REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2019-00454

BETWEEN

GREGORY MAICOO

Claimant

AND

NORTH PLANT LPG CO-OPERATIVE SOCIETY LIMITED

Defendant

Before the Honourable Mr. Justice R. Rahim

Date of Delivery: March 4, 2022.

Appearances:

Claimant: Mr. A. Moses.

Defendant: Mr. K. Ramkissoon instructed by Mr. N. Saladeen.

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JUDGMENT

Introduction

1. This is a personal injury claim consequent on an explosion that occurred at the El Pecos Fast Food Restaurant, Royal Palm Hotel on February 5, 2015, during a delivery of liquefied petroleum gas ("LPG"). It is undisputed that the Claimant, a lorry man employed by the Defendant and accompanied by another employee of the Defendant Neville Rampersad sustained burn injuries to his face, scalp and dorsum of both hands. At the heart of the contention is whether the explosion was caused by the negligence of the Defendant.

The Claim

2. The Defendant was an authorised distributor of the then State owned supplier of LPG, Trinidad and Tobago National Petroleum Marketing Company Limited and owner of vehicle registration number TCU-7612, a bulk truck used for delivery of LPG.

3. The Claimant's case is based on an allegation of negligence and/or breach of statutory duty. The Claimant asserts that the Defendant, his employer owed him a duty of care to provide and maintain a safe system of work together and apparatus and breached that duty by failing to supply a functional hose, thereby resulting in injury. The case as pleaded also relies on the doctrine of *res ipsa loquitur*.

4. The pleaded particulars of negligence against the Defendant are:

    i. Failure of its agent Neville Rampersad to utilise standard operating practices and procedures in the delivery of LPG.

    ii. Allowing the Claimant to carry out his duties without the requisite or adequate safety training and/or professional training in proper handling of LPG and as dispensation.

iii. *Giving and/or directing the Claimant to undertake work and/or task which was inherently dangerous without providing the Claimant with proper safety equipment.*

iv. *Failing to sufficiently maintain the equipment which the Claimant is required to use in the execution of his duties and causing a damaged hose to be used thereby causing gas to leak from the same while in use.*

v. *Failing to properly train the Claimant to respond to the occurrence of an explosion or fire.*

vi. *Failing to take adequate care for the Claimant's safety and subjected him to unnecessary risk and danger by causing the use of a damaged hose which would be capable of causing gas to escape.*

vii. *Failing to take all reasonable and effective measures by supervision or otherwise to ensure a safe system of work.*

viii. *Failing in all circumstances to discharge the common duty of care owed towards the Claimant.*

ix. *Breached its statutory duty by breaching sections 13 A, 6 (1), 6 (2)(a) , 6 (2)(c) and 6 (2)(d) of the Occupational Safety and Health Act 2004 as amended*. It must be noted that despite the claim for breaches of the statute, the Claimant did not treat with alleged statutory breaches during submissions so that the court considers the Claimant to have abandoned these particulars.

5. On the date of trial, the Claimant withdrew his claim for loss of earnings and loss of future earnings.

The Defence

6. The Defendant contends that it adhered to a safe work system and adequately trained the Claimant in handling fires. The Defendant further contends that it discharged all of its duties of care and responsibility towards the Claimant as an employee. The Defendant inspected its truck and apparatus each morning before dispatching the truck to deliver LPG. Additionally, the Defendant says that toolbox meetings were held to inform the Claimant about the importance of performing his duties safely. The Defendant also provided the Claimant with personal protective equipment ("PPE").

7. The Defendant denied liability for the Claimant's injuries. Furthermore, it is the case of the Defendant that the Claimant received a letter certifying his fitness for work and therefore the Defendant is not liable to pay the Claimant any compensation.

Issues to be determined

8. It is undisputed that the Defendant owed the Claimant a duty of care. Thus, the general legal issues for determining liability in this case, therefore, are as follows:

    i. Whether the Defendant breached its duty of care which caused the injuries to the Claimant;

    ii. To what damages, if any, is the Claimant entitled.

    It must be noted that contributory negligence has not been pleaded by the Defendant so that it does not arise as an issue for consideration in this case.

9. Finally, the court was informed by the Attorneys in this case that this incident has been the subject of other litigation in which findings of fact have been made. This court wishes to make it clear that it has read no such decision and so remains unware of those findings so as not to appear to have been influenced by same.

Case for the Claimant

Gregory Maicoo

10. In or about June 2013, the Claimant was employed by the Defendant as a lorry man. His responsibilities included travelling on the truck that transported LPG and assisting Rampersad with the delivery of LPG. Additionally, the Claimant assisted Rampersad in reeling and unreeling the client's gas hose.

11. The Claimant asserted that he received no training to handle LPG or emergency procedures. He did recall, however, attending two (2) safety meetings connected to the delivery of two (2) types of cylinders, namely those that weigh one hundred pounds (100lbs) and those that weigh twenty pounds (20lbs). The Defendant's other safety meetings were, according to him, always held while the Claimant and Rampersad were out on deliveries.

12. On January 15, 2015, the Claimant says he was provided with construction gloves, safety boots and coveralls. It is also his evidence that during the course of employment he became very familiar with the truck and its equipment.

13. On the date of the incident, he and Rampersad made three deliveries of LPG before their stop at El Pecos. The Claimant described the sequence of events when delivering to El Pecos that day. Having reviewed all of the evidence the court understood the scene of the incident to be as follows. The El Pecos restaurant was at the time just one of the several restaurants and/or businesses that occupied a linear building that ran east to west at the entrance to the Royal Palm Plaza. The eastern most end of that linear building meets the Maraval Road at a right angle as the Maraval Road runs essentially South to North. El Pecos was not the first business in line at the eastern end but seemed to be either the second or third headed west along that linear building. The front of El Pecos (the entrance for customers) was situated at the southern face of the building. The gas tanks was situated at the north face of the linear building. This north face shall be referred to as the back of the restaurant. It followed that to gain access to the back of the restaurant where the gas tanks were situated, the delivery truck would have had to pull off of the Maraval road and stop at the back of the first business place situate at the most easterly end of the building where the building meets the Maraval Road. In other words the building was perpendicular to the Maraval Road and

the back entrance was situated at that junction as it were. Between the easterly end of the building and the first business place at that end there is a small area that can be used for parking.

14. To access the back of all of the businesses on that linear building one would have to enter through a gateway at the back at the eastern end of the building (where it meets Maraval Road). The backs of the business places essentially therefore formed a sort of corridor at the back of the entire building.

15. It is the evidence of the Claimant that on the day of the incident Rampersad parked close to the gateway to the back corridor to get access to the tanks. The gate was opened for them to gain access to the area and Rampersad engaged the pump to the back of the truck. The Claimant then unreeled the hose (a special hose used for the purpose of LPG) while waiting to access the client's gas tank. The Claimant walked along the corridor at the back (north face of the building) to get access to the LPG tanks of El Pecos. As he was about to connect the gas nozzle to the LPG supply, he noticed a white cloudy, misty smoke, smelling of LPG, rapidly escaping from the hose about ten to eleven feet (10-11') away from the nozzle. The corridor filled with gas. He took action immediately by running to a nearby sink within the said corridor but discovered no water in the tap. He therefore covered his face with his hands. Soon afterwards, there was an explosion and he found himself surrounded by fire. His hair was burnt as were both of his hands. It is his evidence that he also sustained facial injuries and felt like his entire body was on fire. The inference that arises for consideration on the evidence of the Claimant is that there appeared to be some sort of leak along the LPG hose, which resulted in the highly flammable LPG gas escaping there from at a high pressure.

16. There are two reports relied on by the Claimant which for the basis of a limited measure of dispute, namely, a report of the Fire Investigation by Trinidad and Tobago Fire Services and a forensic report by the Trinidad and Tobago Forensic Centre, Ministry of Justice. The substance of the reports in relation to the issues in this case as follows:

i. The Trinidad and Tobago Fire Investigation Report dated February 5, 2015, was prepared by Fire Officer Ishmael Noel.[1] Noel set out in the report that he interviewed the Claimant who informed him that the delivery hose ruptured as he was about to connect it to the tank, resulting in the leakage of LPG. Noel concluded that the cause of the fire was accidental. Furthermore, based on fire and smoke patterns and possible ignition sources, Noel was of the view that the fire originated in the external passageway at the back of the building in the immediate area of the El Pecos LPG tanks. He set out that the mixture of LPG and air within the rear passageway would have caused the combustion. This was a direct result of a leakage of gas from the delivery line of the North Plant LPG truck. To assist in the determination of the ignition however, Noel requested an analysis from the Forensic Science Complex. By the date of finalisation of the report on February 24, 2015, he had received no such information and so the source of the ignition remains to this day unknown.

ii. The Certificate of Analysis dated May 20, 2015, was authored by Scientific Officer Earlene Bahadoorsingh.[2] She examined the hose and observed two areas of visible damage. Bahadoorsingh concluded, that "the charring of the hose was consistent with fire damage", but was unable to determine what caused the hose's six centimetre (6cm) opening along its body.

17. The Forensic Science Report is listed as an agreed documents between the parties and the Fire Investigation report is agreed as to authenticity but specifically not as to the truth of the contents. The Defendant therefore made submissions on the weight to be attached to those reports. These submissions are dealt with later in this judgment.

18. The Claimant was taken to the Port of Spain General Hospital where he was treated at the Accident and Emergency Department before being transferred to the High Dependency Unit. He was assessed as having partial thickness burns to his face and head, as well as both hands and upper limbs. Seven (7) days later, he was discharged to an outpatient clinic. The Claimant detailed the pain he endured during his hospital stay. He claims that his entire body had to be covered in ice-cold rags to alleviate his pain on some days. He claims that it took three (3) months after he was

[1] See PDF 454 of the TB.
[2] See PDF 462 of the TB.

discharged for his swollen face to return to normal. During the initial healing period, the raw flesh on his hands and face made sleeping difficult and exercise impossible. Moreover, as his scars began to heal, the itching became unbearable, and he could not use his hands to get relief. As a result, he relied heavily on his wife to take care of everything for him.

