

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2015-01061**

**ANN MARIE JONES JACOB**

**Claimant**

**AND**

**PRICESMART CLUBS (TT) LTD**

**Defendant**

**Before the Honourable Madame Justice Margaret Y Mohammed**

**Date of Delivery 21 July 2021**

**APPEARANCES**

**Mr Anil V Maraj instructed by Mr Adrian D Ramoutar Attorneys at law for the Claimant.**

**Mr Kendell S Alexander Attorney at law for the Defendant.**

**RULING - COSTS**

1. On 25 June 2021 I dismissed the Claimant's claim and I ordered the Claimant to pay the Defendant's costs on the prescribed basis pursuant to Rule 67.5(2) (b) Civil Proceedings Rule 1998 as Amended ("CPR"). I also indicated that I would hear the parties on whether rule 67.5(2) (b) (i) or (ii) CPR is to be applied in calculating the quantum.
2. At the hearing Counsel for the Defendant submitted that it was within the Court's discretion to stipulate a value of the claim after the trial pursuant to Rule 67.5(2) (b)(ii) CPR. It was argued on behalf of the Defendant that since the Claimant had not specified a sum for general damages and had only specified the sum of \$33,008.00 for

special damages, it was just and reasonable for the Court to exercise its discretion and stipulate the sum of \$869,969.80 as the value of the claim. It was asserted that the said value was based on the pre-trial correspondence between the Claimant and the Defendant, in which the Claimant had valued her claim for damages in a range between \$750,000.00 and \$1,400,000.00.

3. It was also submitted on behalf of the Defendant that in the written submissions filed on behalf of the Claimant at the end of the trial, the Claimant had specified that her losses were in the sums of: \$100,000.00 as personal injuries; \$93,000.00 as future medical expenses; \$400,108.80 as future loss of earnings; and \$276,861.00 as loss of earnings up to the date of trial. Therefore, the Claimant's case was that she had already estimated the overall claim as being valued at \$869,969.80 and as such the Defendant is entitled to prescribed costs on that value, which amounts to the sum of \$99,244.74.
4. In support of the aforesaid submission Counsel relied on the learning from the local judgment of **Lutchmeesingh Transport Contractors Ltd v NIDCO**<sup>1</sup>. Counsel asserted that in **Lutchmeesingh**, Kokaram J (as he then was) had stipulated a value of a claim after the determination of an action and in doing so the learned Judge took into account other aspects of the case, namely the Claimant's Skeleton Arguments in reply and letters between the Claimant's and Defendant's Attorneys entitled "Offer made without prejudice except as to costs within the meaning of the CPR Part 63.3(1)". Counsel for the Defendant advocated for the Court to adopt a similar approach in the instant case. It was also submitted that in stipulating the value of the claim the Court must consider the overriding objective and what is just and reasonable in the circumstances.
5. Counsel for the Claimant did not agree with the position adopted on behalf of the Defendant. It was argued on behalf of the Claimant that the value of the claim should not be stipulated after the conclusion of a trial and that there were several avenues

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<sup>1</sup> CV 2015-01192

that the Defendant could have pursued to avoid the value of the claim being stipulated at the end of the trial.

6. Counsel for the Claimant submitted that the claim was for an indeterminate sum, because at the time of filing, the Claimant was unable to identify a monetary value for damages. It was also argued that although the Claimant had specified certain sums in her Statement of Case, these were still indeterminate sums that the Claimant was not entitled to until the Court made such a determination. Therefore, the Claimant's claim was not for a monetary sum and as such Rule 67.5(2)(c) CPR is applicable and the value of the claim should be treated as being \$50,000.00 and the prescribed costs calculated thereon. In support of this submission Counsel relied on the learning from the local judgment of **Mary Gomez and ors v Ashmeed Mohammed**<sup>2</sup>.
7. Counsel also submitted that the language of Rule 67.5(2)(b)(ii) CPR when read together with Rule 67.6(1), suggests that the proper time for determination of the value of the claim was at the case management conference ("CMC") stage and the Court ought not to stipulate a value at the post trial stage. Alternatively, Counsel for the Claimant submitted that if the Court should choose to exercise its discretion and stipulate the value of the claim it should take into consideration that in the substantive action, neither party disputed that the genesis of the claim was a work related injury and also that the Claimant is unemployed and has not worked since the date of her initial injury. Further, it was not until both parties were at the trial stage that the first definitive medical opinion, which stated that the injury to the Claimant's neck was unrelated to the injury to her shoulder became available.
8. Baesd on the submissions, the issues to resolve are: whether the Court can stipulate a value of the claim under Rule 67.5 (2) (b) (ii) in the instant case; if so, what is the appropriate sum to stipulate as the value; and the costs which the Claimant is to pay the Defendant.
9. Rule 67.5 CPR deals with prescribed costs. It states:

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<sup>2</sup> Civ App S 153 of 2015

