IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2007-02766
HCA No 709 of 2005/S-387 of 2005

BETWEEN

CAROLYN FLEMING

Claimant

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

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Before: Master Alexander

Appearances:
For the Claimant: **Ms Camille Mohan**
For the 1st & 3rd Defendant: **Ms Avisha Panchu, instructed by Ms Kendra Mark**

DECISION

I. INTRODUCTION

1. On 25th April, 2002 Carolyn Fleming was sitting on a chair at her desk, at the Ministry of Works, performing clerical duties when it collapsed beneath her, causing her to fall to the ground, and to suffer injuries, loss and damage. On 7th March, 2005 she brought this action by virtue of writ of summons and statement of claim seeking damages for negligence. Liability was entered by consent on 30th April, 2009 and the matter sent to a master for assessment.

2. Carolyn Fleming has pleaded that her injuries were intermittent pains on both upper and lower back radiating towards her legs; L4/5 S1 nerve root impairment and permanent impairment of 25%.

II. THE EVIDENCE

3. The evidence comprised of both documentary and viva voce evidence of the claimant and her doctor. The defendant also provided documentary and viva voce evidence. I will now proceed to examine the evidence presented by both parties.

Carolyn Fleming

4. Carolyn Fleming's evidence is that upon being injured on 25th April, 2002, she visited Dr Ramroop from that date until 2011 for regular checkups on her progress. She was on sick leave from 25th April, 2002 to 10th May, 2002. She got extensive sick leave with pay from 11th May, 2002 to 7th November, 2002. She lost earnings from May 2002 to 4th October, 2004 less 12 months paid.

5. She gave evidence that Dr Ramroop certified her fit to work on 5th November, 2004 although, at the time, she was still experiencing pain and discomfort. She also admitted under cross examination that, when this was done, she would have indicated to Dr Ramroop that she was still in pain. She resumed work in November, 2004 and gave evidence under cross examination that as she worked, the pain continued to worsen. According to her, she "*worked until she couldn't work anymore*" for a continuous period of about 1 year and 6 months. It is to be noted that she admitted that she did not inform her employers during that period that she was in pain.

6. It is the evidence of Carolyn Fleming that as a result of her fall she suffered excruciating pain. Initially, she could not even sit or walk up the stairs but had to lie down all day. She had to buy a therapeutic chair to sit on and could not drive because she could not turn around to check for oncoming traffic. She experienced significant pains in her upper and lower back. With time, the pain lessened to a small extent. In her witness statement she stated, "*[N]ow I still experience intermittent pains on both of my upper and lower back. After the injury I had gone back to work but it aggravated the back and caused a restrain. Hence, I cannot sit for long periods. If I pick up a heavy item, I feel a strain in my lower back. I cannot push items around, for instance the trolley at the grocery if it is too heavy, that causes a strain as well.*" She also cannot wear shoes with heels or sit on chairs without full support or for long periods. Standing to wash dishes is a challenge as she gets pains in her upper and lower back. As a result, she no longer performs household duties. She gave evidence

that she cannot exercise since even light walking causes a strain and pain throughout her legs. When the pain is severe she has to take medication to help bear and alleviate it.

7. Under cross examination about her 'restrain' which occurred in 2006, she admitted that she started to see Dr Ramroop again after she resumed work in 2006. She also explained that the medical certificates she received included damages to her back and neck and that the pain in her back travelled up to her neck. Due to her 'restrain' in 2006 she started sending in medicals again in 2006 until she submitted a certificate that certified her no longer fit for work. Under cross examination, she agreed that the figure which may correctly reflect her loss of earnings between the date of the accident and when she returned to work in November 2004 is as suggested by counsel for the defendant the sum of $58,086.32.

Dr Stephen Ramroop

8. Dr Stephen Ramroop is an Orthopaedic Surgeon and the attending doctor of Carolyn Fleming for the injuries that are the subject of this action. She was also a patient of his since 1998 for a previous and unrelated hand injury. His evidence is that she has suffered a nerve root impairment which does not always show up on an x-ray and consequently the only real way to ascertain the extent, existence and treatment to be used for this type of injury is by continued observation of the patient over the course of time. Under cross examination, his evidence was unshaken as to his diagnosis. He maintained that he had previously certified her fit to work but upon subsequent re-evaluation of her condition, he found that she was no longer fit to work, due to the same injury, shortly after she returned to her job. His evidence was given in a clear, frank and forthright manner and is accepted by this court.

