

**THE REPUBLIC OF TRINIDAD AND TOBAGO**  
**IN THE HIGH COURT OF JUSTICE**  
**SAN FERNANDO**

**Claim No. CV2018-03582**

**BETWEEN**

**ANTHONY SEETARAM**

Claimant

**AND**

**EMPIRE BODY GUARD AND SECURITY SERVICES**

Defendant

**Before Master Sherlanne Pierre**

**Date of Delivery:** 22 October 2021

**Appearances:**

**Claimant:** Ms. Lauren Ramtahal instructed by Ms. Sasha Singh

**Defendant:** Mr. Rondelle Keller instructed by Ms. Rachel Richards

**JUDGMENT**

**Introduction**

1. This was the claimant's assessment of damages. He claimed he sustained personal injuries and consequential losses when security officers of the defendant company hit him repeatedly on the head for 3 to 4 seconds on 8 May 2015<sup>1</sup>.
2. He pleaded that, as a result, he sustained injury and experienced pain and suffering, loss and inconvenience as follows:
  - i. pain at time of battery;

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<sup>1</sup> **Order of Seepersad J dated 6 February 2020:** It is ordered by consent that there shall be Judgment in favour of the Claimant as against the Defendant. The court having found that the Defendant's servants and/or agents without reasonable justification effected a battery by inflicting blows to the Claimant's head on the 8th May, 2015 for a period of three (3) to four (4) seconds resulting in the Claimant having to obtain medical treatment.

- ii. left-sided hemiparesis (left-sided weakness) with upper limb dominance;
- iii. 1.3 by 1.3cm hypodensity in right external capsule compatible with a resolving contusion;
- iv. hospitalisation for 6 days;
- v. physiotherapy for almost a year to regain mobility;
- vi. inability to complete his mechanical engineering course at NESC;
- vii. inability to secure employment;
- viii. inability to participate in sporting activities he previously enjoyed, namely, football, swimming, riding a bicycle;
- ix. inability to stand for long periods of time;
- x. inability to drive a motor vehicle;
- xi. difficulty holding objects with left hand;
- xii. sudden shifts in body temperature at varying extremes;
- xiii. pain about the body especially when the temperature falls; and
- xiv. frustration and embarrassment because of having to depend on others to tend to his personal hygiene and care.

### **Submissions**

- 3. The claimant submitted that he was, therefore, entitled to the following awards:
  - i. general damages in the sum of \$288,943.00 for pain and suffering with an uplift to take into account aggravating features of his case; and
  - ii. special damages in the sum of \$8,640.94.
- 4. The defendant was unrepresented at the assessment trial but retained attorneys for the preparation of its final legal submissions. The defendant submitted that the medical evidence adduced by the claimant did not support the extent of disability claimed and therefore, the claimant should be restricted to an award between \$60,000.00 and \$65,000.00. The defendant made no submission on special damages.

### **Issues**

- 5. There were six issues for the court's determination:
  - i. What was the nature and gravity of injury sustained?;
  - ii. What was the extent of any resulting disability and loss of amenities?;
  - iii. Did the injury affect the claimant's pecuniary prospects?;

- iv. What sum should be awarded for general damages?;
- v. Should an uplift be made to the general award for aggravated damages?; and
- vi. What sum should be awarded for special damages?

## **Discussion**

### **What was the nature and gravity of injury sustained?**

- 6. The claimant gave evidence on his behalf and called his father, friend, Dr. Helen Bissoon of the San Fernando General Hospital and Dr. Chandradath Bodoie, a private practitioner. None of the claimant's witnesses were cross-examined save for Dr. Bodoie.
- 7. The defendant called one witness, Stephon Lamy; however, his evidence was relevant to liability and not quantum and was, therefore, of little assistance.
- 8. The evidence on behalf of the claimant was that he was involved in a protest when the battery occurred. He lost consciousness and was taken to the Point Fortin Area Hospital before being transferred to the San Fernando General Hospital.
- 9. The report from the San Fernando General Hospital was issued by Dr. Bissoon and stated as follows:

*“This patient was seen on [the day of the incident] with an alleged history of being hit on the head by a security officer during a protest. Patient has a documented past medical history of hypertension. On examination, he was found to have left-sided hemiparesis with upper limb dominance. CT brain report demonstrated a 1.3x1.3cm hypodensity noted in right external capsule compatible with a resolving contusion. On senior review of CT films nil sign of neurological pathology and was subsequently discharged. He was also reviewed by medicine team with no acute medical intervention. He left hospital on 14/05/2015. Nil further notes seen to indicate any clinic follow-up.”*

- 10. Dr. Bissoon gave additional details in her witness statement. She stated that upon the claimant's arrival at the hospital, he was drowsy but well-oriented. She also produced medical notes which showed that the claimant needed assistance with his self-care and

hygiene because of mobility issues and that he was required to undergo physiotherapy during his stay. Her notes also showed that he received a referral to the hospital's clinic for continued physiotherapy upon his discharge six days later. Dr. Bissoon went on to say that '*[n]o further medical records are seen to indicate immediate outpatient follow up after his discharge*'.

11. Dr. Bissoon stated that she next saw the claimant in June 2017, two years after his discharge. She said that he visited the hospital and complained of headaches, blurred vision and persistent weakness on his left side. She examined him and found him to have persistent motor deficit on the left side of the body and referred him for high blood pressure follow-up, the neurology outpatient clinic, physiotherapy and ordered a repeat CT scan.
12. Dr. Bissoon's evidence was that the next month, July 2017, the claimant was seen by a neurology senior officer to whom *he reported* headaches, blurred vision and worsening left facial and arm weakness since the 2015 incident. He was assessed with reduced power of left upper limb, mild left facial droop and mild circumduction on walking. An assessment of post-concussion syndrome was made and an MRI of the head was requested. She stated, however, that the claimant did not follow-up.
13. There were several matters to note about the 2017 visit. First, the claimant was assessed with post-concussion syndrome in 2017, however, 'post-concussion syndrome' did not form part of the claimant's pleaded case. Second, the claimant himself made no reference to any 2017 visit to the hospital in his witness statement tendered into evidence. One would have thought that had the claimant formed the view that the 2017 visit was relevant to his claim, he would have made reference to it in his very witness statement. Third, Dr. Bissoon did not conclude that the 2017 complaints were linked to the 2015 injury.
14. Based upon the claimant's complaints, Dr. Bissoon referred him for high blood pressure follow-up, to the neurology outpatient clinic and recommended physiotherapy. She also ordered a repeat CT scan and gave him an appointment with the neurosurgical outpatient clinic to review the CT results. There was no evidence that the claimant honoured his referrals to the health centre for high blood pressure follow up or followed

through with the recommendation to continue physiotherapy. As for the CT scan, Dr. Bissoon stated, '*A repeat CT scan of the head was also ordered and an open Neurosurgical Outpatient clinic appointment given to review CT results. There were no further entries to indicate other neurosurgical outpatient clinic visits*'<sup>2</sup>. In other words, none of the investigative follow through ordered or recommended by Dr. Bissoon were done so not surprisingly there was no conclusion made as to cause.

15. The same can be said of the referral by the neurology senior medical officer who assessed the claimant with post-concussion syndrome. Dr. Bissoon stated that '*An assessment of post-concussion syndrome was made and an MRI of the head was requested. An 8 week follow up appointment was given. No further entries were made to indicate follow up*'. The claimant appeared not to have submitted himself for the MRI. There was therefore no evidence of any medical finding as to the cause of the 2017 complaints nor of any medical finding which clearly linked the 2017 complaints to the 2015 incident.
16. The court was, therefore, not satisfied that the 2017 complaints arose from the subject injury or indeed formed part of the pleaded claim.
17. Dr. Bodoie was the internist whom the claimant consulted in 2019, four years after the subject incident. The claimant called him to say he did not have a history of hypertension.
18. Dr. Bodoie testified that based on his examination and several scientific tests he performed over a period of time, the claimant was not hypertensive and likely did not have a history of hypertension. He also stated that the claimant presented with the residual effects of a stroke, however, he could not say whether those effects had been caused by the subject incident because his examination occurred four years after the event.
19. The cross-examination of Dr. Bodoie by the defendant's lay representative did not effectively challenge the doctor's evidence but in any event, the defendant called no

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<sup>2</sup> Para 9 of her witness statement

medical evidence to show whether and how hypertension could cause cerebral concussion, left-sided hemiparesis and hypodensity in the right capsule.

