

**THE REPUBLIC OF TRINIDAD AND TOBAGO**  
**IN THE HIGH COURT OF JUSTICE**  
**CV2015-02696**

**BETWEEN**

**JEFFREY JAMES**

**Claimant**

**AND**

**F.M. CONTRACTING SERVICES LIMITED**

**First Defendant**

**AND**

**WATER AND SEWERAGE AUTHORITY**

**Second Defendant**

**Before Master Sherlanne Pierre**

**Date of Delivery:** 4 February 2022

**Appearances:**

**Claimant:** Mr. Chanka Persadsingh instructed by Mr. Daniel Nanchoo

**First Defendant:** Mr. Yaseen Ahmed instructed by Ms. Tara Lutchman

**JUDGMENT**

**Introduction**

1. The claimant was a truck driver of We Care Services Limited who sustained personal injuries when the 10 tonne truck he was driving became stuck in a cavity on the highway. The truck was also damaged in the incident. The claimant obtained judgment against the first defendant<sup>1</sup> with damages to be assessed before the Master.
2. At the assessment, the claimant gave evidence and was cross-examined. He also tendered medical reports by way of hearsay notice. The first defendant called no evidence.

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<sup>1</sup> The Claim against the second defendant was dismissed.

3. The claimant submitted that he was entitled to the following awards:
  1. General damages for pain and suffering and loss of amenities, suggesting a range of \$100,000.00 to \$120,000.00;
  2. Loss of earnings from 27 November 2014 (the date of the incident) to 15 January 2015 at a rate of \$20,000.00 per month in the total sum of \$40,000.00; and
  3. The cost to repair the truck in the sum of \$10,380.00.
4. He also made miscellaneous special damages claims.
5. The first defendant submitted that:
  1. A reasonable award for pain and suffering and loss of amenities was \$10,000.00; and
  2. The claimant was not entitled to recover for loss of earnings nor for the cost of repairs.

## **Issues**

6. Four issues arose for determination:
  1. What award should be made for pain and suffering and loss of amenities?
  2. Did the claimant prove that he had lost earnings in the sum of \$40,000.00?
  3. Which special damages claims were proven?
  4. Could this claimant recover for the costs to repair the truck?

## **Discussion**

### **What award should be made for pain and suffering and loss of amenities?**

#### *Nature and Gravity of Injury*

7. The claimant pleaded that he sustained the following injuries:
  1. Tenderness of the right jaw and right shoulder;
  2. Soft tissue injury to the right jaw and right shoulder;
  3. Soft tissue injury;
  4. Right maxillary area and inner tissues;
  5. Lumbar back strain; and
  6. Soft tissue injury to left lower limb.

8. He produced two contemporaneous reports, one from the Accident and Emergency Department of the General Hospital, Port of Spain (NWRHA report) and another from Dr. David Toby, orthopaedic surgeon.

9. The NWRHA report, dated 15 May 2015, stated:

*Mr. Jeffrey James was seen in the Accident and Emergency Department, Port of Spain General Hospital on the [day of the incident].*

*Patient reported that the front wheel of his vehicle went into a manhole causing the vehicle to rock forward and subsequently causing him to hit his face and right shoulder in the door.*

*At presentation the patient had stable vital signs. On examination, there was some tenderness of the right jaw and right shoulder. Xrays of both the left jaw and right shoulder showed no bony abnormalities.*

*An assessment of soft tissue injury to the right jaw and right shoulder was made.*

*Patient received oral analgesia and was discharged.*

10. The report from Dr. David Toby, dated 13 January 2015, stated:

*Medical Report*

*Jeffrey James*

*The above fifty six year old Truck Driver presented [day of the incident] complaining of right jaw pain and severe back pain. He gave a history of his truck falling into a ditch and his experiencing immediate pains. He attended my clinic shortly after.*

*At presentation besides being in obvious pain he appeared very traumatized and the right side of his face very swollen and bruised. I diagnosed soft tissue injury, right maxillary area and inner tissues and a lumbar back strain and soft tissue injury to the left lower limb. He was treated symptomatically and he reverted to using his walking stick for the*

*lower limb injury as it had previously been severely injured in a work related injury some years ago and there seemed to have been an aggravation.*

