

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. CV 2018-03859

BETWEEN

CANDICE BAILEY

Claimant

AND

NORTH CENTRAL REGIONAL HEALTH AUTHORITY

Defendant

Date of Delivery: 18 June 2020

Before The Honourable Madam Justice Margaret Y Mohammed

Appearances:

Ms Saajida Narine instructed by Ms Shivana Ramroop Attorneys at law for the Claimant.

Mr Ken Wright instructed by Ms Casha Peters Attorneys at law for the Defendant.

JUDGMENT

1. An employer owes a duty of care to provide a safe place of work to its employees. In this case, the Claimant is a registered nurse employed by the Defendant, who suffered an unfortunate accident by falling off a defective chair while at work on the 29 October 2014 (“the first incident”). The Claimant has sought damages for her personal injuries and consequential loss caused by the negligence and/or breach of duty of care and/or breach of contract and/or breach of statutory duty by the Defendant, its servants and or agents. She also sought interest and costs

THE CLAIMANT’S CASE

2. In 2014 the Claimant was approximately 29 years old. On or about the 29 October 2014, she was on duty for the 12:00 pm to 8:00pm shift at the Adult Surgical Ward Three (ASW3) when she was involved in the first incident whilst in the course of her

employment. At around 5:45pm on the said date, the Claimant proceeded to sit on a chair located at the nurse's station, when one of the legs of the chair broke, causing her to fall forward, first hitting her abdomen on the nurse's desk and then falling onto the ground. As a result of the incident, the Claimant suffered severe injuries, consequential loss and damages.

3. At the time of the first incident, the Claimant was eight weeks pregnant. Immediately following the first incident, she began experiencing abdominal and back pains. She was taken to an operating theatre, where tests were performed. However, no x-rays of her lower back were done as she was in the first trimester of her pregnancy. Instead, an ultrasound was done for foetal assessment which revealed no foetal heart rate.
4. The Claimant was reviewed by the Emergency Registrar and taken to the Maternity Hospital where a second ultrasound was performed, which again revealed no foetal heart rate. The Claimant was placed on bed rest with a follow up ultrasound within two weeks' time.
5. On the morning of the Claimant's follow-up appointment, she began experiencing abdominal cramps and spotting. She immediately contacted her doctor and she was advised that she was having a miscarriage. The miscarriage lasted for over a week. The Claimant contended that this was a painful and emotionally distressful period in her life and that said miscarriage was due to the first incident.
6. On or about mid-November 2014, the Claimant returned to work even though she was still experiencing discomfort and distress as a result of the fall. After a short period, the Claimant proceeded on emergency leave due to the continuing effects of the fall.
7. The Claimant remained on sick leave until on or around the 23 November 2014, when she returned to work. She was placed on light duties which meant that she was not to do any lifting, pulling, or pushing of patients or objects. Again, after a short time, on the 8 December 2014 the Claimant was placed on another period of sick leave for three weeks due to the continuing effects of the fall on her back, gynaecological and psychological matters.

8. The Claimant returned to work in January 2015, but again her pain and discomfort continued and she was placed on another period of sick leave on or around the 17 January 2015. She returned to work shortly thereafter, where she was assigned to the Ophthalmology Ward and placed on light duties. However, due to her continuing back pains which she experienced as a result of the fall, the Claimant was only able to work until the 9 March 2015 when she was placed on another period of sick leave. This continued to August/September 2015 when the Claimant again returned to work at the Ophthalmology Ward on light duties.
9. Thereafter, the Claimant worked from August/September 2015 to on or around September 2016. During this period, the Claimant was assigned light duties. However, on several occasions she was required and instructed to perform duties which involved pulling, pushing, lifting and/or bathing patients which put and/or increased unnecessary strain on her back. Sometime in or about September 2016 (“the second incident”) the Claimant was instructed to lift, push and bathe a patient which severely exacerbated her condition. This resulted in her being placed on another period of sick leave from the 18 October 2016, and since that time up to the time of the institution of her action she has continued to be on sick leave.
10. Following the Claimant’s fall, an internal accident investigation was conducted and a report (“the Internal Accident report”) which was prepared stated, inter alia, under the heading “Why did the accident happen”- “defective chair”.
11. Based on the aforesaid facts, the Claimant contended that the Defendant breached its duty of care to her and/or breached the terms of its contract of employment with her as it failed to provide proper and/or adequate and/or suitable plant and/or machinery and/or appliances and/or furniture for use by her since the chair which she was allowed to sit on was defective. For these reasons the Claimant asserted that the Defendant failed to provide a safe and proper work environment and failed to provide a safe system of work and/or to ensure that its workers followed such system. The Claimant has also asserted that while she was already injured the Defendant’s

servants and or agents caused and/or allowed and/or instructed her to engage in heavy lifting and/or pulling and/or moving of patients which exacerbated her injuries.

12. The particulars of personal injuries which the Claimant pleaded were: no foetal heart rate detected; no evidence of free fluid; miscarriage of foetus; L4/L5 annular tear of the posterior longitudinal ligament; lumbar spondylosis (L5/S1); loss of lordosis consistent with paravertebral muscle spasm; L5/S1 interval disc space desiccation changes; minimal posterior disc bulge with minimal bilateral neural foraminal narrowing; L5/S1 minimal disc herniation; pain in coccyx; pain while walking for long periods, bending over, sitting or lying down; pain on bending over aggravated by physical activity; coccydynia; a large focal central disc prolapse of the lumbo-sacral spine; prolapsed intervertebral disc; and permanent partial disability of 40%.
13. The Claimant contended that her personal injuries, damages and consequential loss were caused and/or occasioned by the negligence and/or breach of duty and/or breach of contract of employment and/or breach of statutory duty of the Defendant its servants and/or agents.

THE DEFENDANT'S POSITION

14. The Defendant's Defence was on liability for the incident and the quantum of damages suffered by the Claimant.
15. The Defendant's position on liability consisted of admissions and denials. It admitted that: it owed a duty of care to the Claimant to provide a safe place of work ; when the Claimant sat on the chair one of the legs broke; at the time of the first incident, the Claimant was eight weeks pregnant; immediately following the first incident the Claimant began experiencing abdominal and back pains; the Claimant was taken to an operating theatre, where tests were performed; no x-rays of her lower back were done as the Claimant was in the first trimester of her pregnancy; an ultrasound was ordered for foetal assessment which revealed no foetal heart rate; the Claimant was further reviewed by the Emergency Registrar and taken to the Maternity Hospital

where a second ultrasound was performed which again revealed no foetal heart rate; the Claimant was placed on bed rest with a follow up ultrasound within two weeks' time; and the Defendant's internal investigation concluded that the cause of the first incident was a defective chair.

16. The Defendant denied that it was responsible for the personal injuries, damages and consequential loss suffered by the Claimant by reason of the negligence and/or breach of duty and/or breach of contract of employment and/or breach of statutory duty of the Defendant, its servants and/or agents. The Defendant also denied that the Claimant fell forward first hitting her abdomen on the nurse's desk resulting in severe injuries and loss.
17. The Defendant asserted that it created a safe system of work for all its employees and that it ensured that the work place was outfitted with new chairs.
18. The Defendant contended that the chair was purchased from Galt and Littlepage Limited on or around 15 August 2013 and allocated to the ASW3 on or around 20 August 2014. The chair was relatively new and ought not to have given way in the manner that it did. In relation to the Claimant's claim that reliance is placed on the doctrine of *res ipsa loquitur*, the Defendant maintained that the first incident was unforeseeable as the Defendant was not the manufacturer of the chair which was relatively new and subject to normal wear and tear.
19. The Defendant's position on the Claimant's damages also consisted of admissions and denials. It admitted all the particulars of personal injuries pleaded by the Claimant, save and except: pain in coccyx; pain while walking for long periods, bending over, sitting or laying down; pain on bending over which is aggravated by physical activity; coccydynia; a large focal central disc prolapse of the lumbo-sacral spine; prolapsed intervertebral disc; and permanent partial disability - 40%.
20. The Defendant denied that the duties assigned to the Claimant at the Ophthalmology Ward exacerbated her injuries. It contended that the Claimant was placed out on light

duties when she was reassigned to the Ophthalmology Ward which has a capacity of ten patients most of whom were ambulant, therefore lifting and pulling of patients was not part of routine patient care. The Defendant also contended that the Claimant overexerted herself causing her condition to be exacerbated.

21. The Defendant also denied that the Claimant was instructed to engage in any heavy lifting and averred that, by way of a Medical Certificate from the Defendant dated 1 January, 2015 the Claimant was placed on light duties with specific instructions that “she is not fit to lift, push or pull any heavy objects.”
22. The Defendant further denied that the cost of the Claimant’s back surgery is estimated at \$60,000.00; and the Claimant is unlikely to be able to return to her old work again. The Defendant also denied that the Claimant is entitled to future loss of earnings. The Defendant contended that if not for the first incident the Claimant would have continued to work as a registered nurse and earn as she had previously done, namely \$11,893.75 monthly (gross), and she would have worked to the retirement age of 65 years.
23. There were some facts which the Defendant neither admitted nor denied. The Defendant neither admitted nor denied that the Claimant also requires surgery to relieve her back pain and suffering; that on the morning of the Claimant’s follow-up appointment, she began experiencing abdominal cramps and spotting; she immediately contacted her doctor and was advised that she was having a miscarriage which lasted for over a week; it was a painful and emotionally distressful period in the Claimant’s life; on or about mid-November 2014, the Claimant returned to work even though she was still experiencing discomfort and distress as a result of the fall and that after a short period, the Claimant had to proceed on emergency leave due to the continuing effects of the first incident.