20. The court therefore considered the proximity of the battery to the onset of the loss of consciousness, cerebral concussion and resulting hemi-paresis in circumstances where immediately prior, the claimant had been actively involved in a protest; that the defendant called no medical evidence of its own to show that the cerebral concussion and hemiparesis were not or could not have been caused or precipitated by the beating the claimant received to his head; and the defendant did not point the court to any finding in the claimant's medical evidence that the cerebral concussion and hemiparesis were not or could not have been caused or precipitated by the beating the claimant received to his head.
21. Further, with respect to the defendant's failure to cross-examine witnesses:  
*'[a] party who fails to cross-examine a witness on an issue in respect of which it is proposed to contradict his evidence-in-chief or impeach his credit by calling other witnesses, should not be permitted to invite the tribunal of fact to disbelieve the witness's evidence on the issue. The cross-examining party must lay a proper foundation by putting the matter to the witnesses so that he has an opportunity to give any explanation open to him.'*<sup>3</sup>
22. In the circumstances, the court accepted that the claimant experienced pain while being beaten on the head, that as a result of the beating, he lost consciousness and suffered a cerebral concussion with resulting left-sided hemiparesis with upper limb dominance and was consequently hospitalised for six days. Further, his condition negatively impacted his ability to mobilise and he required physiotherapy. At the time of discharge, he continued to suffer with mobility issues and needed further physiotherapeutic intervention.

**What was the extent of any resulting disability and loss of amenities?**

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<sup>3</sup> *Blackstone's Civil Practice 2015 at para. 49.65*

23. The claimant's evidence was that during his hospital stay, he was not independent and needed assistance with his self-care, personal hygiene and to perform routine tasks. His dependence on third parties to assist in his personal care caused him to feel embarrassed. He did not regain full mobility by the time of discharge and received a referral to the hospital's clinic. The claimant said he opted to undertake physiotherapy at a private facility and did so for almost a year. He produced receipts for occupational therapy from Renew Star Serpentine Limited from 1 June 2015 to 16 May 2016 as well as receipts for the purchase of a cane and a piece of equipment to assist with hand mobility<sup>4</sup>. He stated that during that period, he continued to be dependent on others and continued to operate under several disabilities as well as experienced a loss of amenities. He also stated that as a result of the physiotherapy, he was able to walk on his own again.
24. The court, therefore, accepted that the claimant operated under several disabilities and experienced a loss of amenities from the date of the incident and while he was undergoing physiotherapy. The court took into account that the claimant:
- i. was unable to undertake his self-care and personal hygiene without assistance;
  - ii. experienced feelings of frustration and embarrassment at having to be helped with his personal hygiene;
  - iii. was unable to engage in his former pursuits of football, swimming, cycling;
  - iv. experienced challenges with driving;
  - v. could not carry out his household chores;
  - vi. could not perform routine tasks;
  - vii. was unable to stand for long periods of time; and
  - viii. had difficulty holding objects with his left hand.
25. The claimant also claimed that he continued and continues to experience the concerns set out at paragraph 24 above, despite having undergone his course of physiotherapy. In addition, he also claimed that he experiences debilitating pain and shifts in extreme body temperature.
26. However, the claimant adduced no medical evidence which spoke to any long term or permanent effect of the injury. As discussed earlier, the claimant did not follow-up with

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<sup>4</sup> An eggsercizer

the hospital after his discharge in 2015, the 2017 complaints were not sufficiently linked to the subject injury and Dr. Bodoie refused to draw a nexus between the 2019 residual weakness and the subject incident. Nor did the claimant produce any updated or current medical report which spoke to his complaints. The claimant also failed to produce any report from his physiotherapist in support of his claims. The effect of any resulting disability is not merely a matter of what a lay claimant says he experiences. Assertions by a lay claimant should be supported by medical evidence. In **Ramnarine Singh and others v Johnson Ansola**<sup>5</sup>; **The Great Northern Insurance Company Limited and others v Johnson Ansola**<sup>6</sup>, Mendonça J.A. stated at paragraph 67 that:

*“It was, of course, not sufficient for the Plaintiff to give oral evidence of the injuries allegedly sustained by him and the effect upon him. In establishing his claim to pretrial loss there had to be medical evidence as to the nature of the injuries he sustained and the residual effect that they may have had on his ability to work.”*

27. With respect to the claim of ongoing pain, it was noted that while pain is a subjective matter, there was no evidence of any pain management by the claimant himself or of any recommendation for ongoing pain management by the doctors.
28. With respect to the claim that he experiences sudden shifts in body temperature, there was no medical evidence which linked that symptom to the 2015 injury.
29. Altogether, therefore, the claimant’s medical evidence, did not support his claims of the ongoing and extensive disability he claimed that he continued to face, his claims of ongoing pain and the complaint with respect to shifts in his body temperature. In the circumstances, the court attached little weight to his assertions of ongoing or permanent effects of injury.

### **Did the injury affect the claimant’s pecuniary prospects?**

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<sup>5</sup> Civil Appeal No 169 of 2008

<sup>6</sup> Civil Appeal No. 121 of 2008



30. The claimant claimed that he could no longer pursue his studies at NESC nor work because of his injury. (The pleaded claim did not include a claim for future loss of earnings.)
31. The claimant did not provide documentary evidence of his enrolment in NESC. Even if the court accepted that he were so enrolled, there was no evidence of when he stopped classes. The claimant needed to show that his cessation of classes coincided with a date proximate to the date of the incident or the period of resulting disability. He also provided no medical evidence that the effects of his injury were such that he was now incapable of ever pursuing his studies. The lay claimant's assessment of the effects of his injury on his educational pursuits was not enough.
32. The claimant also claimed that he was now unable to work and was, therefore, on public assistance. He produced a receipt for a cheque made out in his name from the relevant Government Ministry. There was no evidence from the claimant whether he sought work and if so, what work he sought and the outcome of any such efforts. Further, the claimant's medical evidence was silent on the question of if and how the 2015 injury was expected to impact his employability.
33. In the circumstances, in assessing the claimant's general damages, the court did not take into account that the claimant had been rendered incapable of completing his studies at NESC nor that he had become unemployable. The court did consider that while he was undergoing physiotherapy his ability to continue classes may have been affected.

**What sum should be awarded for general damages?**

34. Two cases relied on by the claimant dealt with injuries which were so severe and in respect of which the disabilities so extensive that they could not be said to be comparable. One of them was also limited in its usefulness because of its age.

35. Having so said, let us now dispose of **Hamid Mohammed v Allan Bullock et al**<sup>7</sup> and **Ian Sieunarine Doc's Engineering Works (1992) Limited**<sup>8</sup>.

**Hamid Mohammed v Allan Bullock et al (supra)**

36. Hamid Mohammed was awarded general damages, inclusive of an uplift for aggravated damages, in the sum of \$265,000.00 on 19 July 2016. He had been struck on the head with an iron pipe and was rendered unconscious. He suffered traumatic brain injury secondary to cranio-facial trauma; right temporal skull fracture; right retro-orbital haematoma; multiple facial bone fractures and left-sided partial paralysis. Those injuries led to multiple complications including loss of sight in the right eye; inability to control his bowel movements; limitations with his memory and cognitive skills; failed erection; phantom pains from the trauma to his head; sleeplessness; nightmares and difficulty in movement so that he needed the support of a cane to walk. He was assessed with 100% permanent disability for future employment and 80% permanent partial disability for normal day-to-day activities. Mohammed also suffered psychologically from his public beating, both during and after its occurrence.

