REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2014-01610

BETWEEN

SEETA PERSAD

Claimant

AND

THE NATIONAL MAINTENANCE TRAINING AND SECURITY COMPANY LIMITED

First Defendant

RYAN SINANAN

Second Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. K. Walesby for the Claimant

Mr. M. Rooplal for the First Defendant

Judgment

1. By Claim Form filed on the 9th May, 2014, the Claimant claims against the Defendants, damages inclusive of exemplary and aggravated damages for assault and battery, trespass to person and negligence. The Claimant was formerly employed with the First Defendant as a Security Officer. The Second Defendant was also employed with the First Defendant as a Security Officer and was assigned to work with the Claimant. It is the case of the Claimant that on the 28th June, 2010 ("the said incident") during working hours the Second Defendant assaulted her by punching her twice in the stomach and thereafter pulling away the chair on which she was about to sit causing her to fall to the ground with the result that she received substantial physical injuries. Judgment in default of defence was granted against the Second Defendant on the 30th July 2014.

2. The Claimant's case against the First Defendant is rooted in the principles of employer's liability. The Claimant contends that the First Defendant as her employer owed a common law and/or statutory duty towards her which it breached by failing to ensure, inter alia, a safe work place. Further, the Claimant alleges that the First Defendant failed to provide adequate training and supervision of the Second Defendant. In this regard, the Claimant claims that the First Defendant exposed her to an unnecessary risk of injury by assigning her to work with the Second Defendant, who she purportedly complained about to the First Defendant, prior to the said incident on several occasions.

3. The First Defendant accepts that as the employer of the Claimant, it owed a common law and/ statutory duty towards her to ensure a safe workplace. However, the First Defendant contends that at all material times it fulfilled this duty. According to the First Defendant, it received a report that the Second Defendant pulled a chair away from the Claimant but puts the Claimant to strict proof of the circumstances surrounding the said incident and the injuries and loss sustained.

4. The First Defendant avers that it dealt with the Claimant's complaints of absenteeism against the Second Defendant. In respect of the Second Defendant's assault of the

Claimant, the First Defendant avers that the Second Defendant in so doing was acting on a frolic of his own and certainly not in the course of his employment. Moreover, the First Defendant claims that prior to this incident with the Claimant, the Second Defendant had no history of, nor ever displayed any disposition towards violent conduct.

Issues

5. Judgment having been obtained against the Second Defendant and there being no evidence on the part of the First Defendant capable of disputing the version of events provided by the Claimant, the court found that the Claimant was in fact assaulted and beaten by the Second Defendant in the manner that she alleges. Further, there is no dispute that the First Defendant owed a duty of care to the Claimant. The issues for consideration by the court are therefore as follows:

    i. Whether the First Defendant was in breach of the duty of care owed to the Claimant;
    ii. Alternatively, whether the First Defendant is vicariously liable for the actions of the Second Defendant; and
    iii. If so, what is the quantum of damages owing to the Claimant.

Issues of fact

6. The finding on those issues are dependent on findings made in relation to the following issues of fact namely;

    i. Did the Claimant complain to the First Defendant about the prior actions of the Second Defendant and if so are the nature of the complaints relevant to the facts and circumstances of this claim.
    ii. If the answer to both questions are in the affirmative, then was it reasonably foreseeable to the First Defendant that the Second Defendant may have

committed acts of a general character such as those which were committed against the Claimant which would have resulted in injury to the Claimant.

iii. If the answer is yes, then did the First Defendant take the steps required in fulfillment of its duty of care.

Evidence for the Claimant

7. The Claimant gave evidence of the assault and battery and of the complaints she made against the Second Defendant prior to the incident. Two other witness were also called namely, Dr. Rasheed Adam who gave evidence of the Claimant's injuries and course of treatment and Ms. Christine Kissoon who gave evidence of the transportation services she provided to the Claimant.

8. According to the evidence of the Claimant, she was employed with the First Defendant since the 9th April, 2008. Her monthly salary was approximately $2,600.00. On the 3rd September, 2009, the First Defendant assigned the Claimant to work at the Princess Town West Secondary School ("the said school"). About a year after the Claimant was appointed to the said school, the Second Defendant was assigned to same and worked the same shifts as the Claimant.

9. The schedule for the Security Officers was that they worked from 6 a.m. to 6 p.m. for two days ("the daylight shift"), then 6 p.m. to 6.a.m for two nights (the night shift") and then were entitled to the next two days off. The Claimant testified that during the daylight shift there would be approximately six or seven security officers on the school compound and during the night shift there would be at least two or three officers. It is her testimony that no Security Officer would patrol the compound alone as it was unsafe to do so, especially for female officers.

10. According to the evidence of the Claimant, Ms. Arline Jones was their immediate supervisor during weekdays from 6 a.m. to 6 p.m. Whenever the Claimant witnessed or was involved in any incident on the compound, she reported same to Jones. In the

absence of Jones, the Claimant made her reports to Estate Sergeant Roberts ("ES Roberts") who was the Shift Supervisor.

Prior Complaints and/or alleged misconduct of the Second Defendant

11. On the 24th February, 2010, the Claimant made a written report to ES Roberts detailing that the Second Defendant and one Officer Singh were not on the compound during the night shift and as a result she was forced to patrol the said school alone. On the 1st March, 2010, the Claimant contacted ES Roberts and when he did not answer she left a voicemail explaining that the Second Defendant had left the compound and that she was again alone at same.

12. On another occasion during a daylight shift in March, 2010 the Second Defendant was late to work. The Claimant telephoned Jones and informed her. The Second Defendant arrived at the said school at about 2:30 p.m. The Claimant then informed him that she was going to make an entry of his late coming in the book and he snatched the book from her and said that he would write that he did a patrol. The Claimant testified that the situation was that the Second Defendant was always late for work and acting aggressively towards her and that this was getting out of hand. She further testified that the Second Defendant would always use obscene language when speaking to her.

13. According to the evidence of the Claimant, on the 4th March, 2010 she once again contacted ES Roberts informing him that the Second Defendant left the compound and that she was alone. ES Roberts informed the Claimant that he was on his way to the said school. At about 7:54 p.m. ES Roberts did not arrive at the said school causing the Claimant to call him again to inquire where he was. ES Roberts asked the Claimant what was wrong with her, she explained that she was the only Security Officer on the compound, that it was getting dark and that she was afraid for her safety. ES Roberts then hung up the phone on the Claimant. The Claimant left the said school on this occasion because she was feeling unwell and was unable to continue working.

14. On the 13th March, 2010, the Second Defendant left in his car saying that he was going to patrol the main entrance but never returned to his assigned location. The Claimant recorded all of these incidents in her pocket diary which had been issued to the Claimant by the First Defendant for the purpose of reporting all incidents and problems encountered while on the job. The pocket diary was supposed to have been inspected by either Jones or ES Roberts periodically.

15. The Claimant testified that despite her multiple complaints, the First Defendant took no steps to address the situation or to discipline the Second Defendant in any way.

The 28th June, 2010 Incident

16. On the 28th June, 2010, the Claimant reported for work at the said school at around 6:00 a.m. At around 10:12 a.m., she was sitting in a chair at a table in the Maintenance Cleaners' room along with the Second Defendant, another worker and two cleaners when phone rang and she walked about two feet away from the group to take the call. When she returned to the table, the Second Defendant was sitting on the chair she previously occupied. The Claimant asked him to return her seat but he did not respond and started speaking louder causing the Claimant to tap him on his shoulder to get his attention. The Second Defendant turned to the Claimant and while getting up punched her twice in the stomach, slammed the chair against the table and walked away cursing and threatening the Claimant. At this point she observed Jones and another person standing at the doorway looking on. The Claimant pulled out the chair from under the table and was about to sit when the Second Defendant pulled the chair from under her causing her to fall flat on her buttocks. It is her testimony that she felt excruciating pain along her back straight up to her neck and her legs felt numb and lifeless.

17. The court accepts these unchallenged facts as the true facts of the incident and so finds.

Aftermath and medical evidence

18. The Claimant then telephoned Jones to inform her about what had happened and of the fact that she was experiencing extreme pain. Jones informed the Claimant that she was not on the compound and that she should call ES Roberts. ES Roberts also informed the Claimant that he was not on the compound. Thereafter, the Claimant called for an ambulance. The ambulance arrived at the said school at about 11:27 a.m. At the Princess Town Hospital, ("the Hospital") the doctor administered injections for the pain, an x-ray was taken and her neck was put in a brace. She was given four days sick leave and was discharged from the hospital at around 7:00 p.m.

19. The Claimant submitted a grievance report to the First Defendant dated the 28th June, 2010 explaining that she was under medication for her injuries and was seeking private therapy at the Billy Mohess Centre in Couva.

