

IN THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV 2022-02419

BETWEEN

GABRIELLE ROACH-GARCIA

CLAIMANT

AND

SYGATE SECURITY AGENCY LIMITED

DEFENDANT

Before: The Hon. Mr. Justice Westmin R.A. James
Date: March 26, 2024
Appearances: Mr. Ronald A. Singh Attorney-at-Law for the Claimant
Mr. Kafi Rishma Bastien, Attorney-at-Law for the Defendant.

JUDGMENT

1. This case concerns the question of whether Sygate Security Agency Ltd (“the Defendant”) is liable for the personal injuries incurred by its employee, Ms. Gabrielle Roach-Garcia (“the Claimant”) on 15th March 2019 when a chair that she was sitting on collapsed beneath her, causing her to fall to the ground, and to suffer injuries, loss and damage.

Background

2. By Claim Form and Statement of Case filed on 5th July 2022 the Claimant sought general and special damages for negligence and consequential loss arising out of an accident on the job caused by the negligence of the Defendant, its employees and/or servants and/or agents on the 15th March 2019 together with interest and costs.
3. By Defence filed on 5th August 2022, the Defendant denied the Claimant’s claim of negligence and indicated that the accident occurred as a result of the negligence or contributory negligence of the Claimant.
4. The issues for determination before this Court are:

- (i) Whether the Defendant breached its duty to provide the Claimant with a safe system of work and/or safe plant and equipment;
- (ii) Whether the Claimant contributed by her own negligence to the injuries sustained; and
- (iii) If the Defendant is found liable, what is the quantum of damages to be awarded to the Claimant.

Whether the Defendant breached its duty to provide the Claimant with a safe system of work and/or safe plant and equipment

- 5. It is well-established that an employer has a duty to take reasonable care for their employees' safety and this includes providing a safe place of work and adequate plant and equipment: see Lord Wright in ***Wilsons & Clyde Coal Co. Ltd, v. English*** [1938] A.C. 57, cited with approval by Bereaux JA in ***The AG v Khimraj Katwaroo*** TT 2021 CA 40.
- 6. The relevant legal principles on employer's liability was recently set out by Madam Justice Eleanor Joye Donaldson-Honeywell in ***Avinash Bhajan v The Attorney General of Trinidad and Tobago*** TT 2023 HC 114. She stated at paras 31-35:

“31. **Halsbury's Laws of England**, stated:

“ At common law an employer owes to each of his employees a duty to take reasonable care for his safety in all the circumstances of the case. The duty is often expressed as a duty to provide safe plant and premises, a safe system of work, safe and suitable equipment, and safe fellow employees; but the duty is nonetheless one overall duty. The duty is a personal duty and is non-delegable. All the circumstances relevant to the particular employee must be taken into consideration, including any particular susceptibilities he may have. Subject to the requirement of reasonableness, the duty extends to employees working away from the employer's premises, which may include employees working abroad.”

32. In *Rennie Bissoon v Absolute Transport Limited*, Mohammed J stated:

“ The duty to take reasonable care will generally involve, as a starting point, a duty to perform an adequate assessment of all of the risks to which employees may be exposed during the course of employment, in order then to determine appropriate precautions to be taken to avoid injury. [Charlesworth and Percy on Negligence 14th Ed. 12-25]. It is no defence where the Claimant was an experienced employee who never complained about the safety of his workplace. [Charlesworth and Percy on Negligence 14th Ed. 11-20]”

33. An employer has the duty to devise a safe system of work, which includes a warning against risks, even if those risks are obvious.

34. In *Shelly-Ann Richards-Taylor v The Attorney General*, Jones J (as she then was) stated:

“ 5. What an employer is required to do is to take reasonable care not to subject an employee to unnecessary risk, that is, not to subject the employee to any risk that the employer can reasonably foresee and guard against by any measures the convenience and expense of which are not entirely disproportionate to the risk involved. [per Lord Herschell: Smith v Baker & Sons [1891] AC 325]. In discharging its common law duty to an employee therefore the responsibility of the employer is to take care to reduce the risk involved in the particular undertaking as far as is reasonably possible.”

