

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2012-02217

BETWEEN

SHURLA GARCIA

CLAIMANT

AND

GULF HOMES LIMITED

1ST DEFENDANT

BENEDIC EDWARDS

2ND DEFENDANT

**MOTOR & GENERAL
INSURANCE COMPANY LIMITED**

CO-DEFENDANT

Claim No. CV2012-00236

BETWEEN

LYSTRA MILLER

CLAIMANT

AND

GULF HOMES LIMITED

1ST DEFENDANT

BENEDIC EDWARDS

2ND DEFENDANT

SHURLA GARCIA

3RD DEFENDANT

MOTOR ONE GENERAL

INSURANCE COMPANY LIMITED

1ST CO-DEFENDANT

PRESIDENTIAL INSURANCE COMPANY LIMITED

2ND CO-DEFENDANT

(Consolidated pursuant to the Order of Dean-Armorer J dated the 11th December 2013)

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 7th June 2018

APPEARANCES:

Mr. Rennie Gosine Attorney at law for the Claimant

Ms. Indra Ramdial Attorney at law for the First Defendant and First Co-Defendant

Mr. Osbourne Charles SC and Mr. Owen Hinds Attorneys at law for the Second Defendant

Mr. Shaun Teekasingh instructed by Ms. Renatta Ramjattan Attorneys at law for the Third Defendant and Second Co-Defendant

JUDGMENT

1. This judgment concerns the claim in action CV2012-00236. This claim arises from a motor vehicular collision, which occurred on 19th February 2009. It involved motor vehicle HBF 1734, driven by the Second Defendant (“the Taxi”) and TCJ 3314 driven by the Third Defendant (“the Truck”). The Claimant was a passenger in the Taxi. The Second Defendant is the servant and/or agent of the First Defendant and the First Co-Defendant is

the insured of the First Defendant. The Second Defendant is the insured of the Second Co-Defendant.

2. As a result of the accident, the Claimant claims against the Second Defendant and the Third Defendant damages for property, personal injuries interests and costs. The Claimant also claims a declaration that the First Co-Defendant and the Second Co-Defendant are liable to satisfy any judgment that is obtained against the Second and Third Defendants respectively.
3. The Claimant's case is that on the 19th February 2009 she was a passenger in the Taxi which was proceeding in a westerly direction along the Toco Road in a line of traffic when the Truck attempted to overtake the line of traffic from behind and pulled to the right to do so. Whilst in the process of overtaking alongside the Taxi the driver of the Taxi suddenly and without warning and/or indication pulled to the right in an attempt to get a better view of the traffic. In doing so the Taxi pulled onto the left of the Truck.
4. The Claimant contends that the collision and ensuing losses and damages were caused by the negligence of the Second and/or the Third Defendants. The Claimant also contends that at the time of the accident she was 49 years and she suffered a fracture to her C2 vertebra; fracture of her right fibula and both ankles were sprained.
5. The Second and Third Defendants have denied that they were negligent. The Second Defendant averred that on the 19th February 2009 whilst he was proceeding in a westerly direction he observed a grey B 12 vehicle (the Taxi) proceeding in the same direction in front of him. The Second Defendant stated that the Taxi was proceeding very slowly and he sounded "his horn" a few times and indicated by his indicator that he wished to overtake the Taxi. The Second Defendant observed that there were no vehicles proceeding in the opposite direction and he determined that it was safe to proceed. The Second Defendant upon reaching alongside the Taxi observed that it suddenly swerved to the right. The Second Defendant also pulled to the right to avoid colliding with the Taxi but the Taxi collided with the left front fender of the Truck. The Truck then collided with the curb wall

on the right side of the road causing the rear tyre of the Truck to burst. The Second Defendant observed that the Taxi had run off the road on the left side. The Second Defendant's position was that the accident was caused by the Third Defendant the driver of the Taxi.

