

**REPUBLIC OF TRINIDAD AND TOBAGO**

IN THE HIGH COURT OF JUSTICE

CV2015-03495

Between

**PREMNATH RAMPAUL**

Claimant

AND

**MARVIN STRAKER**

First defendant

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

Second defendant

**Before the Honourable Mr. Justice R. Rahim**

**Appearances:**

Mr. R. Pheerangee instructed by Mr. A. Rampersad for the claimant

Mr. E. Jones instructed by Mr. B. James for the defendants

## **Judgment**

1. By claim form filed on the 22<sup>nd</sup> October, 2015 the claimant sought damages for personal injuries and consequential loss as a result of negligence of the first and second defendants. According to the claimant, on the 29<sup>th</sup> July, 2013 the first defendant whilst driving motor vehicle registration number PCC 9879 (“the motor vehicle”) made a sharp turn from Lyle Lane Road onto School Street, Felicity and in so doing collided with the claimant. The claimant at the time of the incident was lawfully standing on a bridge located on the northern side of School Street, Felicity.
2. The first defendant who was at the time of the incident a Lance Corporal attached to the Special Forces Unit of the Trinidad and Tobago Regiment was detailed to drive the motor vehicle as part of a security convoy for the then Attorney General. The first defendant was therefore driving the motor vehicle as the lawful servant and/or agent of the second defendant. Consequently, it was the case of the claimant that the incident was caused by the negligence of the defendants and resulted in his suffering personal injuries and consequential loss.
3. On the 22<sup>nd</sup> November, 2017 the court found that the defendants were liable for the personal injuries and consequential loss suffered by the claimant, but that liability was reduced by 25% contribution on the part of the claimant. As such, the only issue to be determined by this court is the quantum of damages to be awarded to the claimant. Even though the defendants were given the opportunity to file submissions, they failed to do so.

## **Damages**

4. The claimant was born on the 6<sup>th</sup> January, 1957 and was therefore fifty-six years of age at the time of the incident. He is currently sixty-one years of age. Evidence of the claimant’s personal injuries was given by the claimant himself and by Dr. Peter Gentle and Dr. Mitra Sieunarine.

5. According to the evidence of the claimant, subsequent to the incident he lost consciousness. When he regained consciousness, he found himself bedridden with his right leg in a cast and a brace around his neck at the Gulf View Medical Centre. He testified that whilst trying to figure out what happened, he immediately felt severe and excruciating pain in his head, neck and legs.
6. At Gulf View Medical, Dr. Sieunarine explained to the claimant that he was involved in the incident and that following the incident, he was sent to Chaguanas Health Facility where the cast and brace were placed on him. Dr. Sieunarine further explained that he was then transferred from the Chaguanas Health Facility to Gulf View Medical.
7. Thereafter, the claimant needed to undergo emergency surgery as he suffered a severe broken right leg. After the surgery, the doctors cut a hole into his cast in order to apply treatment. The claimant testified that the application of the treatment to his leg was at times very hard to endure as pressure was sometimes applied to his leg which aggravated the pain and caused discomfort. The wound on his right leg also became infected as it was exposed for a prolonged period of time before it was attended to. The claimant testified that the infection added to the pain he was experiencing.
8. The claimant stayed for approximately six days at Gulf View Medical. He testified that those six days were the worst days of his life. It was his testimony that the constant severe pain and discomfort mentally destroyed him. He further testified that he felt completely miserable being on the bed for such a long period of time and as a result on a few occasions he lost patience and tried to get out of the hospital.
9. On the 4<sup>th</sup> August, 2013, the claimant was transferred by an ambulance to the San Fernando General Hospital for further treatment. He testified that he had to withstand extreme pains when he was being transferred from the bed to the stretcher. He further testified that whilst being transported in the ambulance, he was screaming out in pain when the ambulance went over speed humps or suddenly jerked. He had to ask the driver to slow down.

