

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

CV 2017-00671

BETWEEN

ANNMARIE ALLISON WILLIAMS a/c

ANNAMARIE WILLIAMS a/c

ALLISON WILLIAMS a/c

ALLISON ANNMARIE WILLIAMS WILSON

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Madame Justice Margaret Y. Mohammed

Date of Delivery: December 13, 2018

APPEARANCES:

Mr. Keith C. Scotland instructed by Ms. Keisha Kydd-Hannibal Attorneys at law for the Claimant.

Mr. Brenston Francois instructed by Ms. Ryanka Ragbir Attorneys at law for the Defendant.

JUDGMENT

1. In December 2013 the Claimant was the parent of a student of the Sacred Heart Girls RC School ("the School"). On 12 December 2013 the Claimant attended the School's Christmas concert at the National Academy for the Performing Arts ("NAPA"), with her daughter who was performing in the concert. As the Claimant was descending a flight of stairs she fell and was injured. She has brought the instant action for damages for personal injuries and consequential loss against the Defendant in negligence, breach of statutory duty under the Occupational Safety and Health Act¹, aggravated and/or exemplary damages, interest and costs.
2. The Defendant is sued pursuant to section 19(2) of the State Liability and Proceedings Act.²

THE CLAIMANT'S CASE

3. The Claimant's case was that on the afternoon of 12 December, 2013 at around 4:00 p.m. the School had its Christmas concert at NAPA. During the concert the Claimant was in the audience and she sat in the auditorium. Prior to the end of the concert the Claimant decided to leave NAPA since her daughter had concluded her performance. The Claimant left the auditorium and proceeded to the backstage area to meet her daughter. She ascended a flight of stairs on the northern side of NAPA to the upstairs area in order to meet her daughter. The lighting on the staircase was very dim and the stairs resembled marble.

¹ Chapter 88:08

² Chapter 8:02

4. After collecting her daughter, the Claimant descended the same flight of stairs. Upon stepping onto the stairs the Claimant lost her footing, slipped and fell on her buttocks and back for the remaining five flights of stairs. The Claimant immediately began to experience difficulty in breathing; severe pain in her back, lower hip and elbow. She then signalled to her daughter to bring her Ventolin inhaler and she took four puffs. A teacher from the School, and management from NAPA attended to the Claimant.
5. She was assisted downstairs, outside via the elevator. Thereafter, the Claimant assisted by her daughter, walked to the Central Police Station ("CPS") in order to make a report of the incident. The Claimant was advised that due to the nature of the complaint, it was out of their jurisdiction. A police officer at CPS then transported the Claimant to the Port of Spain General Hospital for treatment. On the following day, she made a report at the Belmont Police Station.
6. Upon being admitted to the Emergency Department of the Hospital, the Claimant complained of pain to her back and right elbow and numbness in the right hand. The Claimant was examined and an X-ray was conducted on her right elbow, right hand and thoracic lumbo-sacral region and analgesics administered to relieve the pain. The Claimant was discharged on the same day.
7. A few days later, the Claimant visited Dr. Varma Deyalsingh due to persistent pain. She was prescribed medication and she was referred to have an MRI conducted for the lower back and elbow.

8. Sometime after the Claimant received a telephone call from Ms. Faith Douglas, the Front House Coordinator of the auditorium at NAPA at the time and the person to whom the Claimant reported the incident. Ms. Douglas gave the Claimant contact details for herself and that of Ms. Eleanor Wills, the Administration Manager.
9. As a result of the incident, the Claimant pleaded that she suffered personal injuries to her right shoulder, elbow and back. She claimed that she has suffered loss and damage due to the negligence and/or breach of statutory duty of the servants and/or agents of the Defendant.
10. The Claimant claimed that the cost of receiving medical treatment and related expenses have been borne by her and her insurance coverage.
11. The Claimant claimed that her injuries have affected her in the execution of her daily duties and in her personal activities and continue to do so. Her injuries resulted in pain, limited range of motion and inability to carry out daily activities. This has affected her employment at Presidential Insurance where she works as an Underwriter, a sedentary job, as she has difficulty sitting for prolonged periods, as well using her hand for typing and writing.
12. The Claimant also claimed to have suffered emotional and psychological pain and suffering, loss of amenities and aggravated injury and that she is unable to continue the social activities she was previously engaged in due to the effects of her injuries. The Claimant claimed that as a result of her injuries, she will need to continue to wear an arm sling and undertake surgery in the future, thus a claim is also made for future medical expenses. The Claimant claims that she has now found it difficult to maintain the

financial and social and economic standards to which she has grown accustomed. Accordingly, she has claimed future economic loss.

13. On the 6 March, 2015, the Claimant's attorney at law issued a pre-action protocol letter to the Defendant seeking damages and costs. The Defendant responded on the 29 April, 2015 requesting further and better particulars. The Claimant responded on 9 March 2016 honouring the request.
14. The Claimant also pleaded that NAPA has attracted public interest since its opening due to its structural and maintenance problems and health and safety concerns. She attached various newspaper articles to support her contention.

THE DEFENCE

15. It was not disputed that: The Defendant fell at NAPA while attending the School's concert on the 12 of December 2013 and that shortly after the incident, teachers from the School and management personnel from NAPA attended to the Claimant. It was also not disputed that: the Claimant was contacted by Ms. Faith Douglas, to whom the Claimant reported the incident and that she gave the Claimant her contact details together with that of Ms. Eleanor Wells; the Defendant was in control of NAPA; a pre-action protocol letter dated 6 March, 2015 was sent by the Claimant's attorney at law to NAPA; and the Claimant by letter dated 9 March, 2016 provided to the Defendant the particulars which it requested in a letter dated 29 April 2015.
16. The Defendant denied that the Claimant fell in the manner in which she described and denied that the Claimant's personal injuries were due to the

negligence of its service and/or agents or in breach of its statutory duty. The Defendant called upon the Claimant to prove her loss.

17. In the Amended Defence³, the Defendant pleaded that, the School's Christmas Concert at NAPA was from 4:30 pm to 6:30 pm. For the duration of the concert and after, the backstage area of the auditorium was off limits to all persons save and except authorised persons whose names were contained in a list held by a security guard who was posted at the door. The authorized persons were also identifiable by a band on their hands. At around 6:30pm, the Claimant who was not an authorized person to be in the backstage area, defiantly pushed past the security guard and proceeded upstairs to collect her daughter. On her way back down, she fell down the stairs.
18. The Defendant also pleaded that the stairs were brightly lit with fluorescent bulbs, which were directly overhead the stairs. The stairs each had an anti-skid section about five inches wide to prevent any slipping or skidding on the stairs. The stairs were not wet nor did they contain any sort of liquid or other substance on which the Claimant could have slipped. It was further pleaded that there was also nothing of the sort that could have caused leakage unto the steps. Refreshments were also not allowed in this area and the area was cleaned hours before the scheduled start of the concert. The area of the stairs was not crowded.
19. The Defendant further pleaded that the Claimant was assisted by Mr. David Briggs, a member of the Parent Support Group at the school, and Ms. Leslie Ann Lavine, Stage Technician at NAPA. The Claimant refused

³ Filed on the 17 day of September, 2018

inquiries on whether she wanted to go to the hospital, and a lift to the taxi stand.

20. The Defendant averred that any alleged pain, suffering, trauma, injury, expense, loss or damage suffered by the Claimant was not as a result of the acts, omissions or negligence of the Defendant and/or its servants or agents. In fact, the injuries and damage suffered by the Claimant were caused or contributed to by the Claimant's own negligence.
21. The Defendant did not admit or deny that there were flaws in the design of NAPA as alleged in the article "NAPA tragedy" which was annexed to the Claimant's Statement of Case. The Defendant averred that the article did not refer to Occupational Safety and Health problems with NAPA.

