

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2009-00726

BETWEEN

GERARD ANTROBUS

Claimant

AND

PORT AUTHORITY OF TRINIDAD AND TOBAGO

Defendant

Before: Master Margaret Y Mohammed

Appearances:

Mr Imran Khan for the Claimant

Mr Kelvin Ramkissoon for the Defendant

REASONS -ASSESSMENT OF DAMAGES

INTRODUCTION

1. The claimant sustained injuries and other loss, from an accident which occurred on March 22, 2006 during his employment on the defendant's compound in Port of Spain. At the time of the accident the claimant was driving certain hauling equipment when the attached trailer and a 20 feet container resting thereon disconnected causing him to be

thrown violently forward. The court apportioned liability for the claimant's injuries 85% against the defendant. At the hearing of the assessment of damages the defendant did not object to the various medical reports which were tendered into evidence by consent.

2. There were 5 issues to be determined by the Court namely : (a) whether the claimant had proven his loss for special damages; (b) what was a fair award to compensate the claimant as general damages for his pain and suffering, loss of amenities and loss of pecuniary prospects; (c) what was a reasonable award for costs of future surgery ; (d) whether the Workmen's Compensation received by the claimant ought to be deducted from the award for general damages ; and (e) whether the gratuity paid to the claimant ought to be deducted from any award for future loss of earnings.
3. The claimant only pursued his special damages claim for loss of earnings which he had proven this in the sum of \$ 492,200.00. I awarded interest on this sum at the rate of 3% per annum from November 1, 2007 to July 4, 2012. For the reasons set out hereafter, I awarded the sum of \$ 90,000 as general damages with interest at the rate of 6% per annum from March 3, 2009 to July 4, 2012. I also awarded the sum of \$100,000 as cost of future surgery and loss of future earnings in the sum of \$118,212.00. I agreed with the claimant's counsel that the sum of \$82,000 paid as Workmen's Compensation to the claimant was not to be deducted from the award for general damages. I was of the opinion that the gratuity paid to the claimant ought not to be deducted from the award for loss of future earnings. I also awarded prescribed costs in the sum of \$ 83,066.65 and a stay of execution of 30 days. The aforesaid award represented 100% of the claimant's award and in accordance with the order on liability the defendant was only liable to pay to the claimant 85% of the said sums.

DID THE CLAIMANT PROVE HIS CLAIM FOR SPECIAL DAMAGES?

4. The particulars of special damages pleaded were: (a) medical expenses and continuing \$500 ; (b) Travelling \$500; (c) physiotherapy \$300 ; (d) Loss of earnings at \$9851.87

per month from March 22, 2006 and continuing and ; (e) Domestic Assistance at \$1500 per month from March 22, 2006 and continuing.

5. The only claim for special damages which was pursued by the claimant was the loss of earnings. There was no dispute that the claimant's average salary at the time of the accident was \$9851.87. The claimant was terminated from the defendant's employ with effect on November 1, 2007 and as a result of his injuries he was unable to perform any strenuous work save and except to earn income as a part-time taxi driver for approximately 21 months (November 2008 to August 2010) During this period the claimant earned approximately \$150.00 per day for 3 days per week. His average weekly earnings was \$450.00 and for the 21 month period the claimant earned \$37,800.
6. I accepted that at the time the claimant was terminated from the defendant's employ he did not have any advanced education and has always been employed in performing manual labour. I awarded loss of earnings in the sum of \$494,200.09 which represented the total loss of income of the claimant for the period November 1, 2007 to July 2012 (approximately 4 years and 6 months) and deducted the sum of \$37,800 which the claimant earned as a part-time taxi driver during that period.

WHAT WAS A FAIR AWARD FOR GENERAL DAMAGES?

7. **Cornilliac v St Louis**¹ set out the principles which a court is 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 damages².