20. On the 19th July, 2010 the Claimant submitted a report to Jones containing details of the said incident. The Claimant testified that she was never informed by the First Defendant whether the Second Defendant would be disciplined for his misconduct. The Second Defendant continued to work for the First Defendant after the incident, he never spoke to the Claimant or apologized for the incident.

21. On the 23rd July, 2010, the Claimant received a call from Mrs. Wright of the First Defendant's Head Office, who informed the Claimant that she did not need to go to the hospital for treatment again and that she should visit the First Defendant's doctor. The Claimant visited the First Defendant's doctor on the 6th July and the 7th August, 2010 and received injections and tablets for the severe pain. The First Defendant also referred the Claimant to Dr. Omar Ali for a medical assessment.

22. Around the 12th August, 2010 the pain intensified causing the Claimant to hire a taxi to take her to the San Fernando General Hospital for treatment. Thereafter, the Claimant resumed visits to the public hospital. She testified that she has spent approximately $25,000.00 on taxi fees. During the month of December 2010, the Claimant visited Dr.

Bhagwandeen, she having been required to do so by the First Defendant, where she was assessed as being unfit for work. She was also referred to Dr. Ramthal for a second opinion.

23. On the 26th October, 2010 the Claimant visited Dr. Peter Gentle, an Orthopedic Surgeon, who also assessed that she was unfit for work and further assessed a seventy-percent permanent partial disability and recommended that back surgery would help reduce her disability. On the 11th March, 2011 Dr. Gentle referred the Claimant to Dr. Rasheed Adam.

24. Dr. Adam is a Neurologist with over forty five years of experience in the field of medicine. The Claimant visited him on several occasions. On the 27th November, 2010 the Claimant visited Dr. Adam complaining of pain along her spine to her neck, numbness and weakness in her lower limbs and numbness in her perineum. Dr. Adam recommended that she do lower back exercises, physiotherapy, use ice packs and take medication. Dr. Adam evaluated the Claimant on subsequent occasions and his reports gave details of the Claimant's injuries and what treatment she required. He also stated that she was medically unfit to work and assessed a forty-percent permanent partial disability. In his medical report dated the 1st May, 2013 Dr. Adam stated that the costs the Claimant would incur for medication would be approximately $1,200.00 per month, that she would have to pay for transport at approximately $400.00 per month and further that the back surgery to help improve her injuries would cost about $45,000.00. By medical report dated the 19th May, 2016, Dr. Adam's office informed the Claimant's attorney that the cost of the said surgery had increased to $55,000.00.

25. By letter dated the 10th November, 2011, the First Defendant informed the Claimant that they had retired her on medical grounds from the 10th October, 2011. The First Defendant by letter dated the 7th February, 2011 provided details of the said incident to the National Insurance Board. The Claimant began receiving NIS benefits of approximately $1,400.00 per month. From about March, 2014 she also received a monthly disability benefit of $1,800.00 from the government.

Cross-examination of the Claimant

26. The Claimant testified that the two cleaners who were present in the Maintenance Cleaners' room at the time of the said incident were Ms. Joycelyn Mc Intosh and Ms. Ellina Rocke. These two cleaners submitted reports on the incident. The Claimant was shown these reports in which they reported that the Second Defendant did in fact pull the chair which the Claimant was about to sit on causing her to fall to the ground, however, the reports did not mention anything about the Second Defendant punching the Claimant prior to pulling the chair. The Claimant further testified that in the Grievance Report dated the 28th June, 2010, she did not indicate that the Second Defendant punched her. Also, in the Report dated the 19th July, 2010 the Claimant stated that the Second Defendant hit her *"a blow"* on her stomach as opposed to two punches as mentioned in her witness statement. The foregoing evidence is in the court's view insufficient to persuade the court that the Claimant was being untruthful when she testified that she was punched in the stomach by the Second Defendant.

27. It is the testimony of the Claimant that the Station diary is an important book. That all incidents of concern whether it be in relation to safety at the compound or involving the personnel should be recorded in the Station diary. Even though she testified that the Station diary was of great importance, the Claimant only made note of one of the reports she wrote in her pocket diary in the station diary. The report was made on the 6th March, 2010. The extract was however not produced to the Court. That extract would in the usual course of events be in the possession of the First Defendant who has stated that it cannot locate the extract. She further testified that her seniors checked her pocket diary randomly whereas the Station diary was checked by her seniors whenever they were on patrol at the said school. It should be noted that the pocket diary extracts attached to the Claimant's Witness Statement were not agreed documents.

28. According to the Claimant, the complaint she made against the Second Claimant on the 24th February, 2010 did not mention anything about him being aggressive towards her. The Claimant pointed out that entry 150 in her pocket diary contained the record

pertaining to the Second Defendant's aggressive behavior and his use of obscene language towards her. The Claimant testified that entry 150 was the entry she recorded in the Station diary on the 6th March, 2010. The Claimant further testified that she made several oral complaints to Jones about the Second Defendant's verbal abuse and aggressive conduct towards her.

Cross-examination of Dr. Adam and evidence of Kissoon

29. **Dr. Adam** testified that if the Claimant elected to do a Lumbar Laminectomy (back surgery) she would have a 50/50 chance of improvement in her medical condition and that such surgery will cost fifty-five thousand dollars (**$55,000.00**) if done privately. He further testified that the said surgery is available free of cost at the public hospitals but that there is a one year waiting period for same.

30. Dr. Adam also noted that a course of spinal epidural injections had been considered and testified in cross-examination that such injections, if successful, would negate the need for the above-mentioned surgery. According to Dr. Adam, the Claimant must undergo six of these injections and that while they are available at the public hospitals the waiting list for same will be approximately one year.

31. **Christine Kissoon** was hired on several occasions to transport the Claimant for her medical treatment. Kissoon testified that the Claimant has paid her $11,150.00 for transportation services from the 10th August, 2011 to the 12th April, 2014.

Evidence for the First Defendant

32. The First Defendant called two witnesses, Arline Jones and Alana Hosein-Hackshaw.

33. **Arline Jones** is a former employee of the First Defendant. Before retiring, Jones held the position of Senior Security Officer with the rank of Estate Corporal. As a Senior Security Officer her duties included the compilation of the duty roster and timesheets, detailing

her junior officers for duty and ensuring that patrols took place in respect of the site(s) that she was detailed to supervise.

34. On the 28th June, 2010, Jones was detailed to supervise the First Defendant's employees at the said School and the Princess Town East Secondary School ("the East School"). At around 10:12 a.m., Jones returned to the compound of the said School after visiting the East School. Whilst approaching the non-teaching staff room situated at Block H area of the said School, Jones observed the Claimant standing close to the doorway and then she stepped into the room. As Jones got closer to the door of the room, she observed the Second Defendant standing with his fingers pointed to the Claimant and was saying *"I tired tell you don't come around me".* Jones then observed that the Claimant ran to sit on a chair which the Second Defendant pulled away causing her to fall to the floor. The Claimant then got up and sat on the same chair. This incident occurred in the presence of Estate Constable Thomas and Maintenance Technicians, Rocke and Mc Intosh. Upon seeing this, Jones asked the Second Defendant why he was so ignorant and stupid. The Second Defendant vacated the room without responding to Jones.

35. According to Jones, at around 10:30 a.m., the Claimant complained to her that she was experiencing severe back pains, numbness in her legs and appeared to be unable to stand. The Claimant then contacted the Emergency Health Services and the Princess Town Police Station. At around 11:15 a.m. Mr. Chris Ali, an employee of the Emergency Health Services arrived on the compound and transported the Claimant to the hospital to seek medical attention. At around 11:40 a.m. Police Constable Branch and Police Constable Johnson of the Princess Town Police Station arrived on the compound and spoke to the Second Defendant. Before leaving the compound they enquired about the Claimant.

36. Jones later submitted a report concerning the said incident to Mr. Anthony Grant, the First Defendant's Regional Security Supervisor. She testified that prior to the date of the incident she had known the Second Defendant for about six months. It is her evidence that during this period she has never known him to be a violent person. Jones further testified that she is not aware of any complaints made by the Claimant concerning the

Second Defendant prior to the incident, save and except for one occasion when the Claimant contacted her on a Saturday on her cell phone to inform her that the Second Defendant could not be located on the compound of the said School. Jones could not recall the date of this call but remembered speaking to the Second Defendant the following Monday concerning the Claimant's complaint.