10. At the San Fernando General Hospital, he was subjected to another surgery. The metal that was placed in his foot in the previous surgery was removed and a new device was placed on his leg. The claimant testified that he was in severe pain when the doctor was placing the new device on his leg. He further testified that the new device had to be tightened once or twice per day and that he was subjected to immense pains whilst the device was being tightened.
11. On the 31<sup>st</sup> August, 2013, the claimant was discharged from the San Fernando General Hospital. However, the new device was not removed at the time of his discharge. He testified that the device posed several challenges for him such as he was unable to wear long pants and at night the metal would become cold. He also had to keep his leg up at all times which caused his leg to become numb and he would feel splinters in his foot.
12. The claimant testified that his wife had to assist him at all times. His wife fed him, assisted him in walking, showering and going to the toilet. It was his testimony that this made him feel completely useless and immobile. He further testified that at night he would lay on his bed for hours trying to fall asleep which would often make him anxious, sad and depressed about his situation.
13. Three months thereafter the device was removed and the claimant's right leg was then placed in a cast. This cast remained on his leg for six months. After the cast was removed, he continued to walk with the assistance of crutches. The claimant testified that this was something he had to grow accustomed to as he was a very active person. He used crutches until September, 2016.
14. Currently, although the claimant's leg has progressed in healing, it is now six inches shorter than his left leg which means that he now has a permanent limp. He testified that he was advised by Dr. Gentle that the pain will increase from mild to moderate and severe within the next ten to fifteen years and as a result he (the claimant) would need future surgery which presently costs \$55,000.00.
15. According to the claimant, prior to the incident he was an active person. He particularly enjoyed walking on mornings and evenings. He was also a free spirited person who enjoyed

socializing and going to the beach and recreational clubs. He testified that he can never enjoy his walks again as his limp is very severe and after walking for two minutes he has to stop to take a break as he would be in pain.

16. Consequently, as a result of the incident the claimant has experienced and continues to experience the following serious injuries and effects;

- i. Trauma to the right side of the head and neck;
- ii. Trauma to both legs;
- iii. Bleeding from an open wound on the right leg with immediate swelling and deformity;
- iv. Abrasions to both legs with a four centimeter laceration wound on the medial aspect of the lower right leg;
- v. Comminuted fractures of the distal third of the right tibia and fibula as well as open fracture of the distal shafts of the right tibia and fibula bones;
- vi. Soft tissue bruises to both legs;
- vii. Diabetes mellitus;
- viii. In his left shoulder, abduction to 90 degrees with pain;
- ix. Pain in the L5/S1 region with the movements there restricted by 75% in all directions;
- x. Shortening of his right leg by 4 cm which puts strain on the lumbar spine;
- xi. Movements in the right ankle are painful and was diminished by 60 percent in all directions;
- xii. On his lower right leg he has several scars as follows: 5cm, 20cm and 17 cm with oedema in his right ankle and foot;
- xiii. Dorsiflexion is absent in his right foot;
- xiv. Osteoarthritis in his right ankle and mild pains in his right lower leg;
- xv. Severe pain and suffering; and
- xvi. 25% permanent partial disability.

## **Special Damages**

17. Special damages must be specifically pleaded and proven 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 his losses.

18. In the Court of Appeal case of **Anand Rampersad v Willies Ice Cream Ltd Civ. App. No. 20 of 2002**, His Lordship Archie JA (as he then was) considered the duty to prove special damages. At paragraph 8, His Lordship stated as follows;

*“I wish to emphasise at the outset that the fact that a Defendant may not challenge the values of destroyed items given by the Plaintiff does not automatically entitle the Plaintiff to recover whatever is claimed. The rule is that the Plaintiff must prove his loss. The correct approach is as stated by Lord Goddard, CJ in Bonham Carter v Hyde Park Hotel [1948] 64 Law Times 177:*

*“Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage, it is not enough to write down the particulars, so to speak, throw them at the head of the court saying ‘this is what I have lost, I ask you to give me these damages.’ They have to prove it.”*

19. In **the Great Northern Insurance Company Ltd v Johnson Ansola Civ. App. No. 121 of 2008 at paragraph 97** Mendonça, J.A stated as follows;

*“...it seems clear that the absence of evidence to support a plaintiff’s viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff’s claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason.”*