THE ISSUES

24. The following issues arose for determination:

- (a) Did the Defendant breach its duty of care to provide a safe place of work for the Claimant on the 29 October 2014?
- (b) On the 27 September 2016 did the Defendant fail to provide a safe system of work which exposed the Claimant to a risk of further injury or did the Claimant contribute to her injury?
- (c) Has the Claimant proven that the Defendant is liable for her injuries?
- (d) If the Defendant is liable, what is the quantum of damages owed to the Claimant by the Defendant?

THE WITNESSES

- 25. At the trial the Claimant gave evidence and she also called Dr David Santana, Orthopaedic Surgeon. The Defendant relied on the evidence of its sole witness Mrs Natasha Alexander-Jones (“Mrs Jones”).

DID THE DEFENDANT BREACH THE DUTY OF CARE TO PROVIDE A SAFE PLACE OF WORK FOR THE CLAIMANT ON THE 29 OCTOBER 2014?

- 26. The Claimant contended that the Defendant breached its common law and statutory duty of care to provide a safe place of work for the Claimant by providing a defective chair on the 29 October 2014 which caused the Claimant to fall and suffer injuries.
- 27. It was argued on behalf of the Defendant that it did all that was reasonably required to ensure that the Claimant was not exposed to foreseeable risk to her health and safety, and provided a safe place of work for the Claimant as the chair was not defective but relatively new and the first incident was not foreseeable as it did not manufacture the chair.
- 28. **Halsbury's Laws of England**¹, described the common law duty which an employer owes to each of its employees as a duty to take reasonable care for his safety in all the circumstances of the case. The duty is often expressed as a duty to provide safe

¹ Volume 52 (2014), paragraph 376

plant and premises, a safe system of work, safe and suitable equipment, and safe fellow-employees; but the duty is nonetheless one overall duty. The duty is a personal duty and is non-delegable. All the circumstances relevant to the particular employee must be taken into consideration, including any particular susceptibilities he may have.

29. The authors of **Munkman on Employer's Liability**² described the duty of the employee where there is an allegation that the employer has breached this duty as:

“The principles of causation may be summarized that, where a claimant can establish that the injury or damage was foreseeable, it is still necessary for the claimant, on whom the burden of proof lies, to establish that the wrongful act of the defendant was the cause of it, or at least materially contributed to it. The correct test is a matter of law and varies depending on the circumstances of the case.

30. At paragraph 3:04 the author continued:

“Even where the claimant can establish that the injury or damage he sustained was within the bounds of foreseeability, it is still necessary for him to establish that the wrongful act of the defendant was the sole or substantial cause of it, or at least that the wrong materially contributed to it. Indeed in many actions for personal injuries... the starting point in any causation is the but for test; that is, it must be shown that had the defendant not committed the breach of duty concerned, the injury would not have happened.”

31. **Munkman on Employer's Liability**³ sets out that the employer does not undertake that there will be no risk, merely that such risks as there are will be reduced so far as reasonable. To the extent that this leaves an employee at risk, he will accept the inherent risks that cannot be avoided by the exercise of such reasonable care and skill on the part of his employers.

² 15th edition, para 3.03,:

³ 16th Edition at paragraph 4.62

32. The employer's statutory duty is set out at section 6(1) and (2) of the **Occupational Safety and Health Act**⁴, which states, inter alia that:
- i. It shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his employees; and
 - ii. That that duty extends to the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health
33. From the pleadings it was not a dispute of fact that the incident occurred when the leg of the chair broke causing the Claimant to fall and suffer injuries. The Defendant has disputed (a) the manner in which the Claimant fell; and (b) its failure to ensure that the chair was not defective.
34. In order for the Court to satisfy itself which version of the events is more probable in light of the evidence, it is obliged to check the impression of the evidence of the witnesses on it 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**⁵ cited by Rajnauth–Lee J (as she then was) in **Mc Claren v Daniel Dickey**⁶). The Court must also examine the credibility of the witnesses based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**⁷ where it stated that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

The manner in which the Claimant fell

35. The only evidence from any witness on the manner in which the Claimant fell was the Claimant. She stated in her witness statement that on the 29 October 2014 she was working on the ASW3. After doing all her work, at approximately 5:45 pm or so, she proceeded to a side room which was allocated as a temporary nurses' station with the

⁴ Chapter 88:08

⁵ Privy Council Appeal No. 36 of 1897

⁶ CV 2006-01661

⁷ Civ. App. No. 86 of 2011 at paragraph 31

intention of writing up her notes. Just as she sat on the chair, one of its legs broke unexpectedly, causing her to fall forward onto the nurse's desk, hitting her abdomen and then falling flat on the floor in an upright position. As that happened, the back of the chair came forward and hit her on her back. She stated that she filled out an incident report form⁸ on the same day of the first incident.

36. The Claimant admitted in cross examination that she did not call any persons who were present on the day of the first incident as witnesses in Court.
37. Mrs Jones was the sole witness for the Defendant. She stated in her witness statement that she is Registered Nurse with specialty in Ophthalmology. She had been employed with the Defendant for fourteen years. She was appointed to act as Head Nurse of the ASW3 of the Eric Williams Medical Sciences Complex (EWMSC) in or around the year 2013. She performed in that position for a period of three years until in or around the year 2016. During that period she was responsible for the nursing staff assigned to the ASW3. In October 2014, the Claimant was a Registered Nurse assigned to the ASW3. Mrs Jones witness statement is silent on her presence at the time of the incident.
38. In cross-examination, Mrs Jones stated that she recalled the first incident involving the Claimant on the 29 October 2014 and that she had a conversation with the Claimant in November 2014 about it and that the Claimant had submitted a detailed report. She also testified that she was aware that the reason for the Claimant sustaining a back injury was because a chair located in the clerk's room was defective.
39. Therefore, the only unchallenged evidence of the manner in which the Claimant fell when the leg of the chair broke was from the Claimant and for the reason I accept her version.

The Defendant's failure to ensure that the chair was not defective

40. The evidence on the action which was taken by the Defendant to ensure that it provided a safe chair for the use of the Claimant was from Mrs Jones. She stated in

⁸ Page 91 of the Trial Bundle, Item No 11 of the Bundle of Agreed Documents

her witness statement that in her capacity as Head Nurse, she was aware that the chairs in the ASW3 were new or fairly new because she got rid of all the old chairs on the ASW3.

41. According to Mrs Jones, four new black executive chairs were purchased and delivered to the ASW3 in 2013 as she had seen the purchase requisition dated 19 July 2013 for the executive chairs. The four executive chairs were ordered from Galt and Littlepage Ltd Office Specialist on 15 August, 2013 and were subsequently purchased and delivered to the ASW3. One of the chairs was placed in her office; two were placed at the nurse's station and the fourth chair was placed in the clerk's room. She also reviewed the quotation for the chairs from Galt and Littlepage Ltd Office Specialist which is dated 31 July 2013. The chairs were ISO 9002 certified, which is an International Safety Standard and were suitable for weights up to 250 pounds.
42. Mrs Jones continued that on 1 November 2014, in the course of her duties, it was brought to her attention that on 29 October 2014, the Claimant fell from one of the new executive black chairs at the nurse's station in the ASW3. She met with the Claimant on the same day and at their meeting, the Claimant told her that the chair broke when she sat on it. The Claimant also informed her that she was pregnant and that after she fell, she received immediate medical attention at the emergency department of the EWMSC and at the Mt Hope Women's Hospital. She reminded the Claimant to complete an Accident Report and she believed that the Claimant did so. She also completed an Accident and Incident Report based on the information given to her by the Claimant and submitted it to the Defendant's Occupational Safety and Health Department. She made sure the chair was removed from the ASW3. She was not aware of whether the chair was discarded or repaired.
43. Mrs Jones stated that she was responsible for managing the ASW3 and keeping the staff and patients safe, which by extension included ensuring that the equipment, the desks and the furniture were also safe. She testified that the Engineering Department kept a log/ record of the furniture which was taken out of the ASW3 and she kept a log/record of furniture coming into the ASW3. She explained that the Engineering

Department did an annual check of the furniture and directed by memorandum when to remove any furniture.

44. Mrs Jones accepted in cross examination that she did not exhibit any of the records, directives or memorandum concerning the movement of furniture into and out of the ASW3. She admitted that the Defendant did not direct its staff to keep records/logs and that that the keeping of any records/ logs of the moving of furniture into or out of the ASW3 was within her discretion.
45. Mrs Jones testified that she did not deem a chair to be old but that it was the Engineering Department would indicate to her, after making their checks which chairs to remove and which chairs to keep. She indicated that the Engineering Department did annual checks on the furniture but it was not a system which could easily detect if a chair was not correctly functioning or if there was a problem with it. She agreed with Counsel for the Claimant that a better system would have been to have periodical checks and for her to keep a record or log to ensure that the furniture of the Defendant was safe or defective.
46. Counsel for the Claimant indicated to Mrs Jones that there were no records or logs to which she referred. She responded that she had purchase requisitions showing what time the chairs were brought. Therefore, she knew how old the chairs were, but that she did not have records or logs which are kept by the Engineering Department but instead she kept the purchase requisitions on file.
47. Mrs Jones maintained that the chairs in the ASW3 were new at the time of the first incident and that there was a system in place for the inspection and maintenance of chairs and that she was responsible for maintaining the records of the chairs
48. In my opinion, the Defendant failed to provide any credible and cogent evidence that it had taken all the steps to ensure that it provided a safe chair for the following reasons.