Jacqueline Prince

9. Jacqueline Prince is a Human Resource Officer with the former employer of Carolyn Fleming and a witness for the defendant. She gave evidence that the figure which would represent the loss of earnings sustained by Carolyn Fleming in the time of her leave without pay was $58,086.32, a figure which Carolyn Fleming did not dispute under cross examination. This figure is, therefore, accepted as the loss of earnings sustained by the claimant.

Dr Richard Hoford

10. Dr Richard Hoford was an expert witness of the defendant. He gave evidence under cross examination that he examined Carolyn Fleming once (using the same tests performed by Dr Ramroop) and found that there was no nerve root irritation based on certain neurological examinations he conducted. He was not the attending doctor but he relied on a history taken from Carolyn Fleming that she had an 8 year old problem. His evidence is that he did not rely on the physical examination alone, which showed no evidence to support her alleged injury. He gave evidence that she required further investigation with an MRI, something that was never done in 8 years and which he found "*surprising*". In his medical report, he stated that "*examination showed no objective abnormality with bilateral ninety degree straight leg raise, normal tone, no wasting of the leg and good brisk reflexes. … Ms Fleming requires further investigation with MRI and assessment by Spinal/Neurosurgeon who would be in a better position to give permanent disability*."

11. Counsel for the defendant submitted that Dr Hoford gave his evidence in a clear and forthright manner and although he had "*examined the claimant for a short period of time*" his medical assessment was impartial and as such should be accepted. For several reasons I do not accept his evidence as impartial or credible. I note that under cross examination he admitted to only having examined Carolyn Fleming once and not "for a short period of time" as counsel for the defendant would like this court to believe. Further, this singular examination and/or assessment was done a full 8 years after the injury was sustained. I note further that under cross examination as to how long his examination of Carolyn Fleming was his response of "Not long, not very long" was vague and uncertain. When pressed as to whether it was 15 or 20 minutes, he said, "*it could be about that, yes*."

12. Dr Hoford's evidence contradicts the evidence given by Dr Ramroop that a nerve root injury is not something easily visible to the naked eye and would obviously require observation to determine the extent of the problem. The evidence of the Carolyn Fleming's medical witness, therefore, is preferred to that of the defendant's medical witness, whose report was based on a single visit , for 15 to 20 minutes, some 8 years after the injury was sustained.

III. GENERAL DAMAGES

13. To determine the quantum of damages payable to Carolyn Fleming, I was guided by the principles in ***Cornilliac*** **v** ***St Louis***[1]:
    a. The nature and extent of the injuries sustained;
    b. The nature and gravity of the resulting physical disability;
    c. The pain and suffering which had to be endured;
    d. The loss of amenities suffered; and
    e. The extent to which the plaintiff's pecuniary prospects have been materially affected.

Nature and extent of the injuries sustained

14. Carolyn Fleming has suffered a back injury with low back pain or L/S strain. The medical report of Dr Ramroop dated 16th October 2002 showed "Cervical Spine 9%; Lumbar Spine 8%; L4/5 S1 Nerve Root Impairment due to facet joint motion segment instability 8%. This patient has a 25% permanent impairment due to the injuries as described above." In his viva voce evidence, he confirmed his diagnosis of ligament injury causing instability to the lower back or lumbar spine. It is to be noted that Carolyn Fleming was never hospitalized for her injuries nor did she undergo any surgery or have any fractures. In fact, as stated by Dr Ramroop in his evidence, "*surgery is based on clinical findings to a large extent and if the findings are severe enough to affect the daily activities of living in a significant way for example over 80 – 100% so in this case surgery was never indicated at least when I saw her.*"

The nature and gravity of the resulting physical disability

15. Carolyn Fleming resumed work upon both Dr Ramroop and the Medical Board certifying her fit to do so in November 2004. I am to assume that when Dr Ramroop so certified her fit to resume work, he did so with the full appreciation of the nature of her employment and what her duties entailed. She indicated, however, that she was still experiencing pain and discomfort and that she returned to work despite this and with the knowledge of her doctor. Under cross examination she stated, "*I went out to work because I was trying to hold on to my job, I was trying to work*

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1 *Cornilliac* v *St Louis* (1965) 7 WIR 491 per Wooding CJ

and everyday it got worse and worse until that day in 2006 I couldn't sit at all." It is to be noted that she did not provide any medical certificates for the period that she returned to work. However, she gave evidence that by 19th May, 2006 she had a "restrain" so went back on sick leave. By medical certificate dated 20th April, 2007 she was diagnosed with "low back disc herniation/disc change" and declared unfit for work permanently.