35 Further, in *Bunny Ali v The Attorney General of Trinidad and Tobago*, a case involving injury by prisoner attack on a police officer at the same court where the instant claimant was injured, Boodoosingh J (as he then was) cited the decision in *Shelly-Ann Richards-Taylor* by stating:

“ 24. In higher risk jobs, such as this, an employer is required to take reasonable care not to subject an employee to unnecessary risk. The employer must therefore take care to reduce the risk involved in the particular undertaking as far as reasonably possible: Shelly-Ann Richards-Taylor v The Attorney General, CV 2010 – 01230, para 5 per Jones J.”

7. I would adopt the dicta set out above. Therefore the Defendant has a duty to carry on his operations so as to not subject those employed by him to unnecessary risk. The Defendant’s duty is stricter than the duty to take reasonable care for oneself, and it exists whether or not the employment is inherently dangerous.
8. The only evidence from any witness on the manner in which the Claimant fell was the Claimant’s. Her witness statement stated that on 14th March 2019 she was working a shift from 6:00 am to 6:00 am on Friday 15th March 2019 at Ascot Gardens where she was stationed. She also stated that on 15th March, 2019 at around 1:21 am she went to the bathroom and on her return she went to her desk to write the post in the diary.
9. She said around 1:25 am when she sat on the chair which was provided to perform her duties without any warning the chair collapsed under her and fell forcefully to the ground hitting her butt in a sitting position. She said she felt tremendous pain. She said she then called the sentry officer and informed him of the accident who was to send an ambulance. She also called her husband.

10. She also contacted the CEO of the Defendant's son and then later the CEO of the Defendant. An ambulance never came. The Claimant said she also called the HR Manager before her shift changed. The Claimant said she remained in pain until her shift change. Upon her release from her shift, she was taken to the Accident and Emergency Department at the Eric Williams Sciences Complex to get medical attention.
11. The Claimant said she was never warned or cautioned by the Defendant about the hazard and/or potential hazards of sitting on a defective and/or broken chair. She said she has never seen the Defendant performing any safety inspection of the workstation inclusive of the chair. The Claimant also submitted a report to the Defendant on 20th March 2019.
12. It is not in dispute that the chair broke. This was confirmed by Security Officer Anthony Sampson who relieved the Claimant who said that the chair they used to sit was in two pieces, that the back of the chair came off where it was bolted to the seat. The Defendant's Owner/Director Mr Mahadeosingh also gave evidence that he was given notice of the fall on 15th March 2019 and went to the workstation the next day. He said that he observed that the bolts holding up the back of the chair had become loose and the chair was in two pieces.
13. In the absence of any other eyewitness, I accept the uncontroverted evidence of the Claimant in relation to the accident.
14. Mr Mahadeosingh gave evidence on behalf of the Defendant that when security officers are hired, they partake in a training regime which consists of training for multiple posts, pocket diary training; report writing; gate and fixed post duties at the headquarters and training with on-duty officers at locations for both morning and night shifts. He also gave evidence that as part of the continued support structure for field officers a team of experienced supervisors were hired who are deployed to oversee security operations and provide guidance to security officers. He said these supervisors would inspect company assets assigned to the location and conduct a minimum of two visits on both the day and night shifts.
15. He said the Management Team established measures which included coaching and training employees by explaining job hazards and safe work procedures; conducting safety briefings; making visual inspection of their employees work areas at the beginning of during and after each shift for unsafe conditions; participating in formal scheduled safety inspections and follows ups; training employees in safe and efficient ways to perform assigned tasks; reporting of potential hazards; ensuring that all incidents, including near misses, are reported; investigating all incidents whether or not they result in injury or damage; enforcing as required consistent use of

personal protective equipment; encouraging and monitoring all health and safety and environmental matter.

