

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
SUB-REGISTRY, SAN FERNANDO**

No. S-839 of 1996

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

ACT NO. 4 OF 1976

AND

IN THE MATTER OF AN APPLICATION BY RONALD SOODEEN (BORN ON THE 11TH DAY OF APRIL, 1989), MARK SOODEEN (BORN ON THE 22ND DAY OF NOVEMBER, 1987) AND RICARDO SOODEEN (BORN ON THE 19TH DAY OF DECEMBER, 1986) (ALL MINORS SUING BY ALBERT SOODEEN THEIR FATHER AND NEXT FRIEND) AND ALBERT SOODEEN AND CHERYL SOODEEN FOR REDRESS PURSUANT TO SECTION 14 OF THE SAID CONSTITUTION FOR CONTRAVENTIONS OF SECTIONS 4 AND 5 OF THE SAID CONSTITUTION IN RELATION TO THEM AND/OR EACH OF THEM

AND

IN THE MATTER OF THE INACTION AND/OR CONDUCT AND/OR DECISIONS OF THE EXECUTIVE ARM OF THE STATE IN ALLOWING AND/OR PERMITTING DEMERARA VILLAGE, ARIMA TO BE CONTAMINATED WITH LEAD POISONING AND/OR IN FAILING AND/OR NEGLECTING TO REMOVE THE SAID LEAD POISONING TIMEOUSLY AND/OR AT ALL.

BETWEEN

- (1) RONALD SOODEEN**
- (2) MARK SOODEEN**
- (3) RICARDO SOODEEN (all suing by their father
and next friend Albert Soodeen)**
- (4) ALBERT SOODEEN**
- (5) CHERYL SOODEEN**

Applicants

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Respondent

AND BETWEEN

- (1) ALBERT SOODEEN
(Administrator of the Estate of
Ronald Soodeen, deceased)**
- (2) MARK SOODEEN**
- (3) RICARDO SOODEEN (all suing by their father and
next friend Albert Soodeen)**
- (4) ALBERT SOODEEN**
- (5) CHERYL SOODEEN**

Applicants

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Respondent

**By Originating Notice of Motion and by order to carry on
Proceedings, dated the 28th day of September, 1999**

AND BETWEEN

- (1) ALBERT SOODEEN
(Administrator of the Estate of
Ronald Soodeen, deceased)**
- (2) MARK SOODEEN by ALBERT SOODEEN
(Guardian/Trustee appointed to continue and
conduct the proceedings herein on his behalf)**
- (3) RICARDO SOODEEN by ALBERT SOODEEN
(Guardian/Trustee appointed to continue and
conduct the proceedings herein on his behalf)**
- (4) ALBERT SOODEEN**
- (5) CHERYL SOODEEN**

Applicants

AND

**THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO**

Respondent

**(By Originating Notice of Motion, by order to carry on proceedings, dated the 28th day of
September, 1999 and by order appointing a Guardian/Trustee dated the 26th day of March,
2007).**

Before the Honourable Madame Justice Rajnauth-Lee

Appearances

Mrs. Lynette Maharaj S.C. leading Mr. Roger Kawalsingh instructed by Miss Shaheera M.
Allahar for the Applicants

Mr. Neil Byam instructed by Miss Sharon Sharma for the Respondent

16th July, 2012

JUDGMENT

INTRODUCTION

1. Before the Court is the assessment of compensation in these constitutional proceedings. On the 4th July, 1996, an originating motion was filed on behalf of Ronald Soodeen, Mark Soodeen and Ricardo Soodeen (all suing by their father and next friend Albert Soodeen), Albert Soodeen and Cheryl Soodeen seeking certain constitutional relief. The proceedings arose out of an incident which took place sometime between June, 1990 and May 1993, when the Applicants were residing at Peter's Avenue, Demerara Road, Wallerfield ["Demerara Road"]. It was alleged in the motion that between June, 1990 and May, 1993 the Executive Arm of the State allowed and/or permitted persons to dump battery waste along Demerara Road and/or adjoining areas within 100 yards of the Applicants' residence.

2. Consequently, the Applicants, with the exception of Albert Soodeen, were diagnosed as suffering from lead poisoning arising from contact with the battery waste.

3. On the 21st October, 1997, the parties agreed terms of settlement and the following consent order was made by Ramlogan J:

BY CONSENT

IT IS ORDERED AND DECLARED:-

1. that the Applicants and/or each of their fundamental human rights, namely their rights to life and the enjoyment of property and the right not to be deprived thereof except by due process of law have been contravened in relation to them.
2. that the omission and/or refusal and/or failure of the Executive Arm of the State to safeguard the Applicants from contamination by lead poisoning and from the risks of contamination is unconstitutional and illegal.

3. that the omission and/or refusal and/or failure of the Executive Arm of the State to warn the Applicants of the existence of lead contamination and the effects of lead poisoning timeously is unconstitutional and illegal.
4. that the omission and/or refusal and/or failure of the Executive Arm of the State to offer to the Fourth and Fifth named Applicants and/or to pay to them prompt and adequate compensation for their deprivation of the use and enjoyment of their property at Demerara Village is unconstitutional and illegal.
5. that damages be assessed before a Judge in Chambers and paid by the Respondent to the Applicants.
6. that costs fit for Advocate Attorney be paid by the Respondent to the Applicants and that such costs be taxed in default of agreement.

4. On the 30th June, 1998 Ronald Soodeen then nine (9) years of age, died and by order of Master Paray-Durity made on the 28th September, 1999 Albert Soodeen as Administrator of the Estate of Ronald Soodeen was substituted for Ronald Soodeen, deceased.

5. Thereafter, on the 3rd January, 2007, Albert Soodeen applied for an order that he be appointed Receiver and/or Guardian and/or Trustee of Mark Soodeen and Ricardo Soodeen. By Order of this Court made on the 26th March, 2007, Albert Soodeen was appointed Guardian/Trustee authorised to continue and conduct these proceedings on behalf of Mark Soodeen and Ricardo Soodeen.

6. Thereafter, the parties entered into extensive discussions and proposals were exchanged. By consent, interim payments were made by the Respondent to the Applicants. The parties have failed to arrive at a settlement. The assessment of compensation was therefore fixed for trial.

7. At the commencement of the trial, in relation to the Applicants' Notice to amend the claim for damages filed on the 23rd September, 2011, the parties agreed the following special

damages [which damages were further agreed to subsequent to the filing of the Re-Amended Particulars of Special Damages on the 3rd July, 2012 and are reflected hereunder]:

F - Travelling expenses -	\$ 12,532.00
G - Medical expenses -	\$ 23,190.00
H - Medication required daily for Mark and Ronald Soodeen -	\$ 57,725.90
I - Diapers/Clothing -	\$ 28,207.00
J - Cost of hiring babysitter -	\$ 600.00
L - Funeral Expenses (Ronald Soodeen) -	\$ 1,185.00
M - Cost of Medical Reports -	\$ 9,762.50
O - Miscellaneous Items -	\$ 5,990.00
P - Special Equipment (Mark Soodeen) -	\$ 1,500.00
Q - Renovations to House (Room built to accommodate Mark Soodeen)	<u>\$ 23,400.00</u>
	<u>\$164,092.40</u>

8. In addition, the Respondent agreed to admit into evidence the following Medical Reports:

- | | | |
|---------------------------|---|----------------------------------|
| (a) Dr. Dhanragie Dial | - | 15 th October, 1993 |
| | - | 23 rd March, 1994 |
| | - | 23 rd October, 2000 |
| | - | 23 rd October, 2000 |
| (b) Dr. Jacqueline Sharpe | - | 21 st October, 1993 |
| | - | 11 th January, 1994 |
| | - | 13 th July, 2000 |
| | - | 21 st September, 2000 |
| (c) Dr. Rajindra Parag | - | 15 th January, 2001 |

- (d) Dr. Judith Hinkson - 16th June, 2004
- 16th June, 2004
- 16th June, 2004
- \ (e) Ms. Eleanor V. Anthony - 2nd March, 2004
- 2nd September, 2004
- 2nd September, 2004
- (f) Dr. Eugene Laurent - 10th February, 2006
- (g) Medical Records, Port of Spain
General Hospital
- (h) Dr. June Webb - 18th September, 2000
- (i) Dr. Keith Aleong - 4th February, 2000

9. In addition, the parties agreed that the witness statements of Cheryl Soodeen [“Cheryl”] and Albert Soodeen [“Albert”] both filed on the 23rd September, 2011 would stand as evidence in chief without these witnesses being sworn. The parties also agreed that the supplemental witness statements of Cheryl and Albert both filed on the 6th October, 2011 would stand as evidence in chief. The parties also agreed that there would be no cross-examination of any of the witnesses. In addition, the parties agreed that the said witness statements and the said supplemental witness statements were admitted into evidence subject to the Respondent’s objections to the admissibility of paragraphs 7:50 and 7:53 and Annexure B of Cheryl’s witness statement, Cheryl’s supplemental witness statement and paragraph 12:1 of Albert’s witness statement. The parties further agreed that submissions on their admissibility would be made by both sides as part of their general submissions before the Court.

