THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No CV2014-00224

BETWEEN

DEXTER JEFFERS

Claimant

AND

ANDY WILLIAMS

MARITIME GENERAL INSURANCE COMPANY LIMITED

ADRIAN GABRIEL

Defendants

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Ronald Simon for the Claimant

Mr. Ranjit Bobby Bahadoorsingh instructed by Ms. Savitri Sookraj-Beharry for the 2nd and 3rd Defendants

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JUDGMENT

I. **Background:**

[1] The issues that are in dispute in the trial of this matter are largely fact related. They arise out of an accident that occurred on the night of the 8th February, 2013, which incidentally was the Friday (known as Fantastic Friday) before this country's carnival celebrations.

[2] The Claimant's case is that he parked his vehicle, registration number HBT 4113, on Wrightson Road and upon exiting same, was struck by another vehicle, bearing registration number PBR 3078 (the "Vehicle") that was travelling in a westerly direction on the said Wrightson Road. The collision caused injury to the Claimant for which he was later hospitalized. As a result of his injury, the Claimant's ability to perform his job and maintain his former lifestyle has been negatively affected significantly.

[3] In his Amended Claim, the Claimant averred that vehicle PBR 3078 was owned by Adrian Gabriel, the Third Defendant, and driven by one Andy Williams, the First Defendant, on the night of the accident. All parties agreed that Adrian Gabriel is the current owner of the Vehicle and that it was insured with the Second Defendant. However, the First Defendant's involvement in the accident was contested. This contention was later dispensed with on the first day of trial when the **Court informed the parties that, upon a review of the Court records and the status of the proceedings, the claim against the First Defendant had been automatically struck out pursuant to CPR 1998 Part 8.13 (5) as amended by Legal Notice 126 of 2011**. Accordingly, the Claimant presented his case at trial against Mr. Gabriel as being both the owner and driver of the Vehicle on the night in question.

[4] Mr. Gabriel's defence amounted to a complete denial of any involvement in the accident. He averred that on that night at around 6 pm, he had parked his Vehicle at the bottom of the hill near his residence. He maintained that he never left his house that night and upon waking up the following morning, his Vehicle was in the same location and position as where he left it the night before.

[5] The matter proceeded readily toward trial on the 19th January, 2016. At the close, parties were required to file and exchange closing submissions on or before 22nd February, 2016

and, if necessary, submissions in reply by the 11th March, 2016. The time for filing and service of submissions was extended on two occasions, one time for each party.

II. Issues:

[6] At the Pre-Trial Review of the 28th October, 2015, the Court ordered the parties to, inter alia, file their statements of issues. Having considered same in light of the evidence adduced, the Court determines that the following issues fall for determination in this matter:

a. **Whether the accident of the 8th February, 2013 involved the Third Defendant's vehicle PBR 3078?**

b. **If so, whether the Claimant was contributorily negligent?**

c. **What is the quantum of damages to be paid?**

III. Law & Analysis:

[7] There is a preliminary issue to be dealt with that was raised briefly and solely in the pleadings of the Second Defendant. It averred that the Claimant's claim is not maintainable against it because the required 28 days' notice pursuant to **section 10A (5) of the Motor Vehicle Insurance (Third-Party) Act Chap 48:51** was not given[1]. However, this point was not pursued neither in the preliminary stages of the proceedings nor at trial. Counsel for the Defendants, Mr Bahadoorsingh, oddly did not even seek to argue this issue in his submissions. Accordingly, the Claimant was not afforded the opportunity to respond to this averment so as to enable the Court to make a determination on same. It is therefore taken to mean that that preliminary issue raised in the Defence and Amended Defence of the Second Defendant was abandoned.