THE CLAIMANT'S REPLY

22. The Claimant denied that the backstage area was off limits save for authorized persons whose names were contained in a list held by the security guard. The Claimant also denied the existence of a security guard amongst the crowd; that the photographs and description of the staircase at NAPA which the Defendant annexed to the Amended Defence were a true representation of the nature, intensity, spread, angle and distance of the lighting; and that they were proof that the lights were functioning at full capacity at the time when the incident occurred. She also put the Defendant to strict proof that there was no moisture on the stairs and she pleaded that refreshments were served to students upstairs and students and parents trafficked the stairway with said refreshments.
23. The Claimant denied that the stairway in question was properly designed; that the tiles used on the stairway were ceramic tiles with a non-skid section which was five inches wide; that the lights for the stairway are

located directly above; that this is the only reported incident of a person falling on the stairway in question, and that the Claimant, through her own defiant actions caused her own injury without any contribution on the part of the Defendant. The Claimant averred that at the material time the stairs had some grooves but were not non-skid.

24. The Claimant also claimed that the Defendant failed to consider the brightness of the lights and the height at which they were installed and she put the Defendant to strict proof that the all lights were functioning at its full capacity on the date and time of the incident.
25. The Claimant claimed that all parents, teachers and students gathered at the back of the stage to collect their children at the end of the concert. Further to that, she averred that no provisions were made for the collection of children at the front of the stage. Moreover, it was not practical to collect the children who had completed their performance in that area due to the physical locality and the disruption that may have followed.
26. The Claimant denied that the auditorium was off limits to all persons since notice was given by neither NAPA nor the School that there were restrictions in relation to access to the backstage nor was there any visible signs. The Claimant contended that she was unaware of any list of authorized persons and there was no security guard or no security guard was visible amongst the crowd and gathered people. The Claimant admitted that she was posed questions by Ms. Lavine.
27. The Claimant denied that an offer was made to her for transport, that she was asked if an ambulance was required and that she was advised that she

would be helped downstairs, and that she was ushered to the elevator then to outside.

THE ISSUES

28. The following issues arose for determination:
- (a) Did the Defendant owe a duty of care to the Claimant?
 - (b) If (a) is answered in the affirmative, did the Defendant breach that duty of care and if so did the Claimant suffer any injury as a result?
 - (c) Did the Claimant contribute to her injury?
 - (d) If the Defendant is liable, what is the quantum of damages owed to the Claimant by the Defendant?

THE WITNESSES

29. At the trial the Claimant gave evidence on her own behalf. She also relied on the witness statement of Dr. David Toby which was admitted into evidence by agreement of the parties. The witnesses for the Defendant were Ms. Leslie Ann Lavine, Ms. Faith Douglas and Mr. David Briggs.

DID THE DEFENDANT OWE A DUTY OF CARE TO THE CLAIMANT?

30. It was not in dispute that NAPA, which was opened in 2009, is under the management, direction and control of the Minister of Community Development, Culture and the Arts (formerly the Ministry of Arts and Multiculturalism). The Attorney General of Trinidad and Tobago pursuant to section 19 of the State Liability and Proceedings Act⁴ is generally liable for acts and omissions of its servants and/or agents and a Minister is included under 2 (2) of the State Liability and Proceedings Act as a servant

⁴ Chapter 8:02

of the State. Therefore, the Defendant properly represents the Minister as the occupier of NAPA.

31. It was also not in dispute that the Claimant was lawfully at NAPA to attend the concert in which her child was participating.
32. It was submitted on behalf of the Claimant that she was an authorized person to be in the backstage area of the auditorium at NAPA and that the Defendant failed to provide a safe staircase when the Claimant slipped and fell.
33. On the other hand, Counsel for the Defendant argued that the Claimant was not authorized to be in the backstage area of the auditorium at NAPA. As such the Defendant did not owe the Claimant any duty of care as an invitee or a licensee. The Defendant argued that the Claimant was a trespasser and that it complied with its duty of care to her as a trespasser.
34. The tort of occupier's liability is grounded in the tort of negligence on the general duty of care which a person owes to his neighbour. Denning LJ in **Wheat v. E. Lacon & Co.**⁵ described the tort of occupier's liability as:

“Wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an ‘occupier’ and the person coming lawfully there is his ‘visitor’ and the occupier is under a duty to use reasonable care.”
35. In the case of **Indermaur v Dames**⁶ Willes J. stated that a person was an invitee if he was on premises on lawful business in the course of fulfilling a

⁵ [1966] AC 552 at 578

⁶ [1866]LR 1 CP 274 at page 288

contract in which he and the occupier both had an interest. It did not cover persons who were there on bare permission such as a licensee. A typical example of an invitee to whom the occupier will owe a duty of reasonable care to prevent damage caused by unusual danger of which the occupier knows or ought to know is that of a customer in a shop.

36. The distinction at common law between an invitee and a licensee is that invitee enters the premises on business which concerns the occupier, e.g. a customer who enters a shop, a person entering premises in the performance of the contract and even after the performance of a contract for a purpose that is incidental to the contract, but the licensee is someone who has implied permission to enter premises where without that permission, his presence would be unlawful.

37. In **Dumbreck v Addie and sons Collieries**⁷ Lord Hailsham described the responsibility of the occupier on the different types of visitor as:

“There are three categories into which persons visiting premises belonging to another person may fall; they may go (1) By the invitation, express or implied, of the occupier; (2) With the leave and licence of the occupier; and (3) As trespassers.

The duty which rests upon the occupier of premises towards the persons who come on such premises differs according to the category into which the visitor falls. The highest duty exists towards those persons who fall into the first category, and who are present by the invitation of the occupier. Towards such persons the occupier has the duty of taking reasonable care that the premises are safe.

⁷ [1929] AC 358 at page 364-365

In the case of persons who are not there by invitation, but who are there by leave and licence, express or implied, the duty is much less stringent—the occupier has no duty to ensure that the premises are safe, but he is bound not to create a trap or to allow a concealed danger to exist upon the premises, which is not apparent to the visitor, but which is known—or ought to be known—to the occupier.

Towards the trespasser the occupier has no duty to take reasonable care for his protection, or even to protect him from concealed danger. The trespasser comes on to the premises at his own risk. An occupier is in such a case liable only where the injury is due to some wilful act involving something more than the absence of reasonable care. There must be some act done with the deliberate intention of doing harm to the trespasser, or at least some act done with reckless disregard of the presence of the trespasser.”

38. The shift away from the strict proposition that an occupier owed no duty of care to a trespasser was reformed in the case of **British Railways Board v. Herrington**⁸. In this case, the plaintiff, a boy aged six years old, used a gap in a fence near to an electrified railway track as a short cut. There was a fence blocking access to the railway line but the said fence had become detached from the supporting posts and was pressed down within ten inches from the ground. The boy wandered off, crossed the gap in the fence onto the railway line and was severely injured by an electrified rail. It was held that in determining whether a duty of care was owed to the boy, it was **Dumbreck** it was held that even though he was a trespasser which meant he entered the land at his own risk and the occupier did not know owe him a common duty of care owed to persons lawfully on the

⁸ [1972] 1 All 749

land, it did not mean that the occupier was never in any circumstances under a duty to take steps to protect a trespasser from potential danger nor was the occupier's duty limited to refraining from acting with deliberate intention of doing harm to a trespasser actually on the land or with reckless disregard of his presence there.