*Past transportation expenses*

20. In his statement of case, the claimant claimed \$2,700.00 for past transportation expenses which represented nine visits to the clinic at \$300.00 per visit. In his witness statement, the claimant testified that after he was discharged from the San Fernando General Hospital, he had visited the out-patient clinic once per week for two months and thereafter once per month to date. The claimant hired Narace Bachu (“Bachu”) to take him to the hospital. He testified that Bachu was paid \$250.00 per trip but on the days he (the claimant) stayed longer at the hospital, Bachu was paid \$300.00.
21. The claimant only exhibited five receipts which totaled the sum of \$1,350.00. Further, the claimant exhibited his clinic appointment card which showed that he visited the clinic on two occasions. During cross-examination, the claimant testified that he has other clinic cards but those cards were not before the court. The court finds that receipts could have been obtained for the four other days the claimant claimed for and/or he could have attached the other clinic cards to prove that he did visit the clinic on nine occasions. Further, the claimant proffered no reason for his failure to obtain the necessary documentary evidence to support his claim for \$2,700.00. The court is therefore prepared to award the claimant the sum of \$1,350.00 under this heading.

*Past medical expenses*

22. The claimant testified that during his recovery at home, he visited Dr. Sieunarine on two occasions. According to the claimant, Dr. Sieunarine produced two medical reports and was paid the sum of \$2,050.00 for his services. The claimant therefore claimed the sum of \$2,050.00 for past medical expenses. The claimant however only exhibited one receipt from Dr. Sieunarine in the sum of \$450.00.
23. In his witness statement, Dr. Sieunarine testified that after the claimant was transferred to the San Fernando General Hospital, he (the claimant) made no follow up visits to his office on the 4<sup>th</sup> August, 2013. Dr. Sieunarine further testified that on the 4<sup>th</sup> June, 2014 the

claimant returned to his office for a check-up. Therefore, according to Dr. Sieunarine, the claimant only visited his office on one occasion during his recovery at home. The court will therefore award to the claimant the sum of \$450.00 under this heading.

*Loss of past earnings*

24. According to the evidence of the claimant, he is employed as a watchman/checker attached to the transport department of the Chaguanas Borough Corporation. He works for \$316.00 per day and is paid on a fortnightly basis. His fortnightly income is \$3,160.00 before tax deductions and approximately \$2,700.00 after tax deductions (*See true copies of the pay slips of the claimant attached to his witness statement marked "A"*). There were times the claimant was required to work overtime which is calculated using a time and a half formula.

25. After the incident, the claimant was placed on sick leave without pay. He returned to work on the 15<sup>th</sup> May, 2014 and carried on working until the 28<sup>th</sup> July, 2015 when he required surgery. The claimant was therefore placed on sick leave again until the 3<sup>rd</sup> January, 2016 when he was deemed fit to resume his duties.

26. The claimant claimed the \$42,237.00 for twelve months of loss of earnings. This sum was calculated as follows;

i.	Weekly salary	=	\$1,083.00
ii.	Salary per year	=	\$1,083.00 x 52
		=	\$56,316.00
iii.	Less 25% taxes	=	\$42,237.00

27. The court finds that the claimant has sufficiently proven his claim for loss of past earnings. The court will therefore award the sum of \$42,237.00 under this heading.

*Cost of future surgery*



28. The claimant claimed the sum of \$55,000.00 for the cost of future surgery. According to Dr. Gentle's evidence, the claimant has Osteoarthritis in his right ankle and mild pains in his right lower leg which is expected to increase to moderate and severe pains within the next ten to fifteen years. Dr. Gentle therefore recommended that the claimant undergo fusion of his right ankle. Dr. Gentle further testified that at present the cost of the operation is \$55,000.00 and that the cost increases by 10% per year.
29. During cross-examination, Dr. Gentle testified that fusion is required depending on the amount of pain an individual is having in the ankle. Although Dr. Gentle agreed that physiotherapy would assist in the management of the pain, he did not agree there was no need for the surgery.
30. Taking into consideration the cost of the surgery and that it increases in cost by 10% per year, the alternative medical treatment of physiotherapy and the uncertainty of physiotherapy alleviating the expected increased pains, this court finds that a reasonable sum for future medical treatment is \$55,000.00 as a lumpsum payment.
31. The total award for special damages is therefore \$99,037.00. This sum was calculated as follows;

Past transportation expenses	\$1,350.00
Past medical expenses	\$ 450.00
Loss of past earnings	\$42,237.00
Cost of future surgery	\$55,000.00
Total	\$99,037.00

### **General Damages**

32. 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.