6. The Third Defendant denied being responsible for the accident and instead pleaded that the Second Defendant was solely responsible. The Third Defendant pleaded that on the day of the incident whilst the Taxi was proceeding in a westerly direction along the Toco Main Road in the vicinity of Salibya at approximately 15 km per hour (kph) the Second Defendant attempted to overtake a line of traffic causing the Truck to collide with the Taxi which cause the Taxi to flip several times and eventually land on the right front side.
7. At the trial, the Claimant gave evidence and her medical evidence was not disputed by the Defendants. The Second and Third Defendants gave evidence and the Third Defendant called Wayne Quintyne as a witness.
8. In determining the version of the events more likely in light of the evidence the Court is obliged to check the impression of the evidence of the witnesses against the: (1) contemporaneous documents; (2) the pleaded case: and (3) the inherent probability or improbability of the rival contentions. (**Horace Reid v Dowling Charles and Percival Bain**¹ cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**²).

Issues:

- i. Who is liable for the accident?
- ii. What measure of damages should be awarded?

¹ Privy Council Appeal No. 36 of 1897

² CV 2006-01661

Who is liable for the accident?

9. A finding of negligence requires proof of: (1) a duty of care to the Claimant; (2) breach of that duty and (3) damage to the Claimant attributable to the breach of the duty by the defendant: **Charlesworth & Percy on Negligence**³. There must be a causal connection between the Defendant's conduct and the damage. Further, the kind of damage suffered by the Claimant must not be so unforeseeable as to be too remote: **Clerk & Lindsell on Torts**⁴.
10. The burden of proof of proving damages in negligence lies with the Claimant.
11. The particulars of negligence alleged by the Claimant against the Second and /or Third Defendants were:
- (a) *Driving without due care and attention;*
 - (b) *Driving at a speed which was excessive in the circumstances.*
 - (c) *Failing to keep any or any proper look out or to have any sufficient regard for other traffic that was or might reasonably be expected to be on the said road.*
 - (d) *Causing of permitting the Truck to collide with the Taxi.*
 - (e) *Failing in give way to the Truck*
 - (f) *Driving on the wrong side of the road;*
 - (g) *The Claimant also relied on the doctrine of res ipsa loquitor."*
12. The particulars of negligence alleged by the Second Defendant against the Third Defendant were:
- (a) *Colliding with the Truck;*
 - (b) *Failing to control or manage the Taxi while it was on the Roadway;*
 - (c) *Failing to keep an adequate look out for the Truck or any other users of the roadway;*

³ 13th Edition, Chap 1 para 1-19

⁴ 19th Edition, Chap 8 para 8-04

- (d) *Causing and/or driving the Taxi to collide with the Truck;*
- (e) *Failing to stop, slow down or in any way manage or control the Taxi to avoid the collision.*

13. The particulars of negligence alleged by the Third Defendant against the Second Defendant were:

- (a) *Driving without due care and attention;*
- (b) *Driving at a speed which was excessive in the circumstances;*
- (c) *Failing to give any adequate warning of his approach;*
- (d) *Driving too close to the Taxi;*
- (e) *Failing to keep any proper lookout or to have sufficient regard for other traffic that was or might reasonably be expected to be on the said road;*
- (f) *Causing and or permitting the Truck to collide with the Taxi;*
- (g) *Overtaking or attempting to overtake a line of traffic without first ascertaining or ensuring that it was safe to do so when it was unsafe and dangerous to do so;*
- (h) *Failing to see the Taxi in sufficient time so as to avoid the collision or at all;*
- (i) *Failing to have or to exercise or to maintain any or any adequate control of the Truck.*

14. The Claimant in her witness statement stated at the time of the accident she was in the middle back seat of the Taxi. She testified that the Taxi was heading in westerly direction along the Toco Road in the vicinity of Salibya. There was a line of traffic in front of the Taxi. The road had two lanes a western and an eastern lane and the Taxi was in the left or western lane. The Taxi was moving slowly due to the traffic in the left lane but that the traffic on the opposite lane was flowing. As the Taxi moved a cement truck overtook the line of traffic on the western lane and sped passed the Taxi. When the first truck passed, the driver of the Taxi, the Third Defendant opened to the right in an attempt to see what was causing the traffic. In doing so part of the Taxi ended up on the eastern side of the road. Just as the Taxi veered to the right the Truck attempted to overtake the line of traffic on the western lane and in so doing caused it to collide with the Taxi.