Cross-examination of Jones

37. Jones retired on the 13th August, 2015. Jones was referred to the First Defendant's Security Handbook ("the Handbook") *(See Supplemental List of Documents filed by the First Defendant on the 27th September, 2016).* She was directed to section 10 of the Handbook which dealt with the specific duties of a supervisor and asked whether she was aware of these duties, she testified that she was. According to Jones she was responsible for ensuring that persons showed up to work and that the Station diary was properly maintained.

38. Jones testified that the purpose of the Station diary was to ensure that all reports on incidents and patrols are properly documented. She further testified that the purpose of the pocket diary was also to record all incidents. That since the officers are constantly on the move it was used as an alternative to record information in the event that the Station diary was not immediately accessible. As such, the court understood that the purpose of the pocket diary was to record information temporarily until it could be recorded in the Station diary.

39. Jones worked from Monday to Friday. She checked the Station diary daily from Monday through Friday and when she returned to work after the weekend, she would have checked the contents of the diary from Friday to Monday. The pocket diaries however were checked less frequently. Jones checked the contents of the pocket diaries every two to five days. Her perusal of the pocket diaries depended on whether the Security Officers' schedule coincided with her schedule. If Jones was not available ES Roberts was responsible for checking the diaries.

40. Jones testified that while reading the diaries, if she saw a breach of the regulations contained in the Handbook, it was her responsibility to inform the officer to make a formal written complaint to her. She further testified that the regulations contained in the Handbook does not specifically state that complaints have to be in writing, however it was a standard procedure of the First Defendant to have the complaints made in writing.

41. According to the evidence of Jones, ES Roberts did not inform her about the report dated the 24th February, 2010. ES Roberts is still employed by the First Defendant. Jones testified that the only complaint she is aware of, is the call she received from the Claimant one Saturday. Jones handled this complaint by inquiring from the Second Defendant whether he was on the compound, the Second Defendant explained to her that he was on the compound and saw the Claimant looking for him but decided to stay away from her. The Second Defendant did not give a reason for wanting to stay away from the Claimant. Jones did not see it fit to take this complaint further. When questioned as to how she knew the Second Defendant was telling the truth, Jones testified that she took his word for it. That she did not think the Claimant was lying about not being able to locate the Second Defendant on the compound but that the compound was a huge place and the Claimant may not have searched the entirety of same.

42. Jones accepted that it was her responsibility to examine the pocket diary but testified that she did not have sight of certain entries made by the Claimant whereby she noted that the Second Defendant used obscene language towards her and that he abandoned the compound (entry 150, 151, 152, 155 to 152). Jones testified that if the Second Defendant was not given permission to leave the compound that would have been an offence punishable by dismissal. According to Jones, she would not have checked entries made in the pocket diary back to the last time she checked. That when she was not on duty, ES Roberts would have checked the diaries in her absence. Jones would have been aware that ES Roberts checked the diaries since when a Senior Officer checked same, they would sign the book.

43. According to the evidence of Jones, as she drew closer to the door of the maintenance room where the said incident took place, she saw the Second Defendant speaking to the Claimant in a loud tone. She testified that at that point the Second Defendant's behaviour towards the Claimant was aggressive. It is her evidence that as she was about to intervene, the Second Defendant pulled the chair from the Claimant causing her to fall. That it all transpired so quickly she was unable to act prior to the incident occurring.

44. Jones testified that after the incident she did not take any steps to suspend the Second Defendant. That she contacted her seniors and informed them of the incident and waited for a directive from them but did not receive any. Jones accepted that under regulation 8.3 of the Handbook she had the authority to suspend an officer without getting a directive from her seniors. She further testified that the Second Defendant was not suspended any time prior to the tribunal hearing. On the 30th July, 2010 the Second Defendant was suspended by the First Defendant for ten days.

45. According to Jones, she did not contact medical services immediately after the incident because the Claimant did not complain of pains when same occurred. She testified that she did not go to run a personal errand. That when the Claimant called to inform her that she was experiencing back pain and numbness in her legs, she was on the compound.

46. **Alana Hosein-Hackshaw** is the First Defendant's Divisional Manager attached to the Human Resources Department. As Divisional Manager, Hackshaw is the custodian of personnel records in respect of the First Defendant's current and former employees. She reviewed the Claimant's record and the Second Defendant's records and is aware of the said incident.

47. According to the evidence of Hackshaw, having reviewed the Second Defendant's records, she found no record of complaints or disciplinary issues regarding him prior to the said incident.

Cross-examination of Hackshaw

48. Hackshaw was shown the complaint dated the 24th February, 2010 which was made by the Claimant against the Second Defendant. She did not have prior knowledge or sight of this report. She testified that ES Roberts did not have a responsibility to forward this report to her department. That he had to forward it to his next line of authority which was the Regional Security Officer and thereafter, the Regional Security Officer would have made a recommendation if there was to be any disciplinary action or investigation into the matter.

49. According to the evidence of Hackshaw, breaches of regulations noted in the pocket diary would only make its way to an employee's file or record if the breaches were a part of a disciplinary action and in such a case the breaches would be appended to the outcome of the disciplinary action which would be sent to the Human Resource Department. That the only way she would be aware of those complaints is if the Senior Officer took steps to have it brought to her attention. Hackshaw testified that if there were complaints against the Second Defendant that reached the disciplinary stage and a copy was forwarded to the Human Resources Department, it would be on his file.

The First Defendant's Security Handbook

50. The following regulations contained in the First Defendant's Security Handbook were applicable in determining the issues herein;

    i. **5.1** Security Officers' duties and responsibilities can be broken down into the following categories:
        1) Gate/sentry duty and access control
        2) Patrol duty
        3) Perimeter Monitor
        4) Traffic Control
        5) Random Spot Checks
        6) Security incidents, logs and registers

7) Investigations
8) Key control
9) Fire protection and prevention, including evacuation, emergency procedures and first aid,
10) Liaison with protective services.

ii. **6.3 Rules of Service**

3) All officers will report for duty at least fifteen minutes prior to their assigned tour of duty. All personnel are expected to be punctual since habitual tardiness shall be deemed neglect of duty.

4) All Officers must be at their assigned place of work…. Unpunctuality shall result in disciplinary action.

5) All officers shall remain on duty at their assigned post and on duty until properly relieved, or until dismissed by competent authority. Failure to comply would be considered abandoning the post.

6) Officers are not permitted to leave duty station during working hours for any purpose including to get lunch. Failure to comply would be considered abandoning the compound.

iii. **6.5 Personal Conduct**

6) The use of obscene and/or abusive language in the work place is strictly prohibited.

7) Fighting among members of the Security department, or between Security Officers and other persons will not be condoned and can result in severe disciplinary action.

8) No Officer shall wound, threaten, attempt to, or actually carry out any assault on another Officer and other persons. All cases of assault and wounding will result in severe disciplinary action being taken against the offender.

iv. **6.6 Communication, Reports and Correspondence**

1) No Officer shall make false official reports or enter or cause to be entered in any department or Company diary, log or report, an inaccurate, false or improper information.

v. **8.1 Disciplinary Action** will be taken against any employee for breach of the Company's rules. Disciplinary action may take the form of oral warning, written warning, suspension or dismissal, depending on the gravity of the offence.

vi. **8.3 Suspension for the rest of the shift** – regional and shift supervisors, senior Officers, can suspend for the rest of the shift if the officer is violent, under the influence of drugs or alcohol, disorderly, refuses to take up duties at another location or specific assignment.

vii. **8.6 Disciplinary Code:**

24) Obscene and/or abusive language: 1st Offence – warning letter, 2nd Offence – suspension, 3rd Offence – termination;

25) Illegal assault on any person and/or attempted assault: 1st Offence – suspension/termination, 2nd offence – termination;

26) Fighting on the job: 1st Offence – suspension/termination, 2nd offence – termination;

27) Illegal wounding: 1st Offence – termination;

31) Disorderly conduct: 1st Offence – warning letter/ suspension, 2nd Offence – suspension, 3rd Offence – termination;

38) Abandoning Post: 1st Offence – warning letter, 2nd Offence – suspension, 3rd Offence – termination;

39) Abandoning Compound: 1st Offence – termination

viii. **10.1 General functions of Shift Supervisors and Senior Officers**

1) Ensure that Officers are alert, present and accounted for.
2) The Station Dairies are properly maintained in accordance with Standing Order 32.
3) Officers' Pocket Dairies are properly maintained in accordance with standing order 31.
4) All logs are properly maintained.
5) Gate, Patrol, Sentry and Fixed Post duties are being carried out effectively.
6) Other Security functions are being carried out.
7) Ensure Junior Officers are following the Company's policies and general rules and regulations.

8) Initiate disciplinary action against Officers who fail to comply with company's policy.

ix. **10.7 Investigations** - It will be the responsibility of the shift supervisor and senior officer to conduct investigations of all incidents on his shift or facility, and submit the relevant reports to the Regional Supervisor before reporting for duty.