19. He testified that the years that followed were also trying. The sun's rays affected his scars and intimacy with his wife, leaving him feeling insecure.

20. The Claimant asserts that, as of the date of his witness statement, he does not have the full range motion of his hands and cannot lift heavy objects for any lengthy period.

21. The Claimant relied on the reports of Dr Fayard Mohammed and Dr Karlene Mitchell. Dr Mohammed is a Consultant in Plastic Surgery at the Port of Spain General Hospital. He treated the Claimant for partial thickness burns to his face, both hands, and both of his upper limbs. Dr Mitchell is the Acting Registrar of the Plastic Surgery Unit, Port of Spain General Hospital:[3]

    i. According to Dr Mohammed's medical report dated May 20, 2015, the Claimant was assessed as having superficial dermal burns to the face, scalp, and dorsum of both hands, with an estimated nine percent (9%) total body surface area. His injuries healed well, but he developed scar hypertrophy. The report made reference to the Claimant's one (1) month prior visit, during which he was prescribed scar therapy using compression and silicone sheets.

    ii. The second medical report of June 1, 2016, by Dr Mohammed states that the Claimant's burns were assessed at fifteen percent (15%), primarily first degree burns. His burns were treated with scar therapy and compression gloves. Further, by January 2016, the Claimant's hypertrophy had stabilised with the exception of his left hand. On his left hand scar hypertrophy was confined to the dorsum, but extended into the digits, causing pain and decreased range of motion. On January 13, and March 16, 2016, the Claimant received depo steroid injections, but no significant improvement occurred. Dr Mohammed recommended the

[3] See PDF 421-428 of the TB namely, the medical reports on behalf of the Claimant.

use of a medical device that would act as a form of skin replacement, allowing for improved pliability and scar reduction. As of January 2017, the Claimant had hypertrophic scarring extending from the dorsum of his left to the digits. He also had a full range of motion and grade five (5) hand strength, but felt pain when lifting anything that weighed more than five pounds (5lbs). At that time, his disability was estimated at ten percent (10%).

iii. Dr Karlene Mitchell and Dr Stephen Romany authored the medical report dated May 7, 2019. The report made reference to the Claimant's previous reports and visits to the Plastic Surgery Outpatient Clinic. It noted that during a March 3, 2015 visit, the Claimant had hypertrophic scarring on the dorsum of his left hand which he described as painful. Physiotherapy was recommended to alleviate the pain. Compression, scar massage, regular lubrication, silicone ointment/gels and a prescribed course of Lyrica were all used on him. However, Lyrica had no effect on the pain. Following that, the Claimant received courses of Depo-Medrol injections between January 13, 2016 and March 16, 2017. On September 4, 2018, it was determined that the quality of the Claimant's scar had been improved, and on January 15, 2019, it was determined that the scar's pliability had been increased.

iv. According to the medical report dated February 17, 2020, Dr Mitchell examined the Claimant and discovered that he had an estimated fifteen percent (15%) total body surface area superficial partial thickness burns to his face and hands. Dr Mitchell also stated that the Claimant was co-managed by Ophthalmology for thermal injury to his eyes. His scars were managed by conservative management coupled with physiotherapy with the use of compression, scar massage, regular lubrication, silicone ointment/gels and a course of Lyrica. However, Lyrica exacerbated his hand pain. Following that, between January 13, 2016 to March 16, 2017, the Claimant received Depo-Medrol injections. On September 4, 2018 Dr Mitchell noted an improvement in the quality of his scars, followed by an increase in pliability on January 15, 2019. As of March 19, 2019, Dr Mitchell reported that the scar's appearance and characteristics have significantly improved. Further examination revealed normal pigmentation, less than two millimetres (2mm) elevation of the scar and improved pliability. In addition, there was five out of five (5/5) power grip and five out of five (5/5) pincer grip. Fine manipulation was also good. However, the Claimant continued to experience pain in his left upper limb. As such, he was estimated as Class II burn impairment and a disability of twenty-five percent (25%).

Cross-examination by the Defendant

22. The Claimant admitted that after the incident he was employed with another company, H&J Enterprises Limited in June 2021. The Claimant was referred to a receipt dated September 22, 2020 from H&J Enterprises Ltd.[4] According to the Claimant, he was employed only one (1) month prior to the trial date.

23. He testified that he is right-handed and went into the detail about the process of delivering LPG. The first step is usually to adjust the meter to zero. Following that, Rampersad, the driver, would assist the Claimant by manually unreeling the hose and pulling the nozzle towards the client's tanks in their storage area. After unlocking the storage area, the Claimant would check the gauge to determine the amount of LPG remaining in the client's tank. Only then would he connect the hose to the tank and begin dispensing the LPG. However, if the gauge fails to function, the Claimant would have to open the bleeder valve on the client's tank to verify that the tank is filling. When a cloudy mist appears, this is an indication that the tank is full, at which point then the nozzles and the bleeder valve are shut off.

24. The Claimant testified that the truck was equipped with a P70 recirculation pump. He was unfamiliar with the term 'flow valve' but was familiar with 'fisher valve'. According to the Claimant, the fisher valve is a safety valve that can be used in an emergency to shut off the flow from the tank on the truck to the PTO pump.

25. Attorney for the Defendant referred to a previous statement given by the Claimant pursuant to the Occupational Health and Safety Act. In that statement dated April 16, 2015[5] he stated in part, *When he visits the customer, Mr. N. Rampersad will engage the pump (turn on the pump)...*The Claimant accepted that Rampersad in fact signals him to proceed so that he can begin filling the client's tank. On the day of the incident, the Claimant did not receive a signal from Rampersad to begin to dispense LPG. As a result, there was no LPG dispensed and the nozzle was not yet connected to the client's tank when the incident occurred.

[4] See the Defendant's sixth supplemental list of documents filed on June 28, 2021.
[5] See PDF 381 of the TB.

26. Attorney sought to ascertain the length of the unreeled hose connected from the parked truck to the El Pecos' gas tank. The Claimant explained that to access the back corridor from Saddle Road, the gate to the corridor's entrance could only be unlocked from the outside. As a result, on the date of the incident, Rampersad obtained the key from El Pecos and accompanied the Claimant to the storage area.

27. The Claimant testified that Rampersad handed him the keys and instructed him to open the gates. He unreeled an average of eighty to ninety feet (80-90') of hose from the corridor entrance to the gas tank. He attempted to connect the nozzle of the hose to the gas tank and noticed gas escaping, resulting in a cloud in the air. He then set the nozzle down and turned around at which time he saw Rampersad running. The Claimant rushed to a nearby sink, approximately six to eight feet (6-8') from the storage tanks, stooped down and turned on the tap but there was no water. He therefore ran. He made no mention of covering his face as he did in examination in chief but the court is of the view that it is not in issue that he covered his face.

28. He accepted that the Defendant provided him with personal protective equipment. As a result, he was dressed in a fire retardant coverall and boots at the time of the incident. He did admit, however, that he was not wearing gloves. He also accepted that he was entitled to refuse to work if he felt that the equipment with which he was to work was defective.

Training

29. Rampersad is the one who recommended the Claimant to the Defendant for employment. The Claimant accepted that he was aware of the dangers of LPG and other flammable gases due to his previous job experience. At the start of the Claimant's employment Rampersad trained him to fill an LPG tank and attach and detach the nozzle from the client's tank. He denied that he was trained on how to inspect the bulk truck's hose or apparatus. Attorney for the Defendant referred the Claimant to his OSHA witness statement[6], and the Claimant testified that his previous employer, Capital Signal Company Ltd., provided adequate fire safety training. The Claimant was also trained

[6] See PDF 385 of the TB namely a statement of the Claimant dated April 16, 2015.

on how to bleed a gas gauge, to avoid overfilling and how to engage the fisher valve in the event of a LPG leak.[7]

30. The Claimant testified that he was unaware of the checklist for *Filling and Removal of Bulk Gas supplied by North Plant LPG to its Clients*.[8] When questioned about the Defendant's monthly toolbox meetings, the Claimant testified that he attended only two (2) of those meetings.

31. The Claimant was shown a picture of the Royal Palm Suite.[9] He pointed to a sign that appeared to be located at the beginning of the corridor leading to the LPG tanks on the premises, and further, the Claimant asserts that the bulk truck was parked on a nearby vacant parcel of land but backed up to that sign, which is close to the beginning of the corridor leading into the land into the back of the premises.

Inspection and use of the hose

32. The Claimant testified that on the date of the incident, while unreeling the hose, he noticed something unusual. He accepted that he did not include this information in his witness statement. He was, however, unaware of the safety certificate from National Petroleum stating that the bulk truck was inspected one (1) day prior to the incident.[10]

33. According to the handwritten statement of the Claimant recorded from him pursuant to OSHA, on February 4, 2015, the bulk truck was inspected at National Petroleum and half the length of the hose was unreeled.[11] The Claimant acknowledged that this inspection would have resulted in the issuance of the safety certificate. He also accepted that if he noticed a problem with the hose, it was his responsibility to notify the Defendant. The Claimant testified that there were no objects at the top of the wall, gate or on the ground that would have damaged the hose.

[7] See PDF 379 of the TB where the Claimant outlines the training he received from Rampersad.
[8] See PDF 488 of the TB namely, a document that outlines the procedure when dispensing LPG.
[9] See PDF 33 of the supplemental TB
[10] See PDF 139 of the TB.
[11] See PDF 383 of the TB namely, the Claimant's OSHA witness statement.

34. The Claimant was referred to the Defendant's daily checklist which confirmed that there were no problems with the bulk truck and its apparatus on February 5, 2015.[12] He also accepted that Rampersad inspects the truck and its equipment each morning before leaving the Defendant's compound, but stated that this is not done in his presence.

35. Attorney again referred the Claimant to three of his previous statements to highlight the inconsistencies between those statements and his filed witness statement. In his statement dated February 9, 2015, the Claimant stated, "*I observe gas leaking a short distance away in the vicinity of the hose"*.[13] In statement dated February 19, 2015, he said, "*I then saw LPG started to escape from the vicinity of the hose approximately 8-10 ft. from the discharge of the hose"*.[14] In his statutory declaration dated April 16, 2015 the Claimant stated, "*Before I was able to connect the nozzle to the tank I observed gas leaking a short distance away in the vicinity of the hose"*.[15] It was then suggested to the Claimant that these statements all contradict his testimony in his witness statement that gas leaked from the hose itself. The Claimant denied this.

