REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2010-04194

BETWEEN

JEMMA MAHABAL

Claimant

AND

DR. STEVEN HARDUAR

Defendant

Appearances:

Claimant - Mr. Lennox Sanguinette and Mr. Dave Cowie

Defendant - Mr. Jagdeo Singh instructed by Mr. Brent Ali

BEFORE THE HONOURABLE MR JUSTICE DEVINDRA RAMPERSAD

Delivered 11 April 2013

JUDGMENT

Contents

Introduction

1. The Defendant is a dentist and he did some dental work on the Claimant. She alleged that that work, which, according to her, was quite extensive, was done negligently causing her pain, suffering, loss and damage. The Defendant denied the claim and, at the trial, the Defendant's attorney at law elected not to call evidence but, instead, made a No Case Submission. This court dismissed the submission and granted judgment to the Claimant against the Defendant. At that time, the court gave a summary of its reasons and now produces the full extent of its reasoning.

The Claim

2. The Claimant filed the claim on the 18th October 2010. She claimed that on the 2nd June 2008, she attended the Defendant's dental office for a routine tooth cleaning and dental check-up and after conducting a dental examination the Defendant advised that she required twenty-five fillings to be done to her teeth for cavities therein at the proposed cost of $8,000.00. The Claimant said that the Defendant further offered to clean and polish her teeth and to cut and grind her lower front teeth for no additional cost.

3. It was the Claimant's case that at 2:15 pm on that same day the Defendant commenced the work that was discussed. The Claimant claimed that during the course of the procedures, the Defendant informed her that he had identified additional cavities which required fillings and indicated to her that this would carry an additional cost of $1,500.00 to which she agreed. The Claimant claims that twenty-eight (28) fillings were done and were concluded at 4:15pm. She stated that the Defendant suggested that her next visit be in August 2008.

4. She left the Defendant's office without any medication or prescription for the pain and discomfort and claimed that for several days subsequent to the procedures performed, and in particular from 6th June 2008, she experienced intense pain, agony and suffering in her mouth with the result that she was unable to chew or eat and she experienced insomnia, restlessness, and intense nausea despite using the analgesic Paracetamol upon the advice of one Dr. Rajpal Motie.

5. The Claimant said that on 7th July 2008 she returned to the Defendant's office and complained to him of her tremendous suffering. Upon her visit she said that the Defendant indicated that he had to do four x-rays of her teeth at the cost of $500.00 to which she agreed. The Claimant claimed that the Defendant then advised her that she was required to have five root canals done comprising three to the lower front teeth and to two teeth to the left of those at a further cost of $4,000.00. She said that the Defendant further advised her that he was of the opinion that one of the latter teeth was either broken or fractured and that there may be a dormant abscess. She said that no treatment with respect to her pain and suffering or opinion relative to the dental work that he had performed up to then was given.

6. The Claimant claimed that she decided to seek a second opinion and on 9th July 2008 she visited Dr. Glen Bally who questioned the necessity for twenty-eight (28) fillings and advised that the fillings would have to be removed in order to determine if nerves were exposed. On 11th August 2008 the Claimant returned to Dr. Bally's office after experiencing severe pain in a left upper jaw tooth. Dr. Bally removed the filling to discover that a root canal was required because of an exposed nerve. He performed the root canal and the Claimant received some measure of relief. The Claimant returned to Dr. Bally's office on 23rd September 2008 on an emergency visit and was referred to Dr. Azard Ashraph, Specialist Maxillo-Oral Surgeon. Dr. Ashraph performed a root canal on the upper front tooth and informed the Claimant that the dental work that was previously done on her teeth was of very poor quality and he expressed surprise that twenty eight (28) fillings had been done in approximately two hours.

7. The Claimant stated that it was an express or implied term of the Defendant's engagement that the Defendant would:

   7.1. Exercise all reasonable care, skill, diligence and competence as a dental practitioner in and about the performance of the said dental work;

   7.2. Make and carry out all the usual and requisite examinations and clinical procedures necessary for the proper performance of the said dental work; and

   7.3. Furnish such patient after-care to the Claimant as was appropriate to her treatment.

8. The Claimant therefore initiated these proceedings alleging that the Defendant committed several breaches of the duty and standard of care required of him as a dental practitioner. The Claimant claimed several particulars of damages; particulars of breach of statutory duty comprising acts of dishonesty and the making of statements and signing of documents known and/or reasonably believed to be misleading and/or otherwise improper; particulars of breach of statutory duty comprising acts of abuse of the professional relationship between dentist and patient and particulars of expenses including special damages totaling $112,335.00.

Defence

9. In his defence, the Defendant admitted that he treated the Claimant but denied that he breached his duty of care. On the contrary, it was his pleaded case that he exercised reasonable skill and care in his treatment of the Claimant consistent with the practice of dentistry.

10. The Defendant said that on 2nd June 2008 the Claimant came to his office by appointment complaining of bleeding gums when she brushed her teeth, sensitivity to cold drinks as well as non-cervical carious lesions on her teeth. He stated that the Claimant requested to have her pits filled with white filling as it was adversely affecting her appearance and making her depressed. He therefore strongly denied the contention of the Claimant's that she had no prior dental complaints. The Defendant said that on that date he examined the Claimant and informed her of all the potential risks and implications, including the costs

of the procedures, and the Claimant consented to having certain procedures done which he detailed in his particulars of dental work.

11. Of significant importance is the fact that the Defendant denied having performed twenty-eight fillings on the Claimant on the first day of treatment but instead stated that on 2nd June 2008 he examined the Claimant and performed a deep scaling posterior dentition and generalized scaling on the remainder dentition. On that date it is his claim that the Claimant was given a chlorohexidine mouthwash, proper oral hygiene instructions and a prescription for antibiotics, which the Defendant said the Claimant stated she would not use as her husband was a doctor. The treatment took two and a half hours and cost $10,000.00. The Defendant claimed that the next appointment was scheduled for 6th June 2008 and a call was made to the Claimant on 3rd June 2008 to enquire of her health in respect of which she had no complaints.

12. According to the Defendant he then proceeded to do the following other work on the Claimant:

    12.1. On the 6th June 2008 he did a Class V restoration on teeth number 31, 32 and 41;

    12.2. On 9th June 2008 he performed a Class V restoration on teeth numbers 42, 43 and 44;

    12.3. On 13th June 2008 he performed Class V restoration (labial) on teeth numbers 11 and 12; and

    12.4. On 16th June 2008 he performed an NCCL (labial) on teeth number 21, 23 and composite restorations on Teeth number 26 and 27.