39. The occupier is under a duty to take reasonable steps to enable a trespasser to avoid danger where the occupier was aware that there were trespassers on his land, or knew of circumstances that made it likely that trespassers would come on to his land, and also knew of physical facts in relation to the state of his land or some activity carried out on the land which would constitute a serious danger to persons on the land who were unaware of those facts. The occupier's duty would only arise in circumstances where the likelihood of the trespasser being exposed to the danger was such that, by the standards of common sense and common humanity, the occupier could be said to be culpable in failing to take reasonable steps to avoid the danger.
40. Lord Pearson at page 779 stated:
- “It does not follow that the occupier never owes any duty to the trespasser. If the presence of the trespasser is known to or reasonably to be anticipated by the occupier, then the occupier has a duty to the trespasser, but it is a lower and less onerous duty than the one which the occupier owes to a lawful visitor. Very broadly stated, it is a duty to treat the trespasser with ordinary humanity...”
41. In considering the duty of 'common humanity' Lord Morris in **Herrington** held⁹ that to trespassers, the occupier owed a duty which, while not

⁹ Page 767

amounting to the duty of care which an occupier owes to a visitor, would be a duty to take such steps as common sense or common humanity would dictate; they would be steps calculated to exclude or to warn or otherwise within reasonable and practicable limits to reduce or avert danger.

42. Based on the above authorities, in order to determine whether the Defendant owed a duty of care to the Claimant, the Court must first determine the nature of the relationship between the Claimant and the Defendant.

Was the Claimant an invitee, licensee or trespasser?

43. The Claimant's case was that she was an invitee at the backstage area of the auditorium and as an invitee the Defendant did not take reasonable care to ensure that the staircase was safe. It was submitted on behalf of the Claimant that she was lawfully in the backstage area to collect her child as the concert had ended; there were no signs prohibiting persons from entering the backstage area; there was no person controlling the entrance nor was there anyone present at the backstage entrance in an official capacity to authorize certain persons to use the backstage area.
44. The Defendant's position was that that the Claimant was a trespasser in the backstage area of the auditorium at NAPA and as such the only duty of care the Defendant owed her was one of "common humanity" which it complied with. The Defendant contended that the Claimant was not authorized to be in the backstage area since authorized persons had a band on their wrist and she did not; the Claimant failed to comply with the directions of the security officer stationed at the backstage area of the auditorium and the Claimant pushed past the security guard stationed at

the backstage area. Alternatively, the Defendant argued that the Claimant was a licensee.

Authorization by the use of hand bands

45. The Claimant stated in her witness statement that she did not see any person controlling the entrance and exit of persons to the backstage area nor did she see any person standing at the entrance of the backstage area in an official capacity. In cross-examination, the Claimant indicated on numerous occasions that there were no signs in the backstage area prohibiting entry. She also admitted that she did not see any security guards nor did she see any teachers in the backstage area. When the question was put to her whether any teachers were patrolling the area, her reply was “not to her knowledge”. The Claimant also stated in cross-examination that she did not see anyone with a band on their hands.

46. The Defendant asserted that authorized persons would have been discernible by bands being worn on their hands. However, there was no credible evidence from the Defendant to support this assertion. Mr. David Briggs was a member of the Parents Support Group at the School. He stated in his evidence in chief that he was involved in the preparation of the event and he was involved in the meetings between NAPA and the School. He testified that persons who were authorized to enter the backstage area were persons directly involved in the production of the concert and that those persons’ names were listed by the security guard and they were identified by a band on their hand.

47. However, in cross-examination Mr. Brigg’s assertion that persons who were authorized to enter the backstage area was identified by a band on their hand was discredited. Mr. Briggs denied that he knew of any requirement that authorized persons were identified by bands on their

hand. Indeed Mr. Briggs admitted that this information which was in his witness summary was untrue. In my opinion, if Mr. Briggs was as involved as he was in the organization of the event he would have known about the requirement that authorized persons were identified by bands on their hand. Mr. Briggs' evidence in cross-examination supported the Claimant's case and evidence that there was no such requirement to identify persons who were authorized in the backstage area.

48. The other witness which the Defendant relied on to prove this assertion was Ms. Faith Douglas who also did not assist the Defendant's case. Ms. Douglas testified that she was the Front House Co-Ordinator at NAPA at the time of the incident and she managed events which were held in the auditorium from the stage area to the lobby. In cross-examination Ms. Douglas denied any knowledge of any band on the hands for persons authorized in the backstage area. In my opinion, Ms. Douglas as the person who was the Front House Co-Ordinator at the time of the incident would have known of the requirement for the band for persons who were authorized to be in the backstage area. Her evidence in cross-examination demonstrated that there was no requirement that persons authorized in the backstage area were identified with a band on their hand.

49. Ms. Leslie Ann Lavine was a Technical Theatre Technician at the Lord Kitchener (Aldwyn Roberts) Auditorium. In cross-examination she too admitted that there were no persons identified by any bands on their hands and that the bands did not exist as far as she was aware.

Signs prohibiting access

50. The Claimant testified that there were no signs prohibiting persons from entering the backstage area. Her evidence was corroborated by the witnesses for the Defendant Mr. Briggs, Ms. Lavine and Ms. Douglas that

there were no signs prohibiting persons from entering the backstage area. Again, the Defendant failed to demonstrate from the evidence that there were signs prohibiting the Claimant from entering the backstage area and that the Claimant was a trespasser because she ignored the alleged signs.

Authorization by a security guard

51. The Defendant also asserted that there was a security officer present in the backstage area and that the Claimant forcefully pushed her way past the security officer to get to the backstage area.
52. The Claimant's evidence in chief was that at around 6:15 pm, she decided that it was time to leave. The Claimant claims that upon approaching the backstage area, she saw other persons standing around but no one was controlling the entrance and exit of persons to the backstage area nor was anyone standing there in an official capacity.
53. In cross-examination the Claimant stated that she could not recall if there was a door in the backstage area separating where she was and where the children were. She stated that when she went to collect her daughter, she did not see any teacher and a security guard standing at the door controlling the entrance of the changing rooms where the children were. The Claimant denied that she pushed past the security guard to get to the backstage, and that when she was using the steps she was in a place where she was not supposed to be based on the request of the school.
54. The Defendant did not call the person who was the said security officer at the time of the incident as a witness to assist the Court. The Defendant also did not provide any explanation for failing to call the said person. The Defendant relied on the evidence of Ms. Douglas, Mr. Briggs and Ms. Lavine to support its position of the security guard.

55. Mr. Briggs evidence in chief was that the backstage area of the auditorium was off limits to all persons save and except those whose names were contained in a list held by the security guard. The authorized persons' names were on the list by the security guard. In cross-examination, Mr. Briggs maintained that there was a security officer but he was not aware of her name; whether she was employed by NAPA and the manner in which she was dressed. He still maintained that there was a list but he agreed that he did not produce it before the court.
56. Ms. Faith Douglas stated in cross-examination that she did not witness the incident and she did not see the Claimant pushed past the backstage security guard and proceed upstairs to collect her daughter. She admitted that the list of authorized persons was not in her possession.
57. Ms. Lavine testified in cross-examination that she never communicated to the Claimant that the back stage was unauthorized. Ms. Lavine also testified that there was a list which would have been in the hands of the security personnel who she identified as a male and whose job was to ensure that the persons who entered the door to the backstage area were on the list. She agreed that she did not produce a list of any persons who were authorized to be backstage and that the Defendant did not produce the security guard who had the list. She also admitted that she did not see the Claimant pushing the security guard to collect her daughter.
58. Although the evidence of Mr. Briggs, Ms. Douglas and Ms. Lavine was that there was a security guard in the backstage area with a list of persons who were authorized to enter the backstage area, this evidence was not credible for several reasons. They were unsure if it was a male or female security guard. Mr. Briggs referred to a female and Ms. Lavine said the security guard was a male. In my opinion if they were certain that there

was a security guard posted to prevent unauthorized persons from entering the backstage area they would have at least been certain if it was a male or female person. Further, none of the Defendant's witnesses produced the list of the persons who were authorized; the security guard who was on duty was not called as a witness and no explanation was given for failing to call the security guard who would have been crucial in supporting the Defendant's case. In any event, none of the witnesses for the Defendant stated that they saw the Claimant pushed past the security guard in order to access the backstage area. In my opinion, it is more probable that there was no security guard with any list of authorized persons for the backstage area and the Claimant did not push past any security guard to access the backstage area which was consistent with the Claimant's case.