36. In addressing the Claimant's injuries, Attorney for the Defendant referred to the medical report of Dr Victor Coombs dated July 4, 2018.[16] The Claimant agreed with the report's conclusion that he had full range of motion in all his hand joints and was recommended as being fit for work. The court also notes that the report recommends fourteen percent (*14%) PPD for his physical and psychological injuries and residual impairment*. The Claimant testified that when he presented this report to the Defendant, he was informed by Kerry Maharaj, the manager, that there was no available work and that the Defendant had ceased bulk truck service.

37. The Claimant accepted that based on the medical reports of Dr Mitchell and Dr Romney, the burns on his hands were healing and he was able to move and use them. As a result, the Claimant accepted that he was capable of working. He further accepted that he received adequate

[12] See PDF 143 of the TB namely, North Plant Daily Exit Slip.
[13] See PDF 499 of the TB.
[14] See PDF 500 of the TB namely, a statement to the National Petroleum Marketing Company Limited. However, this particular page was not signed by the Claimant.
[15] See PDF 506 of the TB namely, a sworn statement of the Claimant.
[16] See PDF 89 of the TB namely, a report that certified the Claimant was seen on March 23, 2018, for a Permanent Partial Disability ("PPD") assessment.

compensation under the Memorandum of Agreement with the Defendant.[17] However, the Claimant contended that the Defendant was negligent.

38. During re-examination, the Claimant clarified that he ran in the opposite direction of the hose when he mentioned running towards the sink.

Case for the Defendant

The Defendant called three witnesses.

Ramdeo Boodoo

39. Boodoo is a retired Assistant Chief Fire Officer with the Trinidad and Tobago Fire Service, having served since 1983. He is certified in fire safety and investigation and has conducted numerous investigations during his tenure.

40. On May 10, 2021, he filed an expert report dated June 9, 2021.[18] Boodoo says he prepared his report using the information from the pleadings and the Fire Investigation Report dated February 5, 2015. Additionally, he consulted the NFPA 58 Liquefied Petroleum Gas Code, 2014 Edition and Principles of Fire Investigation by Institute of Fire Engineers, U.K.

41. Boodoo found it difficult to accept the Claimant's observation that the hose ruptured based on his analysis. Boodoo also discovered that there would have been no flow of LPG to the client's tank during the hose attachment because the flow valve at the back of the bulk truck was not engaged.

42. Boodoo was of the view that the hose was unlikely to rupture due to its material. Additionally, if the hose was leaking, it was due to continuous seepage caused by a loose coupling or connection.

[17] See PDF 349 of the TB namely, a memorandum of agreement dated October 29, 2018 in which the Claimant agreed to accept the sum of twenty thousand, one hundred and forty dollars and eleven cents ($20,140.11) under the provisions of the Workmen's Compensation Ordinance, 1960.
[18] See PDF 599-603 of the TB.

43. He criticised the Fire Investigation Report, stating that it lacked photographs of the incident. He also refuted the assertion that the explosion occurred in the external passageway.

44. Boodoo set out in his report that an empty or almost empty LPG one hundred (100) gallon cylinder is filled with vapour. On the application of heat this vapour becomes pressurised and would cause the tank to explode and result in severe damages. Boodoo concluded that there is no conclusive evidence of the origin of the fire. Furthermore, an additional investigation should have been conducted to determine whether the LPG originated from the Defendant's hose or another source of leakage. Additionally, Boodoo discovered that there would have been no flow of LPG to the client's tank during the hose attachment because the flow valve at the back of the bulk truck was not engaged.

Cross-examination by the Claimant

45. Boodoo testified that there is a distinction between burning and charring. Charring occurs during the burning process. He also defined soot as the smoke residue from a fire that is found on ceilings and walls. Soot is frequently found in fires involving hydrocarbons like LPG, a carbonaceous material. Typically, fires usually leave carbon deposits.

46. According to Boodoo, he worked with Officer Noel, who was attached to the Fire Prevention Unit. Additionally, based on the Fire Investigator's Report, the Acting Assistant Divisional Fire Officer was Noel's supervisory officer. According to Boodoo, the initial report from Noel was incomplete and unsigned. Boodoo received Noel's official report after the court's order to file an expert report.

47. Boodoo was referred to his report.[19] He explained that LPG has a boiling point of minus forty-one degrees (-41°). Not to be confused with a boiling point, which does not necessarily indicate that the temperature is hot, but rather cold. Therefore, for LPG to remain liquid, it must be stored at the temperature mentioned above.

48. Boodoo testified that a fire investigator looks for signs and burning patterns to ascertain the point of origin. He also testified that a trained fire investigator searches for clues about the fire in addition

[19] See PDF 601 of the TB under the rubric, findings and analysis.

to the recording of statements. Boodoo accepted that Noel conducted his investigation by observing and examining smoke and fire patterns to pinpoint the origin area. Boodoo also accepted that he did not physically examine the building where the explosion occurred. He maintained, however, that Noel's opinion was narrow, and his report omitted other possible causes of the fire. Boodoo explained that in order for the LPG tank to expand and explode, it must be exposed to heat for an extended period.

49. Boodoo says he relied on the statement of Rampersad and determined that there was no flow of LPG from the bulk truck to the hose. Boodoo also explained that, while a valve controlled the flow of LPG into the hose, he concurred with Rampersad that the pump was not engaged. He further explained that the hose can withstand pressures of up to three hundred and fifty pounds per square inch (350 psi). As a result, if the hose leaked and the liquid comes into contact with anyone nearby, they will be frost burned. Additionally, the liquid, will begin to fume, despite it being not flammable. Boodoo admitted that he did not inspect the hose.

50. Boodoo testified that hypothetically LPG would escape if the pump was engaged and there was a six inch or centimetres (6"/cm) hole in the hose. It would then emit a gas producing mist resembling white smoke.

Neville Rampersad

51. Rampersad worked for the Defendant since 1994 as a driver/salesman. At the time of the incident, he transported and delivered LPG from Petrotrin, Point-a-Pierre to the Defendant's customers. Rampersad asserts that the bulk truck never failed an inspection during his tenure with the Defendant.

52. According to Rampersad, he was required to attend health and safety meetings every Tuesday and Wednesday morning. Petrotrin, from which he sourced the LPG on mornings, provided these safety briefings as well as information on how to properly handle, collect and distribute LPG.[20] Additionally, drivers were required to wear their protective equipment when filling LPG. Rampersad also attended the Defendant's monthly toolbox meetings focussing on the importance

[20] See PDF 550 of the TB and para. 6 of Rampersad's witness statement.

of personal protective equipment when dispensing and delivering LPG. He states further that the Claimant attended several of these meetings.

53. Rampersad asserts that he personally trained the Claimant in the safety procedures in handling and dispensation of LPG for over a month. Rampersad claims in his capacity as the Claimant's supervisor, he continually trained and instructed the Claimant in the safe handling, distribution and delivery of LPG.

54. On the evening before the incident, the bulk truck and its apparatus were inspected by the Trinidad and Tobago National Petroleum Marketing Company Ltd, Sea Lots. The vehicle and its apparatus passed inspection. The following day, on the morning of the incident, Rampersad conducted routine safety checks, including a visual inspection of the pump, hose, and valve, which revealed no defects. Rampersad claims that he unreeled the entire length of the hose and inspected it thoroughly.[21]

55. Rampersad explained that prior to dispensing LPG, the gas meter must read at zero. On the morning of the incident, the Claimant and Rampersad had delivered LPG to three other clients prior to delivery to El Pecos. He contends that no problems occurred during those previous deliveries and that he and the Claimant followed all safety protocols.

56. Upon their arrival at El Pecos, Rampersad parked the bulk truck alongside an open lot of land next to a three foot (3') wall adjacent to the restaurant. He met with the manager and advised that all hot points be turned off, was given the keys and together they went through the back entrance and opened the LPG storage area to access the tanks. Rampersad then opened the gate and assisted the Claimant to unreel the hose. He took the end of the hose and passed it over the three feet (3') wall to the open gate to the LPG storage area. Rampersad then examined the hose and discovered no abrasions. He then returned the keys and in the company of an El Pecos employee, ensured that the gas meter was reading at zero. While awaiting the Claimant's signal to engage the pump, he claims that he heard a loud explosion from the storage area. He immediately activated the bulk truck's emergency fissure valve. He then ran to the back gate, where he noticed the

[21] See PDF 559 of the TB namely, the checklist dated February 5, 2015, certifying that the bulk truck was inspected.

Claimant standing. He also saw a small fire some distance from the hose so he used the fire extinguisher to put it out. Immediately after, there was thick smoke and the Claimant was on the ground.

57. Rampersad then spoke with his manager, Kerry Maharaj and moved the truck some distance away. A few hours later, the Trinidad and Tobago Fire Service inspected the bulk truck. The bulk truck was then driven to the Defendant's compound following its inspection.

Cross-examination by the Claimant

58. Rampersad explained that one could determine the amount of LPG in the bulk truck by reading the barometer or checking the percentage inside the tank using the rotor gauge on the side of the truck.[22]

59. Regarding his attendance at the Defendant's toolbox meetings, Rampersad says that each attendee of the meetings is required to sign a logbook. However, he did not know whether the Claimant signed the said book.

60. Rampersad testified that the Claimant did not have clearance to access Petrotrin's LPG bond. Attorney for the Claimant referred Rampersad to the checklist dated February 5, 2015. Rampersad testified that after inspecting the bulk truck, he signed the checklist and gave it to the security at Petrotrin. As such, Rampersad could not explain how the document bore two additional signatures. When Rampersad conducted his inspections on February 5, 2015, he accepted that he omitted to mention the surrounding lighting.

61. Rampersad maintained that he had no direct line of sight with the Claimant. Once the Claimant shouted, Rampersad would have heard the Claimant's shout on whether or not to engage the pump. He denied engaging the pump before exiting the truck, explaining that doing so requires revving the engine. On the other hand, Rampersad admitted that the hose always contains LPG.

