

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

**Claim No. HCA S589 of 1998**

BETWEEN

ODHAI MATHURA  
RUBETH MATHURA  
NARACE MATHURA  
SEERAJ MATHURA

PLAINTIFFS

AND

PETROLEUM COMPANY OF  
TRINIDAD AND TOBAGO LIMITED

DEFENDANT

**BEFORE THE HONOURABLE MADAME JUSTICE A. TIWARY-REDDY**

Appearances:

Winston Seenath instructed by Ted Roopnarine for the Plaintiffs

Ernest Koylass instructed by Romney Thomas for the Defendant

## **JUDGMENT**

### **INTRODUCTION**

1. The first two Plaintiffs are husband and wife, while the two other Plaintiffs are their nephews. The Plaintiffs brought this action against the Defendant for damages for negligence and/or nuisance caused by the negligent escape of oil and other materials

associated with the Defendant's oil mining operations in Fyzabad on to the Plaintiff's rice lands in July, 1994.

## **PLEADINGS**

### ***The Claim***

2. The Plaintiffs are farmers who cultivate vegetables in crop time and rice and para grass in the rainy season on several parcels of land situate at Pluck Road, Penal. The Defendant maintains oil wells, catchment and gathering stations, oil pipe lines and oil pits at Fyzabad Field. The Plaintiffs allege that on 07.14.94 and 08.02.94 respectively, during heavy rainfall, oil and waste tank wash materials and chemicals escaped from the Defendant's Fyzabad field and entered into the Rio Negro River. As a result of the heavy rainfall the Rio Negro overflowed into the Dodge River which flows into the Cunapo Channel. The Cunapo River then over-spilled its banks causing the Plaintiffs' lands to be completely flooded. The Plaintiffs' farm land abounds/abuts the Cunapo Channel. The oil and other waste material which escaped from the Defendant's Fyzabad Field flowed onto the Plaintiffs' land causing severe damage to the Plaintiffs' animals, cutting grass and rice cultivations.

### ***The Defence***

3. The Defendant denied that there was any escape of oil from its Fyzabad station, and averred that if there was an escape, it occurred through exceptional rainfall amounting to an Act of God. The Defendant further denied that the Plaintiffs suffered the alleged or any loss.

## **EVIDENCE AND ANALYSIS**

4. Each Plaintiff gave evidence on his/her own behalf and in support of each other's case. The Court allowed the Plaintiffs leave to re-open their case and to call Rampersad Kisson to give evidence on their behalf. The Defendant produced three witnesses, namely Peter Roopchand, a Well Analyst employed with the Defendant, Ramnarace Singh, Unit Leader of Laboratory/Technical Support Services employed with the Defendant and Alexander Benjamin, a Valuator employed with the Defendant.
5. All the Plaintiffs testified that during 14.7.94 and 2.8.94, there was heavy rainfall resulting in floods, which caused oil and waste material from the Defendant's installation plant at its Fyzabad Field to escape into the John River and onto their lands. According to the Plaintiffs, their land was flooded and everything was covered with the oily water. The Second Plaintiff said:

*"The oil bathe down everything. The trees gone flat – the rice fall to the ground and get rotten."*

6. The First and Second Plaintiffs testified to following the water along the Cunapo River. Their evidence is that the water was black and mixed with oil. The First Plaintiff said:

*"The water was black and the oil was floating on top ... the water came mostly from the oilfield ..."*

7. The Third and Fourth Plaintiffs supported this allegation of the oil coming from the vicinity of the Defendant's oil-field. It is clear that there was some escape/spillage of oil from the Defendant's installation plant on the days in question. This is supported by the Defendant's records produced and marked "AB9". The Third Plaintiff testified that he

collected a sample of the oil that had escaped on to all of the Plaintiffs' lands. He said that he collected this sample of oil and kept it in a bottle in a store room. According to him, he tried to get the sample analysed through his attorneys but was not able to do so. This sample did not advance the Plaintiffs' case as there had been no analysis.

8. The Plaintiffs did not produce any documentary evidence of the loss and damage which each claimed to have suffered. There were no receipts. The valuation carried out by the First Plaintiff left much to be desired. This Court does not accept that the same figures and measurements used for one Plaintiff is valid for all. In these circumstances, the Plaintiffs have not sufficiently proved their claim/s for special damages.
9. Rampersad Kissoon's evidence was important as it supported the Plaintiffs' claim to cultivating rice on the lands. However, it is to be noted that this witness testified that the area from which he cleaned oil in 1994 was not the same area that the Plaintiffs' used to cultivate rice. This is an important piece of evidence as the Plaintiffs' were claiming damage to their rice crop. Kissoon said:

*"I started to work for them in '86 – '87. I rotated the land in Moriche for all three to plant rice. The land is between Pluck Road and St. John. It's not the same parcel where I cleaned the oil – that is grass."*

And in cross-examination, the witness stated:

*"In August water was 7 – 8" oil and water. It didn't remain at that level. I pumped it down to 4". It went down. The grass was about 6" above water when I started to pump."*

This piece of evidence suggested that while there was oil in the water on the Plaintiff's land, the flood waters did not "bathe down" the grass as was suggested by the Second Plaintiff.