COMPENSATORY DAMAGES

10. It is not disputed that this is a unique case. The Court has adopted the approach recommended by their Lordships of the Judicial Committee of the Privy Council [“the Privy Council”] in **Attorney General of Trinidad and Tobago v Ramanoop** [2006] 1 AC 328 that a declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If a person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damage will often be a useful guide in assessing the amount of compensation. The Privy Council, however, has reminded that this measure is no more than a guide because the award of compensation under section 14 of the Constitution of Trinidad and Tobago is discretionary, and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action in law.¹

DAMGES FOR PERSONAL INJURIES AND DEATH

11. The Court has observed that the parties have generally approached this head of damage guided by the comparable common law measure of damages. The medical evidence adduced on behalf of the Applicants has not been disputed and will be referred to in detail later in this judgment.

MARK SOODEEN [“MARK”] BORN ON THE 22ND NOVEMBER, 1987 – PAIN, SUFFERING AND LOSS OF AMENITIES

12. The general evidence was that Mark was a normal five (5) year old, when some two (2) years after lead was dumped in the area where the family lived, he began to complain of belly pains [around December, 1992]. On the 30th April, 1993, Mark was admitted to hospital with seizures. A diagnosis of lead poisoning was made. According to the witness statement of

¹ Pages 335-336 of the judgment of Lord Nicholls of Birkenhead

Cheryl, Mark was healthy, active, intelligent, talkative, self-confident, loving and “cute”. He enjoyed many outdoor activities with his brother Ricardo Soodeen and he loved family outings especially going to the beach. In addition, Cheryl said that Mark was always very eager to learn. By the time he was five (5) years old he was able to read and write and he was registered to start primary school in January, 1993.

13. The following evidence as to Mark’s medical condition was tendered into evidence:

Report of Dr. Jaccqueline Sharpe, Consultant Child Psychiatrist, dated the 13th July, 2000:

“This twelve (12) year old is severely mentally handicapped and epileptic secondary to lead poisoning. He is totally dependent for care on his mother. He has no self-care skills and is extremely restless. His prognosis for improvement is very poor and he will require life-long care. He is on medication.”

Report of Dr. Jaccqueline Sharpe, Consultant Child Psychiatrist, dated the 21st September, 2000:

“ . . . very brain damaged with on-going seizures and severe behavioural difficulties .. he is extremely restless, has no speech etc... Mother needs to supervise him full-time.”

Report of Dr. Rajindra Pariag, Paediatric Neurologist, dated the 15th January, 2001:

“hyperactive...no speech output/poor intellect...no bladder/bowel control...can’t feed himself or dress...no interaction with other kids....seizures difficult to control... coarse physical features . . . needs continuing support and stimulation and drugs to assist with seizures. He is very dependent.”

Report of Dr. Judith A. Hinkson, Clinical Psychologist, dated the 16th June, 2004:

“Mark was unresponsive.....He was unable to carry out simple commands. In general, his behaviour was directionless, with feet and legs pulled up against his body, repeatedly putting inedible objects into his mouth, and constantly moving. He did not respond to his name . . . he obtained a social age of 1-2 years. Mark’s level of cognitive functioning is estimated to be around the IQ 20-30 point and he should be considered as being severely retarded. His self-help skills are non-existent and he needs to be constantly supervised. He will never be able to look after his needs and will require life long supervised care.”

Report of Ms. Eleanor V. Anthony, Occupational Therapist, dated the 2nd March, 2004:

“This is a sixteen year old teenager who has become severely mentally handicapped secondary to lead poisoning and is totally dependent for his care on his parents especially his mother. He has no skills in the area of daily living activities – he is at risk in his environment, very restless and once he is awake needs constant care by his mother. Improvement is not likely to take place and this teenager will need long term care.

Report of Ms. Eleanor V. Anthony, Occupational Therapist, dated the 2nd September, 2004:

“....The damage is irreversible, Mark is unlikely to show any improvement, and as a result he will need long-term rehabilitation and personal care.”

“There is arrested psychological development and mental sub normality resulting in an inability to relearn basic self help skills as well as not acquire social and literacy skills necessary for adult independent living. As a consequence Mark will need 24-hour care and supervision by an adequately trained team of caregivers for the rest of his life

“.....It is my opinion that Caregivers will be required on a 24 hour basis.....”

14. In addition, details of Mark’s medical condition, pain, suffering and loss of amenities have been given in Cheryl’s witness statement.

15. In December 1992, Mark exhibited the first symptoms of lead poisoning. He complained of belly pains and constipation; he lost his appetite and he lost weight. He was very restless and was constantly in pain. He showed no interest in participating in all his normal activities and only wanted someone to rub his belly to soothe his pain. He was treated him for worms but his condition did not improve.

16. On the 30th April, 1993 early in the morning Mark started having seizures with vomiting, twitching of the mouth, incontinence with stools and urine flowing freely. He became unconscious. He was admitted to the Port of Spain General Hospital for treatment. The seizures were not controlled by medication. A CAT scan of the brain was normal and tests confirmed a high lever of lead in the blood.

17. On the 1st May, 1993, treatment for lead poisoning was started under the direction of Dr. Dhanrajie Dial, Consultant Paediatrician. He was confined to bed. He was given Chelation Therapy which was administered intravenously through his arm and a catheter was used to remove liquid from his body. The treatment lasted seven (7) days. His lead level was then tested and the treatment was repeated. Mark was administered fifteen (15) injections on his buttocks, three (3) per day for five (5) days. He cried and screamed when he was getting the injections and from the pain afterwards as his buttocks were sore for several days. His hands were also painful from the Chelation Therapy and he cried from the pain. The catheter also caused him great discomfort. Mark developed a chest infection and began twitching in his forearm. He was given vigorous chest physiotherapy and exercises to improve the strength and mobility of his limbs – arms and legs. On the 2nd June, 1993, he was discharged on medication to return in two (2) weeks for further treatment.

18. On the 16th June, 1993, Mark was admitted to hospital to continue treatment for lead poisoning. His lead level was taken and Chelation Therapy was repeated over seven (7) days as before. He was very unco-operative and restless. On the 23rd June, 1993, he was discharged on medication to return for review of his condition.

19. During the two (2) admissions at hospital, Mark displayed abnormal patterns of behaviour. He was disoriented and kept calling for his “Mammy”. His speech was incomprehensible and the hospital staff had difficulty understanding and coping with his needs. He was spitting, dribbling and grinding his teeth. He spat at the doctors and nurses and tried to bite them. He also spat at the other patients on the ward and in the Out-Patient Clinic. He tore away the drips during Chelation Therapy. He was incontinent and used to burst his “pampers” with very unpleasant consequences. He kept trying to get out of bed and in order to restrain him, his hands were tied and one of his feet was tied to the bed.

20. These abnormal patterns of behaviour continued when Mark went home after each discharge and in fact his behaviour worsened. He babbled all the time, spat continuously and kept hitting his head on objects. It was difficult to control him; he was always trying to run away and he had to be restrained physically.

21. Upon review towards the end of June 1993, Mark was referred to Dr. Jacqueline Sharpe, Consultant Child Psychiatrist, for psychiatric evaluation. Dr. Sharpe found in her Report of the 21st October, 1993, that Mark had symptoms and signs of a chronic brain syndrome. He presented with a picture of a pervasive developmental disorder. Dr. Sharpe found that medication had not been very successful in controlling his activity level to date.

22. In her Report dated the 11th January, 1994, Dr. Sharpe added:-

“ . . . his behaviour was random, undirected, uncontrolled and perseverative. He had to be physically held by one of his parents to restrain his activity and he often resisted these restraints. He had . . . severely impaired attention and concentration.”

23. Following this evaluation, Mark continued to attend Dr. Sharpe in the Child Guidance Clinic for review of his condition and to get prescriptions for medication.

24. On the 2nd November, 1993, Mark was again admitted to hospital for a repeat lead treatment course over five (5) days. His lead level was taken, but after examination the doctor did not proceed with the treatment and Mark was given a new appointment for a ward review on

the 8th November, 1993. There were no further entries in the medical records submitted to the Court but Mark continued to attend Dr. Sharpe for review and medication as before.

25. Whenever Mark was in hospital Cheryl stayed in his room day and night resting on two (2) chairs. She assisted the nursing staff to care for him because the demands on their time prevented them from giving him twenty-four (24) hour care. She bathed him, fed him his meals, gave him his medication and comforted him when he was in pain. This was especially difficult after the injections as he screamed with pain and was not easily soothed. She also helped to restrain him from climbing out of bed during the various medical procedures.

26. Mark had severe physical and behavioural difficulties which made it necessary for him to have full time care and supervision at home. His parents, especially his mother, Cheryl, provided nursing care except for the hours she was at work for periods during 1997, 2001-3 and during those periods, Albert provided nursing care in her absence. Mark had seizures every day and his behaviour did not improve.