59. Based on the admissions made by the witnesses for the Defendant, there was also no credible evidence that there were signs which indicated that only authorized persons were permitted in the backstage area.
60. In my opinion, the Claimant was not a trespasser since she was lawfully in the backstage of the auditorium to collect her child as the concert had ended; there were no signs prohibiting persons from entering the backstage area; there was no person controlling the entrance to the backstage area nor was there anyone present at the backstage entrance in an official capacity to authorize certain persons to use the backstage area by use of a list or by a band on the hand.
61. I have also concluded that the Claimant was not a licensee but an invitee since there was no expressed instructions from NAPA prohibiting the Claimant from being in the backstage area of the auditorium.

DID THE DEFENDANT BREACH ITS DUTY OF CARE TO THE CLAIMANT?

62. According to Lord Hailsham in **Dumbreck**, “The highest duty exists towards those persons who fall into the first category, and who are present by the invitation of the occupier. Towards such persons the occupier has the duty of taking reasonable care that the premises are safe.”
63. The extent of this duty was described in Willes J in **Indermaur v. Dames**¹⁰:
“And, with respect to such a visitor at least, we consider it settled law, that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that, where there is evidence of neglect, the question whether such reasonable care has been taken, by notice, lighting, guarding, or otherwise, and whether there was contributory negligence in the sufferer, must be determined by a jury as matter of fact.”
64. Lord Oaksey in **London Graving Dock v. Horton**¹¹ described the duty of an invitor to an invitee where there is an “unusual danger” as the duty to give him a fair warning of any danger on the premises which he cannot be expected to foresee. Premises inevitably contain a great variety of dangers, some great, some slight, some usual, some unusual, and it is a question of fact whether the danger is so slight or so usual that no warning is needed, or so great or so unusual that the invitee, with the actual knowledge of the premises which he is known by the invitor to possess ought, in the opinion of an ordinarily careful invitor, to be warned of it.

¹⁰ [1866] LR 1 CP 274 at page 288

¹¹ [1951] AC 737

65. It was submitted on behalf of the Claimant that the Defendant breached its duty of care since it failed to give the Claimant fair warning of the danger of the staircase since the lighting in the staircase area was very dim and the tiles on the staircase were very smooth and appeared to be slippery.
66. The Defendant argued that there was no breach of any duty owed to the Claimant since all steps were taken to ensure that the staircase at the backstage area was safe and it did not pose any danger to authorized entrants. Counsel submitted that the staircase area was brightly lit with fluorescent bulbs and that each stair of the staircase had an anti-skid section measuring about five inches wide for the precise purpose of preventing any slipping or skidding on the stairs. Counsel argued that the photographs of the lighting of the staircase, the anti-skid section and the handrail which were exhibited at “B” of the Amended Defence were an accurate depiction of the staircase at the time of the incident.

The lighting of the staircase

67. The Claimant testified that the lighting on the staircase was very dim¹². In cross-examination the Claimant maintained that the lighting was dim and soft and that the pictures which were attached to the Defendant’s Amended Defence were not a representation of the lighting in December, 2013 when she fell. It was put to the Claimant in cross-examination that the lights were bright enough for her to see where she was going, she said that it was “Okay for her to see where she was going but it was not bright.” She admitted that she was not paying attention to the lights when asked if all were functioning.

¹² Paragraph 9 of the Witness Statement

68. Ms. Faith Douglas testified that the staircase in question was spiral; had a railing on one side and a wall on the other; there were lights going around each corner of the stairs so it was well lit with fluorescent bulbs.
69. In cross-examination, Ms. Douglas agreed that she could not indicate how the lighting was at the time of the incident. She also agreed that all of the photographs which were annexed to the Amended Defence were not taken in December 2013 when the incident had occurred. She explained that her reason for not taking a contemporaneous photograph at the time of the incident was that she felt that her responsibility was to visit the Claimant at the hospital, and that she handed the report to Ms. Wells who was in charge of it, henceforth. However, in cross-examination she later agreed that the lights by the staircase were dim.
70. Ms. Lavine also stated in her witness statement that the staircase with the railing was brightly lit with fluorescent bulbs. She confirmed in cross-examination that the photographs annexed to her witness statement (which were the same photographs annexed to the Amended Defence) were not taken at the time of the incident in December 2013 but that they were taken by Ms. Wells in 2015. She could not state whether the photographs depicted the lighting of the staircase in December 2013.
71. Ms. Lavine also testified in cross-examination that NAPA was closed between 2014 to the end of 2016 and she believed that substantial repairs were done to the entire building during that time except for the staircase. According to Ms. Lavine the staircase had remained the same and the lighting was not dim.
72. I have attached no weight to the photographs which the Defendant relied on to demonstrate that the staircase was brightly lit at the time of the

incident since none of them were taken in December 2013 and it is very probable that since they were taken in 2015, some two years after, the condition of the lighting was different.

73. Based on the evidence elicited from the witnesses in cross-examination I have concluded that the staircase was not brightly lit but the lighting was not dim. In my opinion it was sufficiently lit in order not to pose any danger to the Claimant who admitted that it was adequate for her to see.

The tiles on the staircase

74. The Claimant testified that the stairs did not have any non-skid strips¹³. In cross-examination, the Claimant at first stated that she did not see any anti-skid strips on the stairs. She then later contradicted her previous statement and said that there were not proper anti-skid strips. She also admitted in cross-examination that there was a handrail on one side of the staircase which she used and that although she noticed the stairs looked smooth, she still proceeded up the staircase to collect her daughter and that she only perceived the danger after she fell.

75. Ms. Faith Douglas testified that each staircase was made of marble and had an anti-skid section made of granite about five inches wide in the middle to prevent slipping and/or sliding. Additionally, she stated that she did not observe any of the steps being wet or having any kind of liquid or other substance. In cross-examination, Ms. Douglas agreed that the spiral staircase was made out of marble and granite which was mopped and polished two hours before the concert. She stated that she did not think that a person could fall on the marble. In re-examination she explained that the granite was a rough grey material to prevent skids.