[22] See PDF 25, 27 of the supplemental TB namely, bills to Trini Flavour Restaurant and Jzz's International Steak House with the meter readings after each delivery of LPG.

62. Rampersad ran towards it when he heard the explosion, but was stopped by smoke. As a result, he dashed towards the truck and disconnected the fisher valve. He then took out the fire extinguisher and extinguished a few small fires on the hose in the corridor.

63. Rampersad testified that he and the Claimant worked to keep the hose from dragging on the ground during deliveries. He did acknowledge, that when the hose is unreeled and the Claimant is holding the nozzle, the hose would eventually drag on the ground while Rampersad pulls on the reel.

Kerry Maharaj

64. Maharaj is the Defendant's General Manager. The bulk truck was purchased in 2012 and since its purchase, its LPG storage tank, delivery apparatus and other equipment have been inspected annually by NP.

65. The day before the incident, Maharaj spoke with Rampersad who stated that he completely unreeled, examined the delivery hose for defects and discovered none.

66. According to Maharaj, on January 7, 2014, the Defendant purchased an LPG delivery hose and couplings. ESWIL Company Ltd pressure tested the hose for leaks and defects and there were none. He attached the receipt to his evidence at KM2.

67. Maharaj asserts the Defendant has a safety protocol requiring drivers to conduct a visual inspection and complete a vehicle check sheet. If there are any defects, the vehicle is not permitted to leave the compound. Therefore, on the morning of the incident, Maharaj reviewed the bulk truck's check sheet and determined that its apparatus was in good condition. Rampersad and the Claimant were also required to inspect the delivery hose during the LPG delivery. Maharaj asserts that he received no reports of damage to the delivery hose.

68. Maharaj says that the Defendant follows industry-standard safety practices and procedures when storing and handling LPG. The Defendant adheres to its safety operating manual and conducts mandatory health and safety toolbox meetings once per month. Maharaj recalls that Rampersad and the Claimant attended several of these meetings. Additionally, if the Claimant required a replacement of his protective equipment, there is a request form to complete.

69. As per Petrotrin's policy, the Defendant's bulk truck and apparatus are inspected biannually at its compound by Petrotrin's safety inspectors. Additionally, Rampersad must attend Petrotrin's health and safety meetings on Tuesdays and Wednesdays. In turn, Rampersad was to train the Claimant on the job in the safe dispensing and handling of LPG. Furthermore, Maharaj referred to a related matter in which the Claimant allegedly gave instructions to prepare a draft witness statement which sets out that the Claimant attended at least two (2) toolbox meetings.[23]

70. Following the incident, Maharaj received a copy of the Certificate of Analysis dated May 20, 2015. He clarified that the hose and nozzle were collected separately by the Trinidad and Tobago Police Service. Therefore, when assembled the metal nozzle is connected to the hose with a four centimetre (4cm) nipple and secured with a coupling. However, the certificate makes no mention of whether the TTFC received the nipple or coupling.

71. Concerning the Claimant's salary, Maharaj says that the Defendant paid the Claimant half of his salary and the National Insurance Board paid the other half. Maharaj explained that while the Claimant awaited benefits from NIB, he was paid his full salary from February to August 2017. The difference was deducted when the Claimant received his full benefits from NIB. Eventually, Maharaj instructed the Defendant's payroll department to cease payments to the Claimant until he confirmed the payments received from NIB. Despite the preceding, Maharaj instructed payroll to resume the Claimant's salary from January 2019, continuing until December 2020.

72. Since the incident, the Claimant has not performed any duties for the Defendant, and his position was made redundant in December 2020. All outstanding sums for the Claimant's unpaid salary were

[23] See PDF 487 of the TB, para. 5, 6 of the draft witness statement.

paid in the amount of fifty-nine thousand, three hundred and four dollars and twelve cents ($59,304.12) on September 19, 2019.

73. According to Maharaj, the Defendant referred the Claimant to Dr Victor Coombs for evaluation. Dr Coombs produced a medical report dated July 4, 2018, in which he determined the Claimant had a permanent partial disability of fourteen percent (14%) and declared him fit to work.[24] Thereafter he was also paid the sum of twenty thousand, one hundred and forty dollars and eleven cents ($20,140.11) pursuant to a Memorandum of Agreement.[25] Additionally, the Defendant paid the Claimant fifty thousand, two hundred and eighty-nine dollars and eighty cents ($50,289.80) gratuity for years of service.[26]

74. Maharaj added that after the accident a team from OSHA requested a hand-over of all the Defendant's health and safety documents.

Cross-examination by the Claimant

75. Attorney for the Claimant referred Maharaj to the Defendant's checklist. Maharaj confirmed that under the rubric 'remarks', Rampersad failed to enter the amount of LPG remaining in the bulk truck on February 5, 2015. Additionally, Maharaj accepted that there is no document before the court indicating the quantity of LPG remaining following the incident. The quantity should reflect what was left over after the last point of delivery. He was referred to the Defendant's invoice, but Maharaj was unable to read the figures.[27]

76. Maharaj also confirmed the existence of a logbook that recorded employees' attendance to the Defendant's toolbox meetings. However, those records are in the possession of OSHA according to him.

[24] See PDF 542 of the TB.
[25] See PDF 540 of the TB.
[26] See PDF 545 & 548 of the TB, namely, two cheques received by the Claimant dated December 11, 2020 for the sum of twenty-five thousand, one hundred and five dollars and forty cents ($25,105.40) and January 11, 2021 for the sum of twenty-five thousand, one hundred and five dollars and forty cents ($25,105.40).
[27] See PDF 25 of the supplemental TB namely, an invoice in the name of Trini Flavour Restaurant dated February 5, 2015. The numbers on the invoice reflects how much LPG was dispensed at each delivery site.

77. Maharaj testified that the draft witness statement of the Claimant was not signed by the Claimant. According to Maharaj, the Claimant informed him that he desired to have his Attorney read said statement before signing.

78. Maharaj further testified that he was present when the TTPS collected the hose, the nozzle and all related items.

Issue 1- Whether the Defendant breached its duty of care thereby causing injury to the Claimant

Statutory duty

79. The Claimant claims that the Defendant breached certain section of the Occupational Safety and Health Act, Chapter 88:08 ("OSH Act"). The following section sets out some of the duties owed to an employee by an employer:

> *6. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all his employees.*
>
> *(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends include in particular—*
>
> *(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;*
>
> *…*
>
> *(c) the provision of adequate and suitable protective clothing or devices of an approved standard to employees who in the course of employment are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury and the provision of adequate instructions in the use of such protective clothing or devices;*
>
> *(d) the provisions of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the safety and health at work of his employees;*
>
> *13. (1) A person who designs, manufactures, imports or supplies any technology, machinery, plant, equipment or material for use in any industrial establishment shall—*

(a) ensure, so far as is reasonably practicable, that the technology, machinery, plant, equipment or material is safe and without risks to health when properly used;

80. In ***Lewisham London Borough Council v Malcolm (Equality and Human Rights Commission intervening)***,[28] Lord Bingham opined at 1412 …*As between employer and employee it should be for the employer to ensure that the premises in which and the machinery with which his employees work are safe. The risk that there are unforeseeable dangers must be accepted by the employer*.

Common law duty

81. An employer has a non-delegable duty towards his employee to provide a safe system of work, safe workplace, safe plant and competent staff.[29]

82. The learned authors of Halsbury's[30] also states:

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.

Breach of the duty

83. As a matter of general principle, the fact that an employer is under a duty to devise a safe system of work is incontestable. The issue is more often than not a matter of degree as was the case in ***Ammah v Kuehne & Nagal Logistics Ltd***,[31] in which the English Court of Appeal reminded employers of the extent of their duty to devise a safe system of work, including warning against

[28] [2008] 1 AC 1399
[29] ***Wilsons and Clyde Coal Co Ltd v English*** [1938] AC 57, per Lord Wright at p. 78
[30] Halsbury's Laws of England, Vol. 53 (2020), para. 377
[31] [2009] EWCA Civ 11

risks, even if those risks are obvious. All that is left for the court to determine therefore is the question of breach.

Causation

84. In ***Clough v First Choice Holidays and Flights Ltd***[32] Sir Igor Judge P said the term 'but for' encapsulates *a principle understood by lawyers, but applied literally, or as if the two words embody the entire principle, the words can mislead. They may convey the impression that the claimant's claim for damages for personal injuries must fail unless he can prove that the defendant's negligence was the only, or the single, or even, chronologically the last cause of his injuries. The authorities demonstrate that such an impression would be incorrect. The claimant is required to establish a causal link between the negligence of the defendant and his injuries, or, in short, that his injuries were indeed consequent on the negligence*.

Submissions of the Defendant

85. It was submitted on behalf of the Defendant that its employees must adhere to the company's Safe Operating Procedure manual. It also submitted that all of the procedures listed were followed. The bulk truck and its apparatus were inspected at the Petrotrin bond. Additionally, the Claimant testified there were no objects that damaged the hose. The Defendant submitted that there was no conclusive evidence of a leak. However, if the Claimant observed any damage to the hose, he ought to have informed the Defendant and also the Claimant was trained to refuse to work if the Defendant did not address the defective equipment.

86. It was submitted that the Claimant was knowledgeable in the safe handling and dispensation of LPG. That the Defendant discharged its duty to provide the Claimant with PPE gear reasonably fit for purpose.

87. The Defendant disagreed with the findings of the TTFS report and TTFC's certificate of analysis. It was submitted that the TTFS' report disregarded the possibility that the fugitive gas could have come from other sources like the El Pecos facility.

[32] [2006] All ER (D) 165 (Jan), at para. 44

88. The Defendant also submitted that the Claimant's statement to the TTFS is inconsistent with his OSHA and NP statements, that the TTFS report is incomplete as there were no attached photographs, and the completion date is erroneous. Further, the TTFS report disregarded the possibility that the fugitive gas could have come from other sources, including the other restaurants in the building that used LPG or from a leak at El Pecos. Additionally, the expert witness refutes the findings in the report.