49. First, the purchase order and quotation for the chair⁹ at best showed that the chair was purchased in August 2013 but there was no evidence that it was inspected after it was purchased and before it was placed on the ASW3.
50. Second, there was also no contemporaneous documentary evidence to support, Mrs Jones evidence that she kept records or logs of when the chairs were checked.
51. Third, Mrs Jones' evidence was that the Engineering Department was responsible for checking the safety of the furniture to ensure that it was safe for use. However, the Defendant failed to put any evidence if or when the safety of the chair was checked by the Engineering Department. The Defendant failed to call any witness from the Engineering Department to give any evidence on this issue. In my opinion, the only conclusion which the Court can draw, by the Defendant's failure to call any witness, from the department responsible for conducting safety checks on furniture, is adverse to the Defendant which is that no safety checks were done on the chair at anytime previous to the Claimant's injury.
52. Fourth, the Defendant admitted in its Defence that Internal Accident Investigation Report¹⁰ found that the chair was defective and that the cause of the incident was a defective chair. However, the Defendant failed to disclose the Internal Accident Report in the proceedings of the instant action and it also failed to provide any explanation for not disclosing it which by the Defendant's own pleading was relevant to the issue of liability. In my opinion, I am entitled to make the adverse finding against the Defendant that its failure to disclose the Internal Accident Report was because it contained information which did not support its Defence.
53. Lastly, the Defendant's defence that it is not liable in the instant case as it did not manufacture the chair, in my opinion has also failed as there was no evidence to support this assertion.

⁹ Pages 181 and 182 of the Trial Bundle, exhibit "N.J.1" of the witness statement of Mrs Jones

¹⁰ Items 11 of the Agreed Bundle of Documents. Page 92 of the Trial Bundle.

ON THE 27 SEPTEMBER 2016 DID THE DEFENDANT FAIL TO PROVIDE A SAFE SYSTEM OF WORK WHICH EXPOSED THE CLAIMANT TO A RISK OF FURTHER INJURY OR DID THE CLAIMANT CONTRIBUTE TO HER INJURY?

54. It was submitted on behalf of the Claimant, that the Defendant was aware that she was not to lift, pull or push heavy objects after the first incident and on the 27 September 2016 its servants and or agents of the Defendant exposed the Claimant to a further risk of injury by instructing her to bathe an obese patient which caused her injuries to worsen. In support of this submission Counsel for the Claimant relied on the House of Lords ruling in **Paris v Stepney Borough Council**¹¹.
55. In Paris a workman, employed as a garage hand had, to the knowledge of his employers, only one good eye. In working on the back axle of a vehicle to remove a U-bolt, which had rusted in, he struck it with a hammer and a metal chip flew off seriously injuring his good eye. He was not wearing goggles. On appeal to the House of Lords, Lord Simon was of the opinion that that an employer has a continuing duty of care to his employee, whom he knows suffers from a disability or previous injury, to ensure that the risk of further or serious injury was not increased if an accident befell on the Claimant, such special risk of injury being a relevant consideration in determining the precautions which the employer should have taken in the fulfilment of its duty of care owed to the employee¹².
56. It was submitted on behalf of the Defendant that the lifting and pulling of patients were not part of routine care in the Ophthalmology Ward and that if the Claimant overexerted herself she caused her injuries to be exacerbated.
57. At paragraphs 40 to 42 of her witness statement, the Claimant described the requirements of the patients who were on the Ophthalmology Ward as:

¹¹ [1951] AC 367.

¹² Supra at page 375

“40. Around the end of September 2016, I was at work at the Ophthalmology Ward and the ward was a bit busy. The Ophthalmology Ward has 10 beds for 10 patients and is primarily for patients with eye injuries or short term patients who have surgery done and are either discharged the same day or stay overnight. These types of patients would require little assistance to get to the bathroom etc. and may not need bed baths, lifting, pushing or pulling. However, when other wards are full, patients who are considered ‘critical’ are sometimes sent to this ward. Critical patients are generally unable to do things for themselves and require assistance to bathe, etc.

41. Additionally, the beds on this ward are the ‘old time’ hospital beds, which must be cranked up to raise the bed up. That required a lot of bending and twisting. I recall on one occasion I had to catheterise a female patient. I had no help so I had to crank up the bed using a lever on the front to raise the bed up so that I would not have to do much bending, as that caused my back to act up.

42. Another time a patient stayed for more than a night on the ward and required assistance. I told the nursing manager on duty at the time before the patient was warded, that I had an injury and could not bend, lift, pull or push the patient. I was then verbally warned about what I said and told that I had to help the patient.”

58. At paragraphs 43 to 47 of her witness statement, the Claimant described the events leading up to the second incident. She stated:

“43. On Friday 26 September 2016, a critical patient was admitted to the ward. As a Registered Nurse, I was responsible for making rounds with the doctors, writing nurses’ notes, administering medication etc. The nursing students, while they helped with checking patients’ vitals, they could not administer medication and I was responsible for whatever tasks given to them and had to sign off on what they did. It was a lot of responsibility and in addition to Enrolled Nursing Assistants, each ward also has assigned Patient Care

Assistants, Aids to Nurses and escorts or orderlies. These assistants would bathe the patients who are unable to bathe themselves, change their pampers, etc.

44. On that day, I called the Nursing Manager on duty, Nurse Polo, and told her that I needed assistance on the ward as I was the only Registered Nurse on duty with two (2) nursing students and that Nurse Natasha Jones, the Head Nurse, was not on shift as yet. Nurse Polo said she would send staff to assist. When Nurse Jones came to work she heard of my request for help and told Nurse Polo in my presence via the telephone not to send help as she was there, and that I could have used the two nursing students to help me on the ward. I was then assigned to the female section by Nurse Jones.

45. Early on into the shift Nurse Jones then said she had a meeting to go to and left me on the entire ward with the other two students to run. The customer service representative (CSR) then came and expressed concerns about a female patient who was admitted to the ward over the weekend and whose relatives said she wasn't given a bath since she had been admitted. I was then told by the CSR that I had to attend to her. On this day, the escort did not come to work so I explained to the CSR that at the time I was the only senior person on the ward, and I did not have the help as I needed to bathe the patient. I also told the CSR that I had an injury and could not lift or push or pull heavy objects.

46. Despite the concerns I raised with the CSR, I was instructed to attend to the patient's needs. "It was all about patient care," I was told. The patient was severely obese, was on oxygen therapy, intravenous fluids, and other intravenous infusions were connected to her. The patient could not even lift her own leg. I called for a ward attendant to come and assist with the bed bath and waited over a half an hour and no one came. The two nursing students and I then attempted to give the bed bath as I could smell the scent of ammonia coming from the patient. The patient's condition was deplorable. The two nursing students tried to push the patient onto one side of her body to remove

the pampers. As they tried to do so, I got an immediate scent of ammonia and faeces. Her pampers was full of urine and faeces. It was terrible. This was the first time I ever gagged in my mouth.

47. When I tried to roll the patient to the side of the bed with the assistance of the students to take her very dirty pampers off, I felt a snap in my back, and I yelled out in pain. I told the students that I had just felt my back snapped and could not move. After a while I tried to help the nursing students to clean the patient as best as I could. Throughout the remainder of my shift I got horrible back pains.

59. The Claimant's version of the second incident was unchallenged in cross examination.
60. In cross examination Mrs Jones stated that she was aware that the Claimant was placed on light duties even when she returned to work on ASW3 in January, 2015¹³; the Claimant was placed on light duties which meant that she was not to lift, push and pull heavy objects; an obese patient would be classified as a heavy object; and she was responsible for dividing the work among the registered nurses including the tasks to be done and which nurse was assigned to which patients.
61. Mrs Jones accepted in cross examination that whilst there were ten beds on the Ophthalmology Ward that did not mean it had a total capacity of only ten patients. Rather, that meant that the ward may have ten patients warded at any given time for monitoring or to be kept overnight. The number of persons would also exceed ten persons as there would be walk-in patients and persons who may have had surgery but were not discharged the same day. She also accepted that it was possible for patients who could not be warded in ASW3 to be warded in the Ophthalmology Ward given the nature of the public hospital system and it was possible for critical patients to be warded in the Ophthalmology Ward.

¹³ Mrs Jones admitted to receiving in the course of her function as Head Nurse sick leave certificates issued to the Claimant by her doctors at the hospital including the sick leave certificate which is exhibited at page 115 of the Trial Bundle. That sick leave certificate was also agreed to and disclosed by the Defendant.

62. Mrs Jones admitted in cross examination that if a critical patient was placed on the Ophthalmology Ward, the responsibilities of a registered nurse would exceed that of what is classified as light duties. Mrs Jones' evidence in cross examination on the second incident was unreliable. At first, Mrs Jones stated that she could not recall the events on the 26 September 2016 or 27 September 2016. Then Mrs Jones stated that she did not instruct the Claimant to use nursing students to assist or attend to the needs of a particular critical patient on the Ophthalmology Ward but then she changed her response and stated that she did not remember and it did not happen.
63. In my opinion, the Claimant's version of the events of the second incident was also more probable as her evidence was unshaken in cross examination and Mrs Jones evidence was unreliable.
64. Based on Mrs Jones admissions in cross examination, it was more probable that there were more than ten patients in the Ophthalmology Ward at the time of the second incident; there were critical patients who were unable to assist themselves; the Claimant as a registered nurse was responsible for attending to the critical patients when she was assigned to the Ophthalmology Ward in September 2016; the responsibilities included bed baths; and bed baths entailed bending, pulling, pushing and lifting the critical patients.
65. It was clear that Mrs Jones, the servant and or agent of the Defendant knew that the Claimant was assigned to light duties, but she failed to take reasonable steps to send anyone to assist the Claimant. Instead, Mrs Jones left the Claimant as the only registered nurse together with two nursing assistants on the said Ward to conduct a bed bath of a critical patient who was obese, on oxygen therapy and intravenous fluids on the day of the second incident.
66. For these reasons, I have concluded that there was a continuing duty of care which the Defendant owed to the Claimant when she was at work on the 27 September 2016 and this duty was breached when Mrs Jones, the Defendant's servant and or agent

exposed the Claimant to risks by not providing adequate assistance to her to give an obese critical patient a bed bath which exacerbated her injuries.