16. Counsel for the defendant has submitted that the injuries listed in the medical certificates do not *ipso facto* mean that they are the result of the 2002 fall. In support of this contention, she referred to a 2006 torn ligament in the ankle injury sustained which Carolyn Fleming admitted was not related to the instant injuries. Counsel for the defendant also submitted that a major limitation of relying on medical certificates is that they do not link the injuries described in the medical as attributable to the 2002 fall. Further, counsel for the defendant submitted that in a medical certificate dated 2nd February, 2010 Dr Ramroop stated that Carolyn Fleming was unfit for work continuously and permanently with effect from 2nd February, 2010 although she was permanently retired and unable to work since in 2007. It was thus submitted as "highly suspicious" that Dr Ramroop would be issuing a sick leave if Carolyn Fleming was unemployed and so the document ought not to be trusted. Further, counsel for the defendant submitted that Carolyn Fleming's condition has improved vastly, if not completely, based on the evidence of Dr Hoford as well as Dr Ramroop who under cross examination stated that following physiotherapy "*it strengthen the ligament and makes it a little stronger to hold the joints a little better.*" In my view, the submissions of counsel for the defendant are not supported on the evidence but appear to be a mere attempt to stretch the evidence to meet their case. Dr Ramroop's evidence under cross examination was clear that Carolyn Fleming was permanently unfit to work and this is accepted.

Pain and suffering endured

17. Carolyn Fleming's evidence is that she suffered severe injuries to her lower and upper back consequent upon the 2002 fall. Consequent upon this she has experienced severe and excruciating pain in her lower back after the fall, "*initially I could not even sit or walk up the stairs. I just had to lie down all day. I was in excruciating pain … I would experience significant pains from my upper and lower back.*" Since then her condition has not improved significantly and she is unable to

work. In her witness statement she gave evidence that, "*with time the pain has lessened to a small extent*.' And then she further states that, "*I experience intermittent pains on both of my upper and lower back*." She also further states in her witness statement that, "*when the pain is severe I still have to take medication to help alleviate it*." It is now 10 years after the accident and she claims to suffer still from intermittent pain in her leg, lower and upper back and experiences additional pains when attempting to do many of the daily tasks necessary in ordinary living. She is still unable to stand or walk for long periods of time without sitting or resting for a while and exercising and performing daily household chores are impossible. She has since had to hire a housekeeper.

18. Counsel for the defendant has accepted that whilst Carolyn Fleming would have experienced pain at the time of the accident and to some degree afterwards, it is not to the extent that she claims. It was also further submitted by counsel for the defendant that if the pain has continued it would be minor, if at all. In support of this is the fact that when she was seen by Dr Ramroop on 20th July 2002 she complained of "intermittent pains on both her upper and lower back, radiating towards her legs at times." Counsel for the defendant has submitted that there is a conflict with what was told to Dr Ramroop in 2002 and the witness statement as the former referred to the pains as "intermittent" and the latter to "significant pains" as well as what was reported to Dr Hoford in 2011 as "persistent pains". Thus, it was submitted that if the pains were as severe as she would like us to believe then she would have gone to a doctor to have a course of treatment to alleviate the pain and as there were no prescriptions tendered into evidence, the pains were minor or have dissipated completely.

19. In my view, every person's threshold of tolerance or endurance level for pain and suffering is different. I have had the opportunity to observe Carolyn Fleming in court and during her evidence in chief and under cross examination and I found her to be a credible witness, whose evidence was given in a clear, candid and forthright manner. Counsel for the defendant's attempt to zero in on the adjectives used at various points to describe the pains of Carolyn Fleming as justification for a case that her pains have been eradicated, possibly completely, is not accepted. Carolyn Fleming's evidence was clear that initially the pains were excruciating and now they have lessened to intermittent but sometimes severe. This does not contradict with her complaint or description of her pains as 'persistent' or 'significant' at times. Her evidence is therefore accepted.