89. The Defendant also argued that the Certificate of Analysis from the Trinidad and Tobago Forensic Science Centre did not determine whether the opening observed on the hose was made before or after the explosion. In that regard, the Claimant should be limited to prove his claim per the particulars of negligence and not be allowed to rely on the doctrine of res ipsa loquitur maxim.

Submissions of the Claimant

90. The Claimant referred to the decision in ***Joann Berkeley v Guardian Life Holding Limited and Guardian Life of the Caribbean Limited***,[33] where Rajkumar J (as he then was) referred to the decision of ***Paris v Stepney BC*** [1951] A.C. 367, 382 -384:

Lord Oaksey stated at pages 382 to 383:

"The duty of an employer towards his servant is to take reasonable care for the servant's safety in all the circumstances of the case… The standard of care which the law demands is the care which an ordinarily prudent employer would take in all the circumstances. As the circumstances may vary infinitely it is often impossible to adduce evidence of what care an ordinarily prudent employer would take. In some cases, of course, it is possible to prove that it is the ordinary practice for employers to take or not to take a certain precaution, but in such a case as the present, where a one-eyed man has been injured, it is unlikely that such evidence can be adduced. The court has, therefore, to form its own opinion of what precautions the notional ordinarily prudent employer would take."

[33] CV2008-01945 at p. 50

FINDINGS OF FACT

91. This is of course the first port of call for the court. The finding on the facts in dispute are as follows:

Did the Claimant attend monthly toolbox meetings held by the Defendant

92. The Defendant has alleged that it held the meetings and that the meetings were attended by the Claimant and Rampersad. However, they have produced no written evidence in support of same such as the attendance books. The explanation provided is that the books have been taken by OSHA. In the court's view that does not amount to a satisfactory explanation in light of the fact that the Defendant may have issued a summons to OSHA to produce the records for trial or may have earlier on at the Case Management stage produced copies of same which they would have been able to obtain from OSHA. There is however no evidence of any attempts having been made to secure either the originals or copies or to have OSHA produce the records in court. The evidence of the Claimant is that he may have attended a couple of meetings but that the meetings were generally held while he and Rampersad were out doing their duties. In that regard, it appears to be not an issue that both men began their duties very early.

93. In that regard, the evidence of Rampersad is that he arrived at the Defendant's compound at 4:30a.m as per its policy to conduct routine maintenance and inspection. Both men then left the Petrotrin Bond with LPG at 7:55a.m. It follows, as a matter of logic, that after inspection and maintenance at the compound of the Defendant, both men would have left the Defendant's compound relatively early to get to the Petrotrin Bond to fill the truck. It is also a matter of inference that theirs would not have been the only truck at the Petrotrin Bond in line for LPG. The fact that they left the Bond as 7:55a.m tells of early movements.

94. It follows that it is highly plausible that the evidence of the Claimant on the issue is correct in that the toolbox meeting would more likely than not be held after they had exited the Defendant's compound. The court has also inferred from the evidence of the Defendant that the Claimant and Rampersad would not be the only two persons to be present at the monthly toolbox meetings. It follows that those meetings would have likely been held at a time when there was a wide presence of workers on the compound and not in what was virtually in the wee hours of the morning. The court, therefore, finds that the Claimant only attended two (2) toolbox meetings and could not

have been present for the others as he was required to be on duty outside the compound of the Defendant.

Was the Claimant trained by the Defendant in the delivery of LPG

95. The General Manager of the Defendant, Kerry Maharaj, testified that the Claimant was trained by Mr. Rampersad on all health and safety aspects of the job. It is also his evidence that the Claimant came with some experience in Health and Safety from his previous job at Capital Signal Company, that the Defendant employs standard safety practices set out in its Safety Operating Procedure Manual.

96. It is the evidence of Rampersad, that he, Rampersad, attended health and safety meetings twice a week at Petrotrin's LPG filling station and that he was the most experienced person in the handling and delivery of bulk LPG at North Plant. At Paragraph 6 of his witness statement he sets out in great detail the procedure discussed at the Petrotrin meetings which included inter alia that LPG distributors should avoid placing the delivery hose of their vehicles across any road or general access way, the wearing of protective equipment including helmets, long sleeved coveralls, gloves and safety glasses while filling LPG. The other matters discussed seemed to be specific to collection of LPG from the bond and is not relevant to the issue of training of the Claimant.

97. Rampersad also testified that both he and the Claimant attended some toolbox meetings at North Plant at which talks and reminders included the importance of proper safety gear for the dispensation and delivery of LPG and other relevant matters. It is also his evidence that because of his vast experience, he was the one to train the Claimant in the procedure and safety measures for the delivery of LPG.

98. The court is of the view and finds that the Claimant was in fact properly trained in the dispensation of LPG and the proper health and safety processes connected thereto by the Defendant both at the meetings the Claimant attended and by Rampersad who would have been ideally qualified so to do and duly authorised so to do by the Defendant.

99. This much is also obvious from the testimony of the Claimant himself who appeared to be knowledgeable in the relevant procedures, had not had any incident in relation to his delivery of LPG since he was employed at North Plant in 2013 until the date of this incident and was also very aware as to the measures to be taken in the event of the specific emergency of an impending explosion. This is why he ran towards a sink to wet a rag to cover his face. His work history and his incident free experience over the two (2) years is evidence of proper training in the court's view and the court so finds.

100. Finally, it is noted that some weather was made of the fact that the Claimant was unware of a fisher valve on the truck. This, in the court's view, is not relevant to the case before it as the evidence shows that the Claimant was not responsible for the operation of that valve and knew the said valve as a flow valve.

Was the Claimant provided with the proper safety equipment

101. The Claimant accepted in evidence that he was provided with safety equipment by the Defendant. On the day of the incident he was wearing fire resistant coveralls and boots. He admits that he was issued gloves but that he was not wearing same at the time of the incident. He was not questioned on the issue of safety glasses and he mentioned none in his evidence in chief. The inference is that he was not wearing any at the time of the incident as his testimony is that he covered his face but he did not mention removal of glasses in order so to do.

102. It is the evidence of Maharaj that the Defendant ensures that safety goggles and gloves amongst other items are provided to their workers who are required to handle bottled and bulk LPG. The clear inference is that these items were provided to the Claimant by the Defendant and the court so finds.

103. The court notes that although the Claimant pleaded in his Re-Amended Statement of Case that the gloves provided were unsuitable and no replacement was provided and that no glasses were provided, his evidence did not treat with those matters so he has not proven those allegations.

Safety and proper functioning of the equipment used for dispensation of LPG

104. The equipment can be classified into two broad categories namely the truck, pump and apparatus located on the truck as one category and the hose and its coupling as another.

105. In relation to the truck and its apparatus, on February 4, 2015, the bulk truck was inspected at Petrotrin and half the length of the hose was unreeled. The Claimant acknowledged that this inspection would have resulted in the issuance of the safety certificate. It is also the evidence of Rampersad that he would have inspected the truck on the morning of the incident prior to the start of work. Whether two signatures in fact appear on the checklist filled out by Rampersad at the end of the inspection (as set out in cross-examination) is irrelevant to the fact that the truck was inspected as Rampersad said. Additionally and in any event, there is no evidence in this case that points to any malfunction of either the truck or its apparatus on that day. The court notes, however, the inspection by Rampersad appeared to be limited to the mechanical workings of the truck whereas the inspection by Petrotrin concerned the suitability of the apparatus.

106. The court, therefore, finds that the truck and apparatus were properly functioning.

107. In relation to the hose, the position is different in fact. The evidence in this case when taken together and considered with relevant inferences points at first to what appears to be a problem with the integrity of the hose on that day. The evidence above shows that in the process of inspection on February 4, 2015, the hose was not fully extended so as to have an inspection done on the entire hose, however half of the hose was reeled out. When juxtaposed with the evidence of the Claimant that he saw the gas emanating from the hose a short distance away, it follows that had there been a hole or cut or tear or other degradation in the fibre of the hose it would more likely than not have been observed when half of the hose was reeled out at Petrotrin but no such damage was observed. The court draws this inference because the evidence of the Claimant is that on the day of the incident he had reeled out some 80 to 90 feet (80-90') of hose but the escaping gas emanated from close to the discharge (the court interprets this to mean the end of the hose that was to be attached to the LPG tank of El Pecos). The previous statements used by the Defence in cross-examination all seem to support the fact that the gas was emitted about 10 to 11 feet (10-11') away from the nozzle of the hose. In so saying, the court is aware that what was said in the

previous statements is not evidence of the truth as is the witness statement but the previous statements simply provide some factual context to the evidence set out in the witness statement.

108. The court, therefore, accepts and finds that certainly the hose would have been in proper working order on February 4, 2015 when inspected by Petrotrin. However, the evidence of inspection of the hose on the morning of the incident before the truck set off to collect gas at Petrotrin is poor and unsatisfactory. As set out before, the checklist filled by Rampersad relates in large measure to the truck and a fire extinguisher. Nowhere on that document that purports to be a contemporaneous document does he state that he inspected the pump and the hose. The checklist appears to be a standard vehicle checklist with check boxes for a fire extinguisher and verified stock. Both boxes are ticked but no figure is provided for the verified stock. At paragraph 24 of this witness statement, however, Rampersad stated that he did a visual inspection that morning on the pump, hose and its valve for abrasions and signs of wear and tear to ensure that these would be safe for the filling and dispensation of LPG and found no defects.

109. The court is not satisfied that it is more likely than not that Rampersad unreeled the hose on the morning of the incident to check for wear and tear in the run of the hose itself for several reasons. Firstly, the run of the hose, at least half of it had been inspected and certified the day before by Petrotrin after the end of the day's deliveries. It follows that no deliveries would have occurred after inspection so that the likelihood that an abrasion or tear would have developed in the run of the hose overnight while parked up would have been remote in the view of Rampersad as a matter of inference. Secondly, he did not say in his witness statement that he unreeled the hose on the morning of the incident to inspect it before leaving North Plant. What he did say is that he conducted a visual inspection which included the valves for evidence of abrasions and wear and tear. Thirdly, the assertions are not supported by the checklist. The court, therefore, finds that Rampersad did not unreel the hose on the morning of the incident to check for abrasions or wear and tear.