HAS THE CLAIMANT PROVEN THAT THE DEFENDANT IS LIABLE FOR HER INJURIES?

67. In the Defence, the Defendant accepted injuries which the Claimant suffered were: no foetal heart rate detected; no evidence of free fluid; miscarriage of foetus; L4/L5 annular tear of the posterior longitudinal ligament; lumbar spondylosis (L5/S1); loss of lordosis consistent with paravertebral muscle spasm; minimal posterior disc bulge with minimal bilateral neural foraminal narrowing; and L5/S1 minimal disc herniation.
68. However, the Defendant denied that it was responsible for the Claimant's injuries based on the findings of Dr Santana which were pain in the coccyx; pain while walking for long periods, bending over, sitting or lying down; pain on bending over aggravated by physical activity; developed coccydynia; a large focal central disc prolapse of lumbo-sacral spine; prolapsed intervertebral disc and permanent partial disability of 40%.
69. In light of this denial, the onus was on the Claimant to prove that the first incident and the second incident caused the injuries which Dr Santana diagnosed.
70. The Claimant's evidence was that she first visited Dr Santana in June 2015 where she received a medical report dated 22 June 2015 ("the First Santana Report"). The Claimant's second visit to Dr Santana was in April 2016 and she obtained a medical report from Dr Santana dated 28 May 2016 ("the Second Santana Report"). The Claimant's third medical report from Dr Santana was dated 18 October 2016 ("the Third Santana Report") and the last medical report from Dr Santana was dated 2 July 2018 ("the Fourth Santana Report"). The Claimant also relied on the agreed medical reports from the EWMSC dated 9 March 2015, 23 November 2015 and 16 March 2016 and the radiology reports dated 29 October 2014, 31 December 2014 and 7 April 2015.

71. In the medical report dated 9 March 2015¹⁴ which was issued by Dr Ramsingh of the Neurosurgery Unit at EWMSC he stated that after seeing the Claimant at the neurosurgery clinic for seven weeks ,he diagnosed her with a L4/L5 annual tear of the posterior longitudinal ligament. This was also reflected in the sick leave certificate dated 9 March 2015 from the Neurosurgical Unit¹⁵. The sick leave certificate issued by the EWMSC for the Claimant dated 19 April 2015¹⁶ stated that the Claimant was suffering from a lumbar disc prolapse.
72. In the First Santana Report, Dr Santana stated that the Claimant complained that she had pain in her coccyx, pain while walking for long periods and pain on bending over which was aggravated by physical activity. He also indicated that the Claimant was still attending clinic at the EWMSC and that she will be reassessed when she reaches maximum medical improvement. Dr Santana explained that in the First Santana Report the term medical improvement referred to the condition where a patient achieves a plateau meaning no further improvement, so that the Claimant's symptoms and complaints at that level would be permanent.
73. In cross examination, Dr Santana stated that during the time of his first assessment of the Claimant, he did not look at her medical history and he did not enquire whether she had any previous medicals before he did her assessment. He stated that the Claimant did not have any MRIs or X-rays at that time. He explained that when he stated in the First Santana Report that the Claimant was still attending clinic at the EWMSC he knew she had been seeking medical attention at the EWMSC and he did not ask to see the medical reports from the EWMSC because he did not have to review them.
74. In the Second Santana Report, Dr Santana stated that the Claimant had developed coccydynia initially due to the first incident and that it still had not been resolved by April 2016. He stated that the Claimant had no prior back injury and that after the first incident she continued to have back pain every day, painful to walk, bend over, sit or

¹⁴ Page 86 of the Trial Bundle

¹⁵ Page 119 of the Trial Bundle

¹⁶ Page 120 of the Trial Bundle

lie down. According to Dr Santana, the Claimant's back pain was aggravated by physical activity but there were no symptoms in her legs. He stated that upon examination, the Claimant's straight leg raising was greater than 90 degrees bilaterally and that power, sensation and reflexes were all within normal limits. The MRI of the lumbo-sacral spine revealed a large focal central disc prolapse. He suggested surgery to relieve the Claimant's back pain. He explained that if the status quo is accepted then he assessed a permanent partial disability of 40%.

75. Dr Santana explained his finding of coccydynia in the Claimant in the following manner. The coccyx is the last segment of the spinal column which is usually a single bone and which people colloquially referred to as the "tailbone". He said that coccydynia is pain in the tailbone.
76. Dr Santana explained his diagnosis of a large focal central disc prolapse by first explaining that an intervertebral disc is a soft tissue structure that is between each of the bones of the spinal column. It consists of two structures namely a fairly tough fibrous ring and in the centre there is some soft material. He stated that a prolapse disc occurs when the tough fibrous ring ruptures and pressure is applied to the disc, the soft material in the centre of the disc, extrudes outside the disc and into the spinal canal. He also stated that in the Claimant's case, where the disc ruptured in the middle, it is called a central disc and the designation of the size of the rupture is based on an assessment by a clinician which was large in the Claimant's case.
77. Dr Santana explained that these injuries were relevant to the Claimant as she had ruptured the outer ring called the annulus and some of the gelatinous material which is inside of the disc has started to extrude into the spinal canal. He stated that when this appears, it may press on a number of structures, first upon the posterior longitudinal ligament, which is very painful. It may also go on to press on the nerves that supply the legs or it may even press upon the spinal cord itself. All of which can result in symptoms such as pain, numbness, pins and needles, cramps, weakness. He stated that these symptoms would have arisen when the Claimant fell.

78. Dr Santana also explained the relevance of the injury to the posterior longitudinal ligament. He stated that the spinal column is held together by a number of ligaments, one ligament running from the neck all the way down, called the anterior longitudinal ligament and immediately behind the body of the vertebrae is another long ligament that runs from the neck all the way down to the end of the spinal column called the posterior longitudinal ligament. He stated that when the annular ruptured, the posterior longitudinal ligament *“is the first structure that it is going to press against and that is painful”*.
79. In cross examination, Dr Santana stated that when the Claimant visited him for assessment for the Second Santana Report she had an MRI but he was unable to recall if he had requested it. He explained that the Claimant told him that she had no prior back injury.
80. The Third Santana Report stated that the Claimant was diagnosed as having a prolapsed disc. He recommended injury leave and he stated that he was unable to indicate when she would be able to return to work. Dr Santana explained in his evidence in chief that the Third Santana Report was a letter to the Claimant’s employer, and that due to the Claimant’s condition in October 2016, it was not possible for him to indicate when the Claimant would be able to return to work. He stated that there were a number of things that caused him make that decision namely: the Claimant’s then condition; she was continuing to have all the symptoms which she had been having since she first presented to him; the possibility that surgery might be needed to relieve her symptoms; and after that there would be a postoperative rehabilitative period in which physiotherapy would have been required. He stated that only when the Claimant had reached maximum medical improvement he could then decide whether she was fit to return to work. Dr Santana stated that the Claimant was on continuous sick leave or injury leave since the Claimant was not able to continue working after the first incident.
81. In cross examination Dr Santana stated that the Third Santana Report was not a medical report but instead a letter to the Claimant’s employer. He stated that the information in the Third Santana Report came from the Claimant as the information in the First Santana Report and the Second Santana Report. Dr Santana explained that

there was an error in the two different dates recorded in the First Santana Report and the Second Santana Report as the correct date of the Claimant's accident was 29 October 2014.

82. The Fourth Santana Report stated that the Claimant was reviewed on the 2 July 2018, her symptoms were unchanged and the need for surgery remained. Dr Santana stated in his evidence in chief that he issued injury leave certificates for the Claimant over a long period of time because the Claimant had sustained an injury at work and she had not improved sufficiently with conservative management which meant waiting and the use of pain killers.
83. In cross examination, Dr Santana confirmed that during the period that he gave the Claimant injury leave, she gave birth to a child, but he could not recall when she gave birth. Dr Santana stated that he saw the Claimant on 7 July 2017 and he had written up the medical certificate on even date. He would have seen her for a prolapsed intervertebral disc. He could not recall if he prescribed any medication for the Claimant, but he stated that he normally prescribed painkillers. Dr Santana accepted that the Claimant was pregnant towards the end of the period he was seeing her as a patient but he could not recall dates related to her pregnancy. Dr Santana testified that the pregnancy would have had an impact on the Claimant's prolapsed intervertebral disc. He could not indicate the total number of days injury leave he issued to the Claimant. Counsel indicated that it was a total of 821 days and Dr Santana accepted that during the course of the injury leave issued by him, the Claimant was pregnant for nine months.
84. In my opinion based Dr Santana's explanations, the aforementioned medical report from Dr Ramsingh and the two sick leave certificates dated 9 March 2015 and 19 April 2015, it was more probable that the Claimant's early diagnosis, as a result of the fall was, that of the annular tear of the longitudinal ligament and that it worsened from March 2015 to a lumbar disc prolapse (the expulsion of the soft material which is inside the annulus into the spinal canal) by April 2015.

85. It was also more probable that as time passed by, with little or no improvement and despite conservative treatment and the Claimant was exposed to conditions at the second incident which exacerbated her injuries which lead to Dr Santana's findings of large focal central disc prolapsed, prolapsed intervertebral disc and coccydynia. For these reasons I have concluded that the Claimant has discharged the onus of proving on a balance of probabilities that the Defendant's failure to take steps to ensure that the chair was safe from which the Claimant fell caused her injury and that the actions of its servants and or agents at the second incident exacerbated her injuries. The provision of a safe chair and a safe environment for work was reasonably foreseeable and the Defendant breached its common law and statutory duty of care by failing to make such provision.

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

86. Having found that the Defendant was liable for the injuries suffered by the Claimant on the first incident and that the injuries were exacerbated on by the events on the second incident, I will now deal with the damages.