- “(1) The general rule is that where rule 67.4 does not apply and a party is entitled to the costs of any proceedings those costs must be determined in accordance with Appendices B and C to this Part and paragraphs (2)–(4) of this rule.
- (2) In determining such costs the “value” of the claim shall be decided—
- (a) in the case of a claimant, by the amount agreed or ordered to be paid;
  - (b) in the case of a defendant —
    - (i) by the amount claimed by the claimant in his claim form; or
    - (ii) if the claim is for damages and the claim form does not specify an amount that is claimed, by such sum as may be agreed between the party entitled to, and the party liable for, such costs or if not agreed, a sum stipulated by the court as the value of the claim; or
  - (c) If the claim is not for a monetary sum, as if it were a claim for \$50,000.00.
- (3) The general rule is that the amount of costs to be paid is to be calculated in accordance with the percentage specified in column 2 of Appendix B against the appropriate value.
- (4) The court may, however —
- (a) award a percentage only of such sum having taken into account the matters set out in rule 66.6(4),(5) and (6); or
  - (b) order a party to pay costs —
    - (i) from or to a certain date; or
    - (ii) relating only to a certain distinct part of the proceedings, in which case it must specify the percentage of the fixed costs which is to be paid by the party liable to pay such costs and in so doing may take into account the table set out in Appendix C.”

10. In **Lutchmeesingh**, Kokaram J (as he then was), examined the manner in which the value of a claim was to be determined at the post judgment stage, in order to quantify the prescribed costs to be awarded to a party. In that case, the Defendant had issued

an Invitation for Tenders for the construction of a flyover for which the Claimant responded. The Claimant made the second-best tender but after negotiations with the best tenderer failed, the Claimant was invited by the Defendant to enter into negotiations for the said project. During this period of negotiations, the Defendant withdrew from the negotiations on the basis that it did not anticipate arriving at an agreement within the scope and price of the contract. In its “mixed claim”, the Claimant sued for both declaratory relief and damages for breach of contract, on the basis that the Defendant had wrongfully withdrawn from negotiations without giving sufficient or detailed reasons for same. The Claimant did not specify an amount for damages in the claim form. The Claimant’s claim was dismissed on the determination of a preliminary issue and the Defendant was awarded 50% of the assessed costs on its application to determine a preliminary point and also prescribed costs on the action.

11. In stipulating the value of the claim, Kokaram J (as he then was) relied on the learning in **Denisha Mayers v Andy Wilson and Colonial Fire and General Insurance Company Limited**<sup>3</sup>. The learned judge stated at paragraph 24 that in exercising its discretion to stipulate a value, a Court may take into account:

- “ (a) The sum is an assessment by the Court of the value of the claim;
- (b) The Court should identify the real dispute between the parties and stipulate a sum that is the value of that claim;
- (c) That assessment is made on the evidence before the Court. The Court is also entitled to examine the pleadings, examine correspondence passing between attorneys, examine opinions on quantum filed or exchanged between the parties any material which in the Court’s view would have informed the parties as to the value of the claim that the Defendant had to defend;

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<sup>3</sup> CV 2011-03655

(d) The Court should not conduct a trial or an assessment of damages to determine this sum. To do so would unnecessarily increase the expense of the proceedings and cause further delay; and

(e) If the Court stipulates a sum as the value, the Court should proceed to exercise its discretion in the quantification of the prescribed costs to ensure that the costs awarded is fair and reasonable. The Court is therefore entitled to award a percentage of the costs calculated in accordance with the percentages in Appendix B against the appropriate value or some lower percentage. In doing so the Court will take into account the factors set out in rule 66.6 (4), (5) and (6).”

12. In **Mary Gomez** the Court of Appeal considered whether the trial judge’s order on costs was made on the correct basis and what was the correct basis on which to make an order for costs at the post judgment stage. In that case, the appellants had sought declaratory reliefs on their entitlement as equitable owners of three parcels of land and in the alternative they sought compensatory damages. However, the appellants’ claims were for an unquantified monetary sum. The trial judge dismissed the appellants’ claims and stipulated a value for those claims based on the valuation of the appellants’ houses and made an order that costs be paid by the appellants based on those values.

13. The Court of Appeal found that the trial judge’s decision to stipulate the value of the claims at the conclusion of the trial was made on an incorrect basis, and in reversing the trial judge’s order stated that the claim was for an indeterminate value and could be considered a claim “not for a monetary sum”, which could be treated pursuant to Rule 67.5(2)(c) CPR as if it were a claim for \$50,000.00 and prescribed costs calculated thereon.

14. In my opinion, the learning in **Mary Gomez** is not applicable to the instant case as the facts are distinguishable. In that case the primary substantive orders sought were for an unspecified sum with the alternative relief being for compensation or a monetary sum. However, in the instant case it was not in dispute that the only order which the

Claimant sought was for a monetary sum. The Claimant's claim set out a specified monetary sum in her claim for special damages in the sum of \$33,008.98 and an unspecified monetary sum for her other loss.