15. In cross-examination, the Claimant agreed that her witness statement stated that the Third Defendant opened to the right to see what was causing traffic. She later changed her position to state that the Third Defendant slightly pulled the Taxi to the right and that she never changed the lane. She admitted that the driver of the Taxi failed to take steps by pulling to avoid the accident. She stated that the road was very narrow and that the vehicles in both lanes passed close to each other and that the Truck was travelling at a fast speed.
16. The Second Defendant testified that he was driving at 30-35 kph in the vicinity of Salybia Resort. He observed the Taxi in front of him and there were 2 other vehicles between the Truck and the Taxi. The opposite lane for vehicles heading east was clear. The Taxi was driving slowing so he sounded the horn in the Truck a few times, he put on his indicator and he proceeded to overtake the vehicles. Upon reaching alongside the Taxi, the driver of the Taxi suddenly swerved to her right and collided with the left front side of the Truck. He immediately pulled to the right to avoid the collision and ended up colliding with the curb wall on the right or east bound lane which caused the right rear tyre to burst.
17. In cross-examination the Second Defendant agreed that the traffic was heavy. He stated that he was familiar with the location of the accident and the road since he had traversed it previously. He stated that there was a line of cars ahead of the 2 cars he was attempting to overtake but that there was clear space of 3 or 4 car spaces and the traffic was flowing slowly. He agreed that the Truck was more difficult to manoeuvre at a higher speed and that the sound of the horn in the Truck was not loud.
18. The Third Defendant's evidence was that she was driving the Taxi in a westerly direction along the Toco Main Road for about 15-20 minutes when she noticed a vehicle (the first truck) overtake her and the other vehicles in the heavy traffic at a fast speed. She the saw the light of the Truck and as it approached the Taxi she heard a screeching noise and then the Taxi flipped in the air.
19. In cross-examination, she admitted that she knew the Claimant. She denied that she had pulled the Taxi to the right immediately before the impact with the Truck. She said that the

left front wheel of the Taxi was about 1 foot away from the faint white line in the middle of the road and that the traffic was slow about 10 mph. The vehicle in front of her was about 4-5 feet away from the Taxi. She admitted that the Truck was smaller from the regular cement truck and that the first truck had passed the Taxi safely.

20. The Third Defendant relied on the evidence of Wayne Quintyne to support her version of the accident. Mr Quintyne was a police officer at the time of the accident. His evidence was that he was driving along the Toco Main Road in very heavy traffic in a westerly direction when he saw the Truck proceeding in the same direction at the rear of his vehicle overtaking the heavy line of traffic. When the Truck overtook his vehicle he pulled to the extreme left to allow the Truck to pass. He then observed the left rear tyre of the Truck come into contact with the Taxi which caused the Taxi to turn over and fall over a precipice.
21. In cross-examination he said that he only saw 1 Truck on that night. He said that were about 1 or 2 vehicles between his vehicle and the Taxi. He denied that the Taxi had veered to the right. He maintained that the rear left tyre of the Truck came into contact with the Taxi.
22. At the trial, Counsel for the Claimant submitted that the both the Second and Third Defendants were liable for the accident and that liability should be apportioned 70:30.
23. Counsel for the Second Defendant argued that the Third Defendant alone was responsible for the accident since based on the unchallenged evidence of the Claimant the Third Defendant veered the Taxi to the right causing it to collide with the Truck and which was consistent with the Second Defendant's evidence.
24. Counsel for the Third Defendant submitted that the Second Defendant was solely liable for the accident since the Third Defendant knew that he was travelling on a narrow road and that he did not exercise all precautions when overtaking a line of vehicles.

Analysis and Findings

25. Counsel for the Third Defendant referred the Court to the learning in the Privy Council judgment of **Greene v Sookdeo**⁵ where their Lordships stated at paragraph 17 that the approach the Court is to take in determining culpability in motor vehicular accident is to examine the reasonableness of the conduct of the drivers taking into account the exigencies of the particular situation. The exigencies of the particular situation in the instant matter based on the evidence from all the witnesses were that on the day of the accident occurred at night; the road was narrow; the area of the road where the accident occurred was not well lit; there was a line of vehicles in traffic proceeding in the lane going west and the opposite lane was free; and the Taxi was driving at a slow speed.
26. I was of the view that the Claimant presented himself as a witness of truth. She had no interest to serve since she was a passenger in the Taxi. She came across as a credible witness since she maintained that the Third Defendant had pulled the Taxi to the right. She admitted that the Third Defendant was her friend and although she tried in cross-examination to minimize the extent the Third Defendant had pulled the Taxi to the right her evidence remained that the Third Defendant had veered the Taxi to the right. In my opinion given that the road was narrow even if the Third Defendant had only veered the Taxi slightly to the right the effect was that it would have placed part of the Taxi in the middle of the road thereby causing an obstruction which was partially consistent with the Second Defendant's evidence.
27. I do not accept the Third Defendant's evidence that she did not veer the Taxi to the right. In cross-examination, the Third Defendant stated that the Taxi was 4-5 feet behind the vehicle which was in front of her and that the Truck had overtaken 2 other vehicles before it collided with the Taxi. If I am to accept this aspect of the Third Defendant's evidence then it is highly probable that the Truck would have collided with both the Taxi and the vehicle in front of it. In my opinion, the reason the Truck collided with the Taxi and not the other vehicles was because the Taxi was not in the western lane but part of it was in the