87. The Claimant pleaded special damages, general damages, loss of future earnings and cost of surgery to relieve her back pain.

Special damages

88. Special damages must be pleaded, particularized and strictly proved¹⁷. The Claimant pleaded at paragraph 15 of the Statement of Case, special damages consisting of \$2652.30 for medical expenses and continuing, \$1500.00 for transportation and continuing. The Claimant also pleaded an unstated sum for loss of earnings at \$11,893.75 (gross) per month from the 1 September 2017 and continuing.

¹⁷(1988) 43 WIR 372 Grant v. Motilal Moonan Ltd.

89. With respect the medical expenses, the Claimant at paragraphs 35, 36, 37, 49 and 51 of her witness statement provided evidence and receipts for medical expenses which she paid in the total sum of \$2600.00. Her evidence was also corroborated by Dr Santana. The Claimant also provided receipts for the sum of \$52.30 for the purchase of medication. Therefore, the sum of \$ 2652.30 is awarded as medical expenses.
90. However, there was no evidence from the Claimant to explain how she arrived at the sum claimed for transportation costs Therefore, no award is made for this sum.
91. With respect to the Claimant's claim for past loss of earnings for the period September 2017 to the time of the judgment, the Claimant's evidence in her witness statement was that since September 2017 she has not been paid her salary by the Defendant.
92. The Claimant stated that when she started working as a Registered Nurse for the Defendant her basic salary was \$7,507.00 per month and she received various allowances each month as part of her emolument package. Therefore, each month she earned \$11,893.75. She requested a letter from the Human Resource Department of the EWMSC setting out her compensation and she received a letter which was signed by Human Resource Officer III. The Claimant indicated that her salary was directly deposited into her RBC Bank account. She obtained copies of her bank statements for 31 October 2016, 21 January 2017, 28 February 2017, 31 March 2017, 31 May 2017, 30 June 2017 and 31 August 2017 which showed that her salary was deposited into her bank account held at RBC. The Claimant referred in her witness statement to the payslips from the Defendant for the period January - June 2017 and August 2017 which were part of the Agreed Bundle of Documents¹⁸. She also provided copies of her bank statements¹⁹ for the period August to September 2017 and October to November 2017 to show that she did not receive her salary of \$11,893.75.
93. The Claimant stated that towards the end of September 2017, she checked her bank account and noticed that her salary was not deposited into her account. She made several enquiries with the Defendant but she did not get any response to her

¹⁸ Items 13 to 19

¹⁹ Items 25 and 26 of the Agreed Bundle of documents pages 78-79 of Trial Bundle.

enquiries. The Claimant explained that every time she was given injury leave by Dr Santana she submitted it to the Defendant. She stated that she submitted sick leave certificates to cover the period commencing 18 October 2016 to 61 days commencing from 1 January 2019²⁰.

94. According to the Claimant sometime in November 2017 she received a call from the Defendant and she visited the Human Resources Department. On the 29 November 2017, she was handed a letter dated the 8 November 2017 by one of the officer's in the Defendant's Human Resources Department and she signed for receiving it. The letter stated that since she was on sick leave from September 2016, the further injury leave certificates submitted for the periods 1 September 2017 to 31 October 2017 and 1 November 2017 to 31 December 2017 were classified as extended sick leave without pay. The letter also quoted that this was in accordance with a policy of the Defendant.
95. The Claimant stated that she provided a copy of this letter to her Attorney at law. She also stated that after her matter was filed in Court, it came up for a hearing on the 18 February 2019. The day before she received a call from a friend at the EWMSC where she learnt of certain things. She spoke with her Attorney at law on the hearing date and after Court she went directly to the Human Resources Department of the Defendant where she collected two further letters dated the 5 June 2018 and 2 July 2018 both dealing with the period she had been on extended injury leave without pay. These covered the periods 1 May 2018 to 30 June 2018 and 1 July to the 31 August 2018.
96. According to the Claimant, at no time prior to the hearing on the 18 February 2019, was she informed that these letters had to be collected. She said that she submitted the injury leave certificate to the Ophthalmology Ward in person every time Dr Santana issued them to her. This was the first time she came to know the reason for not receiving her salary from September 2017 to present date. She also stated that she has not been given a termination letter from the Defendant nor was she boarded medically unfit.

²⁰ Items 36 to 51 of the Agreed Bundle of documents pages 80 to 81

97. In cross examination, the Claimant testified that she is still employed by the Defendant but she is not being paid and that the last time she was paid by the Defendant was in August 2017. She testified that during the period 2016-2017 when she was on extended sick leave she was being paid because she was in and out of work and she did not proceed on any vacation leave at any point.
98. It was submitted on behalf of the Claimant that her average gross monthly earnings was \$11,893.75. Based on the bank statements adduced into evidence, her (net) monthly income was \$9,943.46 on the 31 August, 2017²¹. The Claimant would also have been entitled to incremental increases in her basic salary over years, as such the sum of \$9,943.46 provides the best average of the Claimant's net monthly earnings to calculate the loss of past earnings.
99. The Defendant accepted that the Claimant has not received her salary since September 2017. However, it was submitted on behalf of the Defendant that the Claimant is only entitled to her basic salary and her Cost of Living Allowance (COLA) on the basis that all other allowances are duty allowances which ought not to be remitted as the Claimant did not perform the duties to which these allowances are attached to.
100. I have attached no importance to the Defendant's submission for the Court not awarding the other allowances of the Claimant as there was no evidential basis for this submission. In any event, if the Claimant was not injured it was more probable that she would have worked during the period September 2017 to June 2020 and she earned those allowances.
101. The Claimant's evidence on her earnings, the period she was absent from work and the reasons for her inability to work were unchallenged in cross examination. Dr Santana's evidence supported the Claimant's evidence on her inability to work.
102. Based on the evidence, the Claimant was on extended sick leave since the 27 September, 2016. The Claimant's last injury leave certificate was issued on the 4

²¹ Page 105 of Trial Bundle, Bundle of Agreed Documents at item No. 19

January, 2019 for a period of 61 days²². The Claimant confirmed that she was still employed with the Defendant as a Registered Nurse up to the date of trial and the letters dated the 08 November, 2017, 05 June, 2018, 24 July, 2018²³ issued by the Human Resources Department of the Defendant confirmed that after 1 September, 2017 the Claimant received no pay, which the Defendant never disputed in its Defence or during cross-examination at the trial of this matter.

103. The Claimant's average gross monthly earnings was \$11,893.75 and her net monthly income was \$9,943.46 on the 31 August, 2017²⁴. The Claimant would also have been entitled to incremental increases in her basic salary over years, therefore the sum of \$9,943.46 provides the best average of the Claimant's net monthly earning. In my opinion the Claimant provided sufficient evidence to prove that her loss of earnings for the period September 2017 to June 2020 is to be calculated as \$9,943.46 x 34 months which is a total of \$338,077.64 (net).

General damages

104. In determining the award for general damages the Court is guided by the principles in **Cornilliac v St Louis** ²⁵ 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.

²² Item 51 of the Agreed Documents page 138 of Trial Bundle

²³ Trial Bundle at pages 109 – 111, Bundle of Agreed Documents

²⁴ Trial Bundle at page 105, Bundle of Agreed Documents at item No. 19

²⁵ (1966) 7 WIR 491

Nature and extent of the injuries suffered

105. The injuries which the Claimant suffered which were not disputed by the defendant were no foetal heart rate detected; no evidence of free fluid; miscarriage of foetus; L4/L5 annular tear of the posterior longitudinal ligament; lumbar spondylosis (L5/S1); loss of lordosis consistent with paravertebral muscle spasm; L5/S1 interval disc space desiccation changes; minimal posterior disc bulge with minimal bilateral neural foraminal narrowing; and L5/S1 minimal disc herniation.

106. The injuries which the Defendant disputed and which I concluded it was also liable for were pain in coccyx; pain while walking for long periods, bending over, sitting or laying down; pain on bending over which is aggravated by physical activity; developed coccydynia; a large focal central disc prolapse of the lumbo-sacral; prolapsed intervertebral disc; and permanent partial disability - 40%.

The nature and gravity of the resulting physical disability

107. The Second Santana Report assessed the Claimant's permanent partial disability as 40% and this remained unchanged up to the Fourth Santana Report in July 2018.

108. Dr Santana explained that permanent partial disability meant that the Claimant is disable as she is not going to be able to do quite a number of activities in normal daily living and even of work. For example, she will not be able to lift heavy things. She may experience these symptoms on bending over, and it may be aggravated. She may not be able to do household chores like sweeping and social activities would also be diminished. In terms of partial, she is not totally disabled so that is the reason it is referred to as a partial disability and because her disability is not going to change it is a permanent partial disability. He explained that the percentage is based upon an assessment of (1) the kind of work the Claimant did which was to lift patients, which would be seriously affected and (2) the activities that are affected and it is measured in terms of, the whole person.

109. Dr Santana further testified that by May, 2016, approximately two and half years following the initial fall, the Claimant was still unable to walk, sit, bend or lie down without pain and discomfort²⁶. He opined that the Claimant's back pain was aggravated on physical activity and recommended surgery to relieve her pain. Dr Santana confirmed under re-examination that he had advised the Claimant not to have a normal vaginal pregnancy but rather a C-section because of her back injuries.
110. I accept Dr Santana's evidence on the result effects of the injury suffered by the Claimant as this was the only medical evidence before the Court on this issue

The pain and suffering which had to be endured

111. The Claimant set out in her witness statement the details all the pain she endured from the initial time of the incident until the time of its filing.
112. At the time of the first incident, the Claimant described the pain when she fell at approximately 5:45 pm as an electric shock rushing up her spine causing her tremendous pain. She stated that she continued to experience abdominal and back pains at that time throughout the evening. She stated that as she was being taken in a wheel chair into the emergency department her abdominal cramps became more and more intense and her pain increased in intensity. She continued to experience pain and severe discomfort all through the night until the next morning around 8:00 am.
113. The Claimant explained that when she returned home that morning she was still in a lot of pain and that she was unable to sleep that night as the pain in her back lingered despite taking medication. She stated that she returned that same day for an ultrasound to be performed. She was given 14 days sick leave and placed on bed rest. According to the Claimant, during that time, the pain in her lower back got worse and she experienced intense abdominal cramps. She experienced a miscarriage and during

²⁶ Trial Bundle at page 173, Witness Statement of Candice Bailey filed on the 03 September, 2019 exhibit "C.B.2"; page 190, Witness Summary of Dr. Santana filed on the 3 September, 2019

that time she had both abdominal cramps and back pain. She stated that she returned to work around the 24 November 2014 as the pain in her lower back had eased up slightly but she still felt discomfort.