27. Mark could not speak when he first came home on the 2nd June, 1993. All he could say was "Daddy" and he babbled the rest of the time. Mark stopped speaking altogether about one month after. Sometimes in the early months he seemed to be disoriented but nevertheless he always wanted his mother to be near to him and to take care of him. He communicated his needs and his feelings by bawling and screaming; for example, when he wanted food, attention and when he was in pain. He bawled and screamed continuously when he could not see his mother. Cheryl and sometimes Albert had to go to him, talk to him, hug him, rub his head and soothe him. He responded well to the attention and affection and became calm for a while. At other times he bawled and screamed day and night for his mother's attention, disturbing the neighbours who often complained about the noise.

28. Mark's hearing and vision seemed to be impaired. To capture his attention it was necessary to call him loudly several times and even then he did not respond appropriately. He

often knocked into the furniture, doors and family members appearing not to see them and sometimes hurting himself.

29. Mark exhibited violent behaviour toward himself and toward the rest of the family. He and was also destructive of property. He would bite Ronald and Ricardo, hit them and his parents with his fists and with objects thereby hurting them and causing them pain and he would also go after Codi, the youngest who was born in the year 2002, and who needed to be protected from Mark. On one occasion he hit Cheryl really hard on her breast causing her pain for several days and requiring her to take antibiotics for relief. He would spit all over the house and often at family members. He would knock his head repeatedly on the ground or against objects. He would destroy items and place pieces of objects in his nostrils; for example, pieces of sponge from the mattress, concrete from walls, and even a nail. He was always trying to run away from the house and on a few occasions he ran on to the road and was almost run over by a vehicle. He would jump over partitions and climb through windows to get away. He has destroyed property belonging to others; for example, sixteen (16) louvres at his grandmother's house and the windscreen of a neighbour's car.

30. Mark has had to take medication constantly and without it he could not sleep at all and was hyperactive and uncontrollable. Even with the medication he sometimes stayed awake all night. Once for eight (8) nights in a row he did not sleep, bawling and screaming all the time. He had seizures every day and took medication to control them. He had high fever every few days and had to be given Paracetamol to relieve it. He got nose bleeds from putting objects into his nostrils and bruises when he fell during seizures or jumped over the partitions and through the windows. He burnt himself on one occasion when he took the hot pot off the stove with his bare hands because he wanted food. Whenever he was hurt he would bawl and scream in pain and hit himself repeatedly over the area that was bruised or hurt. Sometimes he would knock his head on the ground or against an object or hit his mouth presumably because he had a headache or a toothache and he would become calm when he was given Paracetamol for the pain or Cheryl massaged the spot, soothed and comforted him.

31. Mark was unable to take care of his personal needs. He was incontinent and toilet habits were non-existent. He often burst or pulled of his pampers, soiled the bed and floor, played with his stool and even tried to eat it, or pelted it across the room or at anyone he saw. He usually resisted efforts to brush his teeth, bathe him and keep him clean because of incontinence and because he drooled a lot. He bawled and screamed when being taken to and from the bathroom as well as during the bath so that it was difficult to manage him. He stripped himself naked indoors, walked all over the house and into the yard and played with his sexual organs wherever he was.

32. Mark could not feed himself properly. With help he could hold a cup to drink but otherwise his meals were fed to him. He could not swallow solid food and had to eat food specially prepared and pureed for him. He put anything he found in his mouth and therefore had to be protected from ingesting dangerous substances or swallowing foreign objects.

33. Mark could not be left alone. He required constant supervision and nursing care day and night. He required someone constantly to look after his personal cleanliness, to keep the surroundings clean, to feed him proper meals and to administer his medication regularly. His behaviour was such that he often had to be restrained physically by tying his wrists together and one foot to the bed with pieces of cloth and by keeping the doors and windows closed. He could not have interaction with other children/young persons apart from his family because of the need to protect them from him. If people approached him and tried to converse with him he would react violently. He did not enjoy being excluded or prevented from participating in games and he reacted by bawling and screaming. Efforts to place him at the Mermisa Centre, Guanapo Heights, a home for children with Down's Syndrome, were unsuccessful because of his mental state.

34. The Court has observed that this is one of the most extreme cases of pain, suffering and loss of amenities ever seen. No amount of money can ever begin to compensate these Applicants and Mark in particular for the pain and suffering they have experienced from the action and inaction of the Executive Arm of the State. From the evidence adduced on behalf of the Applicants, Mark has endured tremendous pain and suffering. As a severe handicap he has lived

a life which no child should have to. His personality and appearance have changed for the worse. Mark has been deprived of the pleasures of childhood and adulthood. He has been denied all the joys of life. The Court considers that the award for pain, suffering and loss of amenities in regard to Mark should reflect this fact.

35. The Court has considered several cases, including the unreported cases of **Keron Christopher v Clarence Rampersad and Another** HCA S. 1063 of 1996 (the judgment of Kangaloo J. on the 16th July, 2001), **Octon Bernard v Orr and Another** HCA 3278 of 1999 (the judgment of Smith J. on the 22nd November, 2002) and **Tiffany Singh v Attorney General of Trinidad and Tobago** HCA 3260 of 2001 (the decision of Master Margaret Mohammed made on the 26th March, 2012). In **Keron Christopher**, the plaintiff was a healthy, active fifteen (15) year old secondary school student who was knocked down. He became a quadriplegic and lost all sensation below his nipples. As Kangaloo J. observed, he was at the mercy of others to care for him for the rest of his life. He was awarded \$890,000.00 for pain, suffering and loss of amenities. In **Octon Bernard**, the plaintiff was eleven (11) years of age when he was involved in a vehicular accident. He suffered a serious brain injury with bilateral cerebral dysfunction and irritability in the right parietal lobe. He was at best able to lead a semi-independent life with loss of cognitive skills. The award for pain, suffering and loss of amenities was \$500,000.00. In **Tiffany Singh**, Master Mohammed awarded the sum of \$500,000.00 for general damages in respect of a 13 year old who was injured at hospital, the injuries resulting in her being a slow learner.

36. The Court has also considered consent orders entered by the parties in the following cases:

- (a) **Arlene Price v The North-Central Regional Authority** CV2007–02681 in which a consent order was entered before Jones J. on the 22nd September, 2008 for general damages in the sum of \$800,000.00 in respect of a 12 year old boy who suffered a severe brain injury (due to a lack of oxygen) while being administered anaesthetics for surgery to clean his wounds and perform a skin graft

due to burns he sustained on various parts of his body while burning rubbish. He was diagnosed with spastic quadriplegia. A later medical report showed that he had made drastic improvement.

- (b) **Gillian Nurse and Ors v Ministry of Health and Ors**, CV2010-01413 in which a consent order was entered before des Vignes J. on the 13th December, 2010 for general damages in the sum of \$1,450,000.00 in respect of baby boy who was born on the 16th September, 2002, with cerebral palsy as a result of the medical negligence of the Eastern Regional Health Authority.

37. The considerations to be taken into account in arriving at such compensation are to be found in the well-known authority of **Cornilliac v St. Louis** 7 WIR 491 and are as follows:

- (a) the nature and extent of the injuries sustained;
- (b) the nature and gravity of the resulting physical disability;
- (c) the pain and suffering endured;
- (d) the loss of amenities suffered;
- (e) the effect of pecuniary prospects.

38. It has been submitted on behalf of the Applicants in their written submissions filed on the 7th November, 2011, that Mark falls within the category of very severe brain damage considered in the Guidelines of the Judicial Studies Board under category 2 - Head Injuries (A) Brain Damage. The Applicants also referred to the Quantum Summaries and Award Tables (Kemp and Kemp 2006).

39. On the other hand, it was pointed out on behalf of the Respondent that the Privy Council has observed that to the extent to which regard should be had to the range of awards in other cases which are comparable, such cases should as a rule be those which have been determined in

the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist.²

40. Having regard to all the evidence advanced, the extreme nature of the injuries, the nature and gravity of the resultant physical disability, the tremendous pain and suffering endured, the evidence of the loss of amenities suffered, and bearing in mind the comparable awards considered by the Court, the Court in the exercise of its discretion, considers an award of **\$2,500,000.00** to be an appropriate award for Mark's pain, suffering and loss of amenities.

MARK'S CLAIM FOR LOSS OF FUTURE EARNINGS

41. Mark is now twenty-four (24) years old. The parties have agreed that the Court should apply the multiplier/multiplicand approach.³ Despite the observation made in the Respondent's Written Submissions that the Applicants purported to give expert evidence of Mark's loss of earnings in their written submissions filed on the 7th November, 2011, the Respondent has waived any objections to the monthly net income figure of \$4,000.00 proposed by the Applicants as the multiplicand and has agreed to that proposed figure as a matter of fact.⁴

42. The multiplier to be used is however disputed. The Applicants have proposed a multiplier of 23 on the basis *inter alia* that a retirement age of sixty-five (65) should be used as the appropriate retirement age in Trinidad and Tobago. The Applicants also cited the decision of the Privy Council in **Peter Seepersad v Theophilus Persad and Anor.** (2004) 64 WIR 378 where their Lordships said that a multiplier should be fixed which would give proper compensation to the victim, taking into account interest rates in Trinidad and Tobago, and making some allowance for the contingencies of life.⁵

² Lord Morris in **Singh (an infant) v Toong Fong Omnibus Co. Ltd.** [1964] 3 All E.R. 925, at page 927.