16. The Defendant besides making general statements has presented no documentary evidence or witnesses about any of these procedures. In fact in answer to the Court, the Defendant's witness Anthony Sampson indicated that the training they received as officers with respect to the location was how to address the residents coming in and basic security training is all the training that that they got as security officers.
17. The Defendant led absolutely no evidence on the action which was taken by the Defendant to ensure that it provided a safe chair for the use of the Claimant. The Defendant did not provide any evidence or contemporaneous documentary evidence of when the chair was purchased or when it was last checked. Despite Mr Mahadeosingh stating in his witness statement that the Management Team implemented a handover system by which the relieving officer accounted for items handed over to him at the workstation including desks and chairs and ensured they were in good working order, the Defendant provided no evidence of any system for the checking the safety of the furniture to ensure that it was safe for use. The Defendant failed to call any witness to give any evidence on this issue or the steps taken to ensure safety. The Defendant provided no investigatory report of the chair after it had broken and the reason it broke.
18. The Defendant has also not provided any evidence that a negligent manner of sitting caused the fall. The Defendant has presented no evidence that the chair was properly assessed and in good order either before or after the fall.
19. I therefore hold that the Defendant failed to provide any credible and cogent evidence that it had taken all the steps to ensure that it provided a safe chair. The Defendant has not in this Court's mind therefore discharged its evidential burden to show that it has provided the Claimant with proper and safe working equipment or a safe system of work.
20. The court is therefore satisfied, on a balance of probabilities, that the Defendant owed a duty of care to the Claimant and the Court finds that it breached its duty in that it failed to ensure that the Claimant was provided with a safe work environment and plant and equipment; failed to take reasonable steps to ensure that the chair was free of defects and failed to take adequate steps to ensure that the furniture was properly maintained to prevent against this breaking.
21. But for such action the Claimant would not have fallen off the chair and suffered injuries. The issue of causation must therefore lie at the feet of the Defendant. It is also the finding of the court that as a consequence the Claimant sustained serious injury.

Contributory Negligence

22. The case for the Defendant is that the Claimant contributed to her injury. The burden of proving contributory negligence lies on the Defendant. The Defendant however failed to list any particulars of contributory negligence. The Defendant has not led any evidence that the chair broke because of the Claimant's negligence, or that she did not take reasonable care of herself and contributed to her own injury. There was no evidence that the Claimant used the chair in a certain way to cause the chair to break. The Defendant has led no evidence that the Claimant was reckless or careless in the use of the chair.
23. The Defendant has not advanced any pleading or cogent evidence to support its defence of contributory negligence on the part of the Claimant. I therefore find that the Defendant is wholly liable in damages for the Claimant's injuries as they failed to adhere to the standard safe system of work or safe plant and equipment.

QUANTUM OF DAMAGES

24. The pleaded Injuries suffered by the Claimant were:

- Prolapsed L4/L5 lumbar disc; low back strain syndrome with L4/L5 herniated disc with disc nerve root irritation; post traumatic syndrome; paravertebral muscle spasm in the cervical and lumbar spin; symmetric disc bulge with resultant multi bilateral recess stenosis and possible irritation of the traversing L5 nerve roots soft tissue injuries to lumbosacral region.

GENERAL DAMAGES

General Damages for Pain, Suffering and Loss of Amenities

25. Generally, to assess general damages, the principles set out in ***Cornilliac v. St Louis (1965) 7 W.I.R. 491 at page 492 G-H*** are applied and the court will assess the following heads of damages:
- (a) the nature and extent of the injuries sustained;
 - (b) the nature and gravity of the resulting disability;
 - (c) the pain and suffering endured;
 - (d) the loss of amenities suffered; and
 - (e) the effect on pecuniary prospects.
26. The medical evidence was given by Dr Adam. Dr Adam in his medical reports dated 5th April 2022 and 31st May 2022 detailed that the Claimant suffered from a low back strain syndrome plus L4/L5 herniated disc with nerve irritation and post-traumatic

syndrome. In his medical report dated 31st May 2022 Dr Adam stated that her injuries, which have continued for three years, were consistent with trauma sustained on 15th March 2019 and are likely to persist indefinitely. He indicated that if her back symptoms increase then surgery, lumbar laminectomy and discectomy may be necessary. Dr Adam diagnosed her as having 10% permanent partial disability for the post-traumatic syndrome, from the neurological standpoint, excluding any disability related to her lower back syndrome and herniated disc as the Claimant previously received a PPD of 50% for the back injury from Dr Gentle.

27. The Claimant gave evidence that she was in pain when the accident occurred and had to remain in pain throughout her shift before she could go to the hospital for treatment.

28. The Claimant says that she is still experiencing pains in her lower back and head with intermittent shocking feelings. She stated that the injury has affected her life as she cannot play netball and football that she used to play before the accident. She says she cannot stand for long periods of time and cannot do certain chores at home such as washing, sweeping, mopping and cleaning. She says she can only sit and fold clothes but not for long as she gets pain when she sits for too long. She says that she cannot lift any weight such as her son's school bag. She also says that she is unable to take care of her dogs.