*In my opinion his injuries though not life threatening may take a few months to settle and can become chronic.*

11. The court attached weight to the two reports, including the finding of injury to the right shoulder in the NWRHA report, which was not present in the Toby report, and the new findings of injury to the back and left leg mentioned in the Toby report. The reasons were that:

1. The reports were contemporaneous as the claimant had been examined by doctors at the NWRHA and Dr. Toby on the day of the incident;
2. The reports were consistent to the extent that they both found tenderness and/or soft tissue injury to the right side of face and jaw;
3. The finding in the NWRHA report of tenderness and soft tissue injury to the right shoulder was consistent with how the claimant described the incident when he stated that the rocking of the vehicle ‘*caused me to slam into the right door*’;
4. The finding in Dr. Toby’s report of a swollen and bruised right side of face was not inconsistent with the finding of tenderness and soft tissue injury to the jaw contained in the NWRHA. Further, the claimant saw Dr. Toby after the visit to the hospital. It was plausible that the tender jaw had subsequently become swollen and developed bruising;
5. The claimant said he experienced pain and discomfort in the back and leg after he visited the hospital and was compelled to see Dr. Toby. It was plausible that symptoms which were not immediately present following the incident developed as the day wore on; and
6. Dr. Toby’s report made clear distinctions between the claimant’s complaints and his medical findings, the latter which included a finding of lumbar back strain and soft tissue injury to left lower limb.

12. During cross-examination, the claimant also asserted that he had suffered a broken dental plate. The court attached little weight to his belated assertion for the following reasons:

1. Although both medical reports recorded injury to the area of the face and jaw, neither of them mentioned a broken dental plate; and

2. The claimant did not mention a broken dental plate in his evidence-in-chief (witness statement) nor in his statement of case nor did he seek to recover any costs which might be expected to flow from a broken dental plate. The Court was of the view that if his dental plate had been broken it was unlikely that he would have omitted that fact in his evidence-in-chief.
13. In the circumstances, the court found that the claimant had proven that as a result of the incident, he had sustained the following:
1. Tenderness and soft tissue injury of right jaw and right shoulder;
  2. Soft tissue injury of right maxillary (face) area and inner tissues;
  3. Lumbar back strain;
  4. Soft tissue injury to left lower limb; and
  5. Aggravation of pain from a previous injury to the left limb.

#### *Pain and Suffering*

14. The claimant experienced pain when he was slammed into the door of the truck. He felt pain in his jaw and tasted blood in his mouth. He felt searing pain in the shoulder and lower back and felt disoriented and dizzy shortly after the incident. He felt throbbing pain to the face and head. He also experienced pain in the leg and subsequently, his back pain became severe and his face swollen and bruised. On the day of the incident, the pain in the leg caused him to revert to using his walking stick for a previous leg injury.
15. Although the first defendant pointed out that there was no reference to dizziness, disorientation or throbbing of the head in the NWRHA report, the Court accepted the claimant's evidence of how he felt on impact given how he described the incident and the lapse of time which occurred between the incident and visit to the hospital. He said he '*suddenly felt the left rear side of my truck to drop below road level and my truck rocked violently from left to right...*' His evidence was also that he was taken to the hospital only after 'much time and effort' had been spent getting the truck out of the hole with the assistance of others. Further, Dr. Toby had noted in his report that the claimant appeared 'traumatised', which was consistent with his evidence of

feelings of disorientation. The Court therefore accepted the claimant's evidence as to his pain and suffering on the day of the incident as detailed above.

16. The claimant was treated with painkillers on the day of the incident at the hospital and discharged. Dr. Toby said he treated the claimant 'symptomatically'. The symptoms recorded by Dr. Toby were swelling, bruising and pain as well as emotional trauma. The Court considered that had Dr. Toby recommended a medical intervention which was 'out of the ordinary', he would have stated so in his report rather than use the broad description, 'symptomatically'.

17. The claimant claimed that as a result of his injuries he required ongoing medical care, treatment and medical interventions. However, there was no supporting evidence for most of his assertions, dealt with in turn below.