Issue 1- *Whether the First Defendant was in breach of its duty of care owed to the Claimant*

51. The First Defendant owed a duty of care to all its employees to take reasonable care for their safety: ***Charlesworth & Percy on Negligence Thirteenth Edition, Chapter 11, paragraph 11-02 and 11-17.***

52. The basis of the liability of an employer for negligence in respect of injury suffered by his employee during the course of the employee's work is twofold;

    i. He may be liable for breach of the personal duty of care which he owes to each employee; and
    ii. He may be vicariously liable for breach by one employee of the duty of care which that employee owes his fellow employee: ***Commonwealth Caribbean Tort Law 5th Edition, Chapter 6, page 160.***

53. At common law an employer owes to each of his employees 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 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. Subject to the requirement of reasonableness, the duty extends to employees working away from the employer's premises, which may include

employees working abroad: ***Halsbury's Laws of England, Volume 52 (2014), paragraph 376.***

54. In this case, the Claimant contended that the First Defendant has breached its personal duty of care by its failure to provide safe fellow-employees and a safe system of working with effective supervision. The particulars of negligence against the First Defendant are as follows;

    i. Failing in the circumstances to provide the Claimant with a safe working environment and a safe system of work.
    ii. Failing to provide any and/or any adequate supervision and/or training of the Second Defendant.
    iii. Failing to provide any and/or any sufficient and proper aid or assistance to the Claimant.
    iv. Negligently and/or recklessly exposing the Claimant to the risk of injury at the hands of the Second Defendant.
    v. Employing the Second Defendant despite knowing that the Second Defendant had a history of indiscipline during his employment with the First Defendant.
    vi. Exposing the Claimant to an unnecessary risk of injury when the First Defendant knew or ought to have known that it was unreasonably placing the Claimant at significant risk of sustaining injury in assigning her to work with the Second Defendant.
    vii. Failing to take any or any adequate precautions for the safety of the Claimant.
    viii. Failing to take any steps and/or action against the Second Defendant in response to the Claimant's complaints regarding the Second Defendant prior to the incident.

55. According to the learned author, Gilbert Kodilinye in ***Commonwealth Caribbean Tort Law***, page 161 supra, an employee will be in breach of its duty to provide safe fellow employees, if it continues to employ a man who is known to it to be a danger to its fellow

workmen and another employee is harmed by the man: See ***Ifill v Ryaside Concerte Works Ltd. (1981) 16 Barb LR 193.***

56. Further, an employer must organize a safe system of working for his employees and must ensure as far as possible that the system is adhered to: See ***Commonwealth Caribbean Tort Law***, page 163. The Claimant submitted that a safe system of work may involve the organisation of the work, the procedure to be followed in carrying it out, the sequence of the work, the taking of safety precautions and the stage at which they are to be taken, the number of workers to be employed and the parts to be taken by them, and the provision of any necessary supervision: ***Clerk and Lindsell on Torts 21st Ed. 13-18 pg. 934***.

57. In ***Darryl Damian Abraham v The Attorney General of Trinidad and Tobago, CV2011-03101,*** a case relied upon by the Claimant, at page 26 this court stated as follows;

"…the fact of prescribing a safe system of work does not sufficiently discharge an employer's duty, unless it is also accompanied by steps reasonably to ensure it is followed, such as, for example, inspection and supervision."

58. The Claimant further relied upon the case of ***Barcock v Brighton Corporation [1948] 1 K.B. 339 at 343*** wherein the learned Justice Hilbery stated in his judgment that *"a system of work is not devised by telling a man to read the regulations and not to break them … It is no use for a master to say in court 'I discharged my common law duty because I put down on paper a safe system and put it into the hands of the man'."*

The submissions of the First Defendant

59. The First Defendant submitted that it would be unconscionable to hold that it breached its duty towards the Claimant by failing to *"pick-up"* on complaints entered by the Claimant in her pocket diary. The First Defendant contended that having regard to the seriousness of the Second Defendant's conduct towards the Claimant, the onus was on her to bring her concerns to the attention of her supervisor. That it was perplexing that the Claimant

would have taken the step to officially write to her supervisor concerning her failure to find the Second Defendant at the school compound but fail to make an official report to her supervisors concerning the alleged aggression and abuse from the Second Defendant.

60. The First Defendant submitted that Jones, its former employee and Supervisor of the Claimant and Second Defendant admitted that one of her duties was to ensure that the Officers' pocket dairies were properly maintained but contended that this duty did not direct the Supervisor to read all entries therein, nor did it set out any specific timeline or frequency for doing so.

61. Further, the First Defendant submitted that Jones properly and adequately dealt with the complaints of the Claimant made on the 24th February, 2010. That the Claimant's complaints were given credence and was duly investigated.

62. The First Defendant submitted that ES Roberts was not critical to its defence in this claim since;

    i. Jones and not ES Roberts was the direct supervisor of both the Claimant and the Second Defendant.
    ii. The incidents touching and concerning ES Roberts were within the knowledge of Jones, who treated with same.
    iii. In the established chain of command, which is set out in its Handbook and accepted by the Claimant, Jones, the Senior Officer, was the person to whom the Claimant had raised her complaints.

<u>The submissions of the Claimant</u>

63. The Claimant argued that the Second Defendant was in breach of numerous regulations prior to the incident in question. That abandoning one's post and/or the compound which formed the basis of various complaints made by the Claimant to the First Defendant on the 24th February, 2010 and between the 1st to the 15th March, 2010 was a major breach of

the regulations contained in the First Defendant's Handbook and also a breach of the First Defendant's safe system of work. As such, it is the submission of the Claimant that the First Defendant had reason to anticipate further misconduct from the Second Defendant and was under a duty to her to take reasonable steps to avoid the risk from materializing.

64. Further, the Claimant submitted that she gave unchallenged evidence that she submitted an incident report on the 24th February, 2010 to ES Roberts which entailed that the Second Defendant left the compound. That this report was given to ES Roberts and not to Jones as mentioned in the submissions of the First Defendant. According to the Claimant, there is no evidence that this incident was ever investigated. That if any steps had been taken by the First Defendant to investigate this incident, it would have been reasonable to call ES Roberts to give such evidence. The Claimant contended that the Court should draw adverse inferences against the First Defendant for its failure to call ES Roberts: ***See Shairoon Abdool v B&L Insurance Company Limited, H.C.A No. 434 of 2001.*** That the adverse inference that should be drawn is that ES Roberts took no steps to investigate the complaint of the Claimant.

65. Additionally, the Claimant submitted that the First Defendant through its employees, namely, Jones and ES Roberts committed numerous breaches of the regulations contained in its Handbook. That Jones and ES Roberts failed to supervise the Second Defendant and the Claimant and/or to take any disciplinary action against the Second Defendant in relation to the complaints of misconduct made against him by the Claimant which they were or ought to have been aware of.

66. According to the Claimant, she gave evidence that in March, 2010, she recorded both in her pocket diary and in the Station diary that the Second Defendant had been late to work, had used obscene language towards her and had threatened to make a false report in the Station diary. The Claimant submitted that the First Defendant led no evidence to explain its failure to produce the station diary extract for the events that took place on the 6th March, 2010. That the Court should again draw adverse inferences against the First Defendant for this failure since had the extract been produced, it would have supported

the Claimant's contention that such a report was made and that it contained details of the Second Defendant's misconduct towards her.

67. It is the submission of the Claimant that the steps taken by her to report the matters of indiscipline of a fellow officer to Jones and/or ES Roberts through an incident report, a station diary entry, several pocket diary entries and several verbal notifications were all consistent with and in full compliance with the regulations. That assuming but not admitting that the formal requirement under the regulations or otherwise to institute disciplinary proceedings was for a Security Officer to submit an incident report before it would be investigated, Jones and ES Roberts had a duty under regulation 10.1 and 10.7 of the Handbook to bring this to the attention of the Claimant at the time they inspected her pocket diary entries so that she could have pursued such grievances in another format.

68. The Claimant submitted that on the 28th June, 2010, the First Defendant further breached its duty towards her by failing to take any steps to stop the Second Defendant from assaulting her. That Jones had both the opportunity and duty to intervene immediately based upon her observations of the Second Defendant's aggressive behaviour towards the Claimant prior to him pulling the chair. The Claimant further submitted that the steps taken by Jones immediately after the incident further showed a continuing failure by the First Defendant to maintain a safe system of work. That Jones admitted that under the regulations she could have immediately suspended the Second Defendant for the rest of his shift, however, he was not so suspended. Instead, the Second Defendant was permitted by Jones and the First Defendant to continue to work every day until he was suspended by the First Defendant on the 30th July, 2010 one month later.