Loss of amenities suffered

20. Carolyn Fleming's evidence as to her loss of amenities, given the nature and extent of her injury, is accepted. It is not unreasonable that someone with injury to the back and resultant back pains would find it challenging to exercise, do sporting activities, walk, stand or do household chores for any extended periods. It is to be noted, however, that she has not provide any medical evidence as to her inability to "sweep or mop" which she claims the doctors sitting on the first Medical Board advised her not to do. This aspect of her evidence, in the face of the insufficiency of proof, will be disregarded. Further, counsel for the defendant has asked that her evidence of being unable to exercise not be accepted, but to view it as an exaggeration, as she has been undergoing physiotherapy and strengthening exercises with Dr Ramroop and Dr Redman which means she has been exercising. Further, the defendant sought to rely on the medical report of Dr Hoford that showed no losing of muscle tone or wastage, which would have been evident of a lack of exercise. This is not accepted as the muscle strengthening exercises were done in 2002 and 2006 under the supervision of professionals. The defendant has brought no sufficient proof for the allegation that Carolyn Fleming is now able to exercise or participate in sporting activities or that she has exaggerated her loss of amenities.

IV. OTHER PRINCIPLES

21. Apart from the principles cited above, I have considered that the award for damages is to compensate an injured party for the damages, loss or injury she has suffered and it, "*must never be viewed as a road to riches and secondly, that a claimant is entitled to fair, not perfect compensation.* [2] Further, this compensation is to put the injured party in the same position she would have been in if she had not sustained the wrong for which she is now getting the reparation or compensation as noted in ***Livingstone* v *Rawyards Coal Co.***[3]

22. I also noted the comment of Lord Jauncey in ***Ruxley Electronics and Construction Ltd v Forsyth***[4] that,"*[D]amages are designed to compensate for an established loss and not to provide a gratuitous*

[2] *Munroe Thomas* v *Malachi Ford* Civ App 25 of 2007
[3] *Livingstone* v *Rawyards Coal Co.* [1880] 5 AC 25
[4] *Ruxley Electronics and Construction Ltd* v *Forsyth; Laddingford Enclosures Ltd* v *Forsyth* [1995] 3 All ER 268

benefit to the aggrieved party, from which it follows that the reasonableness of an award of damages is to be linked directly to the loss sustained."

23. Thus, in assessing the damages payable to Carolyn Fleming, I bore in mind these principles as well as the fact that "*perfect compensation is hardly possible*" and compensation for injuries is a once and for all award. Additionally, Carolyn Fleming did not ask to report to duty and be provided with a faulty chair, which collapsed, causing her injuries – she was the recipient of the wrong at the hands of her employer whose duty it was to provide a safe system of work for her and so must be fully and fairly compensated for her injuries sustained.[5] I now turn to the examination of some comparable cases to determine a just quantum in all the circumstances of this case.

V. AUTHORITIES ON GENERAL DAMAGES

24. Authorities were provided by both parties to assist with quantum in this matter. Additionally, I was cognizant in the exercise of the general practice of comparison and adjustment that this approach is an imperfect one, so took care to treat with the instant case on its own unique facts.

Authorities of Carolyn Fleming

25. Counsel for Carolyn Fleming submitted that a reasonable sum to award for general damages is $100,000.00 based on the following:

- ***Charles* v *The Attorney General of Trinidad and Tobago*[6]** where Rajkumar J in June, 2008 awarded $50,000.00 for injuries to the left wrist, neck, chest and spine, where he was hospitalized for 5 days. The medical evidence showed no significant degree of disability and referred to a decreased range of movements of the cervical, thoracic and lumbar spine. A second MRI showed injuries to D8 and D9 vertebrae but with no spinal cord injury

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5 *Lim Poh Choo* v *Camden and Islington Area Health Authority* (1979) 2 AER 910 HL