#### Ongoing treatment and medical interventions

18. The claimant stated that following the incident, he continued to have further medical consultations with Dr. Toby **to manage the treatment of his injuries**. In addition to the 13 January 2015 Toby report referred to above, the claimant produced a second report from Dr. Toby dated 3<sup>rd</sup> July, 2020. Together the reports did not support the claimant's assertion that he continued to be under Dr. Toby's care to manage his injuries.

19. Dr. Toby stated that he saw the claimant on the day of the incident in his first report. In the second, he stated '*[f]ollowing my last report of January 13, 2015, I reviewed the above July 03, 2020.*'. There was no evidence that Dr. Toby saw the claimant other than on the two occasions stated in his reports.

20. The claimant also asserted that he continued to see various doctors for his pain. He did not name nor call any doctors whom he consulted nor produce any medical reports or prescriptions from them. There was also no supporting evidence of any continuity of care through the public health system after he was discharged from the hospital on the day of the incident. There was no supporting evidence for the claimant's statement that he continued to see various doctors for his pain after the incident.

21. The claimant also testified that he had to undergo physiotherapy to treat his injuries based on doctor's recommendations. However, none of the medical reports produced,

contained a recommendation for physiotherapy. The report from the Port of Spain General Hospital stated that the claimant '*received oral analgesia and was discharged*'. The first report from Dr. Toby stated that on the day of the incident, he was '*treated symptomatically*'. The second Toby report contained no treatment recommendation at all.

22. Further, the claimant himself did not say at what facility he undertook physiotherapy nor indicate for what length of time he attended physiotherapy. It was also noted that his claim did not include a claim for any costs that might be expected to be associated with physiotherapy. In the absence of any documentary support or particulars, the court did not believe the claimant when he said the injuries he sustained on the day required that he undertake physiotherapy.

23. The claimant also stated that based on his doctor's recommendations and as a result of his injuries, he had to have ongoing treatment at an outpatient clinic of the general hospital. However, there was no referral to an outpatient clinic contained in the NWRHA medical report nor did the claimant produce a referral to clinic from any other institution. Neither did the claimant produce evidence of his having attended such clinic, such as a clinic card, nor adduce into evidence particulars relative to attendance at a clinic. In the circumstances, the Court attached no weight to this assertion by the claimant.

24. The claimant also asserted that based on his doctor's recommendations, he was required to have massage therapy for his injuries but again, while his reports referred to the treatments recommended, none of them contained a prescription, referral or recommendation for massage therapy.

#### Course of Medication and antibiotics

25. The claimant said his doctors recommended courses of medication including, but not limited to, painkillers and antibiotics. Dr. Toby's, and certainly the hospital's, initial treatment likely involved painkillers and antibiotics but there was no evidence of ongoing recommendations or prescriptions. The claimant himself did not say what

medication he took nor how often he purchased medication and he made no claim for costs of medication.

26. In the premises, the court attached little weight to the claimant's claims that he required ongoing treatment and interventions for his injuries.

*Nature and Extent of any Resulting Disability*

27. The claimant also asserted that as a result of his injuries, he had been left with chronic pain, a limp, back pain, an inability to chew properly, lift heavy objects with his right hand, poor sexual performance and neck pain.

Chronic Pain, Limp and Occasional Back Pain

28. The claimant testified that he felt embarrassed and suffered mental anguish for having to use a walking stick for his limp and described himself as 'permanently handicapped'. He referred the Court to Dr. Toby's 2020 report.

29. The second report of Dr. Toby dated 3 July 2020 stated:

*Medical Report*

*Jeffrey James*

*Following my last report of January 13, 2015, I reviewed the above July 03, 2020. He still complained of pain in the left lower limb which was exacerbated after his accident of his truck falling into a ditch. His pain is now chronic and he still requires a walking stick at times and also has a limp. He also complained of occasional back pain.*

30. The Court noted that at least five years had elapsed between Dr. Toby's last examination of the claimant and his 2020 review, with no evidence of any follow-up by Dr. Toby in the intervening period. There was also no evidence that Dr. Toby had the benefit of any medical history pertaining to the claimant for the intervening period.

31. Dr. Toby's 2020 report appeared to be based primarily on complaints made by the claimant. Dr. Toby noted that the claimant 'still complained of pain to the left lower



limb' and gave no other basis for his conclusion that the claimant's pain had now become chronic other than that the claimant's complaints persisted. As discussed earlier, there was no evidence that the claimant required ongoing medical support for his injuries despite his claims. In the court's estimation, the claimant had demonstrated that he was prone to exaggeration when it came to the effects of his injuries.