⁵ [2009] UKPC (Transcript)

middle of the narrow road. For this reason, I have concluded that the Third Defendant failed to keep an adequate look out for any other users of the roadway and she failed to control the Taxi to avoid the collision.

28. Further, the evidence from her witness Wayne Quintyne did not assist the Third Defendant. His evidence was lacking in credibility since he said that he only observed 1 truck overtake that night when the evidence from both the Claimant and the Third Defendant was that there were two trucks which passed the Taxi. Further, he accepted in cross-examination that he had witnessed a serious accident but that he failed to speak to any of the police officers at the scene or to make a report. Indeed the first time he gave a statement was 2 years after the accident.
29. That being said, I do think that only the Third Defendant was liable for the accident. I also found the Second Defendant's evidence to be lacking in credibility in the following material aspects. The Second Defendant's case was that the Truck was directly behind the Taxi. In his witness statement he stated that the Truck was 3 vehicles behind the Taxi and in cross-examination he testified that the Truck was 2 vehicles behind the Taxi. In my opinion, such inconsistencies demonstrated that the Second Defendant was unsure of the position of the Truck before the accident and that he was not paying attention to the road.
30. In his Defence the Second Defendant did not plead any damage to the Truck but he changed this position in his witness statement and in cross-examination to state that the damage to the Truck was the left front fender and bumper and the step to enter the Truck from the left side. He also stated that the right side of the Truck also sustained damage. Notably the damage to the front left of the Truck was consistent with the evidence of the Claimant that the Third Defendant veered the Taxi to the right.
31. In cross-examination some of the responses by the Second Defendant underscored the lack of credibility of his evidence. For example he agreed that the road was not ideal and that the sound of the horn of the Truck which he sounded was not loud yet he insisted that it was still safe to overtake. Further, the Second Defendant admitted that the added weight of the Truck made it more difficult to manoeuvre and that the centre of the Truck was higher

than the Taxi yet he stated that he did not see the precipice and the curb wall. Also in cross-examination the Second Defendant conveniently was unable to recall material evidence when certain questions were posed to him.

32. While both the Second and the Third Defendants owed a duty of care to proceed with caution along a narrow road at night, in my view, the action the Second Defendant was engaged in was of a greater hazard and he had a greater duty of care since he was driving the Truck and he was overtaking a line of vehicles on the narrow road. In my opinion it was not sufficient for the Second Defendant to only check to ensure that the opposite lane was free of traffic, he also had a duty to warn the drivers in the lane proceeding west that he was going to overtake. The Second Defendant admitted that the horn for the Truck was not loud. In my opinion, it was highly plausible that even if he had sounded the horn the Third Defendant may not have heard it. As such he had failed to give adequate notice of his approach and that he was overtaking.
33. It is for these reasons I have apportioned liability at 30% to the Third Defendant and 70 % to the Second Defendant.

If the Defendants are liable what measure of damages should be awarded

34. The Claimant has claimed general damages and special damages. The Claimant pleaded special damages for the following sums:
- Medical Services US \$60.00*
 - Car Parking expenses US \$ 25.00*
 - Highway Toll Fee US \$5.00*
 - Cost of Medication TT \$1191.89*
 - Cost of Medical Report TT \$ 37.50*
 - Loss of Earnings (to be assessed)*
35. Counsel for the Claimant submitted that based on the Claimant's attached bills, invoices and receipts to prove her loss and that based on the Claimant's unchallenged evidence the

Court ought to award the sum of \$140,000.00 US as loss of earnings at \$1000.00 per week from the 19th February 2009 to the 19th January 2012.