29. She said she is unable to work and unable to get alternative employment due to her medical condition in any capacity.

Comparative Cases

30. Counsel for the Claimant sought an award of \$300,000.00 whilst the Defendants' counsel suggested that \$45,000.00 would be reasonable compensation.

31. The Claimant referred the Court to:

- **CV2018-03859 Candice Bailey v North Central Regional Health Authority**
- **CV2011-01821 Kestor Hernandez v AG**
- **CV2008-03959 Jennifer Ward v WASA**
- **CV2018-01701 Crystal Phillip v Tobago Regional Health Authority**
- **CV2009-01066 Clarence Vialva v Klint Ryan**
- **CV2008-03944 Calvin Dipnarine v AG**

32. The Defendant referred to the Court to

- **CV2015-03429 Donna Diaz v Burger Boys Limited**

- **CV2009-03728 Ferosa Harold v ADM Import and Export Distributors Limited**
- **CV2008-04045 Andre Marchong v T&TEC and Galt and Littlepage Limited**

33. The Court considered the above cases referred to the parties along with other cases and found the following to be most relevant to the present case:

- ***Petlyn Edwards v The Tobago Hospitality and Tourism Institute*** CV2018-03124 (19th February 2020) where the claimant sat on a 4 wheel swivel chair at work and fell, and suffered a mild lower back injury: apart from a mild degree of spondylotic changes within the lumbar region, no other significant abnormality. There was no objective finding of lasting injury and no lasting disability. She was awarded \$60,000. Adjusted to January 2024 is **\$68,319.56**
- ***Veronica Williams Bunbury v The University of the West Indies*** CV2017-00223 (6th November 2019) where the claimant fell from a four-legged chair in a sitting position and suffered disc desiccation and posterior annular tear/posterior lumbar disc herniation or “slipped disc”. She remained with constant pain that affected how she functioned, and left her unable to do housework or other physical activity. She was awarded \$60,250. Adjusted to January 2024 is **\$68,793.74**
- ***Rennie Bissoon v Absolute Transport Limited*** CV2016-03211 (25th February 2019) where the claimant fell off a delivery truck at work and suffered lumbar spondylosis with L4-L5 and L5-S1 degenerate discs’ disease: disc desiccation with decrease in disc height and posterior annular tear at L3-4, L4-5 and L5-S1 levels; L3-4 level: diffuse disc bulge causing mild narrowing of spinal canal and bilateral neural foramina; lumbar L4-L5 level posterior disc herniation, spinal stenosis and impingement of bilateral L5 nerve impingement due to narrowing of bilateral neural foramina and lumbar sacral; L5-S1 posterior para-central disc herniation, spinal stenosis and impingement of bilateral S1 nerve root; as well as cervical spondylosis with C5-C6 and C6-C7 degenerate disc disease. The claimant was caused pain by bending, sitting or standing for periods greater than 15 minutes, was unable to bear weight, and experienced great difficulty in playing with and caring for his grandchildren and doing household chores. He was assessed with 30% permanent partial disability. He was awarded \$100,000. Adjusted to January 2024 is **\$114,391.14**
- ***Darryl Damian Abraham v AG*** CV2011-03101 (26th September 2013) where after two separate falls during the course of employment, the claimant suffered nerve root irritation; nerve root compression; lumbosacral spasm with decreased range of movement; absent medial hamstring jerk; decreased ankle reflex; diminished sensation bilateral L5 dermatome; weakness of right ankle dorsiflexion; moderate spondylotic changes; osteopathic lipping L4-5; mild diffuse annular disc bulge at L3-4; mild left neural foramina stenosis; nerve roots irritation at L3-4 and L4-5; diffuse annular disc bulge with focal disc protrusion at L4-5. His injuries required

surgical intervention and he experienced continuing pain. His ability to sit or stand for long periods, weight bear and play basketball which he previously enjoyed were affected. There was no permanent partial disability. He was awarded \$130,000.00. Adjusted to January 2024 is **\$178,713.97**