³ See Kangaloo J. in **Keron Christopher**, page 8 and onwards.

⁴ See paragraphs 18 and 19 of the Respondent's written submissions filed on the 12th December, 2011.

⁵ Paragraph 18 of Lord Carswell's judgment

43. On the other hand, the Respondent has cited Keron Christopher and the dicta of Kangaloo J. and has suggested a multiplier of 20. The plaintiff in the Keron Christopher case was twenty-one (21) years old at the date of trial and in relation to fixing a multiplier, Kangaloo J. said:

‘The multiplier is determined from the date of trial and it is the number of years that the Plaintiff’s disability is likely to last. The Plaintiff’s Counsel contend for a multiplier of 21 while the Defendant’s counsel suggest 18. It has been agreed that the life expectancy of the Plaintiff is seventy years. At the time of trial in 1998 the plaintiff was 18 years old. He had 52 years of working life ahead of him if he became qualified as a welder or some similar type of occupation which would have allowed him to continue after the normal age of retirement of 60 years is applicable if he is employed for someone and not self employed or self-employable. It is trite law that the number of working years left must be reduced significantly to take into account not only of the vicissitudes of life and the vagaries of employment but also the fact that the award is being received in the present time as a lump sum and so must be discounted. In those circumstances a multiplier of 20 is not unreasonable.’

44. The Court takes judicial notice that the compulsory retirement age of the public service (the largest employer in Trinidad and Tobago) is sixty (60).⁶ I also take judicial notice that the current discount rate on Treasury bills in Trinidad and Tobago is five (5) per cent as at the 5th July, 2012.⁷ Taking into account current interest rates in Trinidad and Tobago, and making some allowance for the contingencies of life and in an attempt to fix a multiplier which would give proper compensation to Mark, I have determined that a figure of 20 years’ purchase should be allowed. Applying that multiplier to the multiplicand of \$48,000.00 [$\$4,000.00 \times 12$] the award for Mark’s future loss is **\$960,000.00**.

⁶ Section 14 of the Pensions Act Chap. 23:52.

⁷ See Central Bank website.

RICARDO SOODEEN [“RICARDO”] BORN ON THE 19TH DECEMBER, 1986

45. The history of Ricardo’s injuries and his consequent pain, suffering and loss of amenities are set out in Cheryl’s witness statement. Ricardo resided with his parents and younger brothers Mark and Ronald at Demerara Road. His development was normal. He was healthy, active and intelligent. By the age of five (5) years, Ricardo had learnt to read and write at home, taught by his mother, Cheryl, and started his primary education at the Bon Air Government School. He enjoyed outdoor activities with his brothers, especially Mark, and family outings. He also kept pets, a dog and fishes, and loved looking after them. In May 1993, Ricardo was diagnosed with lead poisoning which has had an adverse effect on the course of his life.

46. As a result of the three (3) years of exposure to lead waste, Ricardo was diagnosed with lead poisoning with a high level of lead in his blood. He suffered brain damage. He received treatment at the Port of Spain General Hospital during two (2) admissions between the 28th May, 1993 and the 7th July, 1993. He had since then taken medication to relieve some of the effects of his injuries. Details of Ricardo’s medical condition and treatment and the effects of his injuries were adduced in evidence by way of certain agreed medical reports. After Ricardo was discharged from hospital, he suffered with headaches, firstly mild but in a short while they became severe and occurred regularly at least three (3) times per week. In addition, he had fever, belly pains, loss of appetite and weight. He felt weak and tired all the time and had occasional spells of dizziness and looked pale and unhealthy. Ricardo was absent from school fairly often because of his injuries. The headaches, fever and belly pains have continued over the years and up to the present time.

47. During his primary school years Ricardo was transferred to various schools, but did not do well. His progress was slow. In 2001, at the age of 14+ Ricardo wrote the Common Entrance Examination and was placed at the Sangre Grande Junior Secondary School. He attended school regularly for one year. During this time he complained of headaches, belly pains and fever. He had difficulty concentrating. He could not read very well and was not able to cope with the school work and in 2002 he left school at the age of 15+ years.

48. In 2004, Ricardo was evaluated by Dr. Judith A. Hinkson, Clinical Psychologist, By her report dated 16th June, 2004, she found that his IQ scores “fall within the low average/borderline ranges of cognitive functioning and suggest an overall lowering of intellectual functioning ...” Other scores placed him “in the category of Mild Impairment” and in “the brain damaged range”. She concluded that the “results point to a brain whose integrity has been compromised”. There was solid evidence of “generalized cerebral damage” with “deficits in abstraction, concentration and attention” and further that “spontaneous recovery of these neuropsychological deficits can be ruled out at this stage”. Dr. Hinkson also noted that because of these deficits “he has been deprived of a secondary school education” which “will prove to be a major drawback” in achieving his career goals. In order to help him to overcome his educational disadvantages, she recommended “individual tutoring for at least 2 years in basic literacy”.

49. Ricardo is now twenty-five (25) years old. In addition to the pain and suffering already outlined, he experienced enormous pain and discomfort from the Chelation Therapy administered intravenously over seven days during each of his two (2) hospital admissions. He suffered swelling in both hands where the drips were attached. He was not able to eat properly. In addition, Ricardo was deprived of a normal happy childhood. The headaches and other complaints limited his outdoor activities which he loved to play, especially cricket and football. His enjoyment of life has been diminished.

50. The Court has been referred to the case of **Jaimungal v Budram** HCA 346 of 1971 where the Plaintiff, eight (8) years old, suffered brain damage with minor changes in behaviour; he suffered with headaches, dizziness, and short attention span and was unable to write the Common Entrance but attended a private secondary school. His performance improved and he stood a fair chance of being a useful man. The award on the 26th January, 1973 was \$15,000.00.

51. The Court has also considered the unreported case of **Sam v High Commissioner of India and others** CV 2007-00206 (the judgment of Stollmeyer J. on the 23rd July, 2008) where the plaintiff suffered a head injury causing right-sided dysfunction as a consequence of a stroke; a craniotomy; slurred speech and an unsteady gait. He was awarded \$275,000.00 for pain,

suffering and loss of amenities (reduced by 20%). The Court has also considered the unreported case of **Sieunarine v Doc's Engineering Works (1992) Ltd.** HCA 2387 of 2000 (the judgment of this Court on the 24th May, 2005) where the plaintiff suffered a brain injury with right-sided weakness, seizures headaches, personality change, poor memory. He had to endure an emergency craniotomy. The award for pain, suffering and loss of amenities was \$200,000.00.

52. Having regard to all the evidence advanced, the nature of Ricardo's injuries, the nature and gravity of the resultant physical disability, the pain and suffering endured, the evidence of the loss of amenities suffered, and bearing in mind the comparable awards considered by the Court, the Court, in the exercise of its discretion, considers an sum of **\$450,000.00** to be an appropriate award for Ricardo's pain, suffering and loss of amenities.

53. Ricardo has not claimed any loss of future earnings, but has claimed loss of earning capacity. It has been contended on behalf of Ricardo that he has so far been able to find employment in small enterprises which have not offered him any job security and opportunities for advancement. It was further argued that Ricardo has a real risk that at any time he may lose his job and be thrown on the labour market. It is submitted that as a result of his injuries and consequent disabilities, his competitive position in the labour market has been weakened and that he is precluded from securing high skilled jobs that are well paid, and managerial/administrative levels of employment.

54. On the 17th November, 2007, Ricardo obtained a fork-lift driver's licence and in July, 2008 he began working at Rock Tech Limited as a fork-lift driver. He earned \$1,200.00 per week working six (6) days a week for ten (10) hours per day. His net pay was \$1,089.92 a week amounting to \$4,732.00 per month. In 2009, he was laid off. He currently drives a taxi earning about \$1,200.00 per week and according to the witness statement of his mother, Cheryl, she does not know for how long he will be able to cope with the stress on the roads.

55. On the other hand, it has been submitted on behalf of the Respondent that there is no claim for loss of earnings but for loss of earning capacity. The evidence of Cheryl, his mother, as to Ricardo's future job prospects has been described as hearsay evidence of opinion in the

Respondent's Written Submissions filed on the 12th December, 2011.⁸ The Respondent has further contended that there is no basis on which the Court can make an award for loss of earning capacity in Ricardo's favour. It was noted that Ricardo was not dismissed because he could not do his job. He was laid off; and he is now driving a taxi. It was therefore submitted that no evidence has been adduced on behalf of Ricardo that would allow the Court to make an award for this kind of loss.⁹

56. The Court has considered the evidence, the Respondent's objections and in particular the medical report of Dr. Hinkson dated the 16th June, 2004. Dr. Hinkson found that Ricardo's IQ score placed him in the category of mild impairment and in the brain damage range. As mentioned earlier, she concluded that the results pointed to a brain whose integrity had been compromised. She found solid evidence of generalized cerebral damage with deficits in abstraction, concentration and attention. Ricardo's mother has described how he suffered from headaches, belly pains and fever and was unable to concentrate in class; could not read very well and was unable to cope with his school work. Consequently in 2002, he left school at age 15+ years. Dr. Hinkson appeared to accept that Ricardo's deficits in abstraction, concentration and attention have deprived him of a secondary school education.