36. The Defendants did not challenge the sums claimed for special damages in their respective Defences and in cross-examination none of the Defendants challenged the Claimant's evidence on the sums claimed and the basis for her claim.
37. However, in the closing submissions, the Defendants submitted that the sum requested for loss of earnings ought not to be awarded by the Court since there was no pleading to support this claim and that there was no documentary evidence or any evidence from the employer of the Claimant to support her claim.
38. At paragraphs 15, 16 and 17 of the Claimant's witness statement she testified that at the time of the accident she worked at Saks Fifth Avenue at Bal Harbour Miami Florida. She had worked for that company for 3 years before the accident and she worked for 40 hours per week where she earned a net salary of US \$1000.00 per week. She stated that since the date of the accident he was unable to work and she attempted to work but she has been unable to resume her job.
39. While I accept that the evidence in support of the Claimant's claim for loss of earning was the sole viva voce evidence from the Claimant, her evidence was not challenged in cross-examination. In the Court of Appeal decision of **Ramnarine Singh and anor v Great Northern Insurance Company Limited**⁶ Mendonca JA noted at paragraphs 97 that:
“...the absence of evidence to support a plaintiff's viva voce evidence of special damage is not necessarily conclusive evidence against him. While the absence of supporting evidence is a factor to be considered by a trial judge, he can support the plaintiff's claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to

⁶ Civ Appeal 169 of 2008

reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There must be some other cogent reasons.”(Emphasis added)

40. The Defendants did not challenge this aspect of the Claimant’s evidence in cross-examination. In my opinion, they failed to provide any reason for the Court to reject this evidence simply on the basis that there was no documentary proof.
41. In this regard I accept the Claimant’s viva voce evidence and award the sum for past loss of earnings in the sum of \$US 140,000.00.
42. The Defendants did not dispute the other sum claimed. Therefore the total sum of TT \$952,672.00 as submitted by the Claimant is awarded as special damages.
43. I now turn to the claim for general damages. Counsel for the Claimant submitted that a reasonable award is the sum is \$180,000.00 in light of the evidence and the authorities. Counsel for the First Defendant argued that a more reasonable award is between \$50,000-\$60,000.00 .Counsel for the Second Defendant did not suggest an award but he argued that the sum claim was unreasonable given the nature of the injuries. Counsel for the Third Defendant submitted that based on the evidence the sum of \$180,000.00 is excessive.
44. In determining the award for general damages the Court is guided by the principles in **Cornilliac v St Louis** ⁷ 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.

⁷ (1966) 7 WIR 491

Nature and extent of the injuries sustained and resulting physical disability

45. In the instant case, the Claimant pleaded that her injuries were as follows:
- (a) Comminuted stable fracture of the C 2;
 - (b) Fracture of the right fibula.
 - (c) Sprained ankles.
46. In closing submissions Counsel for the Claimant conceded that the medical evidence did not support a claim for sprained ankles. The Claimant gave evidence in support of the pleaded injuries. According to the Claimant after the accident she was taken to the Sangre Grande Hospital and then transferred to the Mt Hope Hospital where she obtained an X ray. A plaster cast was placed on her right leg and she was given a neck brace. She was also given antibiotics and pain medication.
47. All the Claimant's medical evidence were unchallenged by the Defendants. The medical reports of Dr. Helmer Hilwig of the North Central Regional Health Authority dated the 21st May 2009 confirmed the diagnosis of a fracture of the right fibula and a comminuted fracture of the C2 neck vertebra. The medical report of the MRI of the Cervical Spine dated the 3rd September 2009 from Elite Imaging revealed no fracture of the C2 vertebra. On the same day a MR Angiogram of the Circle of Willis was also done but nothing was revealed which was consistent with the injuries the Claimant sustained from the accident.

Pain and suffering

48. The Claimant testified that at the time of the accident she was 49 years old and she now experiences pain and stiffness in her neck; pain and swelling in her right leg; back pain and pain and swelling in her ankles. After the accident she continued to experience constant pain and discomfort in her right leg, neck and back. As a consequence she had to take pain killers on a daily basis. The Claimant also testified that as a result of her injuries she wore a cast on her right leg for a period of 3 months. She said that any pressure she put on her legs caused her a lot of pain and caused them to swell and that she felt pain in her back

when she put pressure on her legs. According to the Claimant even 4 years after the accident she still felt pain and discomfort. She felt pain in her neck when she turns her head to the right.