6 *Charles* v *The Attorney General of Trinidad and Tobago* HCA 2092 of 2002

- ***Marchong*** **v** ***T&TEC***[7] where Jones J awarded $60,000.00 in May 2010 for soft tissue injury and lumbar spasm which resulted in some narrowing of the lateral recess at L4-L5 with possible impingement of the traversing L5 nerve root and early disc desiccation at the L5/S1 level.
- ***Isaac*** **v** ***Solomon and Motor and General Insurance***[8] where Des Vignes J in December 2009 awarded $40,000.00 for cervical muscle spasm; cervical spine tenderness on the lower spinous processes; and reduced lumbar spine flexion. The claimant had a normal gait, no neurological abnormalities in upper or lower limbs and her straight leg raising was 90 degrees bilaterally with a weakly positive sciatic stretch test on the right. New MRI scans of the whole spine showed loss of cervical lordosis and anterior osteophytic lipping at C5/6 and C6/7 and some L%/S1 discs degeneration was noted. She had chronic neck and back pains secondary to her whiplash injury. Her permanent partial disability was 20%.
- ***Dexter Sobers*** **v** ***The AG***[9] where Mohammed M in May, 2011 awarded $80,000.00 for loss of lumbar lordosis, disc desiccation and annular tear at L4/% and L5/S1 levels; diffuse disc bulge with posterior central propensity indenting thecal sac with no neural compression, diffuse disc bulge with propensity to left and posterior left paracentral small disc protusion impinging on left S1 traversing nerve root. The claimant experienced back pains radiating down the left leg; her straight leg raising was greater than 90 degrees bilaterally, with a negative sciatic stretch test; power, sensation and reflexes were within normal limits and 20% permanent partial disability.
- ***PTSC*** **v** ***Sookhoo***[10] where the Court of Appeal in 1998 awarded $36,000.00 for a herniated disc lesion at L5/S1 with nerve compression; severe pains and sexual dysfunction.
- ***Theophilus Persad*** **v** ***Peter Seepersad***[11] where the Court of Appeal in February 2002 awarded $75,000.00 (left undisturbed by the Privy Council) for a spinal injury involving L5/S1 disc herniation; wedge fracture at the T12/L1 level. The plaintiff was hospitalized for 6 days; placed in a cervical collar and suffered moderate to severe pain and stiffness with depressed reflexes and paresthesia in both feet.

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7 *Marchong* v *T&TEC* CV2008-04045
8 *Isaac* v *Solomon and Motor and General Insurance* CV2007-04400
9 *Dexter Sobers* v *The AG* CV2008-04393
10 *PTSC* v *Sookhoo* Civ App 136 & 137 of 2000
11 *Theophilus Persad* v *Peter Sepersad* HCA 2834 of 2000

- ***Munroe Thomas*** **v** ***Malachi Forde***[12] where Sobion M in September 2008 awarded $100,000.00(left undisturbed by the Court of Appeal) for soft tissue injury to the right buttock; fractures to 2 ribs; bruised elbows and knees, which caused bleeding; nerve compression in the spine, which cause low back pain and paresthesia or pins and needles in the leg. Although not hospitalized, he underwent surgery to relieve the nerve compression.
- ***Donna Bidesia*** **v** ***The AG***[13] where Sobion M in December 2008 awarded $90,000.00 for fractured ribs, a fractured mandible and lower back pain from L5/S1 disc prolapsed. She underwent surgery for the fractured mandible 4 days after the accident and was on a liquid diet after the surgery.
- ***Wayne Wills*** **v** ***Unilever Caribbean Ltd*** where Sobion M in February 2010 awarded $75,000.00 for acute lumbar strain which caused back pain; L4/5 disc herniation that required surgery. The claimant was treated with physiotherapy and aqua therapy and given a 20% permanent partial disability.

Authorities Relied on by the Defendant

26. Counsel for the defendant submitted that a reasonable sum to award for general damages is $45,000.00 - $55,000.00 on the basis of some of the cases cited above as well as:

- ***Gerard Jadoobirsingh*** **v** ***Bristow Caribbean Limited, Lewis Suarez***[14] where Dean Armorer J in November, 2007 awarded $80,000.00 for mild protusions at four locations on his spine C34, C56, L45 and L5S1; extreme pain that made sitting at a desk for more than 30 minutes and writing for more than 15 minutes impossible and resulted in feelings of numbness and pain. He also suffered with sexual dysfunctions; irritability and ended up losing his family. The claimant also suffered with post traumatic stress disorder as he was haunted by images of being hit by the tail boom of the helicopter and being thrown from the aircraft. Following the accident he had debilitating pains, numbness and cramping and 2 surgical procedures were recommended by his neurosurgeon.