13. The Defendant said that on 7th July 2008 the Claimant phoned his office complaining of sensitivity to treatment and she was advised to visit the office where she was subsequently treated and the Claimant was given a sensitivity agent to take home. The Defendant denies having advised the Claimant to have any root canals performed. The Defendant said that he contacted the Claimant to enquire of her health and she indicated that she had no discomfort.

14. It is the Defendant's case that in August 2008 the Claimant visited the Defendant's office and asked to see her file. She was left with the file unattended and Mintee Barboo, the Defendant's assistant subsequently realized that part of the file was missing, namely the radiographs taken on the 2nd June 2008.

15. The Defendant also said that if the Claimant had suffered loss and damage which he denies then it was caused or contributed to by the negligence of the Claimant as the Claimant failed and refused to take any of the prescribed antibiotics, failed and refused to follow the advice of the Defendant in relation to diet and proper oral hygiene and failed and refused to follow the advice of the Defendant in the manner of brushing and flossing her teeth.

Reply to the Defence

16. In it the Claimant denied the events as laid out by the Defendant and affirmed the events as pleaded in the statement of case.

The Evidence

Jemma Mahabal

17. Mrs. Jemma Mahabal gave evidence that as of the date of trial she had no pain but she still ate with caution. She stated that she had lost 20 pounds during the course of the ordeal but that she did not document it or mention it in her witness statement as she did not see the need to do so. At trial, the Claimant gave evidence that the Defendant's premises were within walking distance of where she lived and that she visited his office on the 2nd June and indicated that this was the day in which the procedures that led to this matter took place. She stated that on the 6th June, she began experiencing significant pain but then stated that the pain actually began on the night of the 5th June. For this pain, the Claimant gave evidence that she took Tylenol which her husband, who is a medical doctor, prescribed. She stated that he did not prescribe anything stronger because of the side effects. The Claimant says that she lived with that pain for 5 weeks and did not visit the Defendant's office because he told her to come in August. She admitted however that she did not telephone his office to say she was in pain and she did not walk across to complain.

18. The Claimant gave evidence that the Defendant did the 28 fillings in two hours. She claimed that he started the procedures at about 2:15 PM and ended around 4:15PM. She acknowledged that this meant that the Defendant took approximately 4 minutes per filling and conceded in the end that she did not know for a fact that 28 fillings were done but that was what she was told by the Defendant. She stated that subsequent to the procedures done with the Defendant she had 12 root canals done with Dr. Ashraph and Dr. Bally. However, the Claimant acknowledged her failure to attach the invoices of these visits to her witness statement and when asked about the same she contradicted herself by first stating that she was advised not to put them in and then stated that she was not asked about any receipts by her attorney. She insists that she is still claiming for a refund of that money despite having invoices and not annexing them. The Claimant stated that she took Rapiclave, an antibiotic prescribed by Dr. Maharaj to ward off any sign of infection and that she took these antibiotics for about 3 months.

19. The Claimant's credibility was tested when asked about the first visit to the Defendant. The Claimant had said that the visit was supposed to be a routine checkup. However it was mentioned in evidence that she paid six thousand dollars ($6,000.00) in cash.

20. All in all the court finds this Claimant's oral testimony to have been shaky and inconsistent. Other than the matter referred to above, the following instances stood out:

    20.1. The first statement that caused this court to question the credibility of the Claimant was her claim under oath that a few days after the alleged procedure, on the 5th July 2008 she began to experience pain, yet she lived with that pain for 5 weeks because the Defendant told her to return in August. When questioned about this

she specifically said she did not telephone the Defendant's office to say she was experiencing pain neither did she attend his office to complain. She also specifically stated that she did not go to Dr. Bally or to any other dentist to alleviate the intense pain but chose to stay home and take Tylenol. This statement was not at all credible given the fact that the Claimant noted that the Defendant's office was within walking distance of where she lived and the fact that if the pain was so intense, it is unlikely that she could have coped merely with Tylenol for five weeks. This was in contrast with her statement of case in which she claimed that on the 7th July 2008 she visited the Defendant's office to complain of her excruciating pain. It is also worth noting that her allegation that she did not attend or call the Defendant's office to complain about the pain was not a reasonable response in the circumstances.

20.2. The court took issue also with the Claimant's assertion that she was told by the Defendant that he did 28 fillings on the 2nd July 2008. She stated under oath that the Defendant started the procedure at about 2:15 and ended at around 4:15. She admitted that that meant that each filling took about 4 minutes to complete, an assertion that even the dentists she brought as witnesses of fact asserted that that simply could not be done. It is also worth noting that when pressed on this issue she stated that she did not know for a fact that 28 fillings were done.

20.3. Another inconsistency was the Claimants claim under oath that she had 12 root canals done. While she did note that she had root canals done by her various doctors, nowhere in the Claimant's written evidence did she assert that 12 root canals were performed on her prior to her evidence on the witness stand and the court took note of this fact.

20.4. The court also noted that the Claimant asserted under oath that although she received certain invoices she did not include them in her witness statement. When pressed on the issue she contradicted herself by first stating that she was advised by her attorneys not to put the invoices in and then a few minutes later asserting that she was not asked about the invoices.

20.5. Under oath, at the beginning of her testimony, the Claimant said that her husband prescribed her Tylenol and nothing stronger because of the side effects. As she continued to be pressed she stated that she also took Replicave, an antibiotic as a precaution and that these were prescribed by Dr. Maharaj.

20.6. Another of the Claimant's statements that this court deemed incredible was her assertion that she was going for a routine checkup yet decided to walk with $6000 in cash. She asserted that she always walked with large amounts of cash, an assertion that this court finds difficult to believe.

Dr. Glen Bally

21. In his witness statement, Dr. Glen Bally identified himself as a dental surgeon having 25 years of experience in clinical dentistry. This was not challenged by the Defendant's

attorney at law. He stated that he was married to one of the Claimant's siblings, but asserted his acknowledgement of his professional duties.

22. He stated that the Claimant first attended his office on 9th July 2008 on an emergency appointment at which she "*ventilated her complaints of intense pain and extreme agony*"[1]. He said that after she related her dental experiences and history to him he expressed concern regarding the advisability and necessity for twenty eight fillings to be done at that single sitting. He said that he thoroughly examined the Claimant on the date in question but "*could not isolate any single source of her pain*"[2] and that, rather, the pain appeared generalized throughout her mouth. He noted that during the course of his examination he observed "*extensive buccal fillings that appeared to have been recently done*"[3]. Dr. Bally did not identify what he meant by "*extensive*" although he did also say that virtually all of the Claimant's teeth bore fillings[4].