69. Furthermore, the Claimant submitted that the un-contradicted evidence of the Claimant was that after the incident Jones immediately left. She did not examine her or arrange for her to be seen by a doctor. The Claimant was therefore forced to personally call for an ambulance approximately one hour later to take her to the hospital. As such, it is the submission of the Claimant that the First Defendant and its other employee failed to contact medical services or to take any other steps to ensure the safety and well-being of the Claimant.

Findings

Did the Claimant complain to the First Defendant about the prior actions of the Second Defendant and if so are the nature of the complaints relevant to the facts and circumstances of this claim

70. The court does not agree with any of the submissions of the First Defendant on this issue. In fact the court is somewhat astounded by the evidence of Jones for the several reasons that follow and considers Jones to be a witness of very low credibility on the material facts.

71. The evidence shows that Jones was in fact present at the doorway on the day of the incident. It is both a matter of common sense and a matter of inference that some event would have drawn sufficient attention to have caused her to present herself to the doorway. She was in fact not the only person who presented herself to that doorway at that time on that day, which affirms supports the court's common sense conclusion. In the court's view, this event could have only been the action of the Second Defendant in having refused to give up the chair, proceeding to speak loudly, punching the Claimant twice in the stomach, slamming the chair against the table and cursing and threatening the Claimant. These acts on the part of the Second Defendant would no doubt have made quite a commotion, causing Jones to go to the room. Jones however places herself at the doorway only in time to see the chair being pulled from under the Claimant and has in the court's view sought to hide the fact of the commotion from the court.

72. Further, even if it is the case that Jones did not observe the actions of the Second Defendant, it must be the case that she heard the loud cursing and slamming of the chair as this is what would have brought her to the doorway. She however attempts to also distance herself from any event prior to the pulling of the chair. In the court's view she does so to hide the fact that she witnessed either by sight or sound the acts of violence perpetrated on her junior and astonishingly did nothing about it. In fact she attempted to paint an entirely different picture. If her evidence is to be believed, there was no assault.

Her evidence is that the Second Defendant pointed to the Claimant and said *"I tired tell you to leave me alone"*. Thereafter the Claimant ran to her chair and it was pulled away at the same time. In cross examination Jones would have the court believe that before she could say anything to the Second Defendant, he pulled the chair away. Once again this court does not believe this witness. Her actions tell a different story all together. Firstly, it is clear that it was the commotion that attracted her attention, and she made no attempt to intervene. Secondly, if her story is true, then why was the Second Defendant standing and with the chair being empty and the Claimant having to run to it. Is it that, having punched the Claimant and thrown the chair, the First Defendant was now standing. Her story does not make sense. It must be that the commotion had either already taken place or the Second Defendant assaulted and beat the Claimant in her presence. Either way her evidence cannot be trusted.

73. Additionally, her actions subsequent to the pulling of the chair in her presence demonstrates an administrative and supervisory malaise and incompetence that is nothing short of unsatisfactory. It is her evidence that having witnessed this incident she simply asked the Second Defendant why he was so stupid and moved on. What is equally astonishing is that this evidence comes from Jones herself. She makes no effort to suspend the Second Defendant, but more importantly neither does she make an effort to assist the Claimant. In fact it is the Claimant's evidence that she is the one who had to call Jones who told her that she was not on the compound. Jones testified in cross-examination that she was elsewhere on the compound, but the court does not believe her testimony in that regard. As a matter of common sense, should Jones have been on the compound it would have been reasonable to expect that she would have proceeded to the place where the Claimant was, having received the complaint. But this never occurred. In fact the evidence shows that the Claimant then had to call Jones' superior who also was unavailable resulting in the Claimant having to call the ambulance herself. It is the court's view that once again Jones has attempted to deceive it. It is clear to this court that Jones in fact beat a hasty retreat after witnessing the event in an attempt to remove herself away from it and her inefficiency in treating with it.

74. In so finding the court notes that the evidence of Jones was that she subsequently made a complaint. This however goes against the weight of the other evidence presented by the First Defendant whose other witnesses testify that there was on file, a complaint by the Claimant. There is no evidence of any such complaint by Jones.

75. The credibility of Jones is material to the issue of whether she is to be believed when she testified that the Claimant made no complaint to her about the aggressiveness and use of obscene language by the Second Defendant prior to the incident. She testified that the only complaint was that of absenteeism on one occasion. In that regard this court finds that the evidence of Jones in relation to the incident is so unreliable that her credibility on that issue affects her credibility on this issue and therefore the court does not believe Jones in this regard.

76. The evidence of the Claimant shows that she wrote out some of her complaints in her diary and copies were relied on in court. The court is aware that these copies amount to previous consistent statements and may therefore infringe the evidential rule against narrative. However, as a matter of common sense, when one looks at the nature and frequency of the complaints it is clear that there was a sustained difficulty between the Claimant and the Second Defendant and that it is more likely than not that the Claimant would have brought this state of affairs to the attention of both her seniors on more than one occasion. Additionally, the evidence of Jones is that her signature appears on some of the entries and the signature of her immediate senior Roberts also appears on some.

77. Further, it is clear that the complaints had not only to do with the tardiness of the Second Defendant but also with the attitude of the Second Defendant to the Claimant and his verbal abuse to her by way of the use of obscene language. However, neither Jones or Roberts sought to intervene in a situation in which it was reasonably foreseeable that the next step after verbal abuse would be physical abuse.

78. The court therefore finds that Jones was aware of the complaints and so was Roberts. Both Jones and Roberts were responsible in the chain of command for relaying the complaints of verbal abuse to the management of the company and so their failure so to

do cannot augur to the benefit of the First Defendant when in fact it was the duty of the First Defendant to ensure that a proper system was put in place to guarantee that such serious matters were brought to their attention within the shortest possible time so as to provide the opportunity to them to take corrective measure to ensure the safety of their employees. But there is no evidence of such processes being not only put in place but being monitored to ensure that they worked.

79. The regulations (supra) sets out the duties of the shift supervisors in relation to discipline and maintenance of the station and pocket diaries. They also provide for offences and penalties but there is no evidence before this court of any process which provides for the scenario where a low level employee may be making complaints to ineffective and inefficient supervisors who take it upon themselves to close matters without proper investigation or not to report the complaints further up the chain of command. There in fact appeared to have been no active monitoring of the station diaries and the pocket diaries. Should there have been such monitoring, the several complaints of the Claimant would have more likely than not been discovered.

80. Further, the First Defendant would have the court believe that it could not locate the station diary for the relevant day so as to ascertain whether the Claimant in fact made an entry of the incident as she testified she did. Although a reason has been proffered by the First Defendant, the court finds a particular level of disquiet with the reason given having regard to the unreliability of the evidence for the defence generally.

81. The court therefore answers the first question in the affirmative and holds that the First Defendant did in fact breach its duty of care to the Claimant.

Issue 2 - *Whether the First Defendant is vicariously liable for the actions of the Second Defendant*

82. Independently of personal fault, an employer will be vicariously liable for a tort committed by an employee in the course of employment: ***Halsbury's Laws of England,***

Volume 97 (2015), paragraph 767. A tort comes within the course of the employee's employment if;

i. It is expressly or impliedly authorized by the employer; or
ii. It is an unauthorized manner of doing something authorized by the employer; or
iii. It is necessarily incidental to something which the employee is employed to do: ***Commonwealth Caribbean Tort Law 5th Edition, Chapter 6, page 339.***

83. In ***Lister and others v Hesley Hall Limited (2001) UKHL 22***, the House of Lords held that in determining whether an employer should be held vicariously liable for an employee's wrongful act, the court ought to focus on the relative closeness of the connection between the nature of the employment and the particular tort. Essentially, a broad approach was required as it related to the nature of the employment by asking, what was the job on which the employee was engaged for his employer.

84. Once there is a close connection between the tort committed and the employee's job, it is immaterial whether the act done was unauthorized or expressly prohibited by the employer or whether same was civilly or criminally illegal: ***See Dubai Aluminum v Salaam [2003] 2 AC 366.*** An employer ought to be liable for a tort which can fairly and justly be regarded as a reasonably incidental risk to the type of business being carried on: ***Gravil v Redruth Rugby Football Club Ltd [2008] EWCA Civ 689,*** Sir Anthony Clarke MR at paragraphs 21 and 22.