The Procedural Argument:

[8] Counsel for the Claimant, in his submissions, dealt firstly and primarily with the procedural issue—whether his entire claim is unsustainable due to his failure to amend

[1] Para 8 of the 2nd Defendant's Defence

his pleadings to reflect the fact that he would no longer be pursuing the claim against the First Defendant. He submitted that he had been under the mistaken belief that Mr. Williams was still in possession of the Vehicle on the night of the accident. It later came to his attention that Mr. Gabriel was in sole possession of same at the material time. Counsel viewed this error as a mere technicality, which, in his opinion, ought not to cause his claim to fail. He relied on several authorities in support, namely:

a. That, pursuant to **Waghorn v George Wimpey & Co Ltd**[2], because it is highly unlikely that his error would have resulted in any significant changes in the Defendants' preparation of their defences, nor would such error result in any prejudice to the Defendants, the Court should, in the interests of furthering the overriding objective, not allow the claim to fail;

b. That, pursuant to **Blackstone's Civil Practice**[3] and the case of **Khan v Rehman**[4], because the Court and the Defendants were aware of the Claimant's intention not to pursue the claim against Mr. Williams as the driver, the Court can and should treat the necessary amendment to the pleadings as being made and decide the matter on that premise.

The submission at (b) is by far the weaker argument and will be dispensed with as follows:

[9] The relevant paragraph of **Blackstone's** ibid[5] states:

> *"While generally contrary to principle and fraught with difficulties, there are occasions where the Court deems the pleadings to have been amended without actual production of amended pleadings."*

[10] The wording suggests that such "deemed amendment" will rarely ever be granted by the Court. Further, the case referred to in **Blackstone's** as an example of this principle was the UK Court of Appeal case of **Khan v Rehman**, which, in this Court's opinion, does not clearly set out the factors that a Court should consider when exercising its discretion

[2] [1970] 1 All ER 474
[3] 2012 para 31.6
[4] [2008] EWCA Civ 1407
[5] Para 31.16

to treat an amendment as being made[6]. The only relevant principle that was taken from the case is that, if an amendment is to be deemed by the Court, the opposing party must be allowed the opportunity to respond to the deemed amendment as if the amendment were properly made in due course.

[11] Further, at the Pre-Trial Review, which amounted to the final hearing before trial, the Court was still under the impression that Mr. Simon would, as he indicated previously, be applying for default judgment against the First Defendant. Therefore, contrary to his submission, this evidences an intention to continue its proceedings against Mr. Williams. As stated above, it was only at trial of the 19th January, 2016, that the Court became aware that the claim against Mr. Williams had been struck out by virtue of the applicability of **CPR 1998 Part 8.13 (5)**.

[12] Counsel for the Claimant also relied on the case of **Waghorn v George Wimpey & Co Ltd**[7] in support of his submission at (a) above.

The facts of **Waghorn** were sufficiently set out in the submissions. The main issue in that case was that the pleadings, as it pertained to the location and circumstances under which the plaintiff slipped, differed materially from the evidence that was revealed to the Court at trial. Counsel for the plaintiff sought to argue that the divergence amounted to a mere modification or development of the pleadings and was not something that was new, separate or distinct. Geoffrey Lane J, however, did not find merit in that submission. He stated:

> *"The only similarity between the plaintiff's allegations in his pleadings, in the way the case was presented and what took place were these: first of all, the plaintiff slipped; secondly, he slipped at his place of work; thirdly, he slipped somewhere near a caravan. It is alleged that he did slip somewhere near a caravan.* ***But the whole burden of the claim put forward by the plaintiff and the whole burden of the defence to that claim prepared by the defendants and put forward on their behalf by their counsel, has been the safety or otherwise of the bund wall or***

[6] Page 5 of the Claimant's closing submissions
[7] 1970 1 All ER 474

bank, and not the safety or otherwise of the right-hand side of the caravan where it runs alongside the dip."[8]

His Lordship continued:

*"**let me hasten to add that if matters emerge, particularly matters of technicality, which perhaps could not be foreseen by those responsible for pleading cases, if those things emerge during a case, it would be quite wrong to dismiss a plaintiff's claim because his pleadings have not measured up to the technical facts which have emerged. One often listens sympathetically to applications to amend in those circumstances. Here there is nothing technical at all."***

Geoffrey Lane J opined that the question to ask is whether *"…the defendants' conduct of the preparation of their case and of the trial [would] have been any different…"* had the proper allegations been made on the pleadings.

[13] Applying the dicta, in looking at the Defences put forward by the Second and Third Defendants, it does not appear that, had the appropriate amendment been made to withdraw the case against Mr. Williams, the Defences would have changed significantly. Both Defences similarly averred that on the night in question, *"…motor vehicle PBR 3078* ***was not driven by the 3rd defendant or at all and was not involved in the alleged or any accident on the date…"***[9] Accordingly, it is irrelevant whether Mr Williams was part of the case or not—the Defences would have remained the same, amounting to a complete denial that the Vehicle was ever involved in the accident, irrespective of who the driver was.