23. He said that the Claimant returned on:

    23.1. 5 August 2008 complaining of pain throughout her entire mouth;

    23.2. 11 August 2008 on an emergency appointment again complaining of pain. This time he identified tooth No. 14 to be tender to percussion and he removed a buccal filling from it and found an exposed nerve. He thereafter performed "*root canal therapy*" and addressed the future course of administration to the Claimant in respect of many other restorations and complications.

    23.3. 23 September 2008, when she once again attended him on an emergency visit. On this occasion, he once again spoke about the Claimant complaining of severe pain and he noticed the incidence of abscess, severe swelling and tenderness to her upper anterior teeth as a result of which he took the decision to refer her to Dr. Azard Ashraph, a clinical specialist.

24. In his report dated 28 January 2009, annexed as ***"GB 2***" to his witness statement, Dr. Bally said that the Claimant's complaint when she came in on 9 July 2009 was that she had *"generalized oral pain, as a result of restorations done recently*". In that report, he said that he scheduled a prophylaxis since the *"pain was generalized and the periodontal tissues were sore (probably due to buccal fillings)".* He explained his decision to refer the Claimant to Dr. Ashraph in that report to be as a result of the conclusion that he came to that the Claimant's "*dental pain and suffering was most severe and would not be easily rectified".*

Cross Examination

25. In cross examination, this witness stated that, in his experience, one does not get pain from tooth enamel. Pain emanates from the exposure of nerves and from gum problems. He said that in the case of the Claimant, he did not find the pain concentrated in one place. He could

[1] Paragrah 10 of his witness statement
[2] Paragraph 11 of his witness statement
[3] Paragraph 13 of his witness statement
[4] Paragraph 12

not specifically remember but he thought that he took an x ray but stated that he could not tell from such an x ray about nerve problems if there were buccal fillings.

26. Of significance is the fact that he said that, on the 9th July, no severe pain was complained of specifically with respect to tooth No. 14 but he did state that teeth can act up at any time. On that date he claimed he did a percussion test as he could not localize the pain. He did not prescribe antibiotics and also stated that antibiotics are only prescribed if there is sign of visible infection but on that date he saw nothing to cause him to prescribe antibiotics.

27. He admitted that the history of a patient is important and that he did not make any attempt to retrieve her history from Dr. Harduar. He said in cross examination that when he saw the Claimant on 9 July, the pain she felt was not described as excruciating.

Dr. Azard Ashraph

28. In his witness statement Dr. Ashraph identified himself as a specialist maxillo-oral surgeon who was also a registered dental practitioner duly qualified to provide professional services in that behalf. He gave evidence as to his expertise in this field citing a practice for the past 35 years both in this country and abroad with a specialist qualification in the field of maxilla-oral surgery and accreditations in advanced restorative dentistry and implantology.

29. He stated that he saw the Claimant as an immediate priority at his office on 23rd September 2008 as a result of a referral by Dr. Glen Bally and upon her visit he examined and x-rayed her. He noted that she had an abscess into her maxillary left central incisor which had been restored, severe swelling and tenderness and intense pain localized in that area. He also noted that she required continuing treatment on a right first molar from which Dr. Bally extirpated the pulp to alleviate the acute pain of which she complained to him – i.e. the root canal on tooth No. 14.

30. At paragraph 9 he stated that he never observed in the Claimant bleeding gums, pits, any indication of excessive brushing and flossing, improper hygiene or any indication of damage caused by her drinking products harmful to her teeth.

31. At paragraph 16 he stated that there were twenty-eight class five composite restorations done which were inadequate in:

    31.1. Tooth to restoration seal. He was allowed to amplify this evidence at the trial to state that a restoration or a filling has to conform to certain parameters to be successful and the most important one would be that there is no seepage of saliva or fluids between the filling and the tooth as this would continue to cause tooth decay.

    31.2. Poor buccal contour. In amplification, he stated that a tooth has five surfaces, one of which would be the buccal surface or the side of the tooth close to one's cheek. He said that the contour of that part of the tooth should be done in such a way to deflect food away from the gum.

    31.3. Overhanging margins causing gingivitis, which he said, in amplification, meant that when a restoration is done it should follow the contour of the tooth and be

intimate with the structure of the tooth so there should be no lick or overhang on the tooth. Rather, there should be a continuous surface.

31.4. Root exposure caused by invasive excessive drilling. This he amplified as meaning what happens when one drills to an extent which is beyond what is reasonable thereby extending the restoration beyond the margin into the gum towards the pulp of the tooth within the root.

32. He said that all the teeth were sensitive to cold stimuli and there were several in the upper jaw that were also sensitive to hot stimuli.

33. Over the period of four months Dr. Ashraph said that he treated the Claimant with root canal procedures to teeth numbers 5, 9, 14 and 25. In addition, he noted during his examination that all the teeth showed the buccal restorations had encroached and perforated into the pulp chambers causing acute pulpitis and devitalisation of the teeth.

34. The Claimant visited him over eighteen times for treatment and to alleviate acute pain from several teeth up to 4th February 2010.

35. Based on his examination, observations, x-rays, notes and dental history of the treatment which the Claimant disclosed, he said that he wrote and forwarded three medical reports to the Dental Council of Trinidad and Tobago.

36. Dr. Ashraph also amplified paragraph 19 of his witness statement. He said that he had to root treat teeth that had buccal restorations, that is, the fillings on the side of the tooth near the teeth which had encroached and perforated the pulp chamber and which had been drilled to the point where it became intimate with the pulp chamber. He explained that the pulp chamber was the part of the tooth which contains the nerve and blood vessels.

37. He also amplified the treatment that he said he administered at paragraph 23 of his witness statement. He stated that a root filling requires the surgeon to remove the dead material from middle of the tooth which is in a pulp chamber, sterilize the diseased areas and, after it has been sterilized, substitute it by inserting material which the body finds non objectionable. He said having therefore root filled these teeth, a posting was inserted in it to support it.

38. His amplification of surgical apiocectomies at paragraph 25 was also important to give the court an idea of what other procedures were done or will be required in respect of the Claimant. He explained that in some teeth, where abscesses form at the tip after one root fills it, it is not often that the body heals, so it is left in the apex of the tooth and cellular structures form a cyst. He explained that when a tooth is non vital, the dead material in pulp chamber affects bone at the tip of the root. At the tip there could be an abscess formation and one surgically goes in to lift up the gum and take the bone away to expose the tip of root in the top and seal the tip from the top side of the tooth from the apex. That was what was referred to as an apiocectomy.