114. According to the Claimant, she proceeded on emergency leave on 4 December 2014 and during this period she started to experience stronger lower back pains. She returned to work after the Christmas holidays and she still experienced excruciating back pains while at work. She stated that she could not bend or finish her rounds without getting pains. She could not lift or assist with the care of the patients because her back pains intensified when she tried to do so. She took a few days off from work to rest and when she returned to work around 8 January 2015 she visited the staff clinic as her pain continued. The doctor who saw her placed her on light duties for three months. She was advised that she was not to lift, push or pull any heavy objects.
115. The Claimant stated that in mid-January 2015, while at work, she was walking on the ward when she sneezed which caused her to feel pain in her back. She described the pain as crippling as she attempted to walk. She was seen by a doctor who was on duty. She was then given fourteen days sick leave from the 17 January 2015. She returned to work after the fourteen days and she was placed on light duties. According to the Claimant, halfway during her shift she began experiencing back pains. She was seen by a doctor at the neurosurgical clinic who placed her on another fourteen days sick leave. The Claimant stated that her back pains continued during this sick leave period. She described her pains as so severe that she was unable to stand up straight, walk, sit down or lie down comfortably.
116. The Claimant stated that she visited the doctor on the 21 February 2015 where she was diagnosed with a tear of the longitudinal ligament at L4/L5. The doctor also increased her pain medication. The Claimant explained that she continued to work intermittently due to the constant pain in her lower back as she was unable to stand, sit or walk for long periods. She visited the Neurosurgical Clinic in March 2015 and she was given another twenty-one days sick leave. She stated that between 9 March 2015 to August or September 2015 she was placed on sick leave after each time she was reviewed by a doctor from the Neurosurgical clinic. In May 2015 she was referred

to physiotherapy and placed on ninety days sick leave commencing 25 May 2015. She started the physiotherapy in May 2015. She stated that she experienced pain during the exercises. She also had massages done to her lower back which assisted her but which she described as incredibly painful. The Claimant also described her pain was not going away and which prevented her from doing basic things at home.

117. The Claimant said that in June 2015 she visited Dr Santana, for a consultation. She returned to work on the Ophthalmology Ward on light duties around August/September 2015. She visited Dr Santana again as her pain and discomfort continued when he recommended surgery and he recommended that she be placed on light duties.
118. The Claimant described the second incident in September 2016 while she was working at the Ophthalmology Ward where she was required to do a lot of bending, and moving of a severely obese patient. She stated that after the second incident she experienced horrible back pains. She stated that she took medication for the excruciating pain when she returned home but she was unable to sleep that night due to the pain. She also stated that she was unable to go to work on the following day as she was experiencing too much pain.
119. The Claimant stated that she continued to be reviewed by Dr Santana as she was in constant pain and discomfort during the period September 2016 to July 2018. During this period Dr Santana gave her a sick leave certificate as she was in pain. She also stated that while she was on sick leave, she gave birth to a child via caesarean section on 2 April 2018. The Claimant stated that after the birth of her child she still feels the pain in her lower back. In cross examination, the Claimant stated that while she was on injury leave she became pregnant and gave birth.
120. Dr Santana's evidence corroborated the Claimant's evidence on the extent of her pain. He also confirmed that injuries such as annular tear of the posterior longitudinal ligament, coccydynia, large focal central prolapse disc and annular bulge, are very painful and may result in symptoms such as pain, numbness, pins and needles, cramps and weakness.

121. The sick leave certificates issued by EWMSC and the injury leave certificates issued by Dr Santana also supported the Claimant's evidence on the extent of her pain and discomfort. The doctors at the EWMSC who treated the Claimant recognised that due to her ongoing back pain and limitations she was placed on light duties with a specific mandate not to lift, pull or push any heavy objects.

The loss of amenities suffered

122. The Claimant was injured on the 29 October 2014. After she was treated at the hospital and she returned home the following day she required the assistance of her partner to assist her to come out of the car. Her partner also gave her a bath as she could not stand in the shower. The Claimant stated at paragraph 25 of her witness statement that while she was on sick leave during the period end of January 2015 to mid-February 2015 her partner had to bathe her, she could not sit on the toilet to urinate or relieve herself, lying in bed was difficult; she lived in a two storey townhouse so she stayed upstairs as she could not walk downstairs. She also could not cook, clean or wash as she did before the fall. Her mother visited her three times for the week and did the washing, cleaning and ironing.
123. According to the Claimant, she was on sick leave until she returned to work at the Ophthalmology Ward in August/September 2015 where she was placed on light duties. She was told by a doctor who was on call at the Defendant around 23 November 2015 that she was not to pull, push or lift heavy objects.
124. The Claimant stated that after her miscarriage she had another child who was born on the 2 April 2018. It was a difficult pregnancy because of her condition and during the pregnancy she continued to see Dr Santana about the pain she was getting. Based on his advice, she was not able to have her son by natural birth because natural labour would have put too much pressure on her spine and she could have damaged her back even further or caused paralysis. She had no other choice but to schedule a Caesarian section which she did at Medical Associates Hospital on the 2 April 2018. As an

expecting mother, she really wanted to have a natural labour and part of her felt that she missed out an important aspect of pregnancy.

125. The Claimant stated that 2019 her son was just over a year old and as he gets older, he is putting on weight and growing. During the middle of the night, when he gets up and cries for a bottle or to change his pampers, she sometimes cannot get off the bed because of the discomfort and pulling she feels in her back. She stated that it would take her a while before she would go to her son so her partner and mother would help and go to him. She also stated that she would like to hold her son as long as she would like but she feels the pulling and strain in her back.
126. The Claimant explained that she enjoyed doing outdoor activities and spending time with family and friends. She enjoyed travelling to different countries but now sitting for long periods causes her discomfort and if the plane jerks her back would pain her. She also cannot sit at certain angles because she still feels pain and pulling in her back. If she turns a particular way, she would feel the pulling, she does have a lot of discomfort. She stated that she is not the same vibrant and energetic person as she was before the fall.
127. The Claimant stated in cross examination that she was placed on permanent bed rest during her pregnancy but she could not recall how soon after becoming pregnant she was placed in this bed rest.
128. Dr Santana testified that he recommended to the Claimant that she should not have a normal vaginal delivery but instead a Caesarean Section.

The extent to which the plaintiff's pecuniary prospects have been materially affected

129. It was submitted on behalf of the Claimant that she is entitled to an award for loss of pecuniary prospect under the head of general damages and that this ought not to be equated to any claim for loss of earnings or future loss of earnings. Counsel also submitted that based on the evidence, the Claimant has been deprived of promotional

opportunities and prospects as a result of her injuries. Counsel referred the Court the judgments of Jones J (as she then was) in **Andre Marchong v TTEC**²⁷ and Des Vignes J (as he then was) in **Ian Gonzales v Scaffolding Manufactures and ors**²⁸.

130. In **Ian Gonzales**, the Claimant was a Rigger employed by the First Defendant. On the 8 October 2005, the Claimant was engaged in building scaffolding for the First Defendant on the Second Defendant's compound. On that day, the Claimant put on his harness and entered the lift, which elevated him 50 feet above the ground. He exited the lift and walked along the pipe of scaffolding to attach his harness to the lifeline, which was approximately 7 feet away from the lift. After taking four steps towards the lifeline, the Claimant's foot slipped and he fell to the ground. As a result, the Claimant suffered injuries, loss and damage.
131. Following the accident on 8 October 2005, the Claimant returned to work at the First Defendant's premises in June 2006 and was assigned the task of driving the forklift. Payslips show he worked until 8 February 2007. He did not return as of 14 February 2007. He was then employed in April and July 2008 at a Hardware. He then secured employment in 2011 at Chemplast (Caribbean) Limited packing boxes and material for which he was paid \$15 an hour. At the date of signing the principal witness statement, 4 June 2012, he was still employed at Chemplast. However, he was terminated in August 2012. Although he was not employed at the time of the trial, the Court found that having regard to the Claimant's limited qualifications and limited work scope, had he made reasonable efforts to find alternative employment, he would have probably earned no higher than minimum wage. The Court awarded a lump sum of \$75,000.00 for loss of earning capacity and the sum of \$1,065.532.00 for loss of future earnings using the multiplier/ multiplicand method. Although this case was appealed the sum awarded as the lumps sum for loss of earning capacity was not reversed at the time of writing this judgment.