32. Dr. Toby also stated that the claimant used a walking stick 'at times'. Based on Dr. Toby's first report, there was evidence that the claimant's previous injury had required use of a walking stick, as it was stated therein, that the claimant had '*reverted to using his walking stick for the lower limb injury as it had previously been severely injured in a work-related injury*'. The claimant did not disclose the medical details as it related to the previous injury to the left limb.

33. Dr. Toby also observed that the claimant had a limp. With respect to the limp, there had been no mention of a limp in the first Toby report nor in the NWRHA report and Dr. Toby did not say that the limp he observed more than five years later had been caused by the 2014 incident.

34. There was also no mention of a limp in the claimant's statement of case which was filed 8 months after the incident. Indeed, there was also no reference to use of a walking stick:

- i. Under 'particulars of injury' (main injuries) there was stated, '*soft tissue injury to left lower limb*'; and
- ii. Under 'particulars of injury' (effects upon social, domestic and leisure pursuits), there was stated- *The claimant is a truck driver and his ability to continue to work has diminished significantly due to his constant pains in his neck, back and jaw. The claimant cannot sit for long periods of time especially when driving his truck, cannot chew properly whilst eating, he cannot pick up objects with his right hand and cannot lift his hands in the air. Due to these injuries the claimant is unable to keep up with his lifestyle and other usual social activities inclusive of; gardening, jogging and assisting in simple chores at home. The claimant has therefore suffered a major loss of amenity.* '.

35. The Court was of the view that the existence of a limp was a significant matter that was unlikely to be overlooked. If it had developed subsequently, then it was incumbent on the claimant to show that the subject incident had caused it.

36. Dr. Toby also noted that the claimant complained of occasional back pain but he did not say that the 2020 complaint was tied to the lumbar back strain which he had diagnosed in 2014. Given the lapse of time between the two visits and the absence of any follow-up or other supporting medical report, it could not be presumed that the back pains were tied to the subject incident.

37. There was no other medical evidence adduced by the claimant showing that his 2020 complaints resulted from the subject incident.

#### Ability to chew

38. The claimant testified that he still was unable to chew properly. There was evidence that he may have had difficulty chewing after the incident given the evidence of tenderness and soft tissue injury to the face and of a bruised and swollen face but there was no evidence that it was a continuing concern and persisted 6 years after the accident. Significantly, in his 2020 report, Dr. Toby did not record that the claimant complained of being unable to chew properly. The Court was of the view that if it had continued to be a concern for the claimant it would have found its way into Dr. Toby's report.

#### Lift heavy objects

39. A similar observation was made with respect to the claimant's assertion that he could no longer lift heavy objects with his right hand nor lift his hands in the air. While the court accepted his evidence that he had sustained tenderness and soft tissue injury to the right shoulder and that it would have affected his ability to lift heavy objects in the periods after the incident, there was no supporting medical evidence that he continued to suffer disability to the shoulder over the years. Dr. Toby's updated report made no reference to such complaint nor contained any such finding.

#### Sexual performance

40. The claimant testified that his sexual activity and/or performance had been severely diminished by the level of pain he experienced in the back. The Court accepted the claimant's evidence of the severe back pain he experienced after the incident and the diagnosis of lumbar back strain. In the circumstances, the court accepted that it was not implausible that the claimant's injuries affected his sexual health after the incident. However, the court did not accept that the issue remained a current one because although the 2020 report noted the complaint of occasional back pain, it was not clear that the back pain was a result of the subject incident.

#### Neck Pain

41. The claimant said he continued to experience pain in the neck. There was no reference to neck pain in any of his medical reports. Neck injury was also not one of the complaints in the claim.

#### *Loss of amenities*

42. The claimant testified that he could not do rigorous or strenuous work and was unable to do simple chores. He also complained that he could not lift his hands in the air, lift heavy objects, lift his grandchildren or engage in some of his usual pursuits such as gardening, playing football, jogging and socialising. Given the soft tissue injury to the right arm and left leg, the court accepted that the claimant would have experienced some limitations in carrying out certain tasks and enjoying certain pursuits after the incident but not that it was a continuing issue. That was so because the 2020 medical report did not bear out the claimant's claims about ongoing inability to lift heavy objects with the right hand or to lift his hands in the air. His assertion that he still could not do simple chores nor lift heavy objects nor his grandchildren was premised on his medically unsupported assertion of a continuing disability to the hand and so little weight was attached to same.