85. According to the case of ***Mohamud v WM Morrison Supermarket plc [2014] EWCA Civ 116,*** each case must turn on its own particular facts, and the decision will inevitably involve an element of value judgment. In this case, it was held that the fact that an assault had taken place at the employee's place of work and at a time when he had been on duty was relevant, but not conclusive. Similarly, the opportunity to be present at premises enabling the assault to be committed did not mean that the act was necessarily within the scope of the employment; a greater connection between the tort and the circumstances of the employment was required. Further, the mere fact that the employment had provided the opportunity, setting, time and place for the tort to occur was not necessarily sufficient.

86. From the authorities cited above, the applicable test for determining whether the First Defendant is vicariously liable for the Second Defendant's actions is whether the Second Defendant's assault on the Claimant was so closely connected with his employment that it would be fair and just to hold the First Defendant vicariously liable.

The First Defendant's Submissions

87. The First Defendant submitted that the Second Defendant's actions on the 28th June, 2010 must be evaluated in isolation as there were no other complaints upon which it could have reasonable been expected to act. Applying the legal principles enunciated above to the circumstances of this case, the First Defendant contends that it is not liable for the Second Defendant's actions. In furtherance of its contention, the First Defendant submitted as follows:

    i. The Second Defendant's wrongful act did not further the First Defendant's aims and was clearly not in the course of his employment with the First Defendant;

    ii. There is no evidence to suggest that the incident on the 28th June, 2010 was related to the functions or duties of the Claimant and the Second Defendant. On the contrary, it appeared to have been caused by some personal issue between the Claimant and the Second Defendant;

    iii. There was no friction or confrontation inherent in the First Defendant's enterprise vis a vis the Claimant and the Second Defendant;

    iv. There was no question of any power conferred on the Second Defendant in relation to the Claimant or any particular vulnerability of the Claimant;

v. The Second Defendant had never displayed any prior disposition to violence in the workplace, as far as the First Defendant was aware or could have reasonably been aware;

vi. The First Defendant was unaware, and could not reasonably have been aware, of any alleged previous confrontation or friction between the Claimant and the Second Defendant;

vii. The Second Defendant had no previous disciplinary issues.

88. The First Defendant in support of its contention that it is not vicariously liable for the actions of the Second Defendant relied upon the authority of ***Noel v The Attorney General of Trinidad and Tobago and Sutherland CV2012-04642***. In Noel, at paragraphs 40 to 41 Rajkumar J. examined, inter alia, whether an employer (the First Defendant) was vicariously liable for the alleged assault and battery committed by one employee (the Second Defendant) against another (the Claimant) at the workplace. In dismissing the claim, he held that the acts alleged to have been committed by the Second Defendant could not have been committed during the course her employment as she was employed as a Messenger and was *"simply not authorized to perform any of the duties that are even remotely connected to the acts complained of."* His Lordship went on to state that her duties neither involved the preservation of order nor did it require or contemplate the use of force by her in any circumstances. Further, his Lordship found that First Defendant could not have foreseen that the Second Defendant posed any danger to the Claimant as the Second Defendant had no track record of violence.

The Claimant's Submissions

89. The Claimant submitted that the said incident cannot be evaluated in isolation. That this incident was the culmination of a succession of breaches of the regulations, all of which up to that time the First Defendant had condoned by refusing and/or neglecting to

investigate or to institute any disciplinary steps against the Second Defendant despite oral and written complaints by the Claimant.

90. The Claimant further submitted that the actions of the Second Defendant fell within the broad scope of his employment. That even though as a Security officer he was required to preserve order, his duties contemplated the use of force in certain circumstances. As such, it is the submission of the Claimant that the actions of the Second Defendant on the 28th June, 2010 was closely connected with his employment, so that it would be fair and just to hold the First Defendant vicariously liable.

91. The Claimant relied on the authority of ***Mattis v Pollock [2004] 4 All ER 85*** wherein the Court of Appeal held that where an employee was expected to use violence while carrying out his duties, the likelihood of establishing that an act of violence fell within the broad scope of his employment was greater than it would be if he were not. The facts of this case is that the claimant visited a nightclub which was owned by the Defendant. The Defendant employed a doorman whom he was aware was prepared to use physical force to ensure compliance with his instructions. The Claimant was involved in an incident with the doorman who had tried to exclude one of his friends. A week later the Claimant and his friends returned to the club. The doorman told the Claimant's friend that he was not allowed in the club and used violence to eject him. That behaviour provoked a negative reaction and a number of the friends gathered around the doorman and he was struck several times. The doorman ran away to his flat where he armed himself with a knife. He returned to the vicinity of the club, intent on revenge for the injuries inflicted on him, found the Claimant and severed his spinal cord. The attack rendered the Claimant a paraplegic. The Defendant was found vicariously liable for the attack.

92. The Claimant further relied on the authority of ***Vishnu Ramdath v Krishna Jaikaran and the Mayor, Alderman, Councilors and Citizens of the City of San Fernando, Civ. App. No 154 of 2005*** wherein the City was found vicariously liable for the conduct of Jaikaran, a police officer who shot a civilian. At paragraphs 21 to 22, Mendonça, J.A. in determining the issue vicarious liability stated as follows:

"the test of vicarious liability where the tortfeasor commits an intentional wrong is whether the wrongful conduct was so closely connected with acts the tortfeasor was authorized to do, that for the purpose of liability of the employer, his wrongful conduct may fairly and properly be regarded as done by him while acting in the ordinary course of his employment …"

Findings

93. It is abundantly clear to this court that the wrongful conduct committed by the Second Defendant was not at all closely connected with acts in respect of which he was authorized by the First Defendant. The facts of this case can readily be distinguished from the facts of ***Mattis v Pollock*** supra. In that case, the authorized act may have reasonably included the use of reasonable violence against those who failed to comply with the rules of the nightclub depending of course on the severity of non-compliance. That is quite a different scenario from the use of violence by one employee against another employee which is the case here. Surely the act of punching and causing a fellow employee to fall on her buttocks are not acts authorized or sanctioned by the First Defendant to be used by the Second Defendant in the course of his duties. The position may have been somewhat different had the Second Defendant used violence on an intruder to the premises he was duty bound to secure and protect.

94. The court therefore agrees with the submission of the defence that the Second Defendant's wrongful act did not further the First Defendant's aims and was clearly not in the course of his employment with the First Defendant. That there is no evidence to suggest that the incident on the 28th June, 2010 was related to the functions or duties of the Claimant and the Second Defendant.

95. The principle of vicarious liability therefore does not apply to the facts of this case.

Liability

96. It is therefore the finding of the court that the First Defendant is liable for the following in that it;

    i. Failed in the circumstances to provide the Claimant with a safe working environment and a safe system of work.
    ii. Failed to provide any and/or any adequate supervision of the Second Defendant.
    iii. Negligently and/or recklessly exposed the Claimant to the risk of injury at the hands of the Second Defendant.
    iv. Exposed the Claimant to an unnecessary risk of injury when the First Defendant knew or ought reasonably to have known that it had placed the Claimant at significant risk of sustaining injury when it assigned her to continue to work with the Second Defendant.
    v. Failed to take any or any adequate precautions for the safety of the Claimant.

Issue 3 - Damages

97. The Claimant was born on the 30th October, 1969. She was forty years old at the time of the said incident and is currently 47 years old. As a result of the said incident the Claimant has experienced and continues to experience the following serious injuries and effects:-

    i. A spinal strain syndrome involving the neck and lower back with L1/L2 disc protrusion and coccyx strain;
    ii. Constant, unbearable, nagging pain along her hips, waist, legs, spine, neck, arms and shoulders;
    iii. Numbness and weakness in the left side of her body;
    iv. Lancing, nagging pain in her private parts and buttocks;
    v. Great pain, discomfort and difficulty when using the washroom and upon showering;
    vi. Excruciating pain when on her monthly period;

vii. Difficulty and pain when using staircases;

viii. Difficulty and pain when stooping and/or bending and standing up from a sitting or stooping position;

ix. Pain and discomfort when lying down and consequential insomnia;

x. Dark spots on her skin which are an allergic reaction to the pain medication she was prescribed; and

xi. A lack of sex drive and general confidence.

98. The Claimant's permanent partial disability has been assessed by Dr. Adam at forty percent (40%).

Special Damages

99. Special damages must be specifically pleaded and proved as established in ***Grant v Motilal Moonan Ltd (1988) 43 WIR 372*** per Bernard CJ and reaffirmed in ***Rampersad v Willies Ice Cream Ltd Civ App 20 of 2002.*** The burden is, therefore, on the Claimant to prove her losses.