*The nature and extent of the injuries sustained and resulting physical disability*

33. According to Dr. Sieunarine, after the incident the claimant was taken by ambulance to the Chaguanas Health Facility Accident and Emergency Department where he was seen by the casualty doctor. No x-rays were done but his right leg was splinted, his neck was immobilized in a rigid collar, he was resuscitated with intravenous fluids and he was started on oxygen via a face mask. Subsequently, the claimant was transferred to the Gulf View Medical Centre. At the Gulf View Medical Centre, Dr. Sieunarine attended to the claimant.
34. The claimant was diagnosed as having sustained open fractures of the distal shaft of the right tibia and fibula bones, a head injury, soft tissue bruises to both legs and diabetes mellitus. He was taken to the operating theatre where he had open reduction, plating of the fractured right tibia and application of a plaster cast on his lower right limb. A window was cut in the plaster cast for twice daily dressing.
35. According to Dr. Sieunarine, the claimant's healing was complicated by the wound becoming infected. This was partly because the wound was exposed for about an hour at the site, the claimant is diabetic and the claimant attempted to get off the bed and pulled off his dressing on at least three occasions.
36. Dr. Sieunarine testified that on the 4<sup>th</sup> August, 2013 the claimant was transferred to the San Fernando General Hospital. At the San Fernando General Hospital, the claimant was taken to the operating theatre again where the metal implants in his tibia were removed and an external metal fixator device was fixed across the fractured right tibia. He had daily dressings and antibiotics until his discharge. He was then followed up as an outpatient. Approximately three months thereafter, the external fixator was removed and a right above

knee plaster cast was applied. The fracture was then grafted with bone harvested from his left pelvis in another surgery. After this surgery, the claimant's right leg was placed in a sarmiento plaster and he was ambulated with crutches.

37. On the 12<sup>th</sup> May, 2016 the claimant was sent for an opinion by Dr. Gentle. Dr. Gentle testified that upon an examination of the claimant's right leg, it was four centimeters short and he had multiple pin tract scars from multiple external fixators. On his lower right leg, he also had several scars.

38. Dr. Gentle testified that the claimant will be left with a twenty-five percent permanent partial disability and that although he is back at work, he would be handicapped for the rest of his life. Dr. Gentle further testified that the claimant already has Osteoarthritis in his right ankle and mild pains in his right lower leg will increase to moderate and severe within the next ten to fifteen years.

#### *The pain and suffering endured*

39. According to the evidence of the claimant, when he regained consciousness and was attempting to figure out what had happened, he immediately felt severe and excruciating pain in his head, neck and both legs. He testified that after the emergency surgery, he had to endure the application of the treatment to his leg which caused pain and discomfort. He further testified that the infection of the wound on his right leg added to the pain he was experiencing.

40. It was the testimony of the claimant that the constant severe pain and discomfort mentally destroyed him. He testified that he felt completely miserable being on the bed for such a long period of time and as a result on a few occasions he lost patience and tried to get out of the hospital.

41. According to the claimant, he had to withstand extreme pains when he was being transferred to the San Fernando General Hospital. He testified that he never felt pain like that of which he felt when the doctor at the San Fernando General Hospital was placing the

new device on his leg. He further testified that the new device had to be tightened once or twice per day and that he was subjected to immense pains whilst the device was being tightened.

#### *Loss of amenities*

42. According to the claimant, after the cast was removed, he continued to walk with the assistance of crutches until September, 2016. He testified that this was something he had to grow accustomed to as he was a very active person. He further testified that although his leg has progressed in healing, it is now six inches shorter than his left leg which resulted in him having a limp.

43. It was his evidence that prior to the incident he was an active person. He particularly enjoyed walking on mornings and evenings. He was also a free spirited person who enjoyed socializing and going to the beach and recreational clubs. He can never enjoy his walks again as his limp is very severe and after walking for two minutes he has to stop to take a break as he would be in pain.

#### *Effect on pecuniary prospects*

44. After the incident, the claimant was placed on sick leave without pay. He returned to work on the 15<sup>th</sup> May, 2014 and carried on working until the 28<sup>th</sup> July, 2015 when he required surgery. The claimant was therefore placed on sick leave again until the 3<sup>rd</sup> January, 2016 when he was deemed fit to resume his duties.