Further, as submitted by the Claimant, the fact that Mr Williams was no longer in possession of the vehicle only came to the attention of the Claimant and his attorney-at-law after the pleadings were filed and would therefore, pursuant to ***Waghorn***, constitute a technicality that could not have been foreseen by the Claimant when drafting the pleadings.

[8] At page 479 b - c
[9] At para 4 of both the 2nd Defendant's Amended Defence and the 3rd Defendant's Defence

[14] On this reasoning, this Court finds that the failure of the Claimant to amend the pleadings to withdraw the claim against the First Defendant is not fatal to the claim.

Having dealt with that procedural issue, the Court shall now deal with the substantive issue of whether motor vehicle PBR 3078 was indeed involved in the accident.

Whether motor vehicle PBR 3078 was involved in the accident:

[15] Counsel for the Claimant approached this issue in his submissions by identifying contradictions in the Defendants' case which, in his estimation, severely affected the credibility of its witnesses.

[16] He first took issue with Mr Gabriel's pleaded case— that he did not know Andy Williams, which was maintained in his witness statement and further corroborated by his statement in the investigator's report. In fact, in the said statement to Mr Ian Gilbert[10], Mr Gabriel stated that he bought the vehicle in 2010 from a person by the name of Raphina who lives in Couva and that he had lost her contact number. He further stated that he was aware that Raphina had bought the vehicle from someone but that the vehicle was not transferred in her name. Raphina informed him that when he was ready to transfer the vehicle in his name, she will contact the person from whom she bought the vehicle. However, the vehicle had not been transferred in Mr. Gabriel's name.

At trial, Mr Gabriel contradicted his pleadings and evidence by stating that he had purchased the Vehicle directly from Andy Williams, who was the previous owner and therefore, had known Mr Williams in that capacity.[11]

[17] I find this contradiction to be noteworthy. It raises questions about the familiarity of the relationship between Mr Gabriel and Mr Williams and the circumstances under which Mr Gabriel came into possession of PBR 3078. Most importantly, it weakens the credibility of Mr. Gabriel as a truthful witness. His testimony at trial showed that he lied in his statement to the investigator and/or fabricated the story with respect to Raphina. In either

[10] Annexed as I.G.3 to Ian Gilbert's witness statement
[11] **NOE page 67, lines 18- 28**

case, it begs the question - why? Unfortunately, this lacuna was not explored sufficiently under cross-examination by Mr. Simon.

[18] Mr. Simon also submitted that, as revealed under cross-examination, Mr Gabriel could have easily brought his parents and sister to give evidence on his behalf, especially considering that they live together at his parents' home and were all allegedly at home with him on the night of the accident[12]. However, Counsel for the Defendant correctly objected to this suggestion at trial by indicating that the decision relating to which witnesses to bring before the Court is a matter for the attorneys-at-law and such question cannot be fairly put to the Defendant.

[19] While the Court is concerned with the glaring contradiction concerning the purchase of the Vehicle in Mr. Gabriel's evidence, it must be remembered that the burden remains firmly planted at the feet of the Claimant to prove that motor vehicle PBR 3078 was involved in the accident. In this light, counsel for the Defendant sought to illuminate several contradictions in the Claimant's case to argue that it failed to discharge this burden.

[20] The Claimant's version of the events leading up to the accident was not entirely consistent throughout. He pleaded that *"…while exiting his motor vehicle… which was parked along Wrightson Road… motor vehicle…PBR 3078 driven by… which was in the southern lane proceeding west…collided…"* with him. His evidence-in-chief, however, sought to introduce the following description of events that were not pleaded:

a. That Shermicka Roberts—who later gave a statement on his behalf to Mr Gilbert, was present in the car;

b. That while driving his vehicle, he realised that he had a flat tyre in the vicinity of Breakfast Shed on Wrightson Road and he parked his vehicle in front of the Parliament building facing west and proceeded to change the tyre;