¹ (1966) 7 WIR 491

² 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

8. All the medical reports concerning the claimant's injuries were tendered into evidence without objection from the defendant and it did not call any medical witnesses. The reports which set out the nature and extent of the claimant's injuries were: the medical report of Dr Pierre dated June 22, 2006, MRI report of Ameeta Varma dated June 16, 2006, medical report of Dr Victor Coombs dated September 11, 2007, patient referral form from Dr Pierre dated June 22, 2006, letter from Dr Sonia Roache dated October 3, 2007, MRI report dated May 13, 2010 and medical report of Dr Spann dated June 10, 2010.
9. According to the aforesaid reports the claimant suffered the following injuries: Lumbar disc protrusions, foraminal compromise, diffuse disc bulges L2/3, L3/4 and L 4/5, L5/S1 diffused disc bulge with small posterior right para central protrusion and facetar hypertrophy causing compromise of the bilateral foramina, mild effusion in both facet joints, small extradural juxta facetar synovial cyst on left side and persistent low back pains as well as leg pains.
10. In order to reduce the degree of nerve compression in the spinal and nerve canal the claimant underwent lumbar laminectomy surgery on September 21, 2006. Dr Spann's medical report of June 10, 2010 indicated that a person with the type of injuries as that sustained by the claimant would suffer a gradual worsening of the condition since it was impossible to halt the degeneration.
11. In accepting Dr Spann's prognosis I concluded that the claimant's condition did not allow him to perform manual labour which was the extent of his ability. However, I did not accept that his condition had a significant impact on the claimant performing certain routine tasks. The claimant admitted in cross-examination that he travelled with his child to school by taxi, often waiting on public transportation. He admitted that this entailed standing and waiting for prolonged periods. The claimant also alleged that after the accident he experienced difficulty during sexual intercourse but admitted in cross-

examination that his wife was pregnant. The claimant also admitted that at home he is still able to assist with the cooking.

Pain and suffering

12. According to the claimant he endured pain in his lower back and legs from the date of the accident to present. Initially he was treated with medication and injections to relieve his pain. He did 14 sessions of therapy at the Spine and Sports Care Centre which assisted him to a small degree. At that time the claimant's severe pain restricted his mobility and ability to function. He could not sit or stand for any prolonged period of time nor could he lift any heavy objects. The intensity of the pain he endured eventually caused the defendant to terminate the claimant's employment on medical grounds
13. I have no reason to doubt that the claimant suffered pain in his lower back and legs at the time of the accident and shortly thereafter. However I am of the view that the intensity of the pain diminished over the years since the claimant was still able to perform routine tasks at home. Further, while the claimant admitted in cross-examination that he visited the Morvant Health Centre for further medical attention, he failed to provide any evidence of any medication or therapy which he was still taking to relieve his pain. In my view if the intensity of the pain had not reduced significantly the claimant would have continued taking medication to relieve his pain.

Loss of amenities

14. The claimant presented no evidence of engaging in sports or having participated in social activities. It did not appear to me that the injury sustained by the claimant had any significant adverse impact on the claimant's lifestyle. The claimant admitted in cross-examination that he stands in the kitchen at home to prepare meals and wash dishes. He is still therefore able to perform household duties. Despite Dr Spann's report that the claimant's condition would gradually worsen the claimant did not demonstrate that his lifestyle was adversely affected.

The extent to which pecuniary prospects were affected

15. It was not in dispute that the claimant was employed as an Equipment Operator at the time of the accident and as a result of his injuries he was declared medically unfit to work on November 1, 2007. At that time he was 51 years old and he admitted that he was presently 56 years old. I accepted that after his retirement the claimant worked part time as a taxi driver and although he had done a course in plumbing some years ago he was unable to use his trade due to his inability to lift heavy objects. In light of the uncontested medical evidence that the claimant's condition would deteriorate and thereby adversely affect his ability to continue to perform manual labour I agreed with the claimant's counsel that this was an appropriate case for the application of the multiplier/multiplicand approach. I agreed with the suggested multiplicand of \$59,106.00 per annum (i.e. \$9851.87 reduced by 50% X 12 months). However I disagreed with the suggested multiplier of 5. In my view, if the claimant was not injured he would reasonably have expected to work to age 60 years. A reasonable multiplier in the circumstances was 2. I therefore awarded the sum of \$118,212.00 as the loss of future earnings.