- ***Ramesh Sam v Tropical Power Limited*** TT 2013 HC 109 (20th May 2013) where the claimant suffered from diffuse annular bulging at the L4/L5 level, with narrowing of the lateral recess bilaterally; lumbar disc herniation and severe nerve root impingement; L4-L5 disc bulge; bilateral stenosis causing irritation of the L5 and L4 nerve roots. He also experienced diffused severe tenderness with mild swelling and severe paraspinal muscle spasms; severe restriction of movements at the lower spinal region; mild swelling of the left knee and severe localized tenderness at the medial femoral condyle with mild effusion. There was evidence also of spondylotic changes in the lower lumbar regions. There was evidence that by the time of the assessment, he had healed substantially and was inflating the impacts of his injuries and lingering disabilities. He was awarded general damages of \$75,000 in 2013. Adjusted to January 2024 is **\$100,431.97**
- ***Carolyn Fleming v AG*** TT 2012 HC 178 (21st May, 2012) where the claimant was sitting on a chair at her desk at work, performing clerical duties when it collapsed beneath her, causing her to fall to the ground, and to suffer injuries on both upper and lower back radiating towards her legs, L4/5 S1 nerve impairment and permanent impairment of 25%. She was awarded general damages of \$80,000. Adjusted to January 2024 is **\$113,112.89**
- ***Andre Marchong v T&TEC*** (21st May 2010) where the claimant a 27-year-old was at work and fell from a swivel chair, sustaining injuries. He was diagnosed with lumbar spasm and soft tissue injury. The evidence pointed to him experiencing discomfort, tenderness over the lower spinae erecta muscles just above the iliac crest and loss of lumbar lordosis. There was no neurological deficits in his lower limb and no fractures. Subsequent tests revealed a narrowing of the lateral recess at the L4L5 with possible impingement of the traversing L5 nerve root and disc degeneration at the L5-S level. The claimant was given a 40% ppd and was awarded general damages of \$60,000. Adjusted to January 2024 is **\$99,332.44**
- ***Wayne Wills v Unilever Caribbean Limited*** CV 2007-04748 (26th February, 2010) where a claimant suffered an acute lumbar strain, and a L4/L5 disc herniation that necessitated surgery 2^{1/2} months after injury. Immediately following the injury, the claimant suffered pain in the neck and along the left side of his body, which intensified over the next few days. After surgery, the claimant progressed well but had some episodes of pain including one severe spasm. His prognosis was continued intermittent pain. The claimant experienced an inability to play football and hockey, to have regular sexual intercourse or sweep and was in pain up to the date of hearing. He was initially awarded \$75,000.00; which was upgraded by the Court of Appeal to \$200,000.00 on 18th December, 2013. Adjusted to January 2024 is **\$266,380.24**

- ***Ann Marie Redman v. Hillary Samuel*** CV2007-02662 (10th July 2009) where a claimant suffered from 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. The claimant experienced severe pain; spent 1 week at the hospital; suffered severe spasm of the legs and decreased sensation in the right leg. Stollmeyer J. (as he then was) awarded \$65,000.00. Adjusted to January 2024 is **\$117,836.26**

34. The cases span both ends of the pendulum of awards. The high end of the awards are Evans ***Ann Marie Redman v. Hillary Samuel (supra)*** and ***Wayne Wills v Unilever Caribbean Limited (supra)*** and at the lower end ***Petlyn Edwards v The Tobago Hospitality and Tourism Institute (supra)*** and ***Veronica Williams Bunbury v The University of the West Indies (surpra)***. It is clear that the injuries in ***Redman and Wayne Wills (supra)*** were more severe and extensive than those of the Claimant, and therefore it is sufficient to exclude the Claimant in this case from attracting an award in that band. The court in ***Petlyn Edwards and Veronica Williams case*** were less severe than the Claimant's injuries. The Claimant's injuries and effects of those injuries will therefore attract an award in the middle of these awards.

35. I have considered the witness statement of the Claimant and the witness statement with medical reports of Dr Rasheed Adam. I have also considered the cross examination of the Claimant and Dr Adam and that the Claimant does not yet need surgical intervention but has PTSD. I have also considered the cases cited by Counsel for the Claimant and Defendant. I have also considered that the Claimant is not completely incapacitated. I have considered 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 that Claimant's injuries fall in between the middle of the range of awards. For her pain and suffering and loss of amenities, I therefore award the sum of **\$130,000.00**.