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12 *Munroe Thomas* v *malachi Forde* Civ App 25 of 2007
13 *Donna Bidesia* v *The AG* HCA 1918 of 1999
14 *Gerard Jadoobirsingh* v *Bristow Caribbean Limited, Lewis Suarez* CV 2005-00784

- ***Ann Marie Redman*** **v** ***Hillary Samuel***[15] where Stollmeyer J (as he then was) in July, 2009 awarded $65,000.00 for disc desiccation at L3-4, L4-5 and L5-S1. At the L3-4 and L4-5 levels there was a mild posterior annular disc bulge indenting the epidural fat in the anterior spinal cord. There was also L3 and L4 nerve root irritation i.e. the disc was bulging inwards and pressing on the nerve in the area of the spinal cord. The claimant experienced severe pain; spent 1 week at the hospital; suffered severe spasm of the legs and decreased sensation in the right leg.
- ***Gaffar*** **v** ***Padmore***[16] where Bereaux J (as he then was) in December 1999 awarded $29,401.00 for injuries to the ligaments over the spine, trauma to the kneecap; tenderness of the lumbar spine, right sacro-ilac region and buttocks. She suffered severe initial pain diminishing with time. The normal expectation was that injuries of that type would degenerate. The trial judge discounted the award for general damages by taking into account her advancing age and obesity.

27. To determine an appropriate quantum in the case at bar, I took into account the range of awards cited above; the fact that in some cases above the injuries sustained by the claimants (e.g. ***Donna Bideshi*** (supra) and ***Peter Seepersad*** (supra)) were more extensive, inclusive of fractured ribs and/or requiring surgical intervention and hospitalization; and in other cases the injuries were less severe (e.g. ***Gaffar*** **v** ***Padmore*** (supra)). I also considered that pain and suffering endured are subjective and that whilst Carolyn Fleming may not have required hospitalization or surgical intervention and/or experienced sexual dysfunction, it is her evidence that she experienced and continues so to do pain and discomfort on carrying out her everyday ordinary domestic functions and that exercising, sitting and standing for long periods pose a challenge. This evidence is accepted. I also had regard to the dicta in ***Elisha Sohan*** **v** ***Henry Hackett***[17] that, "*[T]he injury itself is not a serious injury in that it is not dangerous to life but it is serious enough to cause the Plaintiff persistent pain and the injury will be permanent; it will affect the Plaintiff's living.*" Given the age of the authorities cited above and the adjustments that ought to be made to accommodate the declining value of the dollar, I consider **$80,000.00** to be a just and appropriate award in the circumstances of this case.

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15 *Ann Marie Redman* v *Hillary Samuel* CV2007-02662

16 *Gaffar* v *Padmore* HCA S-953 of 1997

17 *Elisha Sohan* v *Henry Hackett* HCA 513 of 1978 *per* Master Basdeo Persad Maharaj

VI. FUTURE EARNINGS

28. An award for loss of future earnings can be granted where a claimant demonstrates that there is continuing loss of earnings linked to the accident. See ***Munroe Thomas*** **v** ***Malachi Forde*** (supra). In the instant case, it is not in dispute that the Carolyn Fleming was unemployed at the date of the assessment. She, however, has to show that the injury was of such a nature that it rendered her incapable of performing her duties as a clerk or for that matter, any other form of work whatsoever. If it rendered her incapable of performing work as a clerk but did not prevent her from doing other work, it is necessary to show that in order to mitigate her loss. In discharging this onus, **medical evidence as to the nature and residual effect** that the injury may have had on her ability to work is imperative. See ***Parahoo*** **v** ***SM Jaleel Company Ltd.***[18]

29. At the time of the accident, Carolyn Fleming was employed as a clerk earning a monthly salary of $2,700.00. As a result of her injuries she was declared medically unfit to work. Counsel for Carolyn Fleming suggested that the multiplier/multiplicand method be used to calculate her loss of future earnings and suggested a multiplier of 8 and a multiplicand of $32,400.00 based on the ***Peter Seepersad*** case (supra) where a multiplier of 16 was used by the Privy Council for a 40 year old man who had lost 50% of his earning capacity. Her loss would be quantified as $259,200.00.