39. In his report of the 14 July 2011, aside from the mention of restorations having been done to teeth numbers 12, 13, 21, 22, 23, 24, 25 and 26, he mentioned having performed an apiocectomy in the area of teeth numbers 4, 5 and 6 which involved sedation.

Cross examination

40. When cross examined, Dr. Ashraph stated that a filling is a fairly complicated procedure and takes time and this was noted as an important fact to the court. Also of importance was the fact that he stated that if the Claimant had complained of pain it would be in his notes. He made it clear that he took extensive notes of every procedure and of every visit. There were notes attached to his witness statement and the Defendant's attorney questioned the Claimant on most of these notes in particular the notes from 23 September 2008, 25 September 2008 3 November 2008, 4 November 2008 and 14 November 2008 amongst others. It was noted that other than the notes of 25 September 2008 and 3 November 2008, there was no note that suggested that the Claimant experienced pain upon her visit and that an assumption could be made that she was therefore not in pain. It was also determined that when the Claimant visited him on 14 July 2011 the visit went "uneventfully" and this meant that she was "healed". He stated that no other dentist asked him for the Claimant's dental history. It was his evidence he sent the Claimant computerized receipts and so she should have a copy of all those receipts.

No Case Submission

41. At the close of the Claimant's case, the Defendant's attorneys made the election not to lead any evidence in respect of the Defendant on the ground that there was no case to answer – a "No Case Submission" - and the court ordered that submissions be made in writing.

Defendant's Submissions

42. The Defendant submitted that since the Claimant did not call any witnesses as expert witness and since there was the general prohibition against opinion evidence, all the witnesses called were witnesses of facts and not of opinion and accordingly, any evidence purporting to be opinion should be disregarded. The Defendant set out the salient facts upon which the Claimant relied in her claim and in her evidence before the court, before considering the law.

43. The Defendant submitted that according to *Legal Liability of Doctors and Hospitals in Canada*, 4th Edition, Thomson Carswell, Ontario, 2007 page 212, "To be successful a negligence action, the Defendant must owe the plaintiff a duty of care; the Defendant must breach the standard of care established by law the plaintiff must suffer an injury or loss; and the Defendant's conduct must have been the actual and legal cause of the plaintiff's injury. If the case fails to meet any of these requirements, the action will be dismissed."

44. It was submitted that although the Defendant owed the Claimant a duty of care, the Claimant failed to adduce evidence or sufficient evidence to support the other requisite elements and accordingly the claim should be dismissed since the court must make a determination of whether or not the treatment of the Claimant by the Defendant breached the standard of care required by law which the Defendant submitted he had not breached.

45. It was further submitted that the evidence does not establish clearly what treatment was performed by the Defendant. The Defendant submitted that the Claimant was unable to say what treatment was performed on her and the other witnesses, both dentists, never requested the Claimant's records from the Defendant. It was submitted that, accordingly, there was no evidence of any injury caused by the Defendant or at all for that matter. It was further submitted that no order has been made, whether before or at the trial, deeming the Claimant's witnesses as experts and in any event, their evidence failed to establish that the Defendant's work fell short of the practice accepted by a reasonable body of dentists as the acceptable practice. It was therefore submitted that there was no evidence to establish that the Defendant was negligent.

46. The Defendant submitted that under the law, the standard of care required is an objective one. Persons who hold themselves out as possessing special skills or abilities must meet a standard of conduct equivalent to that of a reasonably competent member of their group. Accordingly, the standard of care required of a doctor is that of a reasonable medical practitioner considering all the circumstances. It is not a standard of perfection. It was submitted in support of this proposition that a medical practitioner is not required to achieve success in every case. The Defendant relied on ***Jackson & Powell on Professional Negligence***, 5th Edn, London, Sweet & Maxwell, para. 12-067 p 776 in support of this submission.

47. In addition it was submitted that the classical formulation of the standard, of universal application, approved by the local Court of Appeal, has been the direction to the jury of McNair J in ***Bolam v. Friern Hospital Management Committee*** **[1957] 1 WLR 582 at 586**, known as the ***Bolam*** test - whereby the test was stated to be the standard of the ordinary skilled man exercising and professing to have that special skill. In that case it was noted that a man need not possess the highest expert skill and that it is not necessary therefore that medical personnel cure a patient's case but that he act in a manner that is reasonable for the standards of his profession. The Defendant submitted therefore that there was need for expert evidence in this case as the court needed to determine whether the Defendant exercised reasonable care and to do so the court had to have regard to the practice of other practitioners of similar status giving medical evidence. It was also submitted that expert witnesses were needed to assist the court in deciding whether the acts or omissions of the Defendant constituted negligence. The Defendant said that in ***Deonarine v Ramlal CV App No. 28 of 2003,*** at paragraph 21, the Court of Appeal reiterated that to succeed in a medical negligence claim the Claimant must show that the Defendant's conduct fell below a standard practice regarded as acceptable by a responsible body of professional men skilled in the art. The Defendant made the point that no leave was ever granted to the Claimant to adduce expert evidence pursuant to Part 33 of the CPR so that the court should disregard the opinion evidence of Dr. Bally and Dr. Ashraph.

48. It was also submitted that for the Claimant's case to succeed the Claimant must have suffered loss or injury as a result of the Defendant's breach of duty even if it is proved that the Defendant's conduct fell below the required standard of care. Once again the Defendant submitted that expert evidence is required to demonstrate the loss or injury suffered by the Claimant. It was noted that the Claimant had been refunded all her payments to the Defendant, without any admission of liability on his part, and that there was no evidence

of an injury or loss suffered by the Claimant. It was noted that although invoices for remedial work was presented there was no expert evidence, nor any evidence at all for that matter, linking the need for remedial work to the procedures done by the Defendant and that the Claimant's complaint is merely that of pain. Accordingly, it was submitted that the Claimant did not demonstrate any real loss or injury stemming from the Defendant's conduct.

49. On the issue of causation it was submitted that an injury in itself is insufficient, there must be evidence to demonstrate that it was caused by the Defendant's breach. Again it was noted that expert evidence is needed to make this linkage. It was submitted that there must be a nexus between the Claimant's need for remedial work and the procedures performed by the Defendant and that none of the witnesses, neither can the Claimant, gave evidence as to what work was performed on the Claimant by the Defendant.