110. However, it is unlikely in the court's view that any such examination may have revealed a development of an abrasion or tear overnight in circumstances where the truck and its apparatus had not been used since the inspection the evening before in any event.

CAUSATION

111. The evidence in this case points to there being either a tear or degradation in the run of the hose close to the nozzle which resulted in the escape of volatile and flammable gas. This evidence consists of the testimony of the Claimant and the reports from the Fire Services and the Forensic Science Centre.

112. It is the Claimants evidence that he saw the gas emanating from the hose 10 to 11 feet (10-11') from the nozzle immediately prior to the explosion. In cross-examination the Claimant stated that while unreeling the hose on that day he noticed something unusual. The following is the evidence at pages 48 and 49 of the transcript on the first day of trial:

> MR. RAMKISSOON**:**
>
> Q All right. Now, that morning of February 5, 2015, the bulk truck which you were on had made three (3) deliveries before going to El Pecos. Three safe deliveries. Yeah?
>
> A That's correct.
>
> Q First one was in J-ZZ's Steakhouse in Couva. Yeah?
>
> A That's correct.
>
> Q The second was at the Breakfast Shed in Port of Spain?
>
> A That's correct.
>
> Q And that's the place in the vicinity of Hyatt. And the third one was at Trini Flavour at the corner of 34 Park and Richmond Street, Port of Spain; correct?
>
> A Correct.
>
> Q Those three deliveries you unreeled the hose on each occasion? 3?
>
> A That's correct.
>
> Q And you would have looked at the hose as part of your training and you observed nothing unusual?
>
> A Yes, I did observe something unusual.
>
> Q Ah. And you said that nowhere in your witness statement, Mr. Maicoo; is that not correct?

A That is not correct.

Q Well, find it for me?.....

A Yes, that is correct. It's not here.

Q Ah, good. And you appreciate that if you had seen something, Mr. Maicoo, my only question to you is that it would have been important to put it there. Yes? Correct? You have to say it.

A That's correct.

113. The court finds, that this evidence, that there was something unusual with the hose carries little weight on its own because it is to be found nowhere in the witness statement of the Claimant and he accepted that. It is also vague in terms and lacks particularity and precision in that the court is left unaware as what he may have found to be unusual. It is to be noted that Attorney for the Claimant did not seek to re-examine on this issue and quite rightly so in the court's view as a matter of law, the evidence having not been contained in the witness statement in the first place.

114. The evidence that remained however on the witness statement is that as the Claimant picked up the hose before he could connect the nozzle to the tank of El Pecos, he noticed a white cloudy substance escaping rapidly from the hose ten to eleven feet (10-11') from the nozzle. That is direct evidence that has not been contradicted by any other eye witness testimony in this case. The inference therefore remains that there was a cut or abrasion or wear and tear in the hose from which the gas escaped and the court so finds.

115. This finding is corroborated by the Fire Services Report and the FSC report in different material particulars. The objections to these reports shall now be dealt with.

116. In relation to the FS report the Defendant submits as follows:

a. The Claimant's statement to the TTFS is inconsistent with his OSHA and NP statements.

b. The TTFS report disregarded the possibility that the fugitive gas could have come from other sources, including the other restaurants in the building that used LPG. Also, the leak could have come from the El Pecos facility.

c. The expert witness refutes the findings in the report.

117. The court is of the view that both the evidence contained in the FS Report and the evidence of the Claimant on the issue are not inconsistent with his previous statements. Firstly, the statement given by him in writing on March 20, 2015 he spoke of observing a part of the hose having a bad leak as he put it. This was before the Inspection on February 4, 2015, some two (2) weeks before according to the statement. He stated that this was reported to Maharaj who gave instructions to the Ramp Salesman to "start looking for one". This was not evidence in this case so the court does not give it any weight. In any event, the evidence is that the hose was inspected partially on the February 4 and certified by Petrotrin. It may have been the replaced hose but it matters not. His statement continued that when he picked up the nozzle and proceeded to El Pecos tank he observed gas leaking form the hose about eight to ten feet (8-10') away from him. This statement is not inconsistent with the evidence given by the Claimant in this case as submitted by the Defendant. In fact, if at all, it appears to confirm what has been stated by the Claimant in evidence before the court. However, as a matter of evidence, the Claimant cannot rely on this statement for the truth of its contents as it offends the rule against narrative as a previous consistent statement. The court, therefore, gives no weight to it but finds that it is not an inconsistent statement.

118. Secondly, in his statement provided to ASP Smith pursuant to the OSH Act On April 16, 2015 he did not give particulars of the explosion. His statement quite interestingly appeared to leave out the details save and except to say that there were no objects over the wall, gate or on the ground that would have damaged the hose at the place of the incident on the day in question. There is no inconsistency either by way of allegation or omission in that regard. There simply was no explanation as to what occurred.

119. In relation to the submission that the report failed to consider that the gas may have come from some other course, to so consider would have been highly speculative in the court's view having regard to the evidence before the Fire Service and the information from the Claimant.

120. The final challenge to the FS Report is that of the evidence of Boodoo, the expert called by the Defendant. The court has payed detailed attention to Boodoo's evidence and finds as follows:

a. In relation to the hose, it was his opinion that the specification of the hose used by the Defendant from the receipt dated January 7, 2014 shows that the hose was three quarter inches (¾") in diameter with a three hundred and fifty pounds per square inch (350 psi) capacity. The rubber layering around it is thick and made of a sturdy rubber material with a metal layering. In his years of investigating he has not encountered an incident where a hose of that make up was ruptured. According to him, any leakage of LPG from a delivery hose would not be as a result of a sudden burst but from a continuous seeping form a loose coupling or connection.

b. The receipt attached as KM2 to the evidence of Maharaj confirms the date of purchase as being January 7, 2014. It follows that at the time of the incident, the hose was in use for over one (1) year. The witness, Boodoo, however, does not attempt to treat with the issue of the age and the hose and the impact of wear and tear overtime.

c. He also was of the view that the absence of photographs made the report unreliable. In the court's view, while photographs may be helpful its absence in this case is not necessarily determinative of the reliability of the report the writer of the report having considered other factors.

d. In relation to the absence of a source of ignition, the court is of the view that this is not material to the matters that this court must decide. Should the court be satisfied that there was in fact a leak in the hose, it is foreseeable that such a leak if ignited could cause combustion therefore the liability lies with the actions that touch and concern the leak and the escape of gas and less so the source of the ignition.

e. Boodoo set out that a more thorough investigation ought to have been done to determine if there was another source of LPG leakage. His subtle suggestion is that there may have been a leak elsewhere resulting in a more concentrated fire in that area. He set out that there was only one fatality elsewhere and that having regard to the fact that that person died of fatal burns the suggestion is that there was a high volume of gas at the location of the deceased. This is in the court's view highly speculative as there is no evidence as to the nature and location and severity of the burns suffered by the deceased and the cause of death as far as this case is concerned. There are too many variables that may have accounted for the death some or none of which may be relevant to the cause of the fire.

f. Another criticism by Boodoo is that there was no indication that the flow valve at the back of delivery truck was engaged therefore no gas would have been flowing. Under cross-examination he admitted that he received this information from the driver Rampersad. The court notes, however, that the case for the Defendant as set out in the pleaded case was that the pump had in fact been engaged immediately before the gas began to escape from the hose. That is also the evidence contained in the witness statement of the Claimant. This is the reason that Rampersad had to run to the truck to disengage the pump. In Boodoo's opinion, the fact that the pump was engaged did not mean that there was gas flow in the hose as he proceeded on the assumption that the valve was not engaged as told to him by the driver. He is of course entitled so to do as he would not have been present on the day of the incident but must rely on the evidence. Whether this was in fact the case is, however, a matter for the decision of the court and is set out later in this decision.

g. In the round, when all was considered, therefore, the court gave some weight to the Fire Service report. The report does not however stand on its own but is buttressed by the FSC report.

121. The FSC report found evidence of charring at a distance of twenty-nine point seven metres to thirty point six metres (29.7m-30.6m) from the grooved end of the hose. This charring was in the area of a six centimetre (6cm) opening also situate thirty metres (30m) from along the hose. When converted this amounts to some ninety-eight feet (98') approximately. The report specifies

that the hose was found to be thirty-three point six metres (33.6m) in length. It follows that as a matter of inference, the Scientific Officer considered the end of the hose to be the end that would ordinarily contain the nozzle. The inference is, therefore, that the six centimetre (6cm) opening and charring was closer to the nozzle end of the hose. There was another area of charring at the distance of thirty-one point six metres to thirty-one point eight metres (31.6m-31.8m) from the grooved end. There was no opening of the hose at this spot but the top layer was burnt exposing the partially burnt fabric mesh.

122. In the opinion of the Scientific Officer the charring was cause by fire damage and he was unable to give the cause of the six centimetre (6cm) opening. Boodoo is critical of the report on the basis that it does not say whether the opening was present before or after the fire. In this regard, there are several matters to note. Firstly, there is no evidence before the court that a forensic examination is able to reveal whether the opening was present before the fire. Secondly, the effect of what the report is, that Scientific Officer was unable to say whether the six centimetre (6cm) opening had been caused by fire or otherwise. The court is, however, entitled to draw reasonable common sense conclusions from the evidence, even of an expert and is entitled to accept or reject part or the whole of what an expert says within the confines of reason. In this case, the court is of the view that the evidence of the FSC is potent independent evidence that carries with it a tremendous amount of weight. This report would have been compiled without reference to anything said or reported by the Claimant.

123. In Boodoo's cross-examination, he stated that LPG is stored in liquid form. The flash point is the lowest temperature at which the LPG would ignite without the application of a flame. He accepted that the Fire Report stated that the smoke and fire patterns showed that the fire moved inwards from the rear access of El Pecos, that this was evident in all areas along the external wall of the restaurant. In that regard, he accepted that he did not have an opportunity to view the site himself and accepted that he could not say that the Fire Investigator did not see the patterns.

124. When all is considered, the court finds that the cause of the fire was the leakage of gas from the six centimetre (6cm) opening in the hose and that the source of the ignition is not relevant.