¹³ Paragraph 9 of the Witness Statement

76. Ms. Lavine also testified that the stairs were made of marble and each step on the stairs had an anti-skid section about five inches wide to prevent any slipping or skidding on the stairs which were designed in a spiral manner. She stated that Ms. Wells took the photographs of the staircase in May 2015 which she annexed to her witness statement. She agreed that the entire staircase was not wholly non-skid and it was possible that the Claimant could have fallen on the skid area of the tile part.
77. Ms. Lavine also stated in cross-examination that when she attended to the Claimant there were no liquids or substances on the staircase and there were no leaking air-conditioning units which could have contributed to any leakage. She also testified that refreshments were not allowed in the dressing room which can be accessed through the staircase.
78. I have also attached no weight to the photographs on the condition of the staircase since they were not taken in December 2013 but they were taken in 2015, two years after the incident. I have also noted that there was no contemporaneous document on the condition of the staircase at the time of the incident.
79. The Claimant's evidence on the condition of the staircase was not credible since she changed her description on three occasions. In my opinion if the Claimant did not see the anti-skid strip on the tile it did not necessarily mean that it was not there. Although, Ms. Lavine and Ms. Douglas did not witness the Claimant fall, they were present on the day of the incident and therefore they were familiar with the condition of the staircase. The evidence of Ms. Lavine and Ms. Douglas was consistent that the stairs had an anti-skid section made of granite about five inches in the middle. This was consistent with one version of the Claimant's evidence which was that

there were anti-skid strips but they were not proper. Based on the credible evidence of Ms. Lavine and Ms. Douglas I have concluded that there were anti-skid strips made of granite about five inches in the middle on the stair.

80. However, I was not convinced that even with the anti-skid strip on the stair that this did not pose a danger to the Claimant as an invitor on the premises. Ms. Lavine who was familiar with the backstage area admitted in cross-examination that even with the anti-skid strip on the stair a person could still fall. In my opinion, even with the anti-skid strip on the stair, the staircase still posed a danger to any visitor, including the Claimant. It was an unusual danger which the Claimant was not expected to foresee since even with the anti-skid strip a person could still fall. In my opinion the Defendant was negligent since it failed to warn the Claimant of this apparent danger.

81. Before I leave this issue I will address two matters which arose during the trial.

The Breach of Statutory Duty by the Defendant

82. The Claimant pleaded Particulars of breach of statutory duty at paragraph 38 of the Statement of Case as:

- “a. Failing to ensure as far as is reasonably practicable, that no unsafe structure exists in the industrial establishment that is likely to expose persons to risk to bodily injury in accordance with s8 of the Occupational Safety and Health Act 2004;
- b. Failing to manage the environment, to protect the safety and health of the public in the vicinity of his industrial establishment from dangers created by the operation or processes carried on therein as required by s9 of the Occupational Safety and Health Act 2004; and

c. Failing to take steps within the standards established by the Occupational Safety and Health Act.”

83. The Claimant also pleaded at paragraph 39 of the Statement of Case that she suffered personal injuries because the construction of the staircase was unsafe and/or of unsound construction and the lighting was dim contrary to what is required under the Occupational Safety and Health Act.
84. Counsel for the Claimant did not address this aspect of the claim in the closing submissions and it is reasonable to assume that the Claimant was not pursuing this limb of her claim.
85. On the other hand, it was argued on behalf of the Defendant that the Occupational Health and Safety Act is “an Act respecting the safety, health and welfare of persons *at work*” and that since the Claimant was not an employee of the premises at NAPA it was not her workplace and none of the provisions in the Occupational Health and Safety Act apply specifically to the Claimant.
86. Section 8(4) of the Occupational Safety and Health Act provides that an occupier shall ensure, as far as reasonably practicable, that no unsafe structure exists in the industrial establishment that is likely to expose persons to risks of bodily injury. Section 9(a) provides that the occupier of every industrial establishment shall be under a duty to take steps within the standards established by the Authority responsible for managing the environment, to protect the safety and health of the public in the vicinity of his industrial establishment from dangers created by the operation or processes carried on therein.

87. In my opinion the provisions of the Occupational Health and Safety Act do not apply specifically to the Claimant in the instant case since she was not an employee of NAPA at the time of the incident and the provisions of the said Act contemplate the responsibilities of occupiers to employees who occupy industrial establishments which includes places of work such as NAPA.

The Newspaper Articles

88. The Claimant referred to both in the Statement of Case¹⁴ and in her witness statement¹⁵ to several newspaper articles to support her case. The newspaper articles were about NAPA being unsafe premises, a health hazard to its visitors and employees and containing structural flaws.

89. It was submitted on behalf of the Claimant that the newspaper articles demonstrated that repairs were undertaken at NAPA since the structures and lighting fixtures posed a danger to patrons and that by extension the entirety of NAPA's premises was fraught with problems including the specific staircase where the Claimant fell.

90. It was submitted on behalf of the Defendant that no or very little weight ought to be attached to the newspaper articles since they were not relevant to the claim as none of the articles mentioned the specific staircase where the Claimant fell. It was also submitted that the articles are more prejudicial than probative to the facts in issue in this case. The Claimant is neither an expert in Construction or Occupational Health and Safety and as such the nature of the "research" is speculative and prejudicial to the Defendant.

¹⁴ Paragraph 42

¹⁵ Paragraph 45

91. The information in the said articles are set out as:
- (a) Trinidad Newsday dated Sunday 14 March, 2010 by Andrew Bagoo entitled “NAPA Tragedy”. The article deals with the defects at NAPA such as there is no loading area for the main stage, the stage is ill-matched to the 1,500 seating capacity of the hall, the orchestra pit is defective, the light and sound boards are analogue and not digital (the industry standard for the last decade), there are hundreds of problems with lighting and sound fixtures and equipment, the stage floor is ribbed and not a sprung floor so is ill suited for dancing and thus will damage dancers and there are no costume rooms, no set construction rooms and no warehousing rooms. In paragraph 14, it was stated that the floors are laminated and have begun to chip already... there are creases on the stage. At paragraph 15, it was stated that NAPA has a normal door and so instruments cannot fit through NAPA’s doors to get backstage. At paragraph 16, the complaint made was about the lights and sound boards being analogue and not digital... the lights were square and not round, no dressing rooms in the back stage, no clothing racks and no showers.
 - (b) The Article dated Friday 8 August, 2014 in the Trinidad Newsday by Joan Rampersad entitled “NAPA Closed... Where to go?” It stated that there was a problem with lighting fixtures over the auditorium and that there was a concern for patron safety.
 - (c) The Article published on the 6 August, 2014 in the Daily Express online site entitled “Douglas: Hundreds of millions for NAPA repair.” It was stated that tiles were falling off the building... sanitary ware and fittings, the foundation was failing in terms of its design and filtration system. In paragraph 6 it was stated that the stage showed major defects and support stands for the stage

were crumbling. In paragraph 7, it was stated that there were leaks appearing around the steel pipes, indicating a breakdown of the wall pipes. In the last paragraph, it was stated that some of the floors were not even fixable.

- (d) The Article date Sunday 10 May, 2015 by Reshma Ragoonath entitled “Serious Structural Flaws Keep NAPA Closed”. It was stated that NAPA was shut down after it was deemed unsafe by OSHA. Paragraph 6 stated that there were serious flaws, among them welding bolt failures.
- (e) The Article dated 21 of August, 2016 from the Trinidad Guardian entitled “Millions needed to repair NAPA defects”. It mentioned serious structural flaws in almost the entire building including the UTT facility, catwalk, stage area, roof and ceiling which could cause a danger to the public.
- (f) In the article “NAPA Now Hit by Strike” it was stated that there were concerns by technicians employed at NAPA about prohibition notices by OSHA placed inside the main auditorium and on lighting facilities over the catwalk area and concerns over the air quality.

92. The basis for the Claimant annexing the aforesaid articles was based on her research. I accept that the Claimant was not an expert in Occupational Health and Safety issues and as such the nature of her “research” was speculative. Therefore the said articles were inadmissible. Even if they were, I agree with the submission by the Defendant that no weight is to be attached to the newspaper articles since none of them dealt with the staircase in the backstage area (i.e. the staircase was slippery or the lighting was dim) where the Claimant fell and none of the dates of the said articles (i.e. 2010, 2014, 2015 and 2016) which referred to the overall lack

of safety at NAPA coincided with the date the Claimant sustained her injuries.