50. The Defendant also submitted on the credibility of the Claimant and her witnesses and in analyzing the oral evidence of all involved the court was asked to deem her testimony and evidence to be incredible.

Claimant's Submissions in Reply

51. The Claimant filed detailed submissions in response to the Defendant's No Case Submission. The Claimant submitted firstly on the evidence of Dr. Ashraph. It was submitted that Dr. Ashraph's evidence was challenged unconvincingly by the Defendant's counsel and that attempts to have his evidence and reports ruled inadmissible on the basis that he was not declared an expert is misconceived and amounted to an objection to the opinion evidence of the witness. The Claimant relied on the case of ***Kirkman v Euro Exide Corporation*** 2007 EWCA 66 pars 18-21 and stated that Dr. Ashraph along with Dr. Bally remained witnesses of fact and their evidence perfectly admissible.

52. In addition it was submitted that the Defendant could not approbate the said evidence by cross-examination and simultaneously reprobate its admissibility at trial. The case of ***S v Chesterfield and North Derbyshire Royal Hospital NHS Trust 2003 EWCA Civ. 1284*** was substantially quoted in support of this submission. The Claimant stated that the fact of nerve damage as disclosed in the reports of both Drs. Bally and Ashraph is something noted from their visual and other examination(s) and requires no expert evidence. The Claimant also relied on this court's decision in ***Readymix W.I. Ltd. v Super industrial Services CV2010-03435*** and stated that the parties in this case are in effect on an equal footing insofar as no experts have been so declared on either side. The Claimant also relied on the 2012 Edition of ***Blackstone's Civil Practice*** where at paragraph 52.8 it was stated that witnesses who are qualified to be experts are frequently called as witnesses of fact where they were personally involved in matters relating to litigation and it is both inevitable and appropriate that a witness who happens to be a professional will give evidence of his actions based on his professional experience and expertise, because no professional person can explain or justify his actions and decisions save by reference to his training and experience.

53. It was further submitted that neither Drs. Bally nor Ashraph were required to be declared as an expert pursuant to Part 33 of the CPR 1998 as no further objections were allowable

after the date stipulated and there was no appeal by the Defendant against that order or the decision that they were witnesses of fact. It was submitted that in any event under the rule in ***Gall v Chief Constable of West Midlands*** 2006 EWCA 2638 *".... a party does not normally need leave to call a witness of fact*" viz. the attending physician. Reliance was also placed on the cases of ***DN v Borough of Greenwich*** [2004] EWCA Civ 1659; ***SWRHA v Samdaye Harrilal*** Civ. App. No. 60 of 2008.

54. The Claimant also submitted under the heading of the no-case submission and the reliability of the Claimant's evidence under cross examination. It was submitted that the Claimant was not cross-examined on substantive points in her witness statement. It was asserted that because of the Defendant's failure to sufficiently cross examine the Claimant, the Defendant failed on the law and the Claimant prevailed on the facts. The Claimant relied on the case of ***Sookraj v Samaroo P.C.A. 60 of 2002*** and ***Mansor v Berhad*** Award No. 232 of 2010 of the Industrial Court of Malaysia at paragraph 15.

55. The Claimant submitted also on the Claimant's standard of proof in the face of the No Case Submission. The Claimant submitted the case of ***Miller (t/a Waterloo Plant) v Cawley*** [2002] EWCA Civ 1100 and stated that at the Court of Appeal it was determined that the applicable standard was the usual one of a balance of probabilities. However the Claimant stated that shortly thereafter in ***Benham Limited v Kythira Investments Ltd*** [2003] EWCA 1794 the point was made that the test to be applied by the judge if he does entertain a No Case Submission is whether or not on the evidence adduced by the Claimant has "a real prospect of success". In any event the Claimant's attorney submitted that the Claimant in fact fulfilled and exceeded both the "balance of probabilities" standard and the "prima facie case" or "scintilla" standard. The case of ***Mullan v Birmingham City Council*** July 29, 1999 Times Law Reports, David Foskett J. (Q.C.) was also relied upon.

56. On the issue of the Claimant's fulfillment of the "but for" test the Claimant submitted that both evidentially and in law as regards the requisite burden of proof this had been thoroughly disposed of.

57. On matters of evidence the Claimant in submissions went through the evidence and asserted their position that the evidence as advanced by the Claimant withstood the test of cross examination and in some cases were not tested at all.

58. On the important issue of credibility, the Claimant first submitted the law in the case of ***Textrin v OWTU Court of Appeal in Civil Appeal No. 42 of 1969*** where it was stated that a witness who makes contradictory statements on oath ought not to be believed unless he is able to give a satisfactory explanation for his having done this. ***Graham v. Chorley BC [2006] EWCA Civ 92*** was also considered. It was submitted that on the Claimant's evidence, the court should conclude in her favour by irresistible inference and necessary implication and to draw adverse inferences from the Defendant's having led no evidence in the foregoing circumstances quite apart from the unfavourable conclusions that are clearly available to be drawn from items 1, 2, 3, 4 and 5 of the Agreed Bundle which are in evidence. The Claimant said that the Defendant by admitting the impracticability of properly performing 28 fillings in 2 ½ hours has thereby reduced the issue to being one of strictly fact as to whether the Defendant did indeed perform 28 fillings within 2 ½ hours which requires no expert testimony for the court to decide upon. It was further submitted

that the evidence adduced by the Claimant and her witnesses established the Defendant's negligence on even more than a prima facie basis and by irresistible inference and necessary implication which rendered the Defendant incapable of succeeding on his No-Case Submission. The Claimant also averred that neither Dr. Bally's nor Dr. Ashraph's testimony was discredited in cross-examination. The inconsistencies of the evidence of the Claimant and her witnesses were brushed aside as Freudian slips and indeed the Claimant submitted that there were not many inconsistencies to begin with.

59. On the issue of special damages the Claimant submitted the case of ***Bristol v Cabrera & Anor.*** in Petty Civil Court Action No. 462 of 2011 (per Nalini Singh M.) in which the learned Magistrate quoted from ***Halsbury's Laws of England*** on special damages and also from ***Mario's Pizzeria Ltd. v Hardeo Ramjit*** CA 146 of 2003 where it was said that "*the general rule is that general damages are such as the law will presume to be the direct natural or probable consequences of the action complained of while special damages are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and therefore, they must be claimed specifically and proved strictly*."