[12] **NOE page 72-73 and page 72, line 47**

c. He then placed the soft tyre in the trunk and returned to the right front tyre and was facing east. He was about to pick up the wheel spanner when the Claimant's vehicle struck his left foot;

d. After colliding with him, the Claimant's vehicle slowed down for a bit and at that point he was able to observe the driver as being a dark-skinned man of African descent wearing spectacles, whom he can identify;

e. The driver then pulled to the centre of the road and stopped *"...where the traffic was light by Dock Road due to the red light. When the light changed from red to green, the vehicle drove off at a fast rate."*[13]

[21] At trial, the Claimant admitted, under cross-examination, that it took about 15 minutes to change his tyre[14] and therefore, it would not be correct to say that he was struck while exiting his vehicle as pleaded. Mr Jeffers also stated that after impact, he *"rocked back..."* on his vehicle and first observed the licence plate of the Third Defendant's vehicle and then observed the driver[15]. He stated that he was about 1 foot away from the Third Defendant's vehicle when it stopped. The vehicle stopped for about 30 seconds and Mr Jeffers was able to recognise the driver[16]. The vehicle then drove off.

[22] Mr Bahadoorsingh then attempted to suggest that the Claimant would have been shocked after the accident and therefore, there was a possibility of mistaken identity with respect to the driver of the Vehicle. However, the Claimant affirmed that he was not in shock and that there was no mistake[17].

[23] Mr Bahadoorsingh also attempted to make heavy weather of the apparent contradiction in Mr. Jeffers' witness statement, where he stated that the Vehicle *"...slowed down for a bit..."* and his statement at trial that the Vehicle *stopped* after impact. The Claimant, while admitting that the Vehicle could not have been travelling very fast when it hit him, also

[13] Paras 4 & 5 of the Claimant's witness statement
[14] NOE page 24, line 8
[15] NOE page 34, line 26
[16] NOE page 35, line 21
[17] NOE page 37, line 27

stated that it did, indeed, stop after impact and that he should have used the word ***"stopped"*** in his witness statement[18] instead of the words ***"slowed down"***.

[24] The Court does not find this discrepancy to be material. Whether the vehicle slowed down for 30 seconds or stopped after impact, is not a factor that, in this Court's opinion would have made a significant difference in the Claimant's ability to identify the driver. Further, such a minor inconsistency can be attributed to a memory lapse considering that the accident occurred some 3 years prior to trial.

[25] With respect to the identification of the driver, Mr Jeffers stated at trial that the Vehicle was close to him and the lighting was very good[19] when he observed the driver. Mr Bahadoorsingh focused his cross-examination heavily on the fact that there are many Trinidadians that fit the very general description of the driver given by the Claimant and further, that nowhere in his witness statement did the Claimant mention that the driver looked at him before the Claimant was able to see his face. While the Claimant agreed that these inconsistencies were accurate, on a reading of his witness statement, the Court finds it to be a sufficient identification for the Claimant to say that he noticed the driver when the vehicle slowed down and was able to identify him of being dark skinned and of African descent. The Court is therefore not convinced that there is any evidence to suggest that the Claimant's identification of the driver was mistaken.

[26] Moreover, it is the Court's opinion that, having considered the witness' demeanour in the box, the Claimant's testimony was convincing and he gave sufficient detail about the events to convince this Court that he was telling the truth as he remembered it. Any minor discrepancies between his evidence-in-chief and his live testimony can be explained by the length of time that has passed since the accident and the drafting of his witness statement and the trial.

[27] Mr. Bahadoorsingh then sought to attack the **statement given by <u>Shermika Roberts</u> in the investigator's report** by submitting that no weight should be placed on it as it was contradictory to the Claimant's evidence.

[18] NOE page 39, line 18
[19] NOE page 39, line 40

Shermika's statement was brief and it would therefore be prudent to set it out in full:

> *"On the night of Feb 8 2013 I travelled with Dexter to Port of Spain. I was sitting behind Dexter in the vehicle as we travelled. Just as we were entering Port of Spain, Dexter pulled off the main high way road in front of the parliament building. Dexter exited the car to inspect what we believed to be a flat tire.* ***As he walked towards the trunk to get materials needed to change the tire, I turned and saw he was struck by a vehicle travelling at a very fast pace****. The car proceeded to the red light and speed off once the light had turned green. I saw that Dexter was badly injured to were (sic) he needed to seek medical attention.* ***The vehicle at fault was a white wing road PBR3078."***

[28] The contradictions pointed out by Mr Bahadoorsingh were twofold: (i) the fact that Shermika stated that the Claimant was struck as he was walking back towards the trunk to get materials needed to change the tyre and (ii) that the Vehicle was travelling at a very fast pace.