Loss of amenities

49. The Claimant's unchallenged evidence was that she has not been able to wear high heel shoes after the accident and that prior to the accident she trained models for fashion shows but she has not be able to do so due to her injuries. This was the extent of the Claimant's evidence under this heading.

Effect on pecuniary prospects

50. The Claimant's evidence was that at the time of the accident she was earning US \$1000.00 per week net as a Business Manager employed by Saks Fifth Avenue Bal Harbour Miami Florida. Due to the nature of her job she had to be on her feet all the time and as a result of her injuries she was unable to resume her line of work and she was unable to return to her work since the accident. There was no evidence from the Claimant of the retirement age for the job she did.

Analysis of the evidence

51. In analyzing the evidence I have considered the following factors in arriving at an award of damages. The Claimant was diagnosed with 2 fractures as a result of the accident. I accepted that the Claimant suffered pain in her leg, neck and back from the time of the injury and even 4 years after. However I am of the view that the degree of pain has reduced over the years. In my opinion if the intensity and consistency of the pain was as described by the Claimant she would have been on medication to relieve her pain but there was no such evidence.
52. There was no evidence that the Claimant's life expectancy has been affected and the only evidence on the impact of the injury on the Claimant's daily activities was limited to her

inability to wear high heel shoes and to train models for fashion shows. I have concluded that the Claimant's loss of amenities was not significant.

53. In determining the award of general damages other similar cases are also guidelines for the possible range of an award of damages⁸. I have not been able to obtain any authority with very similar injuries as in the instant case. In my opinion the two most recent authorities which are of some assistance are: **Amanda Duncan v Neil Miguel and Great Northern Insurance Company Limited**⁹ which is a decision of Master Alexander dated the 13th April 2018. In that case the Claimant was a passenger in a vehicle who suffered injuries as a result of a motor vehicular accident. Her injuries were fractures to her jaw, left ankle and left tibia. She also suffered loss of cervical lordosis due to spasm of her cervical muscles; tenderness of the left ankle, soft tissue injury to the left hand and lower back, post concussion syndrome fluid in both sinuses and injuries to several of her teeth. Master Alexander awarded the sum of \$150,000.00 in general damages. In the instant case the injuries of the Claimant were far less serious than in **Amanda Duncan**.
54. In **Nekeisha Candice Moe v Caribbean Airlines and ors**¹⁰ a judgment delivered by this Court on the 19th January 2018 the sum of \$60,000.00 was awarded as general damages. In that case, the Claimant suffered injuries to both knees, soft tissue injury to her neck and left rotator tendonitis. In my opinion, the injuries in **Nekeisha Candice Moe** were less serious than that in the instant case.
55. Having regard to my assessment of the evidence and the recent awards in my opinion an appropriate award for the Claimant's general damages is \$100,000.00.

Loss of future earnings

56. It was submitted by Counsel for the Claimant that the Court should award the Claimant the sum of \$30,000.00 as a lump sum for loss of future earnings. The Defendants opposed this

⁸ Azziz Ahamad v Raghubar 12 WIR 352

⁹ CV 2013-03270

¹⁰ CV 2014-04881

submissions on the basis that there was no pleading and that there was no evidence to support this claim.

57. I have decided not to make an award for loss of future earnings since there was no pleading to support such a claim.

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58. Judgement for the Claimant against the Defendants.

59. Liability is apportioned as follows:

- (a) The First and Second Defendants and the First Co-Defendant to pay 70% of the claim.
- (b) The Third Defendant and the Second Co-Defendant to pay 30% of the claim.

60. The Claimant's damages are assessed as follows:

- (a) General damages in the sum of \$100,000.00 together with interest at the rate of 2% per annum from the 19th January 2012 to the date of judgment.
- (b) Special damages in the sum of \$ 952, 672.00 together with interest at the rate of 2% per annum from the 19th February 2009 to the date of judgment.
- (c) No award is made for loss of future earnings.

61. The Defendants and Co-Defendants to pay the Claimant prescribed costs in accordance with the apportionment of liability.

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Margaret Y Mohammed
Judge