57. The Court has considered the unreported case of **Great Northern Insurance Co. Ltd v Ansola** (Civ App Nos 121/169 of 2008) in which the Court of Appeal clarified that an award for loss of earning capacity was not dependent on whether the plaintiff was employed at the date of the trial or the assessment and that such an award could be made in cases where there was evidence of a disadvantage in the labour market whether or not the plaintiff was employed. The Court has also considered the well-known cases of **Smith v Manchester** (1974) 17 KIR 1 and **Moeliker v Reyrolle and Co. Ltd.** (1977) 1 All ER 9 and I am satisfied that Ricardo's injuries would put him at a disadvantage in the labour market in the future.

⁸ Paragraph 44.

⁹ Paragraphs 46 and 47 of the Respondent's Written Submissions filed on the 12th December, 2011.

58. In the circumstances, the Court is satisfied that Ricardo has been deprived of a proper secondary school education because of his injuries and this has limited his ability in the labour market. He has not had the benefit of having a proper paying and secure job and has not been able to start his own business, which according to his mother, Cheryl, was his lifelong dream. In the circumstances, I of the view that this is an appropriate case to award Ricardo the sum of **\$150,000.00** for loss of earning capacity.¹⁰

THE ESTATE OF RONALD SOODEEN [“RONALD”] WHO DIED ON THE 30TH JUNE, 1998

59. Ronald was born on the 11th April, 1989. According to Cheryl’s witness statement, by the age of one (1) year he was walking and developing as a normal one year old. In April, 1990, he became ill and was admitted to the Port of Spain General Hospital. He was diagnosed with meningitis and was treated at hospital for one (1) month. Shortly after he was discharged, the family moved to Demerara Road. According to Cheryl, Ronald recovered well and was healthy and was developing normally. In August, 1992, however, Ronald’s health began to deteriorate. In May 1993, he was diagnosed with lead poisoning and severe brain damage.

60. Cheryl’s witness statement describes the tremendous pain and suffering that Ronald had to endure: vomiting, twitching eyes, incontinence, no bowel control; not able to stand or walk; seizures. On admission to hospital on the 3rd August, 1992, the seizures continued; he could not eat solids and had difficulty drinking liquids.

61. According to Cheryl’s witness statement, Ronald was admitted to hospital comatose, with seizures, fever, vomiting and incontinence. Over the months episodes of brief seizures recurred

¹⁰ The Court has looked at the decision of **Bhawan Ramcharitar v Att Gen** HCA 4078 of 1996 made on the 17th April, 2009, where Bereaux J. awarded the plaintiff, a prison officer, who lost his eye, the sum of \$200,000.00 for loss of earning capacity. The Court has also looked at the unreported case of **Cindy Kanhai v Mohammed Miguel and others** CV 2006-01087 (no date of delivery) where Master Paray-Durity awarded the sum of \$150,000.00 for loss of earning capacity where the evidence was that the plaintiff would suffer from osteoarthritis and the court considered that she would be disadvantaged in the labour market.

regularly and were controlled with medication. Ronald stopped speaking in December, 1992. In May 1993, after Mark was diagnosed with lead poisoning Ronald was also diagnosed with lead poisoning. On the 30th May, 1993, Ronald was admitted to hospital and was administered Chelation Therapy. The treatment was repeated and Ronald was given fifteen (15) injections in his buttocks. On the 23rd June, 1993, Ronald was discharged from hospital but attended the Child Development Clinic as an outpatient. Between 1994 and 1996, Ronald was admitted to hospital on several occasions with seizures. He had seizures about once per month and from 1996 – 1998, he had seizures for short periods once per week. He was given medication to control the seizures. On the 20th May, 1998, Ronald attended to the ENT surgeon; he was unable to swallow solids and had chest infections often. The doctor referred him to the ENT Clinic at the hospital for treatment. Ronald died about a month later.

62. I believe that it is fair to say that Ronald has suffered more than any child should. His life was one of pain and suffering. He suffered much during the seizures and had pain in his limbs. He took medication to control the seizures and for fever and pain.

63. It is clear from Cheryl's witness statement that Ronald's entire life was affected adversely by this injury. He could not speak and express how he was feeling. He resorted to crying and making sounds. He could not take care of his hygiene needs; he could not bathe himself, brush his teeth or change his clothes. He was incontinent and was in pampers and would eat or play with his stool. He walked with a limp in his right leg, but even then, he walked in fits and starts and could not keep his right foot flat on the ground.

64. It is true to say that Ronald's life changed drastically. He was no longer the normal, alert little boy as before. He had no interest in reading and learning. He could no longer enjoy foods with the rest of the family and had to eat only soft foods. He could not play his favourite games of cricket and football.

65. In the circumstances, and bearing in mind the cases already cited by the Court, the reasoning of the Court set out in this judgment and the awards made in favour of Mark and

Ricardo, the Court is of the view that an award of **\$850,000.00** is appropriate for the pain, suffering and loss of amenities suffered by Ronald.

66. As to the loss of expectation of life, the parties have agreed that the sum of **\$20,000.00** is an appropriate conventional award.

67. As to loss of earnings in the lost years, the parties agreed on the sum of \$3,600.00 as a monthly net income. The parties have also agreed a deduction for living expenses of one half of the monthly earnings prior to the age at which Ronald would have married leaving the sum of \$1,800.00 as an available surplus, and two-thirds of the monthly surplus for the remaining period leaving an available surplus of \$1,200.00. What is in dispute is the multiplier. For the reasons set out earlier when the Court considered Mark's claim, I am of the view that a multiplier of 20 is appropriate. In the circumstances, the award for loss of earnings in the lost years would amount to **\$360,000.00** using the agreed deductions for the first ten (10) years and then for the remaining ten (10) years.

68. The parties have also agreed that funeral expenses of \$1,185.00 should be paid. This amount shall also be paid to Ronald's estate.

GENERAL DAMAGES FOR CHERYL SOODEEN BORN ON THE 11TH APRIL, 1969

69. Cheryl is the mother of Ricardo, Mark and Ronald. According to her evidence, she was a healthy person until she was exposed to lead waste. She was employed up to July, 1992 and stopped working first to look after Ronald who had been hospitalized with seizures and then Mark who fell ill a few months later. In May, 1993 Cheryl and her three (3) children were diagnosed with lead poisoning. As from the 3rd August, 1992, Cheryl has spent most of her time nursing and caring for her children.

70. Cheryl suffered brain damage as a result of lead poisoning. At the age of twenty-four (24) years, Cheryl was admitted to the Port of Spain General Hospital and received treatment over seven (7) days from the 16th July, 1993 to the 22nd July, 1993. Since then, she has been

taking medication to relieve some of the effects of her injuries. In 2004 an evaluation of her condition was done by a Clinical Psychologist and an Occupational Therapist.

71. As from December, 1992, Cheryl started having headaches every day. She has described them as “stabbing” headaches. She obtained relief by taking Panadol tablets; she noticed that she was losing weight. While at hospital in July, 1993, Cheryl was given Chelation Therapy which was administered intravenously over seven (7) days. She had to remain in bed all the times. Both hands were swollen and painful where the drips were attached. The headaches continued and she also suffered a very high fever. After her discharge, she continued to have headaches. She then began to suffer with migraine headaches about twice per month. She then found herself unable to read for a length of time and she had poor concentration and many problems. As recent as 2007, she experienced some spells of dizziness with severe headaches and she attended upon Dr. Lloyd Ramcharan for treatment. According to Cheryl’s witness statement, this condition has continued up to the present time.

72. Evaluation of Cheryl’s condition in 2004 by Dr. Judith A. Hinkson, Clinical Psychologist dated the 16th June, 2004 revealed that she had suffered mild cerebral impairment and that lateralizing indicators implicated both cerebral hemispheres. According to Dr. Hinkson, the psychological implications of these results were important in that Cheryl was more impaired than either she herself or others in her environment probably realized. Given the huge responsibilities that Cheryl faced in looking after a severely handicapped child and the challenges posed by an active toddler, any inadequacies that were shown were likely to be attributed to motivational deficiencies. Dr. Hinkson went on to conclude that Cheryl’s cognitive deficits would more likely be the cause and might very likely lead to long term difficulties which were continuous and self sustaining.

73. Cheryl is now forty-three (43) years of age. Her pain and suffering have lasted for almost twenty (20) years and will continue for the rest of her life. As to the general damages for pain, suffering and loss of amenities, the Court is of the view that, having regard to the cases already cited and considered and to the reasoning of the Court set out in this judgment, the sum of **\$250,000.00** is an appropriate award for Cheryl.

74. Ms. Eleanor V. Anthony, Occupational Therapist has indicated in her report dated the 2nd September, 2004, that there was a real risk that the stress of nursing Mark might become too much for Cheryl to handle. According to Ms. Anthony, she suspected that Cheryl had *Caregivers Burnout* and it was only a matter of time before Cheryl broke down completely. Mrs. Anthony has also indicated that Cheryl needs to get her life and interest back again and that Cheryl has completely lost the ability to have any self interests or social life of her own.