Mr Jeffers at trial, stated that he was struck after he had already changed the tyre. In particular, he stated that he was struck when he had returned to the front of his car and had bent down to pick up the spanner and the jack while facing the oncoming traffic in an easterly direction[20]. Mr Bahadoorsingh is asking this Court to construe that this contradiction completely eliminates any credibility of Shermicka's statement. While this is indeed an inconsistency about facts material to the exact point of the collision, the remainder of Shermicka's statement is in congruence with Mr. Jeffers' evidence. She accurately described where the car stopped, that he stopped to change his tire *(sic)*, that he was hit while he was outside the car in the process of changing his tire *(sic)* and that the car sped off after the traffic light had turned green. Most importantly, she identified the licence plate of the Vehicle consistent with Mr Jeffers' evidence i.e. **PBR 3078**.

[29] Considering the length of time since the incident, the Court will not adopt the approach of inspecting the evidence in support of the Claimant with a magnifying glass— pointing

[20] NOE page 31-33, Page 32, line 25

out every minor discrepancy and enlarging them to the status of material contradictions. The date, time and place of the accident is not a disputed fact between the parties. Indeed, the Third Defendant admitted as such in his evidence-in-chief[21]. Rather, the crux of this matter lies in determining whether PBR 3078 was involved in the accident, and in this light, the Claimant has produced corroborating evidence to show that it was[22]. I however keep in mind that Shermika's statement given in the investigator's report was not tested by cross-examination as she was not called as a witness in the trial.

[30] Considering the evidence given by both parties, I find that on a balance of probabilities, the Claimant has proven that PBR 3078 was the vehicle that struck him on the 8th February, 2013.

Whether the Claimant was Contributorily Negligent:

[31] The Defendants did not plead contributory negligence in this matter. Rather, Mr Bahadoorsingh raised it as an issue to be considered for the first time in his closing submissions.

[32] In the normal course of proceedings, the Court will not be willing to accept the introduction of this partial defence at such a late stage. It is contrary to the principle of full disclosure that is required by the parties when preparing their case. However, the facts surrounding the accident as pleaded by the Claimant were rather bare-boned and, as it turned out, not entirely accurate. No doubt, therefore, the idea to introduce this partial defence of contributory negligence would have arisen from the Claimant's evidence when tested under the strictures of expertly crafted cross-examination by Mr Bahadoorsingh. It is therefore this Court's opinion that, at the stage when pleadings were filed, the Defendants were not presented with the proper factual matrix of the claim to duly consider the applicability of a partial defence of contributory negligence. The facts surrounding the accident were not properly made out until the statement to the

[21] Para 12 of Adrian Gabriel's witness statement
[22] Shermicka's statement to the investigator

investigator's report, the witness statement of the Claimant were filed and exchanged and finally, at trial under cross-examination.

[33] In light of this, the Court thinks it fair to allow the Second and Third Defendants the opportunity to raise this partial defence in its closing submissions—after having had the benefit of hearing the Claimant's evidence in detail concerning the circumstances of the accident. Further, considering that the Defendants filed their submissions first, the Claimant had the opportunity to respond to the defence of contributory negligence in its submissions in response, which strangely, it opted not to do. Accordingly, the Court will consider the partial defence of contributory negligence in its assessment of an award.

[34] The principle of contributory negligence has been trite law for some time in the English jurisdiction. Lord Atkin's speech in **Caswell v Powell Duffryn Associated Collieries Ltd**[23] defines it succinctly:

> *"But the injury may be the result of two causes operating at the same time, a breach of duty by the defendant* ***and the omission on the part of the plaintiff to use ordinary care for the protection of himself or his property that is used by the ordinary reasonable man in those circumstances.*** *In that case the plaintiff cannot recover because the injury is partly caused by what is imputed to him as his own default."*

[35] Lord Denning in **Jones v Livox Quarries Ltd** said this in the Court of Appeal[24]:

> *"Although contributory negligence does not depend on a duty of care, it does* ***depend on foreseeability of harm to oneself****. A person is guilty of contributory negligence* ***if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might hurt himself****; and in his reckonings he must take into account the possibility of others being careless."*

[36] The question therefore is whether Mr Jeffers took reasonable care for the protection of himself when walking from his trunk to the front of his car on the night of the accident.