²⁷ CV 2008-04045

²⁸ CV 2009-03527

132. The Claimant stated in her witness statement that she graduated with a Bachelor of Nursing degree in 2012 from the University of the Southern Caribbean and that she is registered with the Nursing Council of Trinidad and Tobago. She has been a permanent employee of the Defendant as a Registered Nurse since 7 May 2013 and she was assigned to the EWMSC. At the time of the initial incident, the Claimant had just completed a year at the EWMSC. She earned an average gross monthly income of \$11,893.75 which comprised of her basic salary and various allowances given to Registered Nurses and the breakdown of the Claimant's earnings was agreed to by the Defendant and admitted into evidence²⁹.
133. Mrs Jones, who is also a Registered Nurse confirmed in cross examination the salary earned by the Claimant as well as the various allowances which are paid to Registered Nurses. She also stated in cross examination that a Registered Nurse's salary increased as that person became more senior in the profession with the position of Head Nurse being the most senior in rank. Mrs Jones further testified that the appointment to Head Nurse is also based on qualifications and competence and that the Defendant encouraged its employees to undertake various courses as a means of improving their skills and such courses were available to Registered Nurses, particularly if those persons wished to apply for promotions.
134. In my opinion, the facts in **Ian Gonzales** can be distinguished from the instant case as in this case at the time of the trial the Claimant is still employed as a registered nurse with the Defendant. I am minded to consider this heading under the overall award of general damages but I am not minded to award a separate lump sum under this head. I am also of the opinion that the evidence under this heading is also applicable for the Claimant's claim for loss of future earnings.

Analysis of the evidence

135. In analysing the evidence, I have considered the following factors in arriving at an award of damages for the injuries sustained by the Claimant:

²⁹ Trial Bundle at page 106, Bundle of Agreed Documents item 20

- (a) The Claimant was diagnosed with a serious back injury as a result of the fall. As a result, she developed coccydynia, a central disc prolapse; and a prolapsed intervertebral disc. She also suffered a miscarriage as she was in her first trimester.
- (b) Dr Santana's assessment of 40% permanent partial disability for the Claimant as a whole body assessment was helpful in assessing damages as he explained how he arrived at this assessment.
- (c) I accept that the Claimant suffered excruciating pain in the lower back region of when she fell and during the period immediately following the fall when she suffered the miscarriage. This was from the end of October 2014 until she returned to work in November 2014. In my opinion although her back pains continued from November 2014 they were not as excruciating as before, as she was able to return to work in January 2015. However, due to persistent back pain from January 2015 she was given sick leave for various periods and assigned light duties on the Ophthalmology Ward from the end of January 2015 until her injury was exacerbated on the 27 September 2016.
- (d) The Claimant's evidence of her back pain during the period she was seen by Dr Santana from June 2015 to July 2018 was consistent with Dr Santana's evidence on the nature of pain a person would experience with the Claimant's diagnosis.
- (e) Approximately five and one half years after the first incident the Claimant still experienced back pains.
- (f) There was no evidence that the Claimant's injury adversely affected her ability to have another child as she was able to give birth in early April 2018. However, I accept that due to her injury her pregnancy was difficult and that due to her injury she was advised against natural birth as it would have put pressure on her spine.
- (g) There was no evidence that the Claimant's life expectancy has been affected.
- (h) I have attached significant weight to the impact of the injury on the Claimant's inability to do the activities which she set out in detail in her evidence. In particular, it has affected her ability to care for and interact with her young

son. I have concluded that the Claimant's loss of amenities was significant and that she would not be the same energetic person she was before the fall.

- (i) During the approximate five and one half years from the date of the first incident to the trial, the Claimant has been away from her job for a significant period of time. Based on the evidence of Mrs Jones, it is highly probable that the Claimant has missed out on opportunities to improve her skills for promotion and seniority.

136. In determining the award of general damages other similar cases are also guidelines for the possible range of an award of damages³⁰. The Claimant submitted that the Court should consider the awards made in the local cases of **Kester Hernandez v The Attorney General and ors**³¹; **Clarence Vialva v Klint Ryan**³²; **Wayne Wills v Unilever Caribbean Limited**³³; **Darryl Damien Abraham v the Attorney General**³⁴; **Dayal Moonsammy v Rolly Ramdhanie and ors**³⁵; **Betty James v The Attorney General**³⁶; **Rennie Bissoon v Absolute Transport Limited**³⁷; **Choon v Industrial Plant Services Ltd**³⁸; and **SWRHA v Samdaye Herrilal**³⁹

137. It was also submitted on behalf of the Claimant that a reasonable range for any award of damages for the Claimant's pecuniary loss for her back injury is between \$155,000.00 and \$165,000.00 and that taking into account the Claimant's miscarriage the reasonable range for the back injury and the miscarriage is between \$165,000.00 and \$175,000.00. Claimant had submitted that a lump sum of \$75,000.00 be awarded for loss of pecuniary prospect.

³⁰ Aziz Ahamad v Raghubar (1967) 12 WIR 352

³¹ CV 2011-01821

³² CV 2019-01066

³³ Civ App No 56 of 2009

³⁴ CV 2011-03101

³⁵ HCA 2361 of 2001

³⁶ CV 2010-05009

³⁷ CV 2016-03211

³⁸ CV 2006-00574

³⁹ Civ App No 60 of 2008

138. The Defendant submitted that the relevant cases are **Dexter Sober v the Attorney General**⁴⁰; **Lennard Garcia v PLIPDECO Ltd**⁴¹ and **Anne- Marie Redman v Hillary Samuel**⁴². The Defendant also submitted that having regard to the evidence a fair and reasonable award for general damages is \$60,000.00 .
139. In my opinion the following are the relevant cases to consider an award for general damages in the instant matter:
- (a) **Clarence Vialva v Klint Ryan**. The Claimant's injuries were summarised as post-concussion syndrome; mild disc bulge at L3/4 level; diffuse disc bulge at L4/5 causing stenosis of central spinal canal and narrowing of bilateral neural foramina; mild disc bulge at L5/S1 indenting anterior epidural fat with no significant narrowing of bilateral neural fromaina. Surgery was recommended of the L4 laminectomy and L4/5 discectomy undercutting facetectomies and foraminotomies because of pains and neurological deficits. The estimated cost of surgery and nursing fees amounted to \$41,000.00. The Claimant was assessed with a 40% permanent partial disability. The Claimant was also not fit to continue his pre-accident employment. In January 2013 the sum of \$275,000.00 was awarded in general damages
- (b) **Kester Hernandez v The Attorney General of Trinidad and Tobago and ors**. The Claimant suffered an annular disc bulge of the L5/S1 of the lumbo sacral spine causing displacement of the traversing left S1 nerve root, L5/S1 radiculopathy, spasm in the entire back, cramps in both legs radiating down to the toes, unable to sit or stand for more than 10-15 minutes and sexual intercourse was said to be painful. In February 2013 the Court awarded the sum of \$300,000.00 for general damages.
- (c) **Wayne Wills v Unilever Caribbean Limited**: The Court of Appeal accepted fresh medical evidence which showed that the Claimant's injuries had worsened since the Master's ruling. The medical evidence revealed that the Claimant suffered from a herniated L4/L5 disc which had deteriorated following surgery. The

⁴⁰ CV 2008-04393

⁴¹ CV 2010-03061

⁴² CV 2007-02664

symptoms of lower back pain had recurred and he was now experiencing pain radiating down his leg. The Claimant was left with residual stiffness in the lower back and accompanying discomfort on performing certain activities especially bending, lifting, sitting on hard surfaces, walking long distances, climbing stairs. His permanent partial disability was assessed at 25%. In December 2013, the Court of Appeal increased the Master's award on general damages to \$200,000.00.

- (d) **Betty James v The Attorney General of Trinidad and Tobago:** The Claimant was a police trainee who suffered injuries while descending a flight of stairs for which she underwent surgery. She was diagnosed as having a ligament injury which resulted in an injury to her back, namely lumbar disc prolapsed and lumbar root nerve compression. The Claimant suffered lower back and ankle pain, which was so severe she was unable to walk, sleep or stand in comfort. She also could not stand for long periods of time, bend, lift objects or carry out routine tasks without pain and discomfort. She could not run or walk with speed and suffered hip pain. As a result, her pains affected her enjoyment of dancing, playing netball, etc. The trial judge found that it was more than a simple ligament injury and that the pain and suffering increased overtime gradually becoming substantial to the point of being unbearable at times. In January 2015, the Claimant was awarded \$125,000.00 as general damages (which was reduced by a 20% contribution to \$100,000.00);
- (e) **Rennie Bissoon v Absolute Transport Limited** (Formally K&C logistics Ltd). The Claimant was diagnosed with lumbar spondylosis with L4-L5 and L5-S1 degenerate discs' disease as well as cervical spondylosis with C5-C6 and C6-C7 degenerate disc disease. In February 2019, I awarded the sum of \$100,000.00 for non-pecuniary prospects;
- (f) **SWRHA v Samdaye Herrilal.** The Court of Appeal upheld the award made by the first instance judge in the sum of \$120,000.00 against the SWRHA for the loss of satisfaction to the Plaintiff in bringing her pregnancy, confinement and labour to successful conclusion and the loss associated with the physical loss of a child. This sum adjusted to December, 2010 is \$180,716.00.

140. In my opinion, the nature of the back injuries which the Claimant in the instant case suffered were more severe than that in **Rennie Bissoon** and **Betty James**. The Claimant's injuries in the instant case were more in line with **Clarence Vialva** and **Kester Hernandez**. However, there was no evidence in the instant case that the Claimant suffered any pain during sexual intercourse as in **Kester Hernandez** or that she suffered from post-concussion syndrome as suffered by the Claimant in **Clarence Vialva**. In only **Samdaye Herrilal** the Claimant suffered loss associated with a pregnancy.
141. In my opinion, an appropriate range for the Claimant's pecuniary and non-pecuniary loss in the instant case is between \$200,000.00 and \$250,000.00. I award the higher sum of \$250,000.00 as general damages as the Claimant suffered both injury to her back and the miscarriage.