30. Counsel for the defendant submitted that there should be no award for loss of future earnings as there was no credible medical evidence provided to link the injuries of "low back disc herniation/disc damage" identified by Dr Ramroop to the 2002 fall. Further, there was no evidence of the examinations done by Dr Ramroop to support his findings neither was there evidence to show how her injuries prevent her from working nor evidence of other jobs that she can do with the injuries. It was further submitted that, *"it cannot be said that the injuries are automatically the result of the fall since Dr. Ramroop in … a previous medical certificate dated 3.11.06 stated that the Claimant was suffering from an ankle injury and this of course, was not attributable to her fall in 2002.*"

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18 *Parahoo* v *SM Jaleel Company Ltd.* CA110 of 2001 at para 8

31. It was also submitted that the documentary medical evidence was lacking in details and explanations; failed to attribute her injury to the 2002 fall or to explain how she moved from "Low Back Disc Herniation/Disc Damage" to "Low Back Pain/Disc Disease" so little weight ought to be put on this evidence. The court was also asked to disregard the use by Carolyn Fleming's employer of the medical certificates (deemed suspicious and lacking in details) to justify her retirement on the basis that they were insufficient to justify an award for future loss of earnings. She has failed to prove a continuing loss of earnings attributable to the accident.

32. I am mindful that the documentary medical evidence provided by Carolyn Fleming may be lacking in sufficient particularity. It is to be noted, however, that this evidence was supported by the viva voce evidence of Dr Ramroop, whose evidence was unshaken under cross examination. In ***Wesley Gabriel*** v ***Royal Bank of Trinidad and Tobago***[19] Rampersad J stated that, "*[T]his court feels that it was incumbent upon the Claimant, who was pursuing a claim for loss of pecuniary prospects and loss of future earnings to have had a comprehensive medical report justifying a finding such that which he wishes this court to reach, namely, that his future earnings would be severely affected. Unfortunately, the evidence was not made available to assist the court*." I note further that in ***Monroe Thomas*** (supra) Kangaloo JA stated that, "*an injured litigant must provide the court with all the relevant medical evidence to assist in the computation of damages to which he is entitled*."

33. I do not find that the evidence provided by Carolyn Fleming is so extremely negligible that it fails to show that she is now unable to work and that there is a continuing loss of earnings attributable to the 2002 fall. The evidence of Dr Ramroop was clear, cogent and unshakeable under cross examination and it is accepted. Further, this is not a case where there is evidential difficulties as to the amount that Carolyn Fleming would have earned nor are there too many uncertainties or "serious imponderables" preventing me from adopting the conventional multiplier/multiplicand approach that would require me to assess the loss globally and award a lump sum figure. See ***Monroe Thomas*** (supra) at page 15 as well as ***Blamire* v *South Cumbria Health Authority***.[20]

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19 *Wesley Gabriel* v *Royal Bank of Trinidad and Tobago* CV2008-04072
20 *Blamire* v *South Cumbria Health Authority* (1993) P.I.Q.R.Q1, C.A

34. Generally, a court will require clear evidence that the uncertainties of the case are of sufficient magnitude before it will depart from the conventional method of assessing future loss. See ***Meah*** v ***McCreamer***.[21] Further, in ***Eric Roy*** v ***Tappex Thread Inserts Limited***[22] there were several imponderables and uncertainties (e.g. the ability to work a full week as opposed to part time; or to find suitable light employment; or the possibility, if suitable light work is found, he might lose it as well as the difficulties of finding other work where he was now living) but the judge still adopted the conventional approached. On appeal, Lord Justice Roch stated, "*[A]lthough there were clearly imponderables in this case …, they were not such as in my judgment obliged the judge to depart from the conventional method of assessing future loss of* earnings."[23]

35. In my view, any evidential uncertainties in the instant case do not require a departure from the conventional method. I, therefore, accept the suggested approach of counsel for the claimant and apply a multiplier of 7 to the instant case. Further, on the basis of the authority of ***Mooniram Heru*** v ***Indarjit Singh and Or***,[24] I am prepared in arriving at the multiplicand to deduct one-third for living expenses, taxes and other statutory deductions. The multiplicand to be used is $21,600.00 per annum. Future loss of earnings is allowed in the sum of **$172,800.00** ($21,600.00 x 8).

VII. SPECIAL DAMAGES

36. The law on special damages is that it must be pleaded, particularized and "strictly" proved.[25] Carolyn Fleming has claimed the sum of $62,536.32. For this claim to succeed, she must, therefore, **prove** her losses. See ***Dabideen*** v ***Worrell.***[26]

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21 *Meah* v *McCreamer* [1985] 1 AER 367, 135 NLJ 80

22 *Eric Roy* v *Tappex Thread Inserts Limited* 18 June 1998 (unreported)

23 Ibid, where it was noted that the judge in rightly applying the conventional approach had evidence which he accepted of the average earnings of the plaintiff; his age and that but for the accident he would have been capable of performing light work until 65 years.