60. With respect to the determination of liability for negligence, general damages and aggravation, it was submitted that the Claimant adduced much more than a prima facie case or scintilla of evidence to prove her general damages claimed with sufficient certainty and particularity as is reasonable to satisfy the court that the special damage claimed ought to be awarded. Indeed as aforesaid even the balance of probability standard has been exceeded. The Claimant submitted the transcript of ***C.A. No. 216 of 2011 – Rhonda Taylor v Andy Sookhoo & Ors*** in support of this submission.

61. On the issue of quantum of damages the Claimant says that the Defendant has not challenged either Dr. Ashraph's tally of fees paid ($75,165.00) by the Claimant and in any event the receipts collectively annexed the Claimant's Witness Statement amount to $78,044.00 and bear out this assertion fully. In addition it was submitted that the cost of the estimated treatment stated at page two of Dr. Ashraph's latter report ($112,335.00) was not challenged or contradicted nor were any other damages as proposed by the Claimant.

The Law on No Case Submissions

62. One cannot deal with the law on No Case Submissions without referring to the case of ***Alexander v. Rayson [1936] 1 KB 169*** which clearly stated that the responsibility for not calling rebuttal evidence should be upon the other party's counsel and upon no one else. This proposition was also espoused in ***Laurie v. Raglan Building Co. Ltd. [1941] 3 All ER 332*** and more recently in the 2006 decision of ***Graham v. Chorley BC (supra)***. This court must therefore determine whether this No Case Submission should stand and ultimately whether the Claimant's case should be dismissed. To do so the court will analyze the current test under which the submissions of no case to answer are considered.

The Test

63. In ***Benham Limited v. Kythira Investments Ltd and Another*** [2003] EWCA Civ 1794 it was stated that if a judge concludes at the end of the plaintiff's evidence that he has discretion to entertain a submission of no case to answer without putting the Defendant to his election, the threshold test at that stage is: "Have the Claimants advanced a prima facie case, a case to answer, a scintilla of evidence to support the inference for which they contended, sufficient evidence to call for an explanation from the Defendant?". Several other cases considered a situation in which the judge did not put the Defendant to his election including ***Bentley v Jones Harris & Company*** [2001] EWCA Civ 1721; ***Graham v Chorley Borough Council*** [2006] EWCA Civ 92 and others.

64. In this case the Defendant was put to his election of no case to answer and therefore the law is as espoused in ***Miller (t/a Waterloo Plant) v Margaret Cawley [2002] EWCA Civ 1100 pars 17, 20*** applies. In that case the court stated at par 17:

> *"Where a Defendant is put to his or her election and elects to call no evidence, the position is quite different… First, where a Defendant is put to his election, that is the end of the matter as regards evidence. The judge will not hear any further evidence which might give cause to reconsider findings made on the basis of the Claimant's case alone. The case either fails or succeeds, even on appeal. The issue after an election is, in other words, not whether there was any real or reasonable prospect that the Claimant's case might be made out or any case fit to go before a jury or judge of fact. It is the straightforward issue, arising in any trial after all the evidence has been called,* ***whether or not the Claimant has established his or her case by the evidence called on the balance of probabilities …****"(emphasis mine)*

65. And at paragraph 20 the court stated:

> *"… once a Defendant has elected to call no evidence . . . the only issue then becomes whether in the light of the evidence already adduced the Claimant has made out his case on the balance of probabilities and that was the test (more favourable to the Defendant) which the judge ought to have been invited to apply."*

66. As far as this court is aware, there have been no local pronouncements contrary to this position nor has the law been altered since the ***Miller*** case. Therefore this court has to consider whether the Claimant in the present case has established her case by the evidence called on a balance of probabilities.

The Issues

67. On 23 September 2011, a statement of issues of law was filed. All of the issues were referred to as having been unagreed and were designated as follows:

    67.1. Issues on behalf of the Claimant:

        67.1.1. Whether or not the Defendant performed the professional dental services that he was retained by the Claimant to provide to her at

the standard of care applicable to the discharge of the duty of care thereto?

67.1.2. If in the light of the court's findings at 1, above, damages and costs exigible against the Defendant, what is the appropriate measure of general damages that should be applied by the court?

67.2. Issues on behalf of the Defendant:

67.2.1. Did the Defendant or a duty of care towards the Claimant and, if so did he breach same?

67.2.2. Did the Claimant suffered loss and damage and, if so, was same caused by the Defendants breach was same reasonable and or foreseeable?

67.2.3. Was the Claimant contributorily negligent?

Was there a duty of care?

68. There was no doubt that there existed a duty of care, a fact readily accepted by the parties. There is therefore no need to discuss this any further.

Was the duty breached?

69. To determine whether the Claimant has established her case on the balance of probabilities, the court will consider the evidence before it. Both parties advanced differing claims in their pleadings but it is the Claimant and her witnesses who were subjected to the rigours and probes of cross examination. There was no evidence for the Defendant.

70. The Claimant's inconsistencies and incredible statements were pointed out above when this court discussed her evidence[5].

71. Consequently, the court found that the Claimant was an inconsistent and incredible witness but having found her incredible the court must consider if her case in negligence was found anywhere else. Certainly the Claimant, while able to give evidence of her alleged pain and suffering, cannot give evidence as to whether the dental work completed was negligently done. This can only be evidenced by the dentists that attended to her after the alleged negligent work was done. The case in negligence for the Claimant does not rise and fall on the evidence of the Claimant alone. The court must also pay regard to the evidence of the Claimant's witnesses.

72. The Defendant has submitted that since the Claimant did not call any witnesses as expert witnesses under Part 33, and since there was a general prohibition against opinion evidence, all witnesses called were witnesses of fact and not opinion and therefore the opinion

[5] See paragraph 20 above

evidence of the doctors should be disregarded. This contention was opposed by the Claimants who said that the defence's attempt to rule the evidence of the Claimant's witnesses inadmissible because the witness was not a Part 33 expert witness was flawed.

73. Under Part 33 parties must disclose their intention to put into evidence expert witnesses and failure to do so prevents them from adducing expert evidence in court. However where a witness before the court is a witness of fact and wishes to give factual evidence, the court must not hinder that evidence simply because such evidence is being given by an expert in a particular field. This principle was considered in ***Kirkman v Euro Exide Corp (CMP Batteries Ltd) [2007] C.P. Rep. 19***. In that case the witness was the doctor who advised the Claimant and gave evidence of this fact. The other side objected to his evidence on the basis that it was expert evidence and no permission was sought to adduce expert evidence from this witness. The Court of Appeal in their analysis found that this witness might "*if asked in cross-examination, be able to justify his advice as good and correct. In doing so he would almost certainly have to express expert opinion."* On this basis the Court of Appeal in that case found that the first instance judge erred in refusing to admit the evidence of a surgeon who had treated the Claimant in a personal injury action, on the basis that to admit the evidence would be to allow the Claimant to have two expert witnesses compared to the Defendant's one. That case was a good example of where the court must give way in the interests of justice.