93. Further, there was no reference in the articles to any Occupational Safety and Health problems with NAPA for use by its patrons, and particularly in reference to the backstage area where the Claimant fell. In any event, Ms. Lavine admitted in cross-examination that she and her colleagues filed a section 15 Notice under the OSHA, but this was due to alleged problems in the auditorium of NAPA with overhead lighting bars, and that there was no concern by staff about the backstage area where there was no health and safety concerns. Therefore, the newspaper articles were not relevant to the Claimant's claim.

DID THE CLAIMANT CONTRIBUTE TO HER INJURY?

94. Having found that the only unusual danger posed to the Claimant was the condition of the staircase since it was still possible that a person could fall even with the anti-skid surface on the staircase I now turn to the question of whether the Claimant bears any responsibility for her fall.
95. It was submitted on behalf of the Defendant that a reasonable person aware of the perceived danger such as the dim lighting and the slippery staircase as seen by the Claimant, would not have proceeded in such circumstances or would have sought an alternative route such as the elevator which Counsel for the Defendant drew to the Claimant's attention and which the Claimant stated she did not know about until she fell.
96. In my opinion, in the absence of the Defendant taking any steps such as placing signs to warn a user of the staircase of the dangers associated with its use or indicating the alternative use of the elevator, it was reasonable,

given that the lighting was sufficient and that there was an anti-skid part of the tile for the Claimant or any user to use the staircase and not seek an alternative. For these reasons I cannot attribute any fault to the Claimant for not seeking an alternative route.

IF THE DEFENDANT IS LIABLE, WHAT IS THE QUANTUM OF DAMAGES OWED TO THE CLAIMANT BY THE DEFENDANT?

97. The Claimant pleaded loss and special damages for medical expenses in the sum of \$11,480.00 and pharmaceuticals in the sum of \$ 272.50. She also pleaded the cost of future surgery in the sum of \$30,000.00 and a claim for general damages for pain and suffering.

General Damages

98. In determining the award for general damages the Court is guided by the principles in **Cornilliac v St Louis**¹⁶ namely:
- (i) The nature and extent of the injuries suffered;
 - (ii) The nature and gravity of the resulting physical disability;
 - (iii) The pain and suffering which had to be endured;
 - (iv) The loss of amenities suffered; and
 - (v) The extent to which the plaintiff's pecuniary prospects have been materially affected.

Nature and Extent of Injuries Suffered

99. The Claimant claimed that she suffered personal injuries to her right shoulder, right elbow and lower back. She relied on the medical reports of Dr. Aisha Burgess, House Officer at the Port of Spain General Hospital dated 12 December, 2013, Dr. Martin Peters Consultant Radiologist at the MRI Centre of Trinidad and Tobago dated 30 December, 2012 and 12 April,

¹⁶ (1966) 7 WIR 491

2014, Dr. Varma Deyalsingh, Family Physician at Plaza Aranguuez Medical Centre dated 1 October, 2014 and 22 July, 2015, Dr. David Toby, Orthopaedic Surgeon dated 18 November, 2014 and 23 December, 2015 and Dr. Ameeta Varma, Radiologist dated 19 August, 2016.

100. According to the said medical reports the Claimant suffered a small osteochondral defect involving the capitellum which manifested itself as a lump outside the joint; evidence of increase in T2 signal within the distal 2 segments of the coccyx and linear high T2 signal lying anterior to the sacro-coccygeal junction; oedema likely to secondary bruising, evidence of increase in T2 signal within the lateral aspect of the joint space at the radio humeral joint indicating the presence of an effusion; bleeding; bursitis; lump outside the joint due to extra fluid induced by trauma; mild degenerative hypertrophic changes at the acromioclavicular joint with resultant compromise of the subcromial space; increased signal in the superior and posterior labrum suspicious for tears; partial thickness in the supraspinatus extending to the synovial surface and measuring 117mm anteroposteriorly and 12mm along the length of tendon fibres and biceps tenosynovitis and mild subscapularis bursitis.

Nature and gravity of the resulting physical disability

101. The Claimant was assessed at the time with permanent partial disability of 7% as certified in Dr. Toby's report dated 18 November, 2014. She further claimed that the injuries resulted in pain, limited range of motion in her right upper limb and difficulty in performing her usual everyday tasks as she is right handed. She also had difficulty in sitting or standing for long periods of greater than 20 minutes as well as writing and typing. She also testified that she requires assistance when moving from a lying to sitting position or vice versa. She was recommended to use a sling, a course of

medication, future surgery and a lifestyle adjustment at work and daily activities. Dr. Toby in his witness statement¹⁷ stated that as of 21 December, 2015, the Claimant continued to experience the same symptoms without any medical signs of improvement and in his opinion her situation was chronic. He recommended surgery to the Claimant for surgical correction of the elbow injury sustained. The Claimant testified under cross-examination that the surgery was not as yet performed.

The pain and suffering which had to be endured

102. The Claimant claimed that she suffered from headaches, right elbow pain and swelling and severe back pain and numbness as a result of the injuries suffered. In her Witness Statement¹⁸, she stated that as of 19 December, 2013, she continued to experience pain in her lower back and right hand, right elbow and right shoulder region. As of 14 January, 2014, she continued to experience persistent pain in her lower back and right elbow. Her right elbow was very swollen and tender to touch. On 5 August, 2016, she stated that she was recommended an MRI scan of her right shoulder since the pain in her shoulder intensified since the fall in 2013.
103. In cross-examination the Claimant testified that after the incident she had severe pains all over her body and that it took her 15 minutes to walk from NAPA to the CPS. She said that she thought it was wise to walk to the police station after those injuries, with the help of her daughter. She said when she reached at the police station she had increasing pains. She was then taken to the hospital by the police officers. She explained that she worked in an insurance company and she knew that a report of the incident had to be made. She believed she had to make the report at that moment before

¹⁷ Paragraph 13 of Dr. David Toby's Witness Statement filed on the 27 day of March, 2018.

¹⁸ Paragraph 30

going to the hospital. However, she admitted that the report was made on the following day and it did not affect any possible insurance claims.

Loss of amenities suffered

104. The Claimant claims that she was an active private individual who engaged in many social activities such as sitting and sewing for long periods. She confirmed this in cross-examination when asked the extent of her being active. She also claimed that she was a single parent and solely responsible for the care and financial well-being of her daughter and she was unable to maintain her home.

Extent to which her pecuniary prospects have been affected

105. The Claimant claims that that from the date of the incident to date, she was employed as an Underwriter for Presidential Insurance Co. Ltd. At the time of filing the Claim Form and Statement of Case she was earning \$5544.00 per month (she stated in cross-examination that her salary increased just recently). She claimed that the injuries she suffered affected her job in that she was unable to sit for long periods, had difficulty standing after long periods, she had difficulty writing and was required to wear a sling which she was unable to do because her job involves typing.

Analysis of the evidence

106. In analysing the evidence, I have considered the following factors in arriving at an award of damages for the injuries sustained by the Claimant:
- (a) The Claimant was diagnosed with having soft tissue injuries to the right shoulder, right elbow and lower back. Dr. Toby's opinion was that the Claimant's situation was chronic since she continued to experience the same symptoms without any medical signs of improvement. Dr. Toby recommended surgical correction for the elbow injury sustained. I have noted that there was no proposed

surgical intervention for the injury to the right shoulder and lower back and in this regard it is most probable that the Claimant's symptoms would continue.