125. In relation to the issue of whether there was gas in the hose, the evidence of the Claimant is clear that there was.

126. The court does not believe the evidence of Rampersad that he examined the hose after it was reeled out on that day. It was his evidence that he did so on every occasion that he unreeled on that day before going to El Pecos. This process of examination of the hose by the driver Rampersad was not specifically pleaded in either the Defence or the Re-Amended Defence but appears for the first time in the evidence of Rampersad. Further, the court accepts the evidence of the Claimant that he unreeled the hose while Rampersad went to the restaurant for the keys. Even if the court is incorrect, it finds, in any event, that if he did examine the hose he failed to detect the opening.

127. The court also finds that the evidence points in the direction of Rampersad having engaged the gas before it was safe to do so, resulting in gas being run through the hose. In that regard, his evidence on the issue is telling. It is his evidence that at Trini Flavour restaurant, their last stop before El Pecos, after the call from the Claimant to shut off, he engaged the flow valve to stop the flow of gas and then proceeded to shut off the pump. It follows, that all things being equal and there being no evidence otherwise, the flow valve ought to have been switched off upon arrival at El Pecos. However, the evidence of the Claimant is that upon arrival, Rampersad parked the truck and engaged the pump. This is different to what Rampersad said. His take was that he parked but did not switch on the pump. Instead he went to the restaurant got the keys, had the corridor opened and awaited the direction of the Claimant to put on the pump.

128. Both versions cannot be true. The evidence demonstrates clearly that there was gas in the hose so that the only issue is that of from where it came. In that regard, the court accepts the evidence of the Claimant that the pump was switched on before the driver exited upon parking as that simply then leaves the control of the flow to be determined by the control of the flow valve. This is, in fact, the more plausible explanation. It follows then, that the only explanation for there being gas in the hose would be that the flow valve was turned on to some degree or left on from the previous job, not necessarily fully but the evidence point to it being turned on sufficiently so as to cause gas to flow through the hose before the Claimant connected same and the court so finds. The court also finds that Rampersad has attempted to change the narrative by providing erroneous information

as to his procedure that morning. His narrative though cannot account for the presence of gas in the hose.

129. The causes, therefore, was the fact that Rampersad either switched the flow valve on prematurely or left it on to some extent when the last job had been completed and put on the pump as soon as he parked causing gas to flow through the damaged hose, resulting in the escape of gas.

Res ipsa loquitur

Submissions of the Defendant

130. The Defendant submitted this doctrine has no application in these circumstances as the Claimant is aware as to what caused the explosion. Importantly, the Claimant has not proven that the Defendant was negligent and no breach of duty was established. The Defendant made the point that the burden of proof remains with the Claimant.

Submissions of the Claimant

131. The Claimant submitted that the TTFS report and Certificate of Analysis from the Forensic Science Centre is evidence that hose was compromised by a six centimetre (6cm) opening inside the corridor.

132. The Claimant also submitted that the only explanation for LPG escaping from the hose was that the pump was engaged. Therefore, this demonstrates negligence on the Defendant's part. Additionally, Boodoo could offer no alternative cause for the explosion and fire.

133. The Claimant says the inspections done at Petrotrin and NP should not be considered as the inspections did not confirm the integrity of the hose.

LAW AND ANALYSIS

134. The maxim *res ipsa loquitur*, 'the thing speaks for itself', or more loosely, 'the accident tells its own story' holds that a court can draw an inference of negligence from the circumstances in which the

accident occurred. Additionally, the maxim will not shift the burden of proof, as it will remain with the Claimant throughout.[34]

135. The learned authors of Halsbury's[35] set out that which is required to apply the doctrine of *res ipsa loquitur*:

Under the doctrine res ipsa loquitur a claimant establishes a prima facie case of negligence where:

(1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; and

(2) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the claimant's safety.

There must be reasonable evidence of negligence. However, where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care.

136. In relation to whether an employer has fallen below the proper standard of care, particularly when it is within the control of the Defendant, the learned authors of Halsbury's[36] state:

In order that the maxim res ipsa loquitur should apply the defendant must be in control of the thing which causes the accident. It is not always essential that the defendant be in complete control of all the circumstances, provided that the happening of the accident is evidence of negligence on the

[34] ***Ng Chun Pui v Lee Chuen Tat*** [1988] RTR 298 per Lord Griffiths at 301.
[35] Halsbury's Laws of England, Vol. 78 (2018), para. 64.
[36] Halsbury's Laws of England, Vol. 78 (2018), para. 66.

part of the defendant or someone for whom he is responsible. If the instrumentality is in the control of one of several employees of the same employer, and the claimant cannot point to the particular employee who is in control, the rule may still be invoked so as to make the employer vicariously liable.

137. The court accepts the submission of the Defendant that the maxim does not apply as the Claimant is able to prove the acts that would have led to the incident. So that on the first limb the doctrine cannot apply.

Negligence and vicarious liability

138. It was the duty of the Defendant to provide a hose that was fit for purpose. The evidence shows that the Defendant would have done all that it could have done to provide such a hose in that the hose had been examined and certified up to the day before the incident. It follows that the damage to the hose is likely to have occurred during the deliveries that morning. The procedures set out by the Defendant dictate that the lorry man (the Claimant) was the person to unroll the hose and ensure that there was no damage to the hose before connecting the customer's tank.[37] The Claimant also accepted in evidence that the duty lay on him to report any unusual damage to the hose but he made no such report. In such a circumstance, the Defendant cannot be held liable for the acts of his employee so as to found a case of negligence in favour of the very employee whose duty it was to act. It follows that the claim against the Defendant in relation to the particulars of negligence ought to be dismissed save and except for *failure of its agent Neville Rampersad to utilise standard operating practices and procedures in the delivery of LPG and failure to take all reasonable and effective measures by supervision or otherwise to ensure a safe system of work.* Liability, in relation to these particulars, is dependent on whether liability for the acts of the driver can be imputed to the Defendant given the evidence in this case.

139. The case for negligence against the employer is therefore dependant on whether negligence of the employee Rampersad in turning on the flow valve when it was unsafe so to do can be imputed to the Defendant. It is generally accepted that an employee owes a duty of care in relation to physical damage to those who may foreseeably be affected by his conduct, including those

[37] See "Safe Operating Procedure for Fling and Removal of Bulk Gas Supplied by North Plant LPG to its clients" attached as K.M. 5 to the witness statement of Maharaj.

contracting with his employer as fellow employees or customers. Save in exceptional circumstances, it is likely that the employer rather than the employee will be found to have assumed the responsibility to a client; and even where an employee has assumed responsibility personally, the employer may still be vicariously liable[38].

140. According to Halsbury's,[39] The vicarious liability of the employer is said to rest on the personal liability of the employee: see ***Lister v Romford Ice and Cold Storage Co Ltd*** [1957] AC 555, [1957] 1 All ER 125, HL, where an employer successfully claimed an indemnity against a negligent employee in respect of its vicarious liability to the fellow employee who was injured. See, however, ***London Drugs Ltd v Kuehne & Nagel International Ltd*** (1992) 97 DLR (4th) 261, Can SC, where the notion that the employer's liability (e.g. to a customer) presupposed the personal liability of the negligent employee was criticised on the ground that such personal liability would be unfair given the employee's lack of opportunity to decline the risk and financial resources to meet it.

141. *Vicarious liability is not strictly confined to acts done with the employer's authority but extends to acts so closely connected with acts the employee was authorised to do that, for the purpose of the liability of the employer to third parties, the wrongful conduct may fairly and properly be regarded as done in the ordinary course of the employee's employment. An employer is liable for the wrongful acts of his employee authorised by him or for wrongful modes of doing authorised acts. The liability may therefore arise where the act is one which, if lawful, would have fallen within the scope of the employee's employment as being in the discharge of his duties or the preservation of the employer's interests or property, or otherwise incidental to the purposes of his employment. The act need not be part of the employee's ordinary employment but may be necessary because of the exigencies of the particular occasion. If, on the other hand, the act is one which, even if lawful, would not have fallen within the scope of the employee's employment, the employer is not liable unless the act is capable of being ratified and is in fact ratified by him. The fact that the act which the employee has done would only be covered by his authority on the supposition that certain facts existed, but which did not in fact exist, does not excuse the employer, provided the employee acted on the belief that they did exist. On the other hand, the employer is not liable merely because the employee, in doing the act, honestly believed that he was acting in his employer's interests and intended the act to be for the employer's benefit... There is therefore no definitive test of when a tort is committed by the*

[38] Halsbury's Laws of England, Volume 78(2018) para 15
[39] Halsbury's Laws of England, Volume 78(2018) para 15

employee tortfeasor in the course of his employment. Courts have used various expressions and concepts to express the test of when a tort is or is not committed 'in the course of the employee tortfeasor's employment'. The most generalised test is whether the tort is so closely connected with the employment (that is what was authorised or expected of the employee) that it would be fair and just to hold the employer vicariously responsible. The various different formulations have to be considered in the context of the particular facts of the case in hand[40].

142. *In order for an employer to be vicariously liable for the torts of his employee, it is not sufficient that the employment merely gave the employee the opportunity to commit the tort, or even that the act in the doing of which the third person was injured was done on the employer's behalf. There must be a close connection between the employee's tortious conduct and the employer's business. However, liability extends beyond the performance of duties that the employee was engaged to perform and extends to acts that are reasonably incidental to the employment, even if done for the employee's convenience and not for the employer's benefit. The employer is not liable where the act which gave rise to the injury was an independent act unconnected with the employee's employment, or took place while the employee was engaged on his own and not his employer's business*[41].

143. It is pellucid on the evidence that the tortious acts, namely the acts of engaging the pump immediately prior to parking and exiting the truck and the premature engagement of the flow valve were done in the ordinary course of employment by Rampersad. From the evidence provided both orally and in the written guidelines referred to earlier, the act was of course an authorised act but a wrongful mode of such an act. It was wrongful in that the pump was started even before the hose was unreeled and the flow valve was engaged before the hose had been connected to the El Pecos tank and before word had been given by the lorry man that it was safe so to do. Further it was not only foreseeable to Rampersad but obvious that turning on the gas prior to connection of the hose would have resulted in combustion in the said corridor. The court, therefore, finds that the acts were so closely connected with the employment and business of the Defendant employer that the Defendant must bear the liability for the acts. The court will therefore impute liability on the basis of the doctrine of Vicarious Liability.