10. Peter Roopchand (Roopchand), a witness for the Defendant said that the Defendant has an installation plant near the John River. The John River passes through the centre of the Defendant's Fyzabad fields, further, the John River flows into the Rio Negro River and the Rio Negro River meets other rivers/tributaries. The First Plaintiff gave evidence that the Rio Negro flows into the Cunapo Channel and when the Cunapo Channel overflows its banks, this leakage gets on to lands abutting the Cunapo River. Roopchand also supported this as he stated during his evidence in chief:

*“If the floodgate is closed and rain falls heavily, water will back up from the flood gate – easily flow onto nearby lands. If there is oil in that water that oil would be the first to spread across that area.”*

11. After giving an elaborate explanation of the system which the Defendant has in place, to catch any spillage of oil in the event of a leakage or flood into the John River, Roopchand admitted:

*“If there is a high flood, it can move oil from the catchment into the John River. But this will only happen if there is some oil in the catchment, with heavy rain and high flood. Then it'll reach the John River. If there is a thin film in the John River catchment that is the only thing that escape from the catchment. A thin film is something a pump cannot pick up.”*

12. Roopchand added that since 1992, under his watch, there had never been a spill into the John River. After being shown the substance in the bottle collected by the Plaintiff, Roopchand responded:

*“To escape the oil must be light. I see some heavy amount of oil in this bottle. Fyzabad had a light texture of crude oil. The oil in this bottle seems to be heavy and for that quantity to escape would set alarms throughout the*

*country ... To get a spread of this sample over 26 acres could require an escape of oil from our facility of about 500 barrels ... No record of major spills in those forms during July – September 1994. I worked in that area, there was no major spill.”*

This witness explained further:

*“There are times when the John River would swell and overflow the catchment. Such overflow would only reach the catchment if there is a high concentration of oil. If there is a low concentration of oil it would pass the catchment and in high flow the current would push the oil on to the sides. If the river overflows the banks, the oil would flow with the water. As the flood waters rise the oil would attach itself to the grass at the banks. When the flood goes down, the oil is seen as painting the grass on the banks. Can’t recall when I last saw oil paint the grass at the banks.”*

This witness remained adamant that it was impossible for the Plaintiffs to have suffered the kind of loss they were alleging, since in 1994 and 1998, there was no major oil spill in the Fyzabad area to result in the Plaintiff’s entire 26 acres of land being covered in oil.

13. Ramnarace Singh (Singh) testified that the area of the Plaintiffs’ lands is low lying and vegetated mainly by reeds and other salt tolerant species. In 2000, Singh had supervised a series of tests to assess the salinity of the soil near the Plaintiffs’ lands. The tests results suggested that para-grass and rice cannot survive in that environment. Under cross-examination, Singh admitted that he was not familiar with the varieties of rice being cultivated by the Plaintiffs but maintained that it would defy all scientific logic and data for rice to grow on the Plaintiffs’ lands, because of its saline content.

14. Singh testified further that if there is a flood across the length and breadth of the Plaintiffs' lands as claimed by the Plaintiffs, because of the surface tension of oil and water, if there is any oil in the water the oil will spread in a very thin film on the surface of the water and tend to disperse. Thus the witness concluded that the sample taken by the Fourth Plaintiff could not have been taken from the Plaintiffs' land, in the absence of a major oil spill. According to Singh:

*“[It is] impossible to take one scoop with a container and fill this bottle to the mark indicated by the black substance unless there is a lot of oil in the water.”*

15. Singh also testified that he conducted tests on the sample taken from the Fourth Plaintiff's land and the result showed that:

*“... this sample had undergone significant weathering. Crude oil aged from 1994 will undergo weathering. However, under the conditions in this bottle, stored in a house or a shed will not undergo significant weathering ... In my opinion based on the tests, I conclude that the sample was not taken on 14.7.94 because of the heavy weathering in the sample. This sample ... has undergone extensive microbiological degradation. When a sample crude is exposed to the environment – in a cupboard the sample would not have been exposed to sunlight or to nutrients to undergo microbiological degradation.”*

16. Alexander Benjamin (Benjamin) testified that in January 1995 he visited the Plaintiffs' lands at Robinson Trace, off Pluck Road. He inspected the land and saw no trace of oil there. The witness said there was only grass, field grass on the land. He pointed this out

to the First Plaintiff who responded that the witness had taken too long to investigate the report. According to Benjamin:

*“The lagoon in Robinson Trace is too deep for rice production. Water comes too high. Where lagoon is very low and the water comes up to over two feet, the rice tends to die off, even in the absence of pollution. I have never seen para-grass in that area.”*