16. In arriving at an award for the claimant's general damages for pain and suffering and loss of amenities I considered the awards made in the authorities referred to me by the parties where the claimant/ plaintiff suffered similar injuries such as: **Marchong v T&TEC & Galt & Littlepage Ltd**³; **Pierre & Ors v T&TEC**⁴ ; **Wills v Unilever**⁵; **Dial v Ali**⁶; **Balkaran v Ramhit & Goberdhan**⁷; **Persad & Ors v Seepersad**⁸ and **Moonsammy v Ramdhanie & Capital Insurance**⁹. I noted that the awards in some of the authorities were of some vintage with the most recent being some 9 years ago. The injuries in this case were more severe than in **Marchong**, **Wills**, **Dial** and **Persad**. The

³ CV 2008-04045

⁴ HCA 243/96

⁵ CV 2007-04748

⁶ HCA 1709/76

⁷ S 2620/87

⁸ PCA 86/02

⁹ Civ Appeal 62/03

effects of the injuries of the litigants in **Balkaran, Persad** and **Moonsammy** all bear some similarity to the instant case. Bearing in mind the evidence I awarded \$90,000 as fair compensation for the claimant.

AWARD FOR COSTS OF FUTURE SURGERY

17. Dr Spann recommended that the claimant undergo surgery at a cost between \$90,000 to \$120,000 which was not contested in principle by the defendant. The range for the costs of the surgery was based on the number of screws and the duration of the surgery. Both parties could not arrive at a consensus on the sum to be awarded for the costs of the recommended surgery. I awarded the sum of \$100,000 based on Dr Spann's recommendation and taking into account inflation.

SHOULD THE WORKMEN'S COMPENSATION AND GRATUITY PAID TO THE CLAIMANT BE DEDUCTED FROM THE AWARD TO THE CLAIMANT ?

18. It was not in dispute that the claimant received \$82,000 as Workmen's Compensation as a result of the injuries he sustained during the course of his employment. The law is settled with respect to whether workmen's compensation paid to a party who suffered injuries during the course of his employment should be deducted from an award of damages. In **Trinidad and Tobago Electricity Commission v Keith Singh**¹⁰ the Court of Appeal addressed this issue and concluded that a Commissioner under the Workmen's Compensation Act is concerned with the award of compensation and not the award of damages. The Workmen's Compensation Act makes no provision for the deduction of compensation from any award of damages but instead makes provisions for deduction of damages from Workmen's Compensation. At page 17 of the said judgment Mendonca JA addressed the issue by saying :

¹⁰ Civ Appeal 180 of 2008

“ As the payments made to the Respondent should only be deducted against like or equivalent damages the workmen’s compensation paid to the Respondent by the Appellant does not fall to be deducted from the award of damages”

19. As such the sum of \$82,000 paid as Workmen’s Compensation to the claimant was not deducted from the award for general damages.

20. The position with respect to gratuity was not as clear. It was undisputed that the claimant was retired on medical grounds on November 1, 2007 as a forklift operator and paid the sum of \$25,977.60 as gratuity. While counsel for the defendant advanced the proposition that the gratuity should be deducted from the award for loss of future earnings he failed to provide any authority to the court nor any evidence to explain the basis of the gratuity paid and/or its calculation.

21. In **Calvin Dipnarine v AG**¹¹ referring to the well-known English decision of **Parry v Cleaver**¹² I ruled that a pension ought not to be deducted from an award for loss of future earnings since Lord Wilberforce equated a pension as representing the earnings or reward of past savings.

22. I was of the opinion that a gratuity was also to be considered in the same vein and I concluded that it ought not to be deducted from the award for loss of future earnings.

ORDER

23. The claimant’s total special damages which represents past loss of earnings are assessed in the sum of \$ 492,200 with interest at 3% per annum from November 1, 2007 to July 4, 2012.

¹¹ CV 2008-03944

¹² (1970) AC 1

24. The claimant total's general damages are assessed in the sum of \$90,000 with interest at 6% per annum from March 3, 2009 to July 4, 2012. No deduction is to be made for the sums paid as Workmen's Compensation.
25. The total cost of future surgery in the sum of \$100,000. No interest.
26. The total loss of future earnings in the sum of \$118,212.00. No interest. No deduction is to be made for the gratuity paid to the claimant.
27. The defendant to pay the claimant's prescribed costs in the sum of \$ 83,066.65.
28. The aforesaid sums are to be paid to the claimant in the percentage apportioned by the Honourable Mr Justice Des Vignes on the order of liability of May 19, 2010 namely 85% of the claimant's claim.
29. Stay of execution 30 days.

Dated this 25 day of September, 2012

Margaret Y Mohammed
Master (Ag)