Loss of Future Earnings

36. The Claimant also claims Loss of Future Earnings. She said she is unable to work and unable to get alternative employment due to her medical condition in any capacity. The Claimant was injured during the course of her employment and because of her injuries, her employability for the rest of her life would be affected. The Defendant as the negligent party must compensate her for her loss of employability or marketability.

37. The medical evidence however does not support the Claimant's contention that she is unable to work for the rest of her life. From the evidence of the doctor, Dr. Adam stated that the Claimant indicated that she continues to have worsening difficulty at work because of the lower back pain and may have to leave her employment. Dr

Adam also indicated that the Claimant attempted to return to work and has continued to do so with great difficulty and struggles for three to four days. The Claimant herself gave evidence that she got a job in a clothing store in Tunapuna but stopped after two weeks.

38. It is not that the Claimant was incapable of working ever again but she was unable to earn in the same manner that she did prior to the accident. However, Counsel argued, without demonstrating the proof, that the medical evidence supported her inability to work. Dr Adam in his report made no clear pronouncement on her ability to work in the future but at that time she was unable to perform occupational tasks and she would be left with some permanent disability.

39. While a claim of loss of earning capacity typically arises where a claimant is employed at the time of trial, a claimant who is unemployed might make a claim for loss of earning capacity once there existed a risk of suffering a disadvantage in securing employment. To obtain an award for loss of earning capacity, therefore, what was required would be evidence of a disadvantage on the employment market. The circumstances where it would be appropriate to make such an award were clarified in Civ Appeal No 169 of 2008 **Ramnarine Singh v Ganesh Roopnarine, The Great Northern Insurance Company Limited v Johnson Ansola** where Mendonca JA stated:

“While damages for loss of earning capacity would generally arise where the plaintiff is employed at time of the assessment, an award under that head is not dependent on whether the plaintiff is employed. Such an award can apply in cases where there is evidence of a disadvantage in the labour market whether or not the plaintiff is employed. Smith v Manchester Corp (1974) 17 KIR 1 and Moeliker v Reyrolle [1957] sic 1 ALL ER 9 are representative of situations where the plaintiff is employed at the date of trial but may experience a handicap in the labour market as a consequence of his injury if he were to lose his employment. These cases may be representative of the most typical situation and the label of a Smith v Manchester award is best left to those situations.”

40. The court accepts that the Claimant would continue to suffer pecuniary losses from her injury and was disadvantaged on the labour market and so is inclined to make an award under this head.

41. The Claimant did not lead any evidence of mitigation of loss in the present case save for an attempt to work at a Clothing store in Tunapuna in July 2020. This indicates that the Claimant can work in alternative employment. Further, having a disability in this modern world does not mean unemployability. There are various other types of jobs that the Claimant can do to make a living outside of being a security guard or standing for long periods.

42. Having looked at the evidence and the age of the Claimant, I think that it is reasonable that the Claimant's earning capacity has been reduced by $\frac{1}{2}$. In calculating the multiplicand therefore, $\frac{1}{2}$ of the Claimant's weekly earnings of $(\$5000 \times 12 / 52 = \$1,153.85)$ is used, that is $\$576.92$ per week $\times 52$ weeks for a sum of $\$30,000.00$ less 25% for tax and other liabilities is $\$22,500.00$.
43. As to the multiplicand, the Claimant at the time of assessment is 36 years old and the retirement age of the Defendant is 60. The Claimant therefore has a work expectancy with the Defendant of 24 more years. The Claimant submitted that the court apply a multiplier of 12. Taking into account the age of the Claimant, the possibility of doing other work, and the appropriate discount for the vicissitudes of life, I would accept a multiplier of 10 would be fair and reasonable in the circumstances.
44. Therefore the Claimant is entitled to the sum of $(\$22,500.00 \times 10) = \$225,000.00$ for loss of future earnings/earning capacity.
45. Therefore I would award the Claimant the sum of **$\$225,000.00$** under this head.