75. It is submitted on behalf of the Applicants that there ought to be an award for loss of earning capacity in favour of Cheryl. Bearing in mind the report of Dr. Hinkson referred to at paragraph 72 of this judgment and for the reasons set out in this judgment when Ricardo's claim for loss of earning capacity was considered, the Court is of the view that an award of **\$100,000.00** is appropriate in these circumstances.

FUTURE NURSING CARE/MEDICAL TREATMENT AND NEEDS (MARK)

76. It is not in dispute that Mark will require future nursing care, medical treatment and certain items for the rest of his life. It is also not disputed that the award for future care should be calculated using the multiplier/multiplicand approach. The parties are not agreed on the appropriate multiplier and multiplicand and whether the evidence advanced by the Applicants as to the cost of nursing is admissible and therefore can be relied on by the Court in finding the appropriate multiplicand in the circumstances of this case.

77. By Cheryl's own evidence, she worked as a Farm Attendant up to July, 1992 when she left her job to take care of Ronald. She earned \$154.00 per week five days per week. Later on she began to take care of Mark as well when he became ill in December, 1992.¹¹ According to Cheryl, from time to time she became frustrated and depressed at being at home all the time and having to provide constant care for Ronald and Mark. With Albert's support, she went out to work while Albert provided care in her absence. During the period, 1st February, 1997 to 31st

¹¹ Paragraph 10:17 of Cheryl's witness statement.

August, 1997, she worked at Valencia Orchid World Limited earning \$150.00 per week. She worked five (5) days per week. For periods during the years 2001 to 2003, Cheryl worked at Superchick Hatchery Ltd. earning \$280.00 per week gross (\$267.47 per week net).

78. At paragraph 7:50 of her witness statement Cheryl said:

In 2004 Trained Nurses cost over \$40.00 an hour and the cost is higher now. Caregivers who are not trained nurses cost less. On my behalf my Attorneys-at-Law obtained the following information from SERVOL as to the cost of caregivers:-

- (1) In 2004 - \$8.00 - \$15.00 an hour.*
- (2) 2006 - \$15.00 an hour for a brain damaged child such as Mark.*
- (3) 2008 - \$15 - \$25 an hour i.e. \$15 for an ordinary patient; \$20 for a brain damaged patient who is not confined to bed such as Mark; and \$25 for a patient who is not mobile and is attached to machines and equipment*
- (4) 2011 - \$25.00 an hour.*

79. At paragraph 7:53 of her witness statement, Cheryl said that Mark will need nursing care, medical treatment and various items for the rest of his life. On her instructions her Attorneys had calculated the annual cost of providing the services and needs for Mark and the calculation was annexed as “B” to her witness statement.

80. Although the Respondent has objected to paragraphs 7:50, and 7:53 of Cheryl’s witness statement and to the calculation at Annexure “B”, the Respondent accepts that Mark should have his mother as his caregiver and that his mother should have a nursing assistant. The Respondent proposes that the higher figure of \$280.00 per week, being Cheryl’s earnings when she worked for periods in the years 2001-2003, be used to arrive at a yearly figure of \$14,560.00. To that should be added, according to the Respondent, the cost of the nursing assistant which is based on

the cost of the caregivers set out in Cheryl's witness statement which works out to \$450.00 per week and \$33,400.00 per year. The Respondent's objections to the above paragraphs and Annexure B are that this is hearsay evidence of opinion, the source of which is the Applicants' Attorney.

81. The Court has considered the report of Ms. Anthony dated the 2nd September, 2004 [already referred to at paragraph 74 of this judgment]. I have seen nothing in the evidence advanced on behalf of the Applicants which suggests that Mark requires a trained nurse to provide care for him on a daily basis. At page 3 of her Report, Ms. Anthony dealt with the issue of caregivers. The Court has already mentioned that Ms. Anthony suspected that Cheryl was suffering from *Caregivers Burnout* and considered it important that Cheryl develop mechanisms to cope with this situation and would require psychological help. She also mentioned that Cheryl would need to acquire certain care skills. At page 4 of her Report, Ms. Anthony said that Mark would require caregivers on a twenty-four (24) hours basis. According to her, Cheryl needed to get her life and interests back again, since she had lost the ability to have any self interests or social life of her own; her development and growth had been put on hold.

82. In addition, Ms. Anthony set out the cost of caregivers. According to page 4 of her Report, Servol trainees work for approximately \$8 -\$15 per hour and trained nurses obtain \$35-\$40 per hour. This evidence has not been disputed and the Court considers that it can be relied upon by the Court in arriving at the appropriate multiplicand.

83. I have considered the Respondent's submissions and I do not consider it just fair or appropriate to use Cheryl's last earnings as the basis to fix the multiplier in the light of Ms. Anthony's report which suggests that Cheryl may not be able to continue to care for Mark for the rest of his life and having regard to the fact that Cheryl's last earnings were obtained in the years 2001-2003. In the circumstances, the Court considers that it would be more appropriate to make provision for Mark to have full time independent care in order to free Cheryl from the burnout

with which she may be suffering. In addition, the Court has borne in mind that the minimum wage as at the 1st January, 2011 is \$12.50 per hour.¹²

84. The Court has also borne in mind the figures mentioned above and the fact that Ms. Anthony's Report was done in the year 2004. In addition, the Court is of the view that it should place significant value on the nursing care provided by a mother for a son who has been so severely injured whilst at the same time providing a sufficient sum for nursing care for Mark to enable his parents to pay for proper full-time care should the need arise. In addition, the Court has by this formula provided a sufficient sum to enable Cheryl to employ caregivers to provide assistance to her. In the circumstances, the Court is of a view that a multiplicand worked at \$15.00 per hour for a twenty-four hour day (amounting to \$360.00 per day) is adequate. A multiplicand of \$131,040.00 would in my view be appropriate.

85. As to the multiplier, having regard to the matters previously considered, the Court agrees with Mr. Byam that a multiplier of 20 is appropriate in this case as it was in **Keron Christopher**. Accordingly, the award for Mark's future nursing care will be **\$2,620,800.00**.

86. As to Mark's future medical treatment and future needs, these items are not disputed. I will apply the multiplier of 20 for these claims as well. Accordingly, the following award is made:

Medication

Medication not available under C-DAP

Annual Cost- \$3,240.00

Sub Total- \$3,240.00 x 20 = **\$ 64,800.00**

Bi-annual Medical Check-up

Annual Cost - \$120.00 per visit x 2 times (per year) = \$240.00

Sub Total- \$240.00 x 20 = **\$ 4,800.00**

¹² See the Minimum Wages Order, 2010 [Legal Notice No. 291 of 2010].

Travelling Expenses for Cheryl
and Mark for Bi-annual Medical Check-up

Annual Cost - \$20.00 per visit x 2 times = \$40.00

Sub Total- \$40.00 x 20 = **\$ 800.00**

Miscellaneous Needs

Equipment - Wheelchair

Immediate replacement, plus to be replaced every 10 years

Sub Total \$4,850.00 x 3 times = **\$ 14,550.00**

Equipment - Bath Stool

Immediate replacement, plus to be replaced every 10 years

Sub Total \$373.75 x 3 times = **\$ 1,121.2**

Household Items

Mattress

To be changed every 3 years

Sub Total \$440.00 x 6 times = **\$ 2,640.00**

Linen

2 sheets and 2 pillow cases (2 sets)

To be replaced every year on Mark's bed

Annual Cost - \$125.00 each x 2 sets = \$250.00

Sub Total \$250.00 x 20 = **\$ 5,000.00**

Personal Items

Diapers

1 Pack of Adult Diapers (10 in each pack)

Annual Cost- \$40.95 per pack x 52 weeks = \$2,129.40

Sub Total \$2,129.40 x 20 = **\$ 42,588.00**

Total Cost of Future Medical Expenses and Future Needs **\$136,299.25**

COMPENSATION FOR BREACH OF PROPERTY RIGHTS

87. It has been submitted on behalf of the Applicants that they are entitled to compensation for breach of their fundamental right to the enjoyment of their property in accordance with the Order of Ramlogan J. The Applicants have also claimed special damages relating to their loss and consequential expenses at Items A to D of the Re-Amended Particulars of Special Damages filed on the 3rd July, 2012. The Applicants contend that in addition to those special damages, they are entitled to an award for the inconvenience and distress which they have suffered as a result of the breach of this right and the failure of the State to pay them compensation over a period of fifteen (15) years.

88. On the other hand, the Respondent has argued that Albert gave no evidence of paying anything for the land he occupied at Demerara Road or of having any interest in it other than a squatter's limited rights based on three (3) years' possession. It was further submitted that the costs of the building and the costs of alternative accommodation are covered by the claim for special damages.