- (b) Dr. Toby's assessment of 7 % permanent partial disability for the Claimant as a whole body assessment was not helpful in assessing damages since as Kangaloo JA said in **Persad v Seepersad**¹⁹ *"an explanation of the effect of injuries on a person's earning capacity in words as opposed to figures would be greater use to the Courts in their assessment of damages at common law."*
- (c) I accept that the Claimant suffered pain in the region of her buttocks and right elbow when she fell. However, I am not of the opinion that the initial pain was as significant as the Claimant suggested since by the Claimant's own admission she was able to leave NAPA and walk for 15 minutes to the CPS to make a report of the incident and it was only at the CPS that she sought assistance from the police where she was then taken to the Port of Spain General Hospital. In my opinion if the Claimant was in significant pain she would not have been able to get up and leave NAPA after the fall and then walk for 15 minutes. However, I accept that the Claimant continued to suffer pains after she fell but I am of the opinion that her pain diminished after her one-week sick leave had passed. In my opinion, if she had continued to experience significant pain she would have required more sick leave.
- (d) I have noted that the Claimant continued to experience pain in her right elbow since she took steps to alleviate her pains by a series of one day surgeries.

¹⁹ Civil Appeal No 136 and 137 of 2000

(e) There was no evidence that the Claimant's life expectancy has been affected. The impact of the injury on the Claimant's daily activities was limited to difficulty in sitting for long periods i.e. greater than 20 minutes as well as writing and typing. I have attached significant weight to the inability to do these activities since they were critical in the Claimant performing her job as an Underwriter at Presidential Insurance Co Limited. I have concluded that the Claimant's loss of amenities was significant.

107. In determining the award of general damages other similar cases are also guidelines for the possible range of an award of damages²⁰. The Claimant submitted that the Court should consider the awards made in the local cases of **Choon v Industrial Plant Services Ltd**²¹; **Darryl Damian Abraham v the Attorney General of Trinidad and Tobago**²² and **Malcolm Francis v Prakash Auto & Hardware Supplies Ltd**²³.

108. The Defendant submitted that the relevant cases are **Rhonda De Leon v. The Port Authority of Trinidad and Tobago and Port of Spain Infrastructure Limited**²⁴; **Nekeisha Candice Moe v Caribbean Airlines and Airport Authority of Trinidad and Tobago**²⁵; **Andy Marcelle v. The Attorney General of Trinidad and Tobago**²⁶; **Theresa Daly v The Attorney General of Trinidad and Tobago**²⁷ and **Lennard Garcia v Point Lisas Industrial Port Development Corporation Limited**²⁸.

²⁰ Aziz Ahamad v Raghubar (1967) 12 WIR 352

²¹ CV 2006-00574

²² CV 2011-03101

²³ CV 2015-00621

²⁴ CV2016-00612

²⁵ CV2014-04881

²⁶ CV2013-02048

²⁷ CV2010-05291

²⁸ CV2010-03061

109. In my opinion the following are the relevant cases to consider an award for general damages in the instant matter:

- (a) **Rhonda De Leon v. The Port Authority of Trinidad and Tobago and Port of Spain Infrastructure Limited**²⁹: While climbing the internal staircase of the ground floor, the Claimant claimed to have slipped and fallen on the fifth stair of that staircase due to her shoe sticking on the adhesive strips recently installed on the staircase. The Claimant's particulars of injury were outlined as follows:
- a. Right Scaphoid Fracture;
 - b. Excruciating pain in right wrist and complete inability to use right hand for at least three (3) months;
 - c. Intermittent pain in wrist to date.

The Claimant succeeded in proving that the Second Defendant was partly liable in negligence, resulting in her fall and minor injury. The Court also found that the Claimant's contributory negligence to the extent of 50% also caused her to stumble. The Claimant was ultimately awarded \$25,000 being 50% of \$50,000.00 in general damages. Date of judgment was the 1 March, 2018;

- (b) **Nekeisha Candice Moe v Caribbean Airlines and Airport Authority of Trinidad and Tobago**³⁰: On the 31 December 2010 the Claimant was employed by the First Defendant ("CAL") as a flight attendant. While she was exiting the main terminal at the Piarco International Airport ("the Airport") in the Customs Hall ("the Customs Hall") she fell in a puddle of water in the area behind the Customs Officer's desk. She was assessed as having a 35% permanent partial disability. The Claimant

²⁹ CV2016-00612

³⁰ CV2014-04881

suffered from mild cervical spondylosis and thoracolumbar scoliosis, those conditions were not caused by the Claimant's fall. A clinical examination of the Claimant was confined to the left shoulder, left knee and lower back. In relation to the left shoulder, there was no obvious wasting but tenderness was noted. The Claimant's shoulder movements were limited and all movements were painful at the end of each range. There were no specific signs that suggested impingement or instability. There was reasonable cervical spine movement although tenderness was felt at the lower cervical spine. Lumbar movements were within 80% of the normal range with mild local tenderness over the local lumbar region. She suffered soft tissue damage to her shoulder and lower back. It was ordered that the Second Defendant (AATT) pay to the Claimant damages in the sum of \$60,000.00 as general damages. Date of judgment was 19 January 2018;

- (c) **Andy Marcelle v. The Attorney General of Trinidad and Tobago**³¹:The claimant was a Prison Officer. He was injured after falling into a trench 2 feet wide and 2 feet deep and suffered a left shoulder injury which the Judge described as a dislocated shoulder. The claimant's evidence was that he was unable to work for 260 days; he returned to work and was assigned light duties; he was described as feeling weakness in his shoulder then and said he is unable to lift weights. Before, he engaged in exercising, doing chores and social activities but his injuries affected his ability to do so. He was awarded general damages in the sum of \$50,000.00. The defendant was liable for 50% of the general damages. It was thereby ordered

³¹ CV2013-02048

that the defendant must pay the claimant the sum of \$25,000.00 as general damages. Date of judgment was 30 June 2016;

- (d) **Theresa Daly v The Attorney General of Trinidad and Tobago**³²: This was a claim for personal injury arising from the Claimant, a 63 year old retired cleaner, falling down steps at the Immigration Office in Port of Spain, a public building. As a result of the fall, the Claimant claims that she sustained personal injuries and loss, namely, swelling and an Edema in the Quadratus Lumborum Musculature; limitations to Flexion 50%, Extension 50%, Rotation (R&L) 65% and Lateral Bending 50%; and Disc Bulge of the L4/L5, L5/S1 Lumbar Complex with associated Myospasms. The Defendant was ordered to pay the Claimant general damages in the sum of \$80,000.00. Date of judgment was 9 June 2016;

110. In my opinion, the injuries in the **Andy Marcelle** and **Theresa Daly** cases were far more serious than that of the Claimant in the instant case. The Claimant's injuries are more in line with the injuries in the **Rhonda De Leon** and **Nekeisha Candice Moe** cases where the range for the awards for general damages were from \$50,000.00 to \$60,000.00. In my opinion, an appropriate award for the Claimant's general damages is \$60,000.00.

Aggravated and Exemplary Damages

111. In **Thompson v. Metropolitan Police Commissioner**³³, Lord Woolf MR stated the following on aggravated damages:

³² CV2010-05291

³³ [1998] QB 498 at page 516

“...such damages can be awarded where there are aggravating features about the case which would result in the Plaintiff not receiving sufficient compensation for the injury suffered if the award were restricted to a basic award.”