**Ian Sieunarine v Doc's Engineering Works (1992) Limited (supra)**

37. Ian Sieunarine was awarded \$200,000.00 for general damages in 2005. That award was, therefore, made 16 years ago. Sieunarine sustained a depressed skull fracture with underlying haematoma and a hemorrhagic cerebral contusion with right-sided weakness. His injuries required him to undergo surgery. He suffered a personality change, noise intolerance, blurred vision, slurred speech and impotence. He also suffered from dysphasia and seizures, post-traumatic syndrome, headaches, dizziness, forgetfulness with poor concentration. As a result of his injuries, Sieunarine was rendered unable to work, pursue further studies or any sport, hobbies or social activities. He was assessed with a permanent partial disability of 70%.
38. The court was of the view that in the two preceding cases, the gravity of the injuries, the resulting disabilities, the pain and suffering, loss of amenities and the effect on the pecuniary prospects of the respective claimants were to such a severe degree that the awards made would be out of any range that could be considered for our claimant.

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<sup>7</sup> CV2012-01932

<sup>8</sup> HCA No 2387 of 2000

39. Two cases relied on by the defendant need also be distinguished. In the one case, the judgment did not itself disclose the basis for the eventual sum awarded and the age of the decision limited its usefulness. The other case did not deal with injuries or disabilities which were similar to those of our claimant.

**Ramesh Harry v Jattan Jonathan and Deonarine R Singh (trading as D.R. Singh)<sup>9</sup>**

40. The court awarded the claimant \$100,000.00 in 1994. That award was, therefore, made 25 years ago. The claimant fell unconscious out of a moving vehicle and remained unconscious or partially conscious (unable to speak or follow commands) for 10 days. He suffered contusion of the brain which resulted in left and right-sided weakness. He was also diagnosed with post traumatic syndrome. Harry also sustained a left forehead and left ear laceration. As a result of his injuries, Harry was unable to work for two years and thereafter only on a restricted basis for one or two half days a week.
41. In making the 1994 award, the court stated, *'I have been referred to several cases reported in The Lawyer, 1003 at page 48. There is no case referred to me which is close to this case. I would award \$100,000.00'*.
42. The award of \$100,000.00 compensated Harry for a greater period of unconsciousness than in the instant case, that is, 10 days, weakness which affected both sides of the body, rather than one side, an additional diagnosis of post traumatic syndrome, as well as soft tissue injuries, neither of which were present in the instant case and the effect of the injury on Harry's pecuniary prospects which disabled him from working for two years and thereafter only on a limited basis. This court did not accept our claimant's evidence with respect to the effect of the injury on his pecuniary prospects.
43. The concern with relying on very dated awards is not simply about considerations of inflation. It is that they may no longer be reflective of current judicial trends. In the recent case of **Darrell Wade v The Attorney General**<sup>10</sup>; **Jason Superville v The Attorney General**<sup>11</sup>, the Court of Appeal noted the guidance of de la Bastide CJ in **Bernard v Quashie**<sup>12</sup> in which he said at page 7:

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<sup>9</sup> H.C.S. 1050/1988

<sup>10</sup> Civil Appeal No 172 of 2012

<sup>11</sup> Civil Appeal No 173 of 2012

<sup>12</sup> Civil Appeal 159 of 1992

*“The fact of the matter is that damages are being assessed almost on a daily basis. And therefore, in the course of time the amounts awarded for injuries of the same type do increase incrementally over years and one has got to be guided as well not only by awards made several years before converted in accordance with some formula, but also one must have regard to other comparable contemporaneous awards.”*

**Vidya Jaglal v The University of the West Indies and anor<sup>13</sup>**

44. Jaglal was struck at the back of her head with a cricket hardball. She experienced pains in her neck radiating into the arms with varying severity; pains and muscle spasms in the neck requiring medication to provide some comfort; spasms of the para-vertebral muscles of the cervical spine with some varying degrees of nerve root irritation in the upper limbs; chronic pain necessitating long term use of muscle relaxants to alleviate the pain. She was prone to periods of relapse associated with sitting for long periods and was assessed with a 20% permanent partial disability. She was unable to carry out basic household chores such as cooking, cleaning her house and playing with her children. The court awarded her \$60,000.00 in 2018 for her trouble.
45. Certainly there was a dearth of recent comparable cases, however, this court was of the view that neither the injury nor the effects of the injury in **Jaglal** were sufficiently similar to the instant case.
46. The court considered cases which either involved similar injuries, that is injuries to the brain, or in which the effects of the injury were similar, that is weakness on one or both sides of the body.