17. Benjamin admitted that in 1999 when he investigated a claim of oil pollution of the Plaintiffs’ lands, he did not actually go into the polluted area, but stood from a hill and looked on. He returned on a subsequent visit and met with the Second Plaintiff who took him to the polluted area. Benjamin stated:

*“Went back to the land there two weeks later and spoke to one Narace Mathura. We went on Narace’s farmall. He stopped at a point in Robinson Trace and we walked the rest. Narace started walking through the lagoon and I asked him whether there is an easier way to get where the oil is. He told me no and I need to walk through ... I followed him.”*

18. When he visited the Plaintiffs’ lands in 1994, Benjamin saw a sheen of oil on the water up to a point on lands formerly owned by Rampersad Manraj and Devanand Rampersad. There was no trace of oil on the Plaintiffs’ land. According to this witness:

*“The presence of this sheen did not go over in Manraj’s land, did not go over the full extent of Manraj’s land. And the Plaintiffs’ land is further upstream of Manraj. I’ve seen oil on the Plaintiffs’ land but this was because of an oil leak and because of the backup of water due to the closed sluice gate.”*



19. With respect to the sample taken by the Fourth Plaintiff, Benjamin testified that for such thick crude oil to flow on to the Plaintiffs' lands, there would have to have been a major oil spill. As far as he can recall, there was no major oil spill from 1994 to the present. Benjamin also said:

*“I know Manraj and Binda. Their lands are along the 40 ft. trench. The Plaintiffs' lands are on the Cunapo Channel. Manraj has lands on both the 40 ft. trench and the Cunapo Channel. The Plaintiffs' lands are on the embankment of the Cunapo Channel but further upstream. Manraj and Binda were paid compensation for damage to their lands by oil pollution in 1994. The Defendant has no barriers to prevent oil from moving from one person's land to another. The extent of pollution on Manraj's land was so slight; it was not possible to pick up that oil ...”*

And Benjamin stated further:

*“In 1994 there was oil at the sluice gate. Also in 1995, 1996, 1997, 1998 and 1999. I agree that oil would have passed any catchments there were in those rivers ... There is no catchment in the Cunapo River. If the gate is closed and water backs up, the water will back up for between one and two miles. If there are heavy showers, I can say the water spreads across the land in the area. In some places the water is more than 3 feet. The oil in the water would also spread on the land to some extent. If it is fresh oil, it would spread across the water depending on how much oil there is. If it is a thin film, it tends to get out. Heavy oil remains in the catchment.”*

20. This Court noted the records produced by the Defendant concerning the Plaintiffs' claims for compensation from the Defendant over the years. It is interesting that in 1994 the claim was made on December 1 and Benjamin visited the land on 28<sup>th</sup> December, but the

First Plaintiff was not able to go on the land with the witness, who returned on 3.1.95 and rescheduled the visit to 13.1.95. The records disclosed that Benjamin's finding was that there was no evidence of pollution.

21. This Court accepts that when Benjamin visited the land in 1995 he refused to go on to the polluted area since he had a problem with his foot. During cross examination, Benjamin admitted to having a foot fungus in 1990, that it had cleared up in 1994, but returned subsequently, and then was cleared up again. In this regard this Court considers that the Plaintiffs' evidence is to be preferred to that of Benjamin. Since Benjamin did not go on to the polluted area, this Court considers that Benjamin did not properly assess the situation and was therefore in no position to say whether there was oil on the land or not.

22. There was no record to assist the Court as to what transpired between the parties re the 1997 complaint. However, it is clear that in 1998 the Plaintiffs and Devanand Rampersad made a claim for compensation. Rampersad received compensation in the sum of \$720.00. There has been no record of the results of the Plaintiffs claims. The Plaintiffs made a second claim in November 1998. One Cowan from the Defendant company, investigated the complaint and reported that there was no evidence of oil.

## **FINDINGS**

23. After reviewing the evidence this Court makes the following findings:

- That there was an escape of oil and waste material from the Defendant's Fyzabad installation Plant into the John River in July – August, 1994;
- That the oil and waste material made its way into the Rio Negro River, then into the Cunapo River and on to the Plaintiffs' lands;

- That the volume of oil and waste material was not in the volume as represented by the Plaintiffs;
- That the oil and waste material did not destroy the Plaintiffs' cultivation, whether of rice or para-grass; and
- That on a balance of probabilities the plaintiffs' have failed to prove their case.

### **ORDERS**

- 24.
1. The Plaintiffs' claims are hereby dismissed.
  2. The Plaintiffs will pay the Defendant's costs of this action.

### **Note**

This Court wishes to apologise for the delay in delivering this judgment. This was because the file had been mis-placed and was only recently located.

Dated this 27<sup>th</sup> day of May, 2011

Amrika Tiwary-Reddy  
Judge