15. Rule 67.6 provides for applications to be made to the Court to determine the value of a claim for the purpose of prescribed costs. It states:

“(1) A party may apply to the court at a case management conference —

(a) to determine the value to be placed on a case which has no monetary value; or

(b) where the likely value is known, to direct that the prescribed costs be calculated on the basis of some higher or lower value.

(2) The court may make an order under paragraph (1)(b) if it is satisfied that the costs as calculated in accordance with rule 67.5 are likely to be excessive or substantially inadequate taking into account the nature and circumstances of the particular case.

(3) Where an application is made for costs to be prescribed at a higher level rules 67.8(4)(a) and 67.9 apply.”

16. Under Rule 67.6(1)(b) where the likely value of a claim is known, a party can apply to the Court at the CMC to direct that the prescribed costs be calculated on a higher or lower value. In the instant case, it was more probable that based on the pre-action correspondence and the Claimant's pleadings that the Defendant was aware of the likely value of the claim and the monetary sum it would have to pay the Claimant if she succeeded with her claim.

17. In the pre-action correspondence between the parties which were exhibited at “AJJ5” and “AJJ6” of the Amended Statement of Case, the Claimant had estimated the monetary value for one aspect of her claim, namely for her pain and suffering and loss of amenities to be in the sum of \$300,000.00 with interest at the rate of 12% per annum from 13 April 2011 to the date of payment. The Claimant did not state in her

pre-action correspondence how much she estimated her monetary claim was for her future medical care, loss of future earnings and pension.

18. In the Claimant's claim she pleaded that her past loss of earnings was in the sum of \$33,008.98. The Claimant did not specify in her claim the sums for pain and suffering and loss of amenities, loss of future earnings and loss of future medical expenses, but she pleaded sufficient particulars which when applied to the relevant principles of law would have given the parties a range of the specified sum the Claimant was seeking as her monetary award.
19. I have no reason to doubt the submission by the Defendant that the range of the Claimant's monetary claim was between \$750,000.00 to \$1,000,000.00. Having been aware of the likely value of the claim it was up to the Defendant to decide at the CMC, if the prescribed costs at the end of the trial was to be calculated on the likely value or on a lower or higher value. In the instant case, the Defendant chose not to do so since it appeared that it was satisfied that the prescribed costs would be calculated on the likely value which was between the sum of \$750,000.00 and \$1,000,000.00. Indeed, the Claimant's closing submissions put the sum of \$869,969.80 which was sought as damages within the actual range that had been identified.
20. In my opinion, Rule 67.6 is not mandatory as it does not state that an application to stipulate the value should only be made at the CMC. It therefore does not preclude a party from seeking to have the value of a claim stipulated after the CMC. Further, under Rule 67.6 the onus is on a party to make an application to stipulate the value, while under Rule 67.5(2) (b)(ii) the Court on its own motion can stipulate the value. In my opinion, there is no bar in Rule 67.6 or otherwise to prevent the Court from stipulating the value of the claim after the determination of the action, where the Court is in possession of all the relevant information to exercise its discretion to stipulate the value.
21. Having found that the Court can stipulate the value at this stage of the proceedings in order to determine the costs when I applied the learning as set out in **Lutchmeesingh**, I have decided to stipulate the value in the sum of \$869,969.80 and to award



prescribed costs on this stipulated value. The real dispute between the parties was whether the Claimant's injury was caused by the Defendant's actions. In the Claimant's closing submissions, the Claimant specified the sums which she did not specify in her pre-action correspondence and her claim as she sought to recover the sum of \$100,000.00 for her pain and suffering and loss of amenities; \$93,000.00 as future medical expenses; \$400,108.80 as future loss of earnings; and \$276,861.00 as loss of earnings up to the date of trial. Therefore, by the end of the trial the monetary sum the Claimant knew she was seeking from the Defendant was a total of \$869,969.80.

22. In the instant case, the issue of awarding a percentage of the prescribed costs does not arise as the trial was both on liability and quantum. In my opinion, the prescribed costs awarded on the stipulated value is reasonable as there was evidence led by the parties on both issues and the parties' submissions also addressed the issues of liability and quantum. Additionally, there was general compliance with the pre-action protocol process. During the case management of the action, both parties pursued extensive without prejudice discussions to resolve the matter and the parties generally complied with the Rules of Court and orders. I have noted that the Claimant's action was about an injury at work and that she has not been employed. In this regard it was reasonable for the Claimant to pursue the action. However, based on the Defendant's Defence it was equally reasonable for the Defendant to defend it.

**Order**

23. The Claimant to pay the Defendant's prescribed costs in the sum of \$ 99,244.74 pursuant to Rule 67.5 (2) (b) (ii) CPR.

**/S/ Margaret Y. Mohammed  
Judge**