**Anjula Ramnath (a minor by her mother and next friend Umatwatee Ramnath, Umatwatee a/c Veera Ramnath) v The Attorney General of Trinidad and Tobago<sup>14</sup>**

47. The claimant was 9 years old when a heavy steel gate fell on her. The court awarded \$170,000.00 in general damages on 29 January 2020. Anjula suffered soft tissue injuries of the brain and was diagnosed with mild-post traumatic syndrome. Her brain injury resulted in physical discomfort (swelling of neck and shoulders and aches to the back)

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<sup>13</sup> CV2016-00599

<sup>14</sup> CV2016-04167

and psychological trauma. Her symptoms resulted in absenteeism from school, fainting spells when she attempted to read, poor emotional and social coping skills, the need for special accommodation to assist the completion of primary school and transition to high school and the need to undergo psychological trauma resolution work and neurofeedback training.

48. At the date of assessment, which was 7 years post-accident, she still required ongoing medical attention and psychological therapy for anxiety, depression, insomnia and stress and continued to suffer from chronic tension headaches. She was however, expected to eventually return to and lead a normal life. Anjula relied on over nine medical reports including specialist reports which traced her progress from the date of the accident and provided robust medical support for her ongoing disability and the ongoing effects of her injury on her amenities.
  
49. In both Anjula Ramnath and the instant claim, the brain injury had an immediate and deleterious effect on the claimant's quality of life. Anjula's school life and ability to develop social coping skills was interrupted and impeded because of her psychological disabilities while our claimant's normal pace of life was interrupted and impeded because of his physical disabilities (inability to carry out or challenges with routine tasks, self-care, household chores, driving and sporting activities). However, in Anjula Ramnath, there was evidence of ongoing disability and symptoms even up to the time of assessment. In the instant claim, there was a stark lack of medical evidence to support the claimant's assertions of continued and ongoing disability once he had completed physiotherapy.

**Damien Moreno v Anthony Brusco and ors<sup>15</sup>**

50. The 17-year-old claimant was involved in a motor-vehicular accident and was awarded \$75,000.00<sup>16</sup> in general damages before the Court of Appeal. His principal injuries were the post-concussion syndrome and injury to the cervical spine, the latter which resulted in mild curvature of the spine and contributed to cervical muscular spasms and pain in upper back and neck. He also suffered a cerebral concussion and minor facial lacerations (2 cm laceration to one cheek and multiple abrasions on the other). The

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<sup>15</sup> H.C.A. No. 3130 of 2004 and Civil Appeal No .239 of 2009

<sup>16</sup> In a 2014 decision, the Court of Appeal adjusted the first instance 2009 award of \$35,000.00

Court of Appeal did not disturb the first instant findings that any disability or pain Moreno continued to experience was manageable without the use of painkillers. The first instance judge also made no finding as to the effect of the injury on the claimant's quality of life or pecuniary prospects.

51. In **Moreno**, there was a brain injury and a physical injury, here, there was the brain injury but one which affected the integrity of the claimant's physical bearing so in that regard our claimant can also be said to have sustained 'a physical injury'. Moreno's symptoms were muscle spasms and pain in the back and neck. He also sustained the mild curvature to the back. Our claimant's symptom was the weakness on the left side but to the extent that he required physiotherapy to rehabilitate him. Moreno was also compensated for the facial lacerations. Our claimant must also be compensated for the frustration and embarrassment he faced on having to be assisted with his personal hygiene. Like in **Moreno**, our claimant also did not have the benefit of a finding of continuing or permanent disability which affected his pecuniary prospects or quality of life.