Future surgery

142. The Claimant pleaded the sum of \$60,000.00 as the cost for future surgery. She stated at paragraph 36 of her witness statement that she returned to work at the Ophthalmology Ward on light duties around August/September 2015. However, the pain and discomfort continued and so she returned to see Dr Santana sometime in April 2016. He examined her and she told him that she was still getting a lot of pain in her lower back especially when she tried to bend or sit for long. Dr Santana then recommended surgery. She asked him about the risks involved and he said certain things to her. She was concerned and initially hesitant but she went home and did her own research to find out more about the surgery. She knew that based on what Dr Santana said to her there was no guarantee her back pain would ever go away but that surgery may now be her only option for some form of relief. However, to have the surgery done privately costs \$60,000.00 and she did not have the funds to pay for this because since September 2017 she has not been paid her salary by the Defendant.
143. Dr Santana stated that the estimated costs of the surgery was \$60,000.00 in 2016 and the said costs rose by 10% per annum. He explained that surgical intervention would

assist the Claimant as it will remove the pressure that the disc is providing to the nerves which go to the leg. He also stated that once the pressure is removed, it will relieve her pain and other symptoms such as numbness and the sensations of pins and needles. In his opinion, if the Claimant did not have surgery she will continue to experience all the symptoms which he had described in his reports.

144. It was submitted on behalf of the Defendant that the cost of future surgery ought not to be awarded since it can be done at a public health care institution.
145. In light of the evidence of both the Claimant and Dr Santana and the lack of any evidence from the Defendant of any suitable alternative option to relieve the Claimant's pain, I find that the Claimant's claim for costs of the surgery to be reasonable in the circumstances and I therefore make the award of the sum of \$60,000.00.

Loss of future earnings/ loss of earning capacity

146. The Claimant pleaded loss of future earnings in the sum of \$ 11, 893.75 per annum on the basis that, due to her injury, it is unlikely that she would be able to return to work and earn as a Registered Nurse again and that she would have worked to the retirement age of 65 years. The Defendant put the Claimant strict proof of this claim.
147. It was submitted on behalf of the Claimant that she has a valid claim for loss of future earnings as there is sufficient evidence to make such an award as there is no guarantee that the Claimant would be able to return to work as a Registered Nurse even with the surgery to her back. Counsel also submitted that there is also no guarantee if the Claimant returns to work that she would be able to continue working with the Defendant until the retirement age. Counsel submitted that an award for loss of future earnings using the multiplier/ multiplicand method should be made by the Court. Counsel submitted a multiplier of \$117,000.00 and a multiplicand between 3 to 5.

148. Counsel for the Defendant did not address the claim for loss of future earnings in the closing submissions.
149. An award for loss of future earnings can be made if the Claimant demonstrates that there is a continuing loss of earnings which is attributable to the accident⁴³. An award for loss of earning capacity as stated by Browne LJ in **Moeliker v A Reyrolle and Co Ltd**⁴⁴ only arises where the claimant is employed at the date of the trial but there is a substantial or real risk that he may lose this employment at some future time and may as a result of the injury be at a disadvantage in getting another job or an equally well paid job.
150. Where there are evidential uncertainties which prevent a court from using the multiplier/multiplicand method to assess damages for loss of future earnings the courts have disregarded this conventional approach and arrived at a lump sum figure to compensate the Claimant for the future loss of earnings (**Blamire v South Cumbria Health Authority**⁴⁵).
151. In the instant case, the Claimant's evidence, which was not disputed by the Defendant, was that although she has not been paid by the Defendant since September 2017, she is still employed by the Defendant as a Registered Nurse. Therefore, the Claimant has met the first requirement in **Moeliker** so her claim is loss of earning capacity. There was also evidence of the Claimant's gross and net income up to the last date she was paid by the Defendant which was August 2017. In my opinion there was sufficient evidence to rule out a lump sum payment using the **Blamire** award and to make an award based on the multiplier/ multiplicand approach.
152. In order to prove loss of earning capacity, the Claimant has to show that the injury was of such a nature that it rendered her incapable of performing his duties as a registered nurse or any other form of work whatsoever. If it rendered her incapable of performing as a registered nurse but it did not prevent her from doing other work, it

⁴³ Civ Appeal 25/2007 Munroe Thomas v Malachi Forde and ors.

⁴⁴ [1977] 1 All ER 9

⁴⁵ (1993) P.I.Q.R.Q1,C.A

was necessary to show that she mitigated the loss. In discharging this onus, the medical evidence as to the nature of the injury and the residual effect that the injury may have had on the Claimant's ability to work is critical⁴⁶.

153. In the instant case, the medical evidence and the sick leave certificates all demonstrated that the Claimant's ability to function as registered nurse has been impeded by the pain which she experiences. Indeed, at best the Claimant was able to perform light duties as a registered nurse between the first incident and the second incident. After the second incident, the Claimant's injury was exacerbated by the actions of the servants and or agents of the Defendant, and the Claimant has not been able to resume her duties as a registered nurse.
154. Generally, the multiplicand is calculated by using the net annual income of the Claimant. The last time the Claimant was paid by the Defendant, August 2017, her net monthly income was \$ 9,943.46. It was submitted on behalf of the Claimant that the Court use a gross monthly income of \$13,000.00 and reduce it by 25% for statutory deductions and holidays as the multiplicand since Mrs Jones stated in cross examination that her current gross monthly earnings as Head Nurse was approximately \$13,000.00. Mrs Jones also stated in cross examination that Registered nurses were entitled to incremental increases in their basic salary over the years.
155. I accept that based on Dr Santana's evidence that there is no guarantee that the Claimant would be able to resume duties as a Registered Nurse immediately following the surgery for her back as a period of rehabilitation is required in order for her to reach her maximum medical improvement. I also accept that even with the back surgery, there is a high probability that the Claimant would not be able to continue working until the retirement age of 65 years. Based on Dr Santana's evidence due to the nature of the Claimant's back injury, there is a high probability that even with surgery she may still have to live with some degree of pain due to her injuries. However, there was no evidence from Dr Santana even in such a situation that the

⁴⁶ CV A 110/2001 Seudath Parahoo v SM Jaleel & Co Ltd, Hamel-Smith JA at para. 8

Claimant would not be able to earn any income in any other position, even if she was no longer able to earn income as a Registered Nurse. In my opinion, while there is a real probability that with the surgery, the Claimant may no longer be able to work as a Registered Nurse, there was no evidence that she would not be employable in another position given her training.

156. I have no difficulty in applying a gross monthly multiplicand of \$13,000.00 as I accept that if the Claimant was not injured in October 2014, it was more probable that she would have been able to improve her skills and to undertake courses which would have caused her to earn an increased income. I have discounted it by 25% for statutory deduction, holidays and the other factors as set out above. I have calculated the multiplicand as \$117,000.00⁴⁷.
157. The multiplier is based on the number of years during which the loss of earning power will last. It is discounted on the basis that a lump sum is being awarded instead of periodic payments over the years as would ordinarily occur. In determining an appropriate multiplier, the Claimant submitted the following comparable cases for the Court's guidance:
- (a) **Ramnarine Sam v The High Commissioner of India, Bryan Boodram, New India Assurance Ltd**⁴⁸ the Court assessed a multiplier of 16 as appropriate for a Claimant who was 29 years old at the time of the accident and 31 years old at the date of the assessment.
- (b) **Andre Marchong v Trinidad and Tobago Electricity Commissions ors**⁴⁹ the Court applied a multiplier of 18 for a Claimant who was 27 years old at the time of the accident and 31 at the date of assessment.
158. At the time of the fall in October 2014, the Claimant was 29 years of age. At the trial of this matter, she turned 35. Mrs Jones testified that the retirement age of nurses is 65. Therefore, the Claimant's remaining working life is 30 years. In discounting the

⁴⁷ \$156,000.00 - \$39,000 = \$117,000.00

⁴⁸ CV 2007-00206

⁴⁹ CV 2008-04045

multiplier, I have taken into account that after the surgery, there is a high probability that the Claimant may return to the labour market but due to the residual pain which she may continue to experience she would not be able to be employed beyond the age of 50. In my opinion, in the instant case, a reasonable multiplier is 5. Therefore, the loss of earning capacity is calculated at \$117,000.00 x 5 years = \$585,000.00 with no interest.

INTEREST

159. Counsel for the Claimant submitted that she relied on the 2017 decision of Rampersad J in **Sheriffa Ali v Massy Distribution and ors**⁵⁰ where the learned judge awarded interest at 3% per annum on general damages from the date of service of the writ to the date of judgment and interest at 3% per annum on special damages from the date of loss to the date of judgment.
160. The award of interest on damages is discretionary pursuant to section 25 of the **Supreme Court of Judicature Act**⁵¹. The Court of Appeal in **The Attorney General of Trinidad and Tobago v. Fitzroy Brown et al**⁵² reduced interest awarded for general damages for false imprisonment to the rate which is payable on money in court placed on a short term investment account to 2.5 % per annum.
161. There was no evidence before me to persuade me to deviate from the position adopted by the Court of Appeal in **Fitzroy Brown** as such I will adopt the rate of interest as set out therein.

ORDER

162. Judgment for the Claimant.

⁵⁰ CV 2015-01345

⁵¹ Chapter 4:01

⁵² CA 251 of 2012

163. The Defendant to pay the Claimant the sum of \$340,639.94 as special damages. Interest at the rate of 2.5% per annum from the date of the accident, 29 October 2014 to the date of judgment on the sum of \$2,562.30 and from the 1 September 2017 on to the date of judgment on the sum of \$338,077.64.
164. The Defendant to pay the Claimant the sum of \$250,000.00 as general damages with interest at the rate of 2.5% per annum from date of service of the claim 31 October 2018 to the date of judgment.
165. The Defendant to pay the Claimant the sum of \$585,000.00 as loss of future earnings with no interest.
166. The Defendant to pay the Claimant the sum of \$60,000.00 as costs for future surgery with no interest.
167. The Defendant to pay the Claimant prescribed costs in the sum of \$114,890.00.

Margaret Y Mohammed

Judge