Past Transportation/ Domestic Assistance/ Medical Expenses

100. The Claimant claims the following sums;

i. Transportation expenses in the sum of $24,100.00;

ii. Medical expenses in the sum of $16,920.00;

iii. The cost of hiring domestic assistance in the sum of $6,900 .00

101. The First Defendant does not contest the Claimant's Claim in this regard, insofar as the Claimant has provided receipts for same. The court therefore finds that the amounts claimed by the Claimant for past transportation, medical expenses and domestic assistance are true and correct values reflected in the receipts provided.

Loss of past Earnings

102. As a result of the said incident, and to date the Claimant has not been fit to return to work and to earn an income. The Claimant began working for the First Defendant in April, 2008 and was earning a monthly salary of approximately $2,600.00. This figure varied slightly from month to month based on the number of hours worked each month *(See true copies of the pay slips of the Claimant issued by the First Defendant for the period July, 2010 to August, 2011 attached to the witness statement of the Claimant marked "S.P.13").*

103. In her viva voce evidence, Hackshaw, the Divisional Manager, Human Resources of the First Defendant gave details of the hierarchy of workers within the First Defendant. She explained that from the rank of security officer a worker could be promoted to a higher rank earning $15.93 an hour, which is $0.93 more than the Claimant earned at the time of the said incident. Hackshaw further explained that the next rank is 'Corporal', earning $23.68 per hour, and that to qualify for this position an employee must have five years' experience and pass an exam after which the employee will be placed on a merit list. The length of time for the promotion to Corporal after passing the exam depended on the vacancy of the position. The next rank, in accordance with the evidence of Hackshaw is a Sergeant earning approximately $26.00 per hour. Mr. Hackshaw testified that had the Claimant continued to work for the First Defendant and satisfied the said qualifications the Claimant could have made it up these ranks.

104. The Claimant submitted that based on the evidence of Hackshaw, the Claimant would have attained the rank of Corporal in or about April, 2013 had the said incident not occurred and occurred, would presently be earning $23.68 per hour. The Claimant further submitted that based on her past pay slips mentioned above the Claimant worked approximately 173 hours each month ($2,600.00 ÷ $15.00). After the said incident, the Claimant continued to be paid by the First Defendant until August, 2011.

105. According to the Claimant, if the incident had not occurred, she would have earned approximately $225,555.52 during the period September, 2011 to October, 2016. This sum was calculated as follows;

i. At the rank of security officer for the period September, 2011 – March, 2013: $2,600 per month * 19 months = $49,400.00
ii. At the rank of Corporal for the period April, 2013 – October, 2016:($23.68 * 173) $4,096.64 per month * 43 months = $176,155.52

106. The Claimant therefore submitted that an award of $225,555.52 under this head of loss is reasonable in the circumstances.

107. The First Defendant does not contest the Claimant's claim for loss of earnings from the 1st November, 2011.

108. According to the evidence of Hackshaw, even though an officer has five years' experience and passes the examination to be promoted to Corporal, this promotion is still dependent on the availability of the post. Consequently, an assessment that after five years the Claimant would have been promoted to Corporal is somewhat speculative. Additionally, there is no evidence from which the court could assess the probability of such an occurrence. In those circumstances, the court is prepared to award the Claimant the sum of $153,400.00 representing the difference between what she would have earned had she continued working as a Security Officer during the period November, 2011 to October, 2016 at a rate of $2,600.00 per month (59 months *$2,600).

Cost of Future Surgery and Medical Treatment

109. The First Defendant submitted that no award should be made to the Claimant for future medical treatment since she could have already accessed the recommended treatment at no cost. The Claimant claimed the sum of $175,000.00 for the cost of future surgery and medical treatment. The Claimant submitted that it was reasonable based on

the one year waiting period, for the Claimant to rely on medication to relieve her pain until she could afford to undergo the epidural injections or surgery privately: See **Devanand Ramsamooj v Dai-Tech Limited CV2013-02216, Oswyn Edmond &Ors v The Water and Sewerage Authority CV2009-04244, -04245, -04246, -04248.**

110. The Claimant further submitted that having regard to the uncertainties as to the likelihood of success of the proposed surgery and medical treatment options and the duration of any future medical treatment, surgery and medication that the Claimant will require in the future if such treatment is unsuccessful or not pursued a lump-sum award as was made in ***Peter Seepersad v Persad& Capital Insurance Ltd [2004] UKPC 19*** ought to be made in this case.

111. According to Dr. Adam's evidence, if the Claimant elected to do a Lumbar Laminectomy (back surgery) she would have a 50/50 chance of improvement in her medical condition. This surgery will cost fifty-five thousand dollars (**$55,000.00**) if done privately. However, the surgery is available free of cost at the public hospitals but that there is a one year waiting period for same. Dr. Adam also noted that a course of spinal epidural injections had been considered and that such injections, if successful, would negate the need for the surgery. According to Dr. Adam, the Claimant must undergo six of these injections and that while they are available at the public hospitals the waiting list for same will also be approximately one year. Taking into consideration the cost of the surgery, the alternative medical treatment, the uncertainties of the success of the surgery and/or the epidural injections, the availability of same at the public health facilities, the fact that the Claimant was informed of the surgery in 2013 and failed to apply for same at the public health facilities and the amount the Claimant claimed for past medical expenses ($16,920.00), this Court finds that a reasonable some for future medical treatment is $50,000.00 as a lumpsum payment.

112. The total award for special damages is therefore $251,320.00. This sum was calculated as follows;

Past Transportation Expense	$24,100
Past Medical Expense	$16,920
Past Domestic Expense	$6,900
Loss of past earnings	$153,400
Cost of future surgery and medical treatment	$50,000
Total	$251,320.00

General Damages

113. The relevant principles for assessing general damages, in a personal injuries claim were set by Wooding CJ in ***Cornilliac v. St. Louis (1966) 7 WIR 491***. They are as follows;

i. the nature and extent of the injuries sustained;
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, consequentially, pecuniary prospects have been materially affected.

Damages for Pain and Suffering, and Loss of Amenities

114. Bearing in mind that the Claimant is set to undergo surgery, which, if successful, will reduce her pain and suffering, the First Defendant submitted that the sum of $125,000.00 is an appropriate award under this head of damages. In arriving at this figure, the Defendant relied on the following authorities;

i. ***Persad & Capital Insurance Ltd v Peter Seepersad P.C. Appeal No 86 of 2002***- the 40 year old Plaintiff was awarded the sum of $75,000.00 for serious whiplash,

cerebral concussion, wedge compression fractures of the L1 and T12 vertebrae which healed well and prolapsed L5/S1 disc where there was pre-existing degeneration, causing continuous pain. The award was adjusted to December, 2010 to $129,578.00.

ii. ***Moonsammy v Ramdhanie CA Civ. 62 of 2003***- The 42 year old plaintiff sustained a L4/5 and L5/S1 disc prolapsed with compression of L5 and S1 nerves. This produced neurological deficits in the lower limbs. He was assessed as having a 35% to 40% permanent partial disability. Initially the back injury did not appear to be severe, but as time passed, his condition degenerated. There was muscle spasm, a decreased range of movements of lumbosacral spine, and disc osteophyte bulges. The Plaintiff in this case also complained of pain during sexual intercourse. The Honourable Master awarded $75,000.00 which was not the subject of the appeal. This figure when adjusted to December, 2010 is 121,102.00.

iii. ***Richardson v Kiss Baking Company Ltd H.C.A. No 696 of 1996*** – the plaintiff suffered a bulge at disc L4-L5-S1, post-concussion syndrome and neck and lower back strain. There was evidence that his symptoms would continue indefinitely and might be permanent. His permanent partial disability was assessed at 30% and he was deemed medically unfit to continue his work as an electrician. He was awarded on 31st January, 2000 the sum of $35,000.00; as adjusted to December, 2010 to $71,385.00.

iv. ***Wayne Wills v Unilever Caribbean Limited HCA: CV 2007-04748***- In this case the Claimant suffered a L4/5 herniation and severe neck pains. He underwent surgery and his permanent partial disability was estimated at 20%. General Damages was awarded at $75,000.00; as adjusted to December, 2010 to $82,711.00.