[23] [1949] 2 K.B. 291
[24] [1952] 2 Q.B. 609 at 615

Put another away, the Court must ask whether it was reasonable for Mr Jeffers to foresee that if he did not act in a prudent manner, the accident might occur as it did.

[37] It was revealed under cross-examination that Mr Jeffers passed on the driver's side of the car, i.e. the right side of the vehicle when he moved from the trunk to the front of the car to change his tyre. Considering that the car was parked facing west, this means that Mr Jeffers sought to walk on the side of the car that was facing to the roadway[25].

[38] Mr. Jeffers stated that he had to pass about a foot from the car into the roadway to walk. He further stated that the way his car was parked, it would have been approximately two feet onto the roadway[26]. This means that the Claimant was walking approximately three feet onto a busy, major roadway at around 11:30 in the night.

[39] After a demonstration before the Court, Mr. Jeffers eventually admitted that during the period between leaving his trunk to the front of the car, he never looked back to see if any cars were coming. In fact, the first time he looked back was when he bent down to pick up the spanner[27]. This was later confirmed when Mr. Jeffers admitted that he did not see the Vehicle until after it struck him[28], which suggests that Mr Jeffers was not paying attention to the oncoming traffic while walking to the front of the car.

[40] Mr Bahadoorsingh submitted that this failure to keep a lookout for the oncoming traffic, especially when walking on the roadway, showed that Mr. Jeffers did not act reasonably to ensure his own safety. The Court finds that this submission holds merit and is in sync with the tested evidence.

[41] In the English case of **Clifford v Drymond**[29] the claimant, whilst walking on a zebra crossing, was struck by a car coming from her right. The car was travelling not more than 30 miles per hour and had been about seventy-five feet away when the claimant began to cross. On appeal, it was determined that the claimant should bear 20% of the blame as pedestrians were required…

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[25] NOE page 24- 25
[26] NOE page 27, line 13
[27] NOE page 32, line 21
[28] NOE Page 33, line 19
[29] **[1976] RTR 134, CA** cited in **Bingham & Berrymans' Personal Injury & Motor Claims Cases** 12th Edn. at para 10.43

> ***"…not only to allow vehicles plenty of time to slow down or stop before starting to cross, but also to look left and right while crossing. If the claimant did not look at the approaching car she was negligent; if she did look she should have seen the car near enough to make it doubtful whether it would pull up. She must also have been guilty of a measure of negligence in having failed to keep the car under observation as she proceeded to cross the road. If she had she would have seen that it was not going to stop and could have allowed it to pass."***

[42] The reasoning and facts of this case are applicable. Prudence would have required Mr Jeffers to look east at the oncoming traffic before deciding to walk on the roadway from the trunk to the front of the car. Had he done so, he would have likely realised that the Vehicle would not have been able to manoeuvre in time to avoid a collision. The fact that Mr Jeffers proceeded on his journey on a major roadway at night without looking back until the collision suggests that some blame should be attributed to him. Given that the accident occurred at around 11:30 pm on Fantastic Friday, which is usually a busy and festive time in this country, marking the start of the weekend before this country's carnival celebrations, this failure on the part of the Claimant is magnified.

[43] Considering that the Court deems the Claimant to be contributorily negligent, the issue as to the extent of liability must be addressed. In this light, Mr Bahadoorsingh provided no case to support his submission that liability should be split 50/50 between the parties. Having considered **Clifford** supra, coupled with the fact that (i) the accident in this case occurred on a major roadway and not on a zebra crossing; and (ii) the accident occurred on carnival Friday, a time which, being a citizen of this country, the ordinary and reasonable man ought to have been on high alert for drunk partygoers and/or speeding drivers, the Court assigns 40% liability for the accident to the Claimant. Consequently, Third Defendant is found to be 60% liable.