74. Similarly, in ***American Life Insurance Company and ors v RBTT Merchant Bank Ltd CV 2008-00215***, Aboud J considered a similar position where persons with particular expertise gave evidence before the court. The court allowed the expert opinion evidence in that case.

75. The court agrees with the position as espoused in ***Kirkman*** and ***American Life*** and finds that the doctors who gave evidence before the court were witnesses of fact as they indeed advise and attend to the Claimant. Their years of expertise in their fields would obviously allow them to form an expert opinion on what their clinical observations revealed. It is not as though they were called upon as third parties to opine on the findings of an attending practitioner. Instead, they spoke first hand based on their own findings. While they are experts in their own right, their evidence amounted to evidence as adduced from a witness of fact. Certainly their expertise and opinion would be expressed but this evidence must be allowable in this case. This is especially so since the Defendant had their respective reports from even prior to the filing of these proceedings and never raised any objection to the admissibility of any portions of it in so far as they related to expert opinions expressed. Therefore both of these witnesses were competent to give evidence on behalf of the Claimant. There was no prejudice to the Defendant who had all of the Claimant's evidence laid bare before him from very early on.

76. The Claimant's doctors gave evidence and there were some notable points in their oral testimony. With respect to the evidence of Dr. Glen Bally the court noted:

    76.1. In his witness statement he stated that the Claimant was in excruciating pain requiring urgent dental assistance.

76.2. At paragraph 13 of his witness statement he said that he noticed extensive buccal fillings that were recently done

76.3. Dr. Bally noted that he could not say whether the Claimant was on antibiotics but he did not prescribe any antibiotics for the Claimant because there was no visible sign of infection and nothing that would cause him to deem antibiotics necessary.

76.4. He also was forthcoming with the fact that he did not attempt to retrieve her medical history from the Defendant and so he could not say whether 28 fillings were done.

76.5. He referred the Claimant to Dr. Ashraph because the treatments that were administered were not working.

77. Dr. Ashraph also gave evidence worth noting:

77.1. Dr. Ashraph stated at paragraph 9 of his witness statement that there was no indication of excessive brushing or flossing, improper hygiene or any indication of damage caused by her drinking products harmful to her teeth.

77.2. Dr. Ashraph gave evidence that he wrote to the dental council following the examination of the Claimant because of the alleged negligence that he saw.

77.3. He stated that a filling was a complicated procedure and takes time to complete and that it was unlikely that 28 fillings could be done in the time that was stated by the Claimant. However he gave evidence that at paragraph 16 that there were indeed twenty eight class five composite restorations inadequately done.

77.4. He stated that the Claimant did endure pain, but he also stated that he did not think that the Claimant was in significant pain as if she was in pain it would be in his notes and he expressed the importance of his notes.

77.5. He also noted that he was not approached for her dental history and although he stated that he usually asked for dental history there was no evidence that he did so in this case.

78. Now the court must decide what weight to apply to the evidence of these two doctors and the court must determine whether their evidence can be used to help determine whether there was any negligence on the part of the Defendant. It is trite law that to establish that a party was negligent one must first establish that he owed a duty of care and that that duty was breached. In this case, there is no doubt that the Defendant was engaged by the Claimant to perform dental work on her. With that engagement comes a duty of care and that proposition cannot be doubted. But what is the duty of care that is owed and how is this judged? This issue was discussed by McNair J in ***Bolam v. Friern Hospital Management Committee*** **[1957] 1 WLR 582 at 586**, and is known as the *Bolam* test. The standard is that of the ordinary skilled man exercising and professing to have that special skill. In that case it was noted that a man need not possess the highest expert skill and that it is not necessary therefore that medical personnel cure a patient's case but that he act in a manner that is reasonable for the standards of his profession.

79. Taking this into consideration, the Claimant cannot say whether or not her procedures were done to a standard reasonable for the Defendant's profession, but, the doctors who came as witnesses could. It is for the court then to decide what weight to give to this evidence. In addition, the court noted that the Defendants witness statements have not been tendered and the Defendant himself has not taken the stand. The question therefore remains as to whether the Claimant has discharged her burden both legally and evidentially.

80. The court has analyzed the witness statements and evidence in court of the Claimant and her witnesses and notes the following:

80.1. There was no suggestion that anyone other than the Defendant did the work complained of by the Claimant;

80.2. There would be nothing to repair if there was no evidence of work negligently done and both doctors gave evidence that there were fillings recently done that were of a poor quality. This evidence was not challenged;

80.3. Further, it was obvious from the evidence of Doctor Ashraph that he was of the view that the Defendant had not acted in a reasonably professional manner to the extent that he was invited to present a report to the governing professional body to which both he and the Defendant are affiliated, namely the Dental Council of Trinidad and Tobago;

80.4. Both doctors gave evidence that the Claimant was in pain as reported by her, a fact that was challenged under cross examination but not conclusively defeated. Indeed while it was brought to the fore that Dr. Ashraph did not note that the Claimant was in pain on every visit, the evidence of pain by Dr. Bally, who saw the Claimant immediately after her visit was not tested and certainly not disproved. Even though the court had issues with the Claimant's credibility, it is not inconceivable that the Claimant would have suffered from the work done by the Defendant, which the both doctors who gave evidence for her indicated was poorly done. Therefore the court will not discount her evidence that she suffered pain.

81. The court accepts the evidence of the dentists who gave evidence in this regard and rejects the submission that their evidence should not be considered in so far as it related to their opinion evidence since that issue was already dealt with by the court when the Defendant's notice of application in respect of evidential objections was ruled upon on 5 June 2012 and in respect of which there was no procedural appeal. In any event, the Court of Appeal in ***Vanessa Garcia v The North Central Regional Health Authority*** *Civ. App. No. 118 of 2011*, ***Rhonda Taylor v Andy Sookhoo and others*** Civ. App. 216 of 2011 and ***Endeavour Holdings Ltd v Nirmal Bhaggan*** Civ App. No. 117 of 2012 confirmed that expert evidence can be received at any time and the Court of Appeal went on to discuss the purpose of expert evidence in the recent case of ***Kelsick v Kuruvilla & Ors*** Civ App. No. 277 of 2012 which is to assist the court. It has to be said that the Defendant never expressed any desire or intention to call any expert evidence of his own to suggest that what he had done was done to an accepted standard.

