel-Smith JA at para. 8

<sup>28</sup> 1970 AC 130

<sup>29</sup> HCA 919 of 1979

damages should take into account the market rate from the date of the updated award which in this case is a rate between 0-3% per annum from February 2011.

42. With respect to interest on the award for special damages attorney for the defendant submitted that similar considerations should apply.

43. The award of interest on damages is discretionary pursuant to section 25 of the Supreme Court of Judicature Act Chap 4:01. The state of the local authorities on the applicable rate of interest is now in a state of flux<sup>30</sup> having regard to the prevailing economic situation. In the absence of any evidence being led as to the appropriate rate of interest a reasonable rate of interest for the award of special damages is 6% per annum from the date of the injury i.e November 21, 2006 to May 27, 2011 and general damages is 9% per annum from November 7, 2008 to May 27, 2011.

#### **ORDER**

44. Special damages is awarded to the claimant in the sum of \$ 620.30 with interest at the rate of 6% per annum from November 21, 2006 to May 27, 2011 which is a total sum of \$776.94.

45. General damages is awarded to the claimant in the sum of \$80,000 with interest at the rate of 9% per annum from the date action was filed i.e. November 7, 2008 until May 27, 2011 which is a total sum of \$98,420.00

46. The defendant to pay the claimant prescribed costs in the sum \$23,684.00

Dated this 27 May 2011.

Margaret Y Mohammed  
Master of the High Court (Ag)

---

<sup>30</sup> CV 2008-04009 Sean Wallace v The Attorney General of Trinidad and Tobago per Des Vignes J at paragraphs 69 and 70.