24 *Mooniram Heru (as Administrator of the estate of Curtis Bhaan Heru) and Ors* v *Indarjit Singh & Ranjit Singh* CV2005-00129

25 *Grant* v *Motilal Moonan Ltd* (1988) 43 WIR 372 per Bernard CJ

26 *Dabideen* v *Worrell* HCA 1648 of 1979 where it was stated that merely writing down the particulars and throwing them at the head of the court asking that they be given in damages would not suffice.

37. In ***Heeralall* v *Hack Bros (Construction) Co Ltd***[27] it was stated that, "*[S]pecial damages must be specially pleaded and proved and are awarded in respect of out-of-pocket expenses and loss of earnings actually incurred down to the date of the trial itself. They are generally capable of substantially exact calculation, or at least of being estimated with a close approximation to accuracy … The basic principle, as far as these losses are concerned, is that the injured person should be placed, as far as money can do so, in the same financial position as he would have been in at the date of the trial if no accident had happened*."

Costs of visits to Dr Redman

38. This claim was for $700.00 and was supported by corresponding receipts. It is allowed.

Travel Expenses

39. The sum of $750.00 was pleaded in the statement of case but in her witness statement she claimed $1,232.00 but provided no supporting documentary proof. I accept, however, that items of special damages need not always be proven to a hilt, see ***David Sookoo* v *Ramnarace Ramdath***.[28] Moreover, in ***Anand Rampersad* v *Willies Ice Cream***[29] it was stated that, "*[A]s much certainty an particularity must be insisted on in proof of damage as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry*." In the absence of proof, I consider it reasonable to allow $750.00 for this expense.

Costs of visit to Gulf View medical Centre

40. The sum of $3,000.00 is claimed for this in the statement of case but in the witness statement, the sum of $8,845.00 is stated to be the actual amount expended. The defendant submitted that the claimant is only entitled to the amount claimed in the statement of case. I note ***Charmaine Bernard* v *Ramesh Seebalack***[30] which emphasizes that the statement of case must set out a short statement of facts on which the claimant relies. The witness statement and its annexures also form part of the evidence of the claimant. Carolyn Fleming has attached receipts to her witness statement totaling $7,645.00. This sum is, therefore, allowed.

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27 *Heeralall* v *hack Bros (Construction) Co Ltd* (1977) 25 WIR 117 at page 124

28 *David Sookoo* v *Ramnarace Ramdath* CA 43 of 1998

29 *Anand Rampersad* v *Willies Ice Cream* CA 20 of 2002

30 *Charmaine Bernard* v *Ramesh Seebalack* [2010] UKPC 15

Loss of earnings

41. The claim for loss of earnings is for a period from May 2002 to October 2004 at $2,700.00 per month less 12 months pay received, amounting to $64,800.00. She has attached no documentary evidence in support of this claim such as a pay slip. Her loss of earnings was confirmed by the evidence of the defendant's witness, Jacqueline Prince, through whom the earnings and service record card of Carolyn Fleming was put into evidence, reflecting the terms of her daily wage, cost of living allowance and deductions. This sum totaled $58,086.32 and was accepted as being correct by Carolyn Fleming under cross examination. This sum is allowed.

VIII. INTEREST

42. Counsel for Carolyn Fleming sought 12% and 6% interest but the defendant submitted a rate of 6% and 3% per annum on general and special damages respectively. The interest to be awarded in any matter is within the discretion of the court. See **section 25 of the Supreme Court of Judicature Act**. According to ***Jefford* v *Gee* (1970) AC 130** the award of interest is not to compensate for damages done but rather, "*for being kept out of money which ought to have been paid to him*". In the circumstances, I award a protracted interest rate as set out below.

IX. CONCLUSION

43. IT IS THEREFORE ORDERED that the defendant do pay to the claimant, Carolyn Fleming:
    a) General damages in the sum of **$80,000.00** with interest at the rate of 9% per annum from 7th March, 2005 to 21st May, 2012;
    b) Special damages in the sum of **$67,181.32** with interest at the rate of 5% per annum from 25th April, 2002 to 21st May, 2012;
    c) Loss of future earnings of $**$172,800.00** which said sum does not attract any interest;
    d) Costs reserved to the adjourned date.

Dated 21st May, 2012

Martha Alexander

Master (Ag)