SPECIAL DAMAGES

Loss of earnings

46. The Claimant claims loss of earnings from 15th March 2019 to present and continuing. In order to prove a claim for pre-trial loss of earnings, the Claimant has to show that the injury she sustained rendered her incapable of performing any work from the date of this injury to the date of the trial.
47. The Claimant submits that she has been unable to work since the accident due to the severity of the pain she experienced and as such she is no longer physically fit and able to perform duties in her chosen field.
48. As I stated previously the Claimant is not incapacitated. I am of the opinion that the Claimant has not satisfied me that she was rendered incapable of performing any type of work as a result of her injuries. While she may have had some difficulty working in her chosen field which would have affected her ability to work at full capacity she could have done other types of work for the last 5 years.
49. The Claimant however would have suffered some loss of earnings even if she sought employment or took up alternative work or any other role in a lower capacity.
50. I am therefore minded to award $\frac{1}{2}$ of her pre-trial loss of earnings from the date of termination 12th March 2019 to the date of assessment 26th March 2024 (263 weeks) with a reduction of 25% for statutory dues.

51. I will calculate loss of wages as 12th March 2019 to 5th March 2024 which would amount to 263 weeks. One half the weekly wage is \$576.92 x 263 weeks is \$151,729.96 less 25% for statutory dues, illness, holidays and other contingencies of life is \$113,797.47.

52. Therefore I would award pre-trial loss of earnings from 12th March 2019 to the date of assessment 26th March 2024 in the sum of **\$113,797.47.**

Medical Expenses

53. The Defendant has not challenged any of the special damages for medical treatment. I would accept the Claimant's calculations and award special damages for the consultations and medical reports of Dr Adam and Dr Gentle in the sum of **\$4,000.00.**

Cost of Future Surgery

54. The Claimant claims \$55,000.00 for future medical expenses. The Claimant said that Dr Adam by his report dated 31st May 2022 has recommended a surgery at a cost of \$55,000.00 and she is unable to do so because she is unable to pay for it.

55. The expert evidence of Dr Adam however in his report dated 31st May 2022 does not say that the Claimant must undergo surgery. Dr Adam said "**[i]n addition if her back symptoms increase then surgery – lumbar laminectomy and discectomy may be necessary.**" There was no recommendation that the Claimant undergo surgery at the time of the assessment. There is no other evidence that this has changed to date.

56. I would award the cost of the surgery if the Claimant is recommended to have surgery and proceeds with the surgery. I would order that the Defendant pay the cost of the surgery up to \$55,000.00 to the doctor performing the surgery upon the scheduling of the surgery by the Claimant.

SUMMARY OF THE AWARDS

57. The sums which the defendant shall pay to the Claimant are as follows:

General Damages

Pain and Suffering and Loss of Amenities	\$130,000.00	
Loss of Future Earning/Earning Capacity	\$225,000.00	
SUB TOTAL		<u>\$355,000.00</u>

Special Damages

Loss of Earnings	\$113,797.47
Medication and Medical Services	\$ 4,000.00

SUBTOTAL	<u>\$117,787.47</u>
Future expenses	
Cost of Future Surgery (to be paid to Dr	\$ 55,000.00
SUB TOTAL	<u>\$ 55,000.00</u>
TOTAL	<u>\$527,787.47</u>

I therefore award General Damages in the sum of **\$355,000.00** and special damages in the sum of **\$117,787.47** I also order **\$55,000.00** for future medical expenses if undertaken.

58. **IT IS HEREBY ORDERED** that:

[1] Judgment for the Claimant against the Defendant.

[2] The Defendant is to pay the Claimant general damages in the sum of \$355,000.00 with interest on damages of \$130,000.00 for pain and suffering and loss of amenities at the rate of 2.5% per annum from 15th March 2019 to 26th March 2024 and thereafter statutory interest at the rate of 5% of per annum on \$355,000.00 until payment.

[3] The Defendant is to pay the Claimant special damages in the sum of \$117,787.47 with interest at the rate of 1.5% per annum from 15th March 2019 to 26th March 2024 and thereafter statutory interest at the rate of 5% per annum until payment.

[4] The Defendant to pay for the cost of surgery up to the sum of \$55,000.00, to be paid to the doctor who is performing the surgery within 21 days of the scheduling of the surgery.

[5] The Defendant is to pay the Claimant's costs on the prescribed basis, quantified based on damages and interest assessed in the sum of \$75,480.25.

[8] There shall be a stay of execution of 28 days

/s/ Westmin James
Westmin R.A. James
Judge