#### **Judson Mohammed v The Attorney General<sup>17</sup>**

52. The court awarded Mohammed \$30,000.00 in general damages on 13 April 2017. The claimant-police officer was slashed across the face by a prisoner and was kicked and punched about the body. He was diagnosed with cerebral concussion or post concussion syndrome and suffered from amnesia, headaches, dizziness and loss of balance. He sustained a wound above the left eye, soft tissue injuries and suffered from pain to the neck and right ear for several months after the incident. The court was satisfied that there was no evidence that Mohammed suffered from any resulting disability save for a scar and did not suffer any loss of amenities nor did his injury have any effect on his pecuniary prospects.
53. Our claimant's injury rendered him unconscious (albeit briefly he regained consciousness at the San Fernando General hospital). His mobility was affected to the extent that he required physiotherapy for almost year. During that period, he was unable to carry out routine tasks and was reliant on others, to varying degrees, to assist

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<sup>17</sup> CV2015-00123

with self-care and personal hygiene. In addition, he experienced a loss of amenities in that he could not effectively manoeuvre a motor vehicle nor engage in sporting activities. The effect of the cerebral concussion on our claimant resulted in greater disability for a longer period of time and affected his loss of amenities in a way in which the claimant in **Mohammed** was not affected.

54. In the above circumstances, our claimant would not attract an award in the vicinity of \$170,000.00 as made in **Anjula Ramnath** because of the lack of evidence of long term or continuing effects of the brain injury even up to date of assessment. He would, however, attract an award greater than that of \$30,000.00 made in **Mohammed** because of the evidence of his resulting disability and the effects of the injury on his amenities from date of injury to end of physiotherapy. Our claimant would attract an award which was not too far from that awarded in **Moreno** with some upward adjustments to take into account his period of rehabilitation and the fall in the purchasing power of the dollar.
55. Having regard to the foregoing, the court was of the view that the sum of \$90,000.00 would do justice in this case.

**Should an uplift be made to the general award for aggravated damages?**

56. A court may make an uplift to a general award for damages where such award would not sufficiently compensate the claimant for the aggravating factors of the case<sup>18</sup>. The compensatory award of \$90,000.00 already took into account the pain and suffering which the claimant endured at the time of the beating. In the circumstances, these were not appropriate circumstances for an uplift.

**What sum should be awarded for special damages?**

57. The claimant produced several receipts which he said were for medication. There was no evidence that the claimant was prescribed medication. In any event, several receipts were simply not legible and those that were, were for ordinary grocery items and not medication. There were, however, two sets of receipts which the court took into account, namely, receipts for the purchase of equipment and those for physiotherapy.

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<sup>18</sup> **Thompson v Commissioner of Police of the Metropolis** [1998] QB 498

58. The court accepted that the injury affected the claimant's mobility and that the claimant underwent a period of rehabilitation. He produced receipts for equipment (a cane and an eggsercizer purchased on 13 May 2015) in the total sum of \$394.25 and was awarded that sum.
59. The court also accepted that the claimant was referred to physiotherapy by the hospital, however, he elected to do physiotherapy privately. There was no plea of mitigation in the defence<sup>19</sup>. The reason he gave for using private services was that appointments were scheduled too far apart at the hospital. The claimant's evidence was that he was a young man who was suddenly rendered immobile and dependent on his family to perform even the most intimate of tasks to the point that his condition caused him embarrassment. The court was of the view that it was not unreasonable for the young claimant to wish to 'get back on his feet again' as soon as possible and so his election to use private facilities was not unreasonable. He produced receipts for the sessions from 1 June 2015 to 16 May 2016 and pleaded the sum of \$7,745.00. That sum was awarded.
60. The total award for special damages was, therefore, \$8,139.25.00.
61. In the circumstances, the defendant shall pay the claimant the sum of \$90,000.00 in general damages with interest thereon at the rate of 2.5% per annum from the date of the claim to date of assessment and special damages in the sum of \$8,139.25 with interest thereon at the rate of 1.5% from the date of the incident to date of assessment and costs assessed in the sum of \$24,868.39 on the prescribed scale.
62. There shall be a stay of execution of 28 days.

**Sherlanne Pierre**

**Master**

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<sup>19</sup> See Geest PLC v Monica Lansiquot Privy Council Appeal No. 27 of 2001