89. The Court agrees with Mr. Byam's contentions. In addition, the fact that damages had not been paid for some time after the Order of Ramlogan J. was made on the 21st October, 1997, did not convert the original cause of action into a continuing one for failure to compensate the Applicants. Further, the Court is of the view that an award for special damages as claimed by the Applicants at Items A to D of the Re-Amended Particulars of Special Damages in the sum of \$25,990.00 is an appropriate award in these circumstances. Accordingly, no further award ought to be made.

VINDICATORY DAMAGES AS CLAIMED BY THE APPLICANTS (THE ADDITIONAL AWARD)

90. It has been contended on the part of the Applicants that this is an appropriate case to make an award for vindicatory damages having regard to the breaches of their constitutional

rights, the stress and shock experienced by Cheryl and Albert, and in particular to Mark's deprivation of his right to life and the continuing horrific effects on his life.

91. On the other hand, Mr. Byam has argued on behalf of the Respondent that it is clear from the dicta in **Ramanoop** that the "if but only if" test which applied to exemplary damages also applied to a vindictory award as well. In **Ramanoop** (at paragraph 19) Lord Nicholls said:

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. "Redress" in section 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions "punitive damages" or "exemplary damages" are better avoided as descriptions of this type of additional award.

92. In the later case of **Subiah v Attorney General of Trinidad and Tobago** [2009] 4 LRC 253, their Lordships of the Judicial Committee of the Privy Council made it clear that having identified an appropriate sum (if any) to be awarded as compensation, the court had to ask itself whether an award of that sum afforded the victim adequate redress or whether an additional award should be made to vindicate the victim's constitutional right. The answer according to the Board was likely to be influenced by the quantum of the compensatory award, as also by the gravity of the constitutional violation in question to the extent that that was not already reflected in the compensatory award. The purpose of such additional award was not to punish but to

vindicate the right of the victim to carry on his or her life free from unjustified executive interference, mistreatment or oppression.¹³

93. In Merson v Cartright and Another [2006] 3 LRC 264, their Lordships had made the point that the sum appropriate to be awarded to achieve this purpose depended upon the nature of the infringement and the circumstances relating to that infringement. It would be a sum in the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right, in other cases an award of damages, including substantial damages, may seem to be necessary.

94. While the Court accepts the gravity of the violation of the Applicants' constitutional rights, the Court is of the view that in the circumstances of this case, the declarations made in the Order of Ramlogan J. on the 21st October, 1997 and the substantial damages awarded herein provide adequate constitutional redress pursuant to section 14 of the Constitution of Trinidad and Tobago. Accordingly, I do not make any additional award.

SPECIAL DAMAGES

95. The Court has already dealt with most of the claims for special damages [See paragraphs 7 and 68 of this judgment]. In addition, the following sums are not disputed:

- (a) Items A to D (property claims) in the Re-Amended Particulars of Special Damages filed on the 3rd July, 2012: the sum of **\$25,990.00**.
- (b) Item K – expenses incurred as a result of Mark's condition: the sum of **\$1,296.00**.
- (c) Item R – loss of earnings for Mark calculated as follows:

2006 - \$3,200.00 x 12 months =	\$ 38,400.00
2007 - \$3,600.00 x 12 months =	\$ 43,200.00
2008 - \$4,000.00 x 12 months =	\$ 48,000.00

¹³ Page 258

2009 - \$4,000.00 x 12 months =	\$ 48,000.00
2010 - \$4,000.00 x 12 months =	\$ 48,000.00
2011 - \$4,000.00 x 12 months =	\$ 48,000.00
2012 - \$4,000.00 x 6 months =	\$ 24,000.00
(January – June 2012)	_____
TOTAL	\$297,600.00

96. The main areas of dispute are the claims for special foods and nursing care for Ronald (up to the date of his death) and for Mark (up to the date of assessment).

97. As to the claim for special foods for Ronald and Mark, it has been contended by Senior Counsel for the Applicants that both Ronald and Mark required special foods because of their severe brain impairment. By Item E of the Re-Amended Particulars of Special Damages filed on the 3rd July, 2012, the following were set out as special foods – macaroni, eggs, oats, potatoes, potted meat, bread, juice - @ \$200.00 per week.

98. It has also been argued on behalf of the Applicants that in the absence of cross-examination of both Cheryl and Albert, the evidence on this claim remained unchallenged and the Respondent was not entitled to dispute same. The Court was encouraged to adopt the approach taken by the Court of Appeal in Grant v Motilal Moonan Ltd and Another (1988) 43 WIR 372.

99. On the other hand, the Respondent has argued that the Applicants have not provided any evidence as to the difference between the costs of a diet which met the needs of Mark and Ronald and a normal diet. Indeed, it was argued that the list of food items looked very much like an ordinary grocery list and that there was nothing in the Particulars which set off the costs of ordinary food items which would otherwise have been consumed by Mark and Ronald.

100. Whilst the Court accepts the Applicants' submissions that a claim for extra nourishment is a claim that can be allowed by the courts, in these circumstances, the Court will make no award. The Court agrees with the Respondent's contention that the food items described by the Applicants as special foods are in reality ordinary food items purchased by families in Trinidad and Tobago as a regular part of their diet.

101. As to the claim for nursing care for Ronald (up to the date of his death) and for Mark (up to the date of the assessment) the Applicants have claimed the sum of \$2,514,407.60 for the period the 3rd August 1992 to the 4th July, 2012 and calculated as follows:

(a)	<u>ALBERT SOODEEN</u>	-	\$ 64,050.00
(b)	<u>CHERYL SOODEEN</u>		
	- As at 31/01/09		\$1,848,287.60
	- 01/02/09 - 31/12/09	-	\$ 160,320.00
	- 01/01/10 - 31/12/10	-	175,200.00
	- 01/01/11 - 30/09/11	-	\$ 163,800.00
	- 01/10/11 - 07/11/11	-	\$ 22,800.00
	- 08/11/11 - 16/12/11	-	\$ 23,400.00
	- 17/12/11 - 04/07/12	-	<u>\$ 120,600.00</u>
			<u>\$2,514,407.60</u>

In addition, the Applicants have claimed the sum of \$100,290.00 paid to certain caregivers during the period 2005-2012. This sum is not in dispute.

102. On the other hand, the Respondent has contended that the yearly figure for nursing care for Ronald (up to date of his death) and Mark (up to the assessment) should be at most \$33,490.00 since there was in reality nothing paid to Cheryl for her nursing care. The Respondent has also contended that the Applicants ought to separate the claims for nursing care for Ronald from the claims for nursing care for Mark and has suggested a rough approach of eighty per cent (80%) for Mark and twenty per cent (20%) for Ronald, based on the fact that Ronald was nursed for roughly six years and Mark for roughly twenty-five years. Accordingly, the Respondent has proposed a yearly amount of \$35,000.00 for nursing care, amounting to a

total of \$665,000.00. This yearly figure is calculated on the basis of the weekly sum of \$450.00 being the costs of caregivers worked out in Cheryl's witness statement as the weekly sum paid by her to certain caregivers.¹⁴

103. Having considered the submissions of the parties, the Court is in agreement that the figure for nursing care for Albert for the periods that Cheryl worked and based on his loss of earnings as a taxi driver is appropriate, amounting to the sum of **\$64,050.00**.¹⁵ In addition, as mentioned above, there is agreement on the payment of the sum of **\$100,290.00** paid to certain caregivers during the period 2005-2012. That I will also award. As to Cheryl's claim for nursing care for Ronald (up to the date of his death) and Mark (up to the date of assessment) which has been calculated on the basis of the statutory minimum wages during the appropriate period, the Court is of the view that the proper approach is that suggested by Mr. Byam for the Respondent. I agree with Mr. Byam that the special damages for Cheryl's nursing care should be based on the weekly sum incurred by her for the caregivers. That weekly sum is \$450.00 for a seven (7) hour day. I bear in mind that Cheryl had the care of both Ronald and Mark for more than seven (7) hours per day and indeed from the time they awoke in the morning until they went to sleep at night. Bearing that in mind and applying Mr. Byam's method of calculation I am of the view that an appropriate weekly sum for Cheryl's nursing care is \$900.00 per week for a fourteen 14 hour day (\$450.00 x 2). Accordingly, the award by way of special damages for Cheryl's nursing care is **\$840,600.00** calculated and set out in Appendix A to this judgment.

INTEREST

104. The Respondent has submitted that the Court should grant no interest on the award of general damages or two per cent (2%) at the highest. On the other hand, the Applicants are claiming on the award of general damages interest at the rate of six per cent (6%) from the date of the filing of the motion until the 27th September, 2000, and twelve per cent (12%) from the

¹⁴ See Annexure "B" to Cheryl's witness statement

¹⁵ See Albert's witness statement filed on the 23rd September, 2011 para. 10:5

28th September, 2000 to the date of assessment; and on special damages interest at the rate of three per cent (3%) from the 3rd August, 1992 to the 27th September, 2000, and six per cent (6%) from the 28th September, 2000, to the date of assessment.