82. In answer to the question therefore, the court finds that the duty of care was breached. Dr. Bally noted extensive restorations which were recently done and noted excessive drilling

at Tooth No. 14 for which he began a root canal procedure. He then referred the Claimant to Dr. Ashraph.

83. Dr. Ashraph identified issues with 28 fillings, consistent with the extensive restorations referred to by Dr. Bally.

84. He gave uncontroverted evidence of the relevant applicable standard in dentistry in that there were twenty-eight class five composite restorations done which were inadequate[6] in:

84.1. Tooth to restoration seal.

84.2. Poor buccal contour.

84.3. Overhanging margins causing gingivitis.

84.4. Root exposure caused by invasive excessive drilling.

85. As a matter of fact, the findings of Dr. Ashraph were so serious that he referred the matter to the Dental Council of Trinidad and Tobago which resulted in proceedings before that council which the Defendant refused to take part in other than to forward the transcription of his patient record in relation to the Claimant and a letter. Findings were made by the Dental Council but those findings were not relied upon by this court as they were not properly brought before this court and were struck out.

86. Consequently, this court is of the respectful view that the Defendant owed a duty of care to the Claimant and that duty of care was breached.

Causation - Did the breach cause injury, loss or damage?

87. While the Claimant established that the duty of care was breached, the Claimant has to also prove that the said breach caused her injury, loss and/or damage as was established in the case of ***South West Regional Health Authority v Samdaye Harrilal CV App No. 60 of 2008 Mendonca JA, Jamadar JA and Bereaux JA delivered 12th May 2011.***

88. There is no doubt in the courts mind that, but for the work done by the Defendant, the Claimant would not have had to have undergone the extensive remedial work done by Dr. Bally and more particularly Dr. Ashraph.

89. Again, the uncontroverted evidence is that root canal procedures were done by Dr. Bally on tooth number 14 and by Dr. Ashraph on teeth numbers 4, 5, 6, 8, 9, 11, 14, 19, 21, 23, 24, 25 and 28 which were restored with titanium posts inserted in the park canal and the coronal tissues replaced with a composition material. It is also unquestioned that as a remedial measure, Dr. Ashraph considered the removal of all of the restorations done and their replacement. In all, 12 root canals were done and composite restorations were done on teeth numbers 3, 4, 5, 6, 8, 9, 14, 24, 26, 27, 28, 29 and 30 – amounting to a total of 13 restorations. Further, restorative treatment was contemplated on teeth numbers 9, 11, 12, 13, 18, 19, 20, 21, 22 and 31 with possible root canal therapy. Also, Dr. Ashraph

[6] See his evidence in this regard mentioned at paragraph 31 above

recommended the crowning of the root treated teeth and referred to several of those who treated teeth requiring surgical apiocectomonies – one of which was already done as referred to in his report of 14 July 2011 in the area of teeth numbers 4, 5 and 6.

90. This court accepts that the Claimant visited Dr. Ashraph over 18 times for treatment.

91. The court therefore finds that on the basis of the evidence, particularly the evidence of the two doctors, there is evidence of negligence on the part of the Defendant. Further, the nature of the injuries expressed by the Claimant and her witnesses leads one to the inescapable conclusion that the Defendant's breach of his duty of care towards her resulted in her losses, damages, pain and suffering. No other cause was suggested and therefore nothing else can be entertained. While the Claimant's evidence was tested and her inconsistencies brought to the fore, the two doctors who were brought to substantiate her claim and who were the ones who could really speak to the ***Bolam*** performance of the Defendant and they brought home the fact of causation as well.

What is the extent of the injury, loss or damage?

Special Damages

92. The Claimant pleaded particulars of expenses including special damages in the amount of $191,779.00 which represented the payments made to date for remedial dental work, and the prospective payments to be made for pre-assessed dental work. Of that figure, the cost of work done claimed by the Claimant was the sum of $79,444.00. The Claimant annexed certain receipts in respect of payments to Dr. Ashraph. The court calculated that those receipts amounted to the sum of $78,044 and the court awards the following sums based on the receipts annexed:

92.1.	Payments to Dr. Bally	$ 2,425.00
92.2.	Payments made to Dr. Ashraph	$78,044.00
	TOTAL	**$80,469.00**

93. Further, Dr. Ashraph presented a figure for Future Costs – see Medical report of the 7 April 2010 – in the sum of **$112,335.00**. This sum was not challenged and would therefore be awarded as well.

94. The awards for damages would carry interest on special damages in the sum of 3% per annum from 2 June 2008 and 6% per annum on general damages from 18 October 2010.

General Damages

95. While the court accepts that the Claimant must have suffered some degree on pain and discomfort on the basis of her two witnesses evidence, the court has already stated that the Claimant's evidence was inconsistent, those inconsistencies causing doubt in the courts

mind as to the nature and gravity of the resulting physical discomfort, pain and suffering, loss of amenities and loss of future pecuniary prospects.

96. With respect to general damages, the court does consider the severe pain and suffering that the Claimant must have endured and has noted that the Claimant was not cross-examined with respect to paragraph 46 of her witness statement which sets out the effects which the issues that she has experienced with her teeth has caused on her life. Bearing in mind the principles as espoused in ***Cornilliac v St Louis (1965) 7 WIR*** 491, and the fact that the Claimant's injuries are fairly unique so that no authorities on point were provided, this court is of the view that this experience which began on 2 June 2008 with intense and excruciating pain continuing for more than 3 months until the first root canal was done followed by the continued visits for over 18 times to complete 11 further root canals and the replacement of fillings, along with one completed surgical apiocectomy with the possibility of others having to be performed, the court is of the view that a reasonable figure for general damages would be the sum of $75,000.00. This sum would therefore be awarded to the Claimant.

The Order

97. Accordingly, there will be judgment for the Claimant against the Defendant with damages assessed as follows:

    97.1. **Special damages** assessed in the sum of $80,469.00 together with interest thereon at the rate of 3% per annum from 2 June 2008;

    97.2. **Future costs** assessed in the sum of $112,335.00;

    97.3. **General damages** assessed in the sum of $75,000 together with interest thereon at the rate of 6% per annum from 18 October 2010.

98. The Defendant shall pay to the Claimant the prescribed costs of the action quantified by the court in the sum of $37,003.77.

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/S/ Devindra Rampersad J
High Court Judge

Assisted by
Krystal Richardson
Attorney at Law
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