#### *Effect on pecuniary prospects*

43. In his statement of case, the claimant claimed loss of future pecuniary prospects and/or diminution of earning capacity. He pleaded that his ability to continue to work as a truck driver had diminished significantly due to constant pains in his neck, back and jaw and that he could not sit for long periods of time when driving his truck.

44. The claimant testified that the extent of his injuries, particularly to the back, meant that since the incident, he had not been able to work in the capacity of truck driver or service provider. (In his witness statement he identified himself as a service provider as well.) He also testified that his injuries had severely curtailed his ability to work as a truck driver as he continued to experience pain in his back, neck and jaw. He also said that he was unable to sit for long periods of time and that was worsened when he attempted to drive his truck.
45. He further stated that because he could not drive his truck, his contract with Trinidad and Tobago National Petroleum Marketing Company (NP) was not renewed although he had expected it would be because he had received positive feedback on his performance. The claimant further asserted under cross-examination, that as a result of the incident, he was unable to work for the rest of his life. At one point, he estimated that his ability to work had been diminished by 75%.
46. There was no or no sufficient support in the medical reports for the claimant's statement that he was unable to work for the rest of his life and none of the medical reports addressed whether his injuries affected his ability to work as a truck driver.
47. Although the claimant said his neck pain had affected his ability to work, there was no mention of any injury to the neck in any of the medical reports. With respect to the injury to the jaw, while there was a finding of injury to the jaw in the contemporaneous reports, the updated Toby report did not refer to jaw pain as an ongoing concern. With respect to the pain to the back, the updated Toby report noted that the claimant complained of 'occasional' back pain, which, in the ordinary sense of the word, meant that it occurred infrequently and irregularly and therefore could not provide a basis for the claimant's assertion that he could no longer work. Moreover, as noted previously, in his report, Dr. Toby noted the occasional back pain as a complaint made by the claimant and not as a medical finding tied to the subject incident. In the circumstances, the court was not satisfied that the claimant had shown that he could no longer work as a result of the injuries suffered in the incident.

48. The court noted that despite the claimant's claims that he could no longer work, he made no claim for future loss of earnings.

*Range of awards for comparable injuries*

49. The Court considered the cases set out hereunder in arriving at an award.

50. The case of ***Carolyn Flemming v The Attorney General***<sup>2</sup> involved back pain and a diagnosis of lumbar strain. The court awarded \$80,000.00 in May 2012. In Flemming, the court accepted the claimant's evidence of her resulting disability: she was unable to stand or walk for long periods of time without sitting or resting; exercise, sporting activities and performance of some household chores were challenging; she continued to suffer from intermittent pain in her leg, lower and upper back and experienced additional pains when attempting to do many of the daily tasks necessary in ordinary living. Further, her injuries permanently affected her ability to work. After she was certified fit to resume duties, she was subsequently deemed medically unfit on a permanent basis due to her pain and discomfort.

51. **Lennard Garcia v Point Lisas Industrial Port Development Corporation Limited**<sup>3</sup> involved a claimant who sustained injuries after a fall. He was hospitalised for three days having sustained the following injuries: soft tissue injury to the lower back, right shoulder and right knee. The medical evidence suggested that the accident aggravated the claimant's pre-existing lumbar spondylosis. His continuing disability included weakness in the left leg and wasting of the left quadriceps muscle from the nerve being pinched, daily low back pain which he was expected to experience for the rest of his life (though it could be decreased by weight loss) and pain when sitting, standing and walking. The evidence with respect to any loss of amenities was weak. The court assessed damages at \$80,000.00 in September, 2013 and awarded the claimant 70% of that sum based on apportionment at the liability stage. In arriving at the award the court considered that the claimant continued to be 'plagued by pains and it is pain that he would have to live with for the rest of his life.'