[40] Halsbury's Law of England, Volume 97A(2021) para 366
[41] Halsbury's Law of England, Volume 97A(2021) para 367

144. The court, therefore, finds the Defendant is liable for the following particulars of negligence:

a. Failure of its agent Neville Rampersad to utilise standard operating practices and procedures in the delivery of LPG.

b. Failure to take all reasonable and effective measures by supervision or otherwise to ensure a safe system of work.

OSHA- statutory duty

145. In its particulars of negligence, the Claimant relied on section 6 of the Occupational Safety and Health Act. The Defendant submitted that the Claimant failed to establish that the Defendant the Occupational Safety and Health Act. With regards to the other sections of the Act, section 13A and subsections of section 6 (6(1), 6(2) (a), 6(2) (c) and 6(2) (d), the Defendant argues that the Claimant has not shown how each statutory provision has been breached.

146. As highlighted above by the court, the Claimant has failed to treat with the particulars of the alleged statutory breaches in relation to the section 6 breaches. As a consequence, the court formed the view that the Claimant abandoned those claims and relief pursuant thereto.

Damages

147. It is to be noted that the Claimant abandoned his claim for loss of earnings and loss of future earnings at trial. In assessing an award of damages for assault and battery, the court ought to be guided by the factors set out by Wooding C.J. in ***Cornilliac v St Louis***[42] that set out the principles in assessing damages in personal injury cases for non-pecuniary loss:

(a) The nature and extent of the injuries sustained;

[42] (1965) 7 WIR 491

(b) The nature and gravity of the resulting physical disability;

(c) The pain and suffering which had to be endured;

(d) Loss of amenities; and

(e) The extent to which pecuniary prospects were affected.

Submissions of the Defendant

148. The Defendant submitted, if it is liable in negligence, the Claimant is only entitled to damages for the burns to his hands as he did not evacuate the building when he smelled the LPG and could have avoided his injuries. As a result, he had a duty to mitigate his injuries he would have sustained.

149. With respect, the court is of the view that such an argument is disingenuous. The duty to mitigate cannot apply in these circumstances as they were urgent emergency circumstances in which the Claimant's life and well-being were put at immediate risk. He was, therefore, only expected to do what he may have been able to do with immediate dispatch given the dire circumstances. It is his evidence that he applied his training by attempting to wet a rag to place it on his face but that there was no water in the pipe. In the court's view, he, therefore, did the next and only action available to him which was to stoop down close to the sink and cover his face. For this he cannot be faulted.

150. The Defendant highlighted that the photographs tendered shows the Claimant with his wife in the sun. Additionally, there is no evidence to corroborate that the Claimant's wife did everything for him. The latter of this argument rings somewhat hollow as it is a matter of logic and common sense that during his recovery from facial and hand burns the Claimant would have required assistance to perform routine tasks.

151. The Defendant compared the instant case to the case of ***Natasha Williams v International Waterfront Resources***, CV2019-03545. In this case, the Claimant had a partial disability of twenty percent (20%) and was awarded the sum eighty-five thousand dollars ($85,000.00). Therefore, the

Defendant submits that the Claimant ought to be awarded an award of forty thousand dollars ($40,000.00).

Submissions of the Claimant

152. The Claimant relied on three decisions and submitted that the Claimant should be awarded the sum of one hundred and sixty thousand dollars ($160,000.00). He relied on the period of time the scar took to heal and the extent of first degree burns sustained by the Claimant over fifteen percent (15%) of his body. The cases relied on by the Claimant are:

i. ***Charles and others v Shell Trinidad Ltd***, *HCA 546/1972. In this action the 3rd plaintiff, Clarence Gray, an infant, suffered first and second degree burns to the face, neck, right forearm and hand, left upper arm, forearm and abdomen, right thigh, leg and foot, left thigh, leg and foot, mottled depigmentation of the arms, legs and thigh along with hyperpigmentation of the abdomen. The award for general damages in that case was three thousand dollars ($3,000.00). That figure updated to December 2010 is sixty-three thousand, three hundred and fifty-four dollars ($63,354.00).*

ii. *The 4th Plaintiff suffered septic superficial burns to both feet and legs and the lower half of both forearms. There was some keloid formation behind the thighs which was likely to burn and itch. The general damages as general damages was three thousand, five hundred dollars ($3,500.00). That figure adjusted to December 2010 is seventy-three thousand, nine hundred and twelve dollars ($73,912.00).*

iii. ***Raffick Mohammed v Myra Bhagwansingh***, *CV2015-01034. The Claimant who was doused with acid suffered acid burns to sixteen percent (16%) of his body, including face, neck, upper left arm and back. There was thickness and superficial burns elsewhere. There was also scarring over several different areas of the Claimant's body. He was required to avoid the sun at all times, because the scars were heat-sensitive. The damages awarded by Master Alexander in a 2019 judgment was three hundred and eighty-five thousand dollars ($385,000.00).*

iv. ***Sanjay Armoogam v. Gulf City limited and the Attorney General of Trinidad and Tobago***, *CV 2010-02200. The Claimant in that matter was a trainee assigned to the 1st Defendant under of the Government's "MUST Programme". He was observing electrical works being conducted by the 1st Defendant's employee, during which there was an explosion. As a result, he suffered injuries. His injuries included first, and second degree burns to face, neck, chest, arms, head and scalp. He also suffered burns of fingers and hands, and scarring. He' had a whole-body impairment of thirty-six percent (36%). Des Vignes J, who was not inclined to follow the awards made in older cases (those over thirty (30) years) was guided by several more recent cases. In the 2014 judgment, an award in the sum of one hundred and fifty thousand dollars ($150,000.00) was made*.

Discussion and Findings

153. The court is of the view that the award on this case should be one on the upper end of similar awards for general damages. In particular, the finds that the pain and suffering would have been tremendous owing to the location of the burns on both hands and face. This of course would have more likely than not affected his ability to sleep on his side and chew. The burns to both hands would have been particularly inconvenient as he would have been deprived of the use of the hands. It is his evidence that at the time of the incident he was in serious pain as he felt like his entire body was on fire, while conscious. At the hospital, his hands were completely covered in bandages and on several days his entire body would have to be covered with rags soaked in ice for several minutes. That to him was of extreme discomfort. In addition to the pain on the face, there was also swelling for two (2) months. The lasting effects are scars on his hands and face and lack of full range of motion in his hands. He is unable to carry things for a long time and his hands become red and burn/tingle or itch.

154. The court has also considered the evidence of all of the doctors who attended to the Claimant and provided medical reports as set out earlier in the evidence and notes the finding of twenty-five percent (25%) disability. The court, therefore, accepts the submissions made by the Claimant in relation to the appropriate award being one for one hundred and sixty thousand dollars ($160,000.00) for general damages in all of the circumstances. No special damages have been pleaded and/or pursued.

Workmen's Compensation

155. By Memorandum of Agreement dated October 29, 2018[43] the Claimant agreed to accept workmen's compensation pursuant to the Workmen's Compensation Act Chap 88:05 (wrongly referred to in the agreement as a 1960 Ordinance) in full and final settlement in the sum of twenty thousand, one hundred and forty dollars and eleven cents ($20,140.11). The issue is whether such payment should be deducted from the damages awarded.

156. In ***Trinidad and Tobago Electricity Commission v Keith Smith***[44] , the Court of Appeal Mendonça JA stated the following on double recovery:

A fundamental rule, or as Lord Reid puts it a universal rule, is that a plaintiff cannot recover more than he has lost. In the assessment of damages for personal injuries he only recovers the net loss. There is no double recovery. The rule is however subject to exceptions. Lord Reid in Parry v. Cleaver identified the two classical exceptions where payments received by the plaintiff are to be disregarded as (1) where a plaintiff receives money from the benevolence of third parties and (2) where the plaintiff recovers under an insurance policy for which he has paid the premiums. But there are of course other exceptions. In deciding whether payments received by the plaintiff are to be deducted from the award of damages the intrinsic nature of the payment must be borne in mind (see Parry v. Cleaver per Lord Reid at p. 15) as well as the fact that the common law has treated the question as one depending on justice, reasonableness and public policy (see Parry v. Cleaver per Lord Reid at p. 13).

157. Mendonça JA then cited the decision of ***Hodgson v Trapp***[45] in which the court will look at the net loss:

In Hodgson v. Trapp, Lord Bridge was of the opinion, with which the other law Lords concurred, that a benefit paid to the plaintiff may only be set off against a loss that the benefit was intended to compensate. In that case Lord Bridge held that a mobility allowance, which was intended to contribute to the care of the plaintiff, should be set off against the damages recoverable in respect

[43] See page 349 of Trial Bundle
[44] Civil Appeal No 180 of 2008
[45] (1989) 1 AC 807

of the cost of future care as opposed to future loss of earnings. Similarly in Cresswell v. Eaton [1991] 1 All E.R. 484 an issue arose whether "fostering payments" fell to be taken into account. The judge stated (at p. 495):

"But although in my judgment the fostering payments fell to be taken into account that is solely in regard to the disbursement dependency. They do not spill over into the calculation of the quite separate service dependency claim."

158. His Lordship further stated at paragraph 33:

As the payments made to the Respondent should only be deducted against like or equivalent damages the workmen's compensation paid to the Respondent by the Appellant does not fall to be deducted from the award of damages.

159. In this case, the successful claim for negligence attracts an award which is not like or equivalent to damages payable under the workmen's compensation legislation so that the sum paid is not to be deducted.

Disposition

160. The court makes the following order:

a. The Defendant shall pay to the Claimant general damages for negligence in the sum of one hundred and sixty thousand dollars ($160,000.00) plus interest at the rate of two point five percent (2.5%) from the date of filing of the claim to the date of Judgment.

b. The Defendant shall pay to the Claimant the prescribed costs of the claim to be quantified by a Registrar.

Ricky N. Rahim

Judge