105. I have looked at the several cases cited on the issue of interest and the awards of interest made in the cases previously referred to in this judgment. I have also considered the unreported cases of **Battoo Brothers Limited and Seecharan Kassie v Kenneth Michael Leavitt** Civil Appeal No. 93 of 1978 and **Angel Baldeo v Prestige Car Rentals Limited and Others** HCA No. 442 of 2000. The Court agrees with the submissions advanced by Mrs. Maharaj on behalf of the Applicants that the payment of interest is the norm in Trinidad and Tobago. Interest is in the discretion of the court and can be awarded by the court as just compensation for the deprivation by the Applicants of the use of their damages until assessment. Accordingly, I propose to award interest at the rate of eight per cent (8%) on general damages and four per cent (4%) on special damages with no interest to be awarded on loss of future earnings, loss of earning capacity and any damages awarded for future care.

ALBERT'S CLAIM FOR COST OF FINANCIAL ADVICE

106. At paragraph 12:1 of Albert's witness statement, Albert made the point that the Court having made an order appointing him the Guardian/Trustee to manage the affairs of Mark and Ricardo, after the assessment of damages he will incur further expenses in paying for professional advice to help discharge his duties. Albert estimated that cost to be \$20,000.00 per year. Whilst the Court appreciates that Albert may require this type of assistance because of his educational level and lack of financial experience, the Court does not accept that without any appropriate evidence as to the cost of such investment advice, it can simply award an estimated sum. Albert has not explained how he arrived at this estimate.

107. The Court does consider however that appropriate orders for the protection of the patients must be made. Indeed, in an effort to ensure the protection of the patients' awards of damages, I propose to vary paragraphs 4 and 5 of the order made by the Court on the 26th March, 2007, and

to order that the monies awarded as damages [with the interest payable thereon] to Mark and Ricardo be paid into court and invested by the Registrar of the Supreme Court in the Trinidad and Tobago Unit Trust Corporation in the Growth and Income Fund with liberty to Albert as Guardian/Trustee to make an application to the court for an order that the monies be invested in an alternative manner and for payment out of any extraordinary expenses should the circumstances warrant. In addition, I propose to make an order for the payment out of quarterly sums for the expenses to be incurred for the benefit of Mark and Ronald which will be fixed by the court upon an application made thereto. For convenience, the monetary compensation to be paid will be detailed in the Order herein.

ORDER

(1) The Respondent shall pay to the Applicants the following monetary compensation for breaches of the constitutional rights of the Applicants set out in the Order of Ramlogan J. made on the 21st October, 1997:

A. MARK SOODEEN

- (a) General damages for pain, suffering and loss of amenities in the sum of \$2,500,000.00 with interest thereon at the rate of 8% per annum from the 21st October, 1997 to the 16th July, 2012.
- (b) Damages for loss of future earnings in the sum of \$960,000.00.
- (c) Damages for future nursing care, future medical treatment and future needs in sum of \$2,757,099.25.
- (d) Special damages for loss of earnings in the sum of \$297,600.00 with interest thereon as follows:
 - (i) 4% on \$38,400.00 from the 31st December, 2006 to the 16th July, 2012.
 - (ii) 4% on \$43,200.00 from the 31st December, 2007 to the 16th July, 2012.
 - (iii) 4% on \$48,000.00 from the 31st December, 2008 to the 16th July, 2012.
 - (iv) 4% on \$48,000.00 from the 31st December, 2009 to the 16th July, 2012.
 - (v) 4% on \$48,000.00 from the 31st December, 2010 to the 16th July, 2012.
 - (vi) 4% on \$48,000.00 from the 31st December, 2011 to the 16th July, 2012.
 - (vii) 0% on \$24,000.00.

B. RICARDO SOODEEN

- (a) General damages for pain, suffering and loss of amenities in the sum of \$450,000.00 with interest thereon at the rate of 8% per annum from the 21st October, 1997, to the 16th July, 2012.
- (b) Damages for loss of earning capacity in the sum of \$150,000.00.

C. THE ESTATE OF RONALD SOODEEN

- (a) General damages for pain, suffering and loss of amenities in the sum of \$850,000.00 with interest thereon at the rate of 8% per annum from the 21st October, 1997, to the 16th July, 2012.
- (b) Damages for loss of expectation of life in the sum of \$20,000.00.
- (c) Damages for loss of earnings in the lost years in the sum of \$360,000.00.
- (d) Funeral expenses in the sum of \$1,185.00 with interest thereon at the rate of 4% per annum from the 30th June, 1998 to the 16th July, 2012.

D. CHERYL SOODEEN

- (a) General damages for pain, suffering and loss of amenities in the sum of \$250,000.00 with interest thereon at the rate of 8% per annum from the 21st October, 1997, to the 16th July, 2012.
- (b) Damages for loss of earning capacity in the sum of \$100,000.00.
- (c) Special damages for cost of nursing care provided to Ronald Soodeen and Mark Soodeen in the sum of \$840,600.00 with interest thereon at the rate of 4% from the 21st October, 1997 to the 16th July, 2012.
- (d) All damages and interest due to Cheryl Soodeen shall be paid directly to her.

E. **ALBERT SOODEEN**

(a) The following items of special damages shall be paid to Albert Soodeen:

A-D - Housing expenses -	\$ 25,990.00
F - Travelling expenses -	\$ 12,532.00
G - Medical expenses -	\$ 23,190.00
H - Medication required daily for Mark and Ronald Soodeen -	\$ 57,725.90
I - Diapers/Clothing -	\$ 28,207.00
J - Cost of hiring babysitter -	\$ 600.00
K - Expenses incurred because of Mark Soodeen's condition -	\$ 1,296.00
M - Cost of Medical Reports -	\$ 9,762.50
N - Cost of Nursing Care for Ronald and Mark Soodeen	\$164,340.00
O - Miscellaneous Items -	\$ 5,990.00
P - Special Equipment (Mark Soodeen) -	\$ 1,500.00
Q - Renovations to House (Room built to accommodate Mark Soodeen)	<u>\$ 23,400.00</u>
TOTAL	\$354,533.40

(b) Interest shall be paid on the said sum of \$354,533.40 at the rate of 4% per annum from the 21st October, 1997 to the 16th July, 2012.

(c) All damages and interest due to the Estate of Ronald Soodeen shall be paid to Albert Soodeen, Administrator of the Estate of Ronald Soodeen.

(d) Paragraphs 4 and 5 of the Order of the Court made on the 26th March, 2007, are hereby varied as follows:

(i) All damages due to Mark Soodeen and Ricardo Soodeen [together with all interest due thereon] shall be paid separately into court and the Registrar of the Supreme

Court is hereby directed to invest the said monies separately in the Trinidad and Tobago Unit Trust Corporation in the Growth and Income Fund with liberty to Albert as Guardian/Trustee of Mark Soodeen and Ricardo Soodeen to make an application to a Judge or Master for an order that the monies be invested in an alternative manner and/or for the payment out of any extraordinary expenses incurred for the benefit of Mark Soodeen and/or Ricardo Soodeen should the circumstances warrant.

- (ii) Quarterly sums for expenses incurred for the benefit of Mark Soodeen and Ricardo Soodeen shall be paid to Albert Soodeen as Guardian/Trustee of Mark Soodeen and Ricardo Soodeen out of the account(s) established at the Trinidad and Tobago Unit Trust Corporation (Growth and Income Fund) or out of such other account(s) or investment(s) as the court may order pursuant to paragraph (i) above.
 - (iii) Within 90 days of the investment of the said monies by the Registrar of the Supreme Court, Albert Soodeen as Guardian/Trustee of Mark Soodeen and Ricardo Soodeen, shall make an application to a Judge or Master to fix the quarterly sums to be paid for expenses incurred for the benefit of Mark Soodeen and Ricardo Soodeen and referred to at paragraph (ii) above.
- (2) The Respondent shall pay to the Applicants, Albert Soodeen and Cheryl Soodeen, costs of the assessment, certified fit for Senior Attorney, Junior Attorney and Instructing Attorney, to be taxed in default of agreement and to be shared 4/5 to Albert Soodeen and 1/5 to Cheryl Soodeen.

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MAUREEN RAJNAUTH-LEE
JUDGE

Amended Cost of Nursing Care provided by Cheryl Soodeen

I am prepared to award \$900 per week for the cost of nursing care provided by Cheryl Soodeen for the period 3rd August, 2002- 14th July, 2012 except the period when she was on maternity leave or working. Since I am awarding one figure per week for the entire period there is no need to delineate whether the care was for Mark, Ronald or both of them.

Cost of Nursing Care provided by Cheryl Soodeen			
Period	Cost per Week	Number of Weeks	Total
3-Aug-92 to 31-Jan-97	\$900	234	\$210,600
1-Feb-97 to 31-Aug-97	Worked at Velancia Orchid World Limited		
1-Sep-97 to 31-Jul-01	\$900	204	\$183,600
1-Aug-01 to 28-Feb-02	Worked at Superchick Hatchery Ltd		
1-Mar-02 to 30-Apr-02	Maternity Leave		
1-May-02 to 31-May-03	Worked at Superchick Hatchery Ltd		
1-Jun-03 to 31-Dec-11	\$900	468 (52 weeks x 9 years)	\$421,200
1-Jan-12 to 14-Jul-12	\$900	28	\$ 25,200
Total	\$900	934	\$840,600