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<sup>2</sup> CV2007-02766 – submitted by claimant

<sup>3</sup> CV2010-03061

52. In *Nekeisha Moe v Caribbean Airlines, Airport Authority of Trinidad and Tobago*<sup>4</sup>, the claimant fell in a puddle of water and sustained soft tissue injuries to the left knee, shoulder and lower back. The following medical interventions were recommended: physiotherapy for at least one year which would have expected to improve her permanent partial disability assessed at 35% and surgery to the shoulder. The claimant continued to experience pain, however, in making its award, the court discounted the claimant's continuing pain in the shoulder having found that her refusal to have surgery was unreasonable and found that her pain could not have been as severe as she claimed since she had also failed to undertake physiotherapy. The court accepted that the claimant's ability to drive and ride her motorcycle had been affected. The court awarded the sum of \$60,000.00 in January, 2018. In this case, there was evidence that although the injuries were 'soft tissue', they required physiotherapy for at least one year as well as surgery.

53. The case of *Ferosa Harold v ADM Import and Export Distributors Limited*,<sup>5</sup> involved diagnoses of soft tissue injury to the neck, lumbar spine and left shoulder and tenderness in several parts of the body. The claimant was assessed with a permanent partial disability of 60%. The court awarded \$60,000.00 in April 2015. In making the award, the court considered that her soft tissue injury and tenderness contributed to a loss of cervical and lumbar lordosis or "thoracic and lumbar spine" as a result of which she suffered from persistent, debilitating pains that restricted how she performed her daily activities and affected her enjoyment of life.

54. *Dotsy Walker and another v Ashton Williams*<sup>6</sup> was a matter which involved soft tissue injuries with some bruising which resulted from an attack by a dog. The court awarded \$25,000.00 in March 2017. The injuries involved soft tissue injuries such as abrasions to the right side of the chest with small puncture marks, mild swelling and tenderness. It affected her ability to work for one week when she was placed on sick leave. The award took into account the emotional trauma which the claimant experienced as well as the fact that there was no evidence of any continuing disability and the injuries had resolved themselves by the time of the assessment.

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<sup>4</sup> CV2014-04881

<sup>5</sup> CV2009-03728

<sup>6</sup> CV2015-04057

55. In **Judson Mohammed v The Attorney General of Trinidad and Tobago**<sup>7</sup> the claimant was assaulted and suffered the following injuries: wound above left eye, soft tissue injuries, pain in right ear and pain in the neck due to damaged muscles and limitation of movement, cerebral concussion, amnesia, post-traumatic headaches, dizziness and loss of balance. When the assault occurred, the claimant fell into a semi-conscious state. However, while his pain and suffering lasted for several months (neck and ear pain as well as headaches), there was no evidence of lasting disabilities save for a scar above the eye. His pecuniary prospects were not affected. The court awarded the sum of \$30,000.00 in April, 2017.

56. The Court also considered **Rodney Le Blanc v The Attorney General**<sup>8</sup> which involved soft tissue injury to the stomach. The claimant was struck with a baton by a police officer. He was given medication and discharged. In making an award of \$20,000.00 in June, 2018, the court noted that the claimant's injuries were relatively minor and did not result in permanent disability.

57. The cases suggested a range of \$25,000.00 to \$80,000.00 with necessary adjustments in respect of older awards. Cases in which there was evidence of ongoing and permanent disabilities fell at the higher end of the scale or in which the soft tissue injuries required hospitalisation, or medical treatment such as surgery and physiotherapy. Cases which primarily involved soft tissue injuries without evidence of permanent effects on amenities and pecuniary prospects attracted awards at the lower end of the scale.

58. The Court here accepted that the claimant suffered soft tissue injuries, aggravation of pain from a previous injury and a lumbar back strain. The claimant's credibility was brought into question with respect to many of his allegations related to the effects of his injuries, ongoing disabilities and the effect on his pecuniary prospects. He also failed to establish sufficient nexus between his 2020 complaints and the subject incident. As a result, the Court did not accept that the nature and gravity of the

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<sup>7</sup> CV2015-00123

<sup>8</sup> CV2014-04778

claimant's injuries were severe because they did not require, for example, hospitalisation, physiotherapy or surgery; the claimant had suffered ongoing or permanent disabilities; experienced a significant loss of amenities; or that the claimant's pecuniary prospects had been significantly