115. While the Claimant agreed with the cases submitted by the Defendant, the Claimant submitted that a fair compensation to the Claimant is the sum of $140,000.00. The Claimant highlighted the following cases:

i. **Dexter Sobers v The Attorney General of Trinidad and Tobago CV2008-04393** - The claimant suffered loss of lumbar lordosis, disc desiccation and annular tear at L4/5 and L5/S1 levels, diffuse disc bulge with posterior central propensity indenting thecal sac with no neural compression, diffuse disc bulge with propensity to left and posterior left paracentral small disc protrusion impinging on left S1 traversing nerve root. The claimant experienced back pain, which radiated down the left leg following the accident. Upon examination, the claimant's straight leg raising was greater than 90 degree bilaterally, with a negative sciatic stretch test. Power, sensation and reflexes were within normal limits. The claimant's permanent partial disability was assessed at 20%. The award in respect of general damages was $80,000.00 in May 2011.

ii. ***Gerard Jadoobirsingh v Bristow Caribbean CV 2005-00784***-The judge made an award of $80,000.00 for pain and suffering, after considering and giving weight to particular factors including the Plaintiff's injury consisted of mild protrusions at four locations on the spine, he was forced to tender his resignation as a result of his inability to work and to sit in one place for more than 30 minutes, he experienced numbness and pain on sitting and he experienced sexual dysfunction. This award when adjusted to December, 2010 is $105,150.00.

iii. ***Kurlene Pierre v Miles Almandoz and Company & Trinidad and Tobago Insurance Limited Civil Appeal No. 2 of 2012***-In this case the Claimant suffered a loss of curvature of her cervical spine, disc degeneration of her cervical spine, restricted movement of her shoulder and neck, moderate to severe pain in her shoulder, neck and back, and such pain affected her ability to swim, dance and socialize. Further, the Claimant could no longer perform simple household chores, her back pain was unbearable during her menstrual cycle, and experienced pain during sexual relations. An award of $110,000.00 was made for pain and suffering.

116. In the view of the court, the injuries sustained by the Claimant (as set out above) appear to be so serious as to bring it within the scope of an award on the higher end of similar awards. The court will therefore award the sum of $140,000.00 under this head.

Loss of Future Earnings

117. The Claimant seeks loss of future earnings on the basis that she is unable to return to her previous or any kind of work. The evidence of Dr. Bhagwandeen, Dr. Gentle and Dr. Adam confirmed that the Claimant is unfit to work due to her injuries. The Claimant was forty years when the incident occurred and is forty seven years presently. She was a previously fit and healthy woman and expected to be working until at least sixty years. On the evidence of Hackshaw, the Claimant was also likely to be promoted to a Corporal with the attendant increase in salary. The Claimant claimed $786,554.88 as loss of future earnings, suggesting a multiplier of 16 on the bases of the following cases:

i. ***Ian Gonzales v Scaffolding Manufacturers (Trinidad) Ltd &Ord CV2009-03527***- In making a determination with regards to loss of future earnings, the Court considered the evidence of the Corporate Secretary of the First Defendant that had it not been for the accident in that matter the Claimant would likely have been promoted through the ranks of the First Defendant thereby earning a higher salary. In arriving at a multiplicand the Court applied the hourly rate of employees who were in the position the Claimant would have been in had it not been for the said accident, rather than the hourly rate the Claimant earned at the time of the accident. In this case, the decided the multiplicand was discounted to reflect the fact that the Claimant therein had not proven his unfitness to work and could have earned at least a minimum wage, and did in fact attain employment after the date of the said accident.

ii. ***Yudhistra Jadoo v Deewa Jagroop & Ors CV2010-00606*** - The Claimant herein was not completely crippled on the labour market, but would find it very difficult to find alternative employment and would experience this all his working life. A

multiplicand of 75% of his pre-accident earning was used, reduced for taxes and deductions and further reduced by 1/3 for living expenses. A multiplier of 16 was applied.

iii. ***Wayne Wills v Unilever Caribbean Limited CV2007 – 04748, No 56 of 2009*** - The Claimant was 40 years old at the time of assessment and would likely have worked until the age of 60. The Court used this 20 year difference as a bench mark and discounted it to 12 to reflect the fact that the Claimant received a lump-sum and for the uncertainties of life. In arriving at a multiplicand, the Court considered that the Claimant could no longer perform the duties of his previous job and would have found it difficult to find alternative employment, and applied the Claimant's annual net wage as the multiplicand.

iv. ***Elva Dick-Nicholas v Jayson Hernandez & Capital Insurance Company Limited CV 2006 – 01035, S-1449 of 2004*** - The Claimant in this decided case was 44 years old at the time of the accident and was expected to be on the labour market until the retirement age of 65, further she was diagnosed as being unfit to return to work. The Judge considered a multiplier of 10 as being reasonable having regard to the contingencies of life.

v. ***Peter Seepersad v Persad & Capital Insurance Ltd [2004] UKPC 19*** - The Claimant in this matter was 40 years old at the date of trial. The Privy Council considered that the Claimant would be able to work partially and applied a multiplicand of 50% of the Claimant's pre-accident earnings, and a multiplier of 16 years.

118. The starting point for the multiplier is the number of years during which the loss is likely to endure, that is, the remaining period that the Claimant would have worked. This number is then reduced to take into account contingencies of life such as illness, early retirement or unemployment and the fact that she is receiving a lump sum which can be invested. In this case, the court also considered that in order to qualify for promotion, the Claimant would have had to pass two examinations. Applying the learning in the above authorities to this case, this court considered a multiplier of 12 and her salary

as Corporal of $4,096.94 (gross) per month to be appropriate. Her future loss of earnings was therefore calculated as follows:

i. Multiplicand $4,096.64 x 12 (months) = $49,159.68 (annual gross salary)
ii. Future loss of earnings $49,159.68 x 12= $589,916.16
iii. Less 35% (for holidays, illness and other contingencies of life) = $206,470.65
iv. Total future loss of earnings = $383,445.51

Loss of earning capacity

119. The Claimant suggested the sum of $100,000.00 for loss of earning capacity. The Claimant referred the court to the following cases;

i. ***Andre Marchong v T&TEC & Galt and Littlepage Ltd CV 2008-04045*** - The Claimant in this case was 31 years old and was declared medically unfit because of his inability to sit for long periods of time without pain which disqualified him for continued employment as a clerk. The judge placed little reliance on the Claimant's contention that he was unable to find a suitable job and she formed the opinion that the Claimant exaggerated his pain and resulting disability. A multiplier of 21 was used and an award of $377,241.26 was made for loss of earning capacity. No separate award for loss of future earnings was made.

ii. ***Ian Gonzales v Scaffolding Manufacturers (Trinidad) Ltd &Ord CV2009-03527-*** After making an award for loss of future earnings the Court went on to consider damages for loss of earning capacity and found that an award under this head of loss is generally achieved through a lumpsum payment. The Court considered that the Claimant had experience and training in only one field which said field he will no longer be able to work in, and his limited qualifications and injuries would be a great disadvantage on the labour market. Based on this and the Claimant's 35% permanent partial disability a lumpsum award of $75,000.00 was made for loss of earning capacity.

iii. ***Cindy Kanhai v Miquel Mohammed &Ors CV2006-01087*** - The Claimant in this case was 20 years old at the hearing of the assessment and would have likely had a working life of at least 40 if it had not been for the accident. The Court in this case considered that the Claimant's injuries and permanent partial disability presented a substantial risk that the Claimant would be disadvantaged in the labour market and that she would suffer a diminution in her earning capacity and not a complete loss of earning capacity. The Court further considered that a lumpsum rather than an award based on a multiplier/multiplicand calculation would be appropriate in the circumstances where there were many uncertainties. An award of $150,000.00 was awarded to the Claimant for her handicap on the labour market, however no award was made for loss of earnings.

120. In ***Peter Seepersad*** supra, no separate award was made under the head of loss of earning capacity. In ***Dayal Moonsammy*** supra, the Court of Appeal ruled that the High Court Judge should not have awarded loss of earning capacity as there was no evidence to prove that in the future, the Appellant would not be able to carry out his functions at an acceptable level.

121. Considering the above authorities and the award that was made under the head of loss of future earning, this court is of the opinion that a reasonable award for loss of earning capacity is $75,000.00 as a lumpsum payment having regard to the severity of the injury and the fact that the Claimant has been assessed with a permanent partial disability of 40%. It is highly unlikely that she will in fact be able to work for the rest of her employable life. The evidence clearly demonstrates the tremendous difficulty she has with the most mundane of physical tasks.

122. The total award for general damages is therefore $598,445.57. This sum was calculated as follows;

Damages for pain and suffering and loss of amenities	$140,000
Loss of future earnings	$383,445.57
Loss of earning capacity	$75,000
Total	$598,445.57

Disposition

123. The court will therefore dispose of the claim as follows;

a. Judgment for the Claimant against the First Defendant for negligence.
b. Judgment for the Claimant against the Second Defendant for assault and battery.
c. The Defendants shall pay to the Claimant, general damages in the sum of $598,445.57 together with interest at the rate of two percent per annum from the 9th May 2014 to the date of judgment.
d. The Defendants shall pay to the Claimant, special damages in the sum of $251,320.00.
e. The Defendants shall pay to the Claimant the prescribed costs of the claim.

Dated the 25th day of January, 2017

Ricky Rahim
Judge