112. Exemplary damages are awarded where there is the presence of outrageous conduct involving malice, fraud, insolence and/or cruelty. The purpose of exemplary damages is not to compensate the Claimant but to punish the wrongdoer and deter any such future conduct. In **Rookes v. Barnard**³⁴, Lord Devlin held that exemplary damages may be awarded:
- (i) Where there are oppressive, arbitrary or unconstitutional actions by servants of the government;
 - (ii) Where the Defendant’s conduct was calculated to make a profit for himself; and
 - (iii) Where statute expressly authorises same.
113. Counsel for the Claimant did not make any submissions on making an award for aggravated and exemplary damages although it was pleaded.
114. It was submitted on behalf of the Defendant that no award should be made for aggravated and exemplary damages to the Claimant since the Claimant did not plead any facts to support this and there was no evidence from the Claimant in support of such a claim.
115. I agree with the submission by the Defendant that there were no pleaded facts by the Claimant to support such a claim. There was also no evidence from the Claimant to support such a claim. The evidence from the Claimant was that after she fell, she was ushered out of NAPA. The evidence from

³⁴ [1964] AC 1129

Ms. Lavine was that she offered assistance to the Claimant after she fell, offered to call an ambulance and assisted the Claimant in getting up and guiding her to the elevator. Ms. Douglas testified that she contacted the Claimant and visited her at the hospital. In cross-examination the Claimant admitted that Ms. Lavine and Ms. Douglas took this action. In my opinion, the conduct of Ms. Lavine and Ms. Douglas do not warrant an award for aggravated damages. It also was not arbitrary, oppressive or unconstitutional conduct.

116. Therefore, no award is made for aggravated and exemplary damages.

Special Damages

117. Special damages must be pleaded, particularized and strictly proved³⁵. The Claimant pleaded at paragraph 29 of the Statement of Case, the sum of \$41,752.50 in special damages consisting of \$11,480.00 for medical expenses, \$272.50 for pharmaceuticals, \$30,000.00 for future surgery and future economic loss. With respect to the claim for future economic loss there was no evidence to support this claim and Counsel for the Claimant made no submissions on this claim.

118. With respect the medical expenses, the Claimant provided receipts for all the costs incurred by her save and except proof of payment by her to the MRI Centre of T&T on 30 December, 2013 listed at number 5 of the Claimant's Schedule of Expenses. In the absence of proof of this payment, this sum of \$3,500.00 is not awarded and is deducted from her claim for medical expenses. Therefore, the sum of \$7,980.00 is awarded as medical expenses.

³⁵(1988) 43 WIR 372 Grant v. Motilal Moonan Ltd.

119. The Claimant provided receipts to support the sum claimed for pharmaceutical save and except for the cost of \$150.00 for the sling. Therefore, this sum is deducted and the sum awarded under this category is \$122.50.

Future surgery

120. The Claimant pleaded the sum of \$30,000.00 as the cost for future surgery. The evidence of Dr. Toby was that surgical intervention would assist the Claimant's right elbow.

121. It was submitted on behalf of the Defendant that the cost of future surgery ought not to be awarded since the Claimant has not provided any evidence that she sought a second opinion from another doctor on whether the surgery was necessary or whether it was in fact the only option to salvage her elbow. It was also submitted that the Claimant did not indicate whether she sought any advice as to alternative options to surgery to seek relief, e.g. physiotherapy. It was further submitted that the Claimant also did not provide any evidence as to whether the surgery on her right elbow could be performed at a public hospital and so avoid expenses to her.

122. In my opinion, the submission by the Defendant was without merit since Counsel for the Defendant did not question the Claimant on whether she got a second opinion and if she explored her options of having the same surgery done at a public hospital. Therefore, there was no evidential challenge to the Claimant's evidence. In those circumstances, I am bound by Dr. Toby's evidence of his recommendation for surgery for the Claimant's right elbow at the estimated cost of \$30,000.00. I therefore award the sum of \$30,000.00 as cost for future surgery.

INTEREST

123. Counsel for the Claimant did not make any submission on the rate of interest which the Court is to award for the damages claimed.
124. It was submitted on behalf of the Defendant that Court should follow the decision of the Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**³⁶ (decided in 2016), where the Court reduced interest awarded for false imprisonment from 9% to 2.5% and considered the commercial investment rates given by financial institutions in Trinidad. It was argued on behalf of the Defendant, that although the instant case does not involve false imprisonment, the guidance by the Court of Appeal is useful in determining a contemporary percentage of interest that should be awarded. The Defendant submitted that interest on general damages should therefore be calculated at 2.5% from the date of service of the Claim Form and Statement of Case to the date of judgment and that the interest on special damages be calculated at a rate of 1.5% from the date of the Claimant's fall at NAPA to the date of judgment.
125. In the Claim Form the Claimant requested interest pursuant to section 25 of the Supreme Court of Judicature Act³⁷.
126. According to Lord Denning MR in **Jefford v Gee**³⁸:
- “A claim for interest is not itself a cause of action. It is not part of the debt or damages claimed but something apart on its own. It is more like an award of costs than anything else. It is an added benefit awarded to a plaintiff when he wins a case...”

³⁶ CA 251 of 2012

³⁷ Chapter 4:01

³⁸ [1970] 2 Q.B. 130

127. Lord Denning MR also suggested in **Jefford v Gee** that special damages should be awarded at half the rate allowed on other damages from the date of the accident to the date of the trial.
128. I agree with the submission by the Defendant that although the decision by the Court of Appeal in **Fitzroy Brown** was with respect to a claim for false imprisonment, the principle of how the Court arrived at the sum awarded for interest is also applicable to the instant case.
129. I therefore award interest on general damages at 2.5% from the date of service of the Claim Form and Statement of Case to the date of judgment and interest on special damages at the rate of 1.5% from the date of the Claimant's fall at NAPA to the date of judgment.

CONCLUSION

130. The Claimant has successfully proven that on the date of the incident she was an invited guest to NAPA. The Defendant has failed to satisfy the Court that the Claimant was a trespasser to the backstage on the date of the incident. The Defendant failed to prove that: only certain persons and not the Claimant, had access to the backstage; the authorised persons names were on a list held by a security guard present backstage; those authorized persons had a hand band on; there were signs prohibiting persons from entering backstage; and the Claimant pushed past the security guard to access the backstage area. Accordingly, as an invitee, the Defendant owed a reasonable duty of care towards the Claimant.
131. While the Claimant was not able to satisfy the Court that the lights in the staircase in question were so dim as to pose a danger to her, the Court accepted the evidence of the Defendant's witness, Ms. Lavine, that although the steps have anti-skid strips, it was still possible for a person to

fall. This danger was an unusual danger which the Claimant was not expected to foresee, and so the Defendant was negligent in not warning the Claimant of the apparent danger. The Court did not find any contributory negligence attributable to the Claimant.

132. As a result of the breach of duty of care by the Defendant, the Claimant suffered injuries which she has proven by her evidence and is entitled to the damages which she has proven.

ORDER

133. Judgment for the Claimant against the Defendant.
134. The Defendant to pay the Claimant damages in the sum of \$60,000.00 as general damages for pain and suffering and interest on this sum at the rate of 2.5% per annum from the date of service of the Claim Form and Statement of Case (i.e. 21 February 2017) to the date of judgment.
135. The Defendant to pay the Claimant the sum of \$8,102.50 for special damages and interest on this sum at the rate of 1.5% per annum from the date of the Claimant's fall (i.e. 12 December 2013) to the date of judgment.
136. The Defendant is to pay the Claimant the sum of \$30,000.00 as cost of future surgery. No interest is awarded on this sum.
137. No award is made for aggravated and exemplary damages.

138. The Defendant to pay the Claimant prescribed costs in the sum of \$23,620.50.

Margaret Y Mohammed

Judge