45. The claimant submitted that the sum of \$185,000.00 is an appropriate award under this head of damages. In arriving at this figure, the claimant relied on the following authorities;

- i. ***Johnson Ansola v Ramnarine Singh and Ors. HCA 3487 of 2003*** – the forty-six year old plaintiff who was a passenger in a vehicle sustained a severe comminuted compound of the right lower tibia and fibula, a right talar dislocation and a right

shoulder dislocation. There was diminished range of motion of his right ankle and he complained of severe pain in the right ankle and in the right tibia and fibula. At the time of trial, he continued to suffer from severe pain in the right ankle, numbness in the right ankle and foot. He was unable to stand for long periods and had to use a stick to move around. He was assessed to have a permanent partial disability of 30%. Rajkumar J in June 2008 awarded \$150,000.00 for pain and suffering and loss of amenities. This sum updated to December 2010 is \$185,773.00.

- ii. **Nimrod Joseph v Roy Edwards and Presidential Insurance Company Limited CV2008-00500** – the claimant who was struck by a motor vehicle sustained a fractured tibia and fibula, comminuted intra-articular fracture left distal radius, cerebral concussion and multiple abrasions to his arms, right thigh and left leg and multiple facial lacerations and abrasions with loose incisor tooth. He used crutches for two years and was still walking with the aid of crutches at the time of assessment. He was assessed to have a permanent partial disability of 60%. Master Alexander awarded the claimant with \$160,000.00 as general damages for his pain and suffering, resulting disability and loss of amenities.
- iii. **Ramlochan v Ramsarad HCA 2680/1973** – wherein Maharaj J awarded \$20,000.00 for fractures of both legs, with shortening of a leg; scarring of both legs and a fracture of left collar bone as adjusted to December, 2010 to \$178,964.00.

46. Apart from the above cases, the court considered the following cases;

- i. **Bobb v Austin HCA S-104 of 1978** wherein Ibrahim J awarded \$13,000.00 for fractures of the right tibia, fibula and areas of the shoulder blades. An updated figure as at December 2010 is \$88,952.00.
- ii. **Ramroop v Burroughs Welcome & Co Ltd HCA 457 of 1975** wherein Cross J awarded \$14,000.00 for fracture of both legs; 1.25” shortening of left leg; osteo-arthritis; post-concussion headaches and dizziness; touch loss. An updated figure as at December 2010 is \$211,807.00.

- iii. **Rojan, Rojan & Rojan v Narinesingh S1326/1985** - the Plaintiff, a sixteen year old schoolboy who suffered from a compound fracture of the right tibia and fibula and injury to the left elbow. He underwent five surgeries which resulted in a 3” shortening of his leg and the use of a leg brace. He suffered from continuing pain and the likelihood of osteoarthritis. He was awarded \$145,000.00 in general damages by Master Paray-Durity in 1995. An updated figure as at December 2010 is \$315,319.00.
- iv. **Caribbean Molasses Co (Trinidad) Ltd v Ganness CA Civ 7 of 1979**, wherein the Court of Appeal awarded \$30,000.00 for fractures of right fibula, femur and tibia; loss of movement in knee and 3” shortening. An updated figure as at December 2010 is \$195,959.00.

47. The injuries sustained by the claimant (as set out above) appear to be serious enough to bring it within the scope of an award on the higher end of similar awards and the court so finds. The court will therefore award the sum of \$170,000.00 under this heading.

### **Interest**

48. The Court of Appeal in the case of the **Attorney General v Fitzroy Brown and others CA 251/2012** set out that the pre-judgment interest rate on general damages should be aligned with the short term rate or the rate of return on short term investments of which there is some evidence before the court. Therefore, the Court of Appeal in that case reduced the rate of pre-judgment interest rate on general damages from 9% to 2.5%. There being no evidence of the rate of return on short term investments before the Court, the Court will award 2.5% interest on general damages. Further, the Court will also award 2.5% interest on special damages.

## **Disposition**

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

- i. The defendants shall pay to the claimant, general damages in the sum of \$170,000.00 (less 25% contribution) together with interest at the rate of 2.5% per annum from the 26<sup>th</sup> November, 2015 to the date of judgment;
- ii. The defendants shall pay to the claimant, special damages in the sum of \$99,037.00 (less 25% contribution) together with interest at the rate of 2.5% per annum from the 29<sup>th</sup> July, 2013 to the date of judgment; and
- iii. The defendants shall pay to the claimant 75% of the prescribed costs of the claim.

Dated the 1<sup>st</sup> of March, 2018

Ricky Rahim  
Judge