The Quantum of Damages to which the Claimant is entitled:

[44] The guidelines and principles to be followed when making an award in damages have been cited repeatedly in various personal injury judgments. They stem from the case of **Cornilliac v St. Louis**[30]**,** which suggests that this Court take into account the following:

a. The nature and extent of the injury suffered;

b. The nature and extent of the resulting disability;

c. The pain and suffering endured;

d. The loss of amenities suffered; and

e. The loss of future pecuniary prospects.

[45] In assessing these factors, it is usual for the injured party to adduce evidence of medical reports to prove each limb. The Medical Report of Dr Camille Quan Soon, being the only evidence in support of the Claimant's claim for damages, was not attached to his witness statement. However, Mr. Simon sought to adduce it by annexing it to a hearsay notice filed on the 29th July, 2015. It is therefore a question of what weight the Court will ascribe to this report considering that the doctor did not give evidence at trial.

[46] The Medical Report[31] states that:

a. Mr Jeffers was admitted to hospital on the 9th February, 2013;

b. Clinical and radiological assessment revealed that ***"…his only significant injury was a closed isolated fracture of the left medial malleolus";***

c. The patient underwent Open Reduction and Internal Fixation on the 16th February, 2013;

d. His post-operative course was uneventful and as at the 2nd May, 2013 on his follow up visit it was noted that he was ***"…weight bearing fully and his surgical wound had healed."***

[30] 7 WIR 491

[31] As attached to the Hearsay Notice filed on the 29th July, 2015

[47] It was surprising to see that the Claimant, who bore the burden of proving its damages as claimed, made no submissions on the issue of quantum. To the contrary, it was the Defendants in their submissions who provided some case law to argue that an award of $50,000.00 should be given which is to be appropriately reduced in the event the Court accepts the Defendants' submissions on contributory negligence.

[48] The most applicable case provided was that of **Ramnath Barran v Kumair Ragoo and Deowar Ragoo**[32]**,** where **$10,000.00 in general damages** was awarded to a plaintiff in 1989. At trial, the doctor who examined the plaintiff appeared to give evidence and stated that he suffered the following injuries[33]:

a. Fractured dislocation of the right ankle as confirmed by x-ray;

b. Bruised back;

c. That the fracture comprised the lateral malleolus of the right ankle **and the right leg was manipulated and put in a plaster cast**;

d. Placed in plaster of paris for three months;

e. Hospitalized for seven days **and discharged with crutches**;

f. Continued physiotherapy for another month **and assessed with 50% loss of range of movement in the right ankle and PPD at 6%**.

[49] Whilst the injury is similar, its effect does appear to be a bit more severe considering the loss of range of movement and the PPD assessed, which was not apparent in the instant case. Further, as evidenced by Dr Quan Soon's report, Mr Jeffers suffered no additional injury such as a bruised back, nor was he discharged with crutches. In fact, when discharged, it appears that all wounds had healed and Mr. Jeffers had no issue with walking on his own.

[50] Mr. Bahadoorsingh submitted that this award of $10,000.00 would be adjusted to a figure of $39,000.00 as at December 2010, and would equate roughly to an award of

[32] HCA No. 1443 of 1980
[33] Page of the judgment

approximately **$50,000.00** today. As stated above, Mr. Simon did not seek to address nor challenge this submission.

IV. Disposition:

[51] Accordingly, given the severity of the injuries in ***Barran*** supra, I find that a suitable award in general damages for the instant matter would be **$40,000.00**.

Having found the Claimant to be 40% contributorily negligent, the Court finds that the Defendants are liable to the Claimant in the sum of $24,000.00 in general damages.

The Claimant is entitled to his costs of the claim based on the reduced award granted by the Court in accordance with CPR Part 67.5 (2) (a). Accordingly, the value of the Claim being $40,000.00 but reduced to $24,000.00 as ordered to be paid by the Court, costs on the prescribed scale will be quantified in the sum of $7,200.00.

In light of the above analyses and findings, the order of the Court is as follows:

ORDER:

1. **Judgment be and is hereby entered for the Claimant against the Second and Third Defendants for 60% of his damages awarded in the sum of $24,000.00.**
2. **The Second and Third Defendants shall pay to the Claimant his costs of the Claim quantified on the prescribed scale in the sum of $7,200.00.**

Dated this 20th day of July, 2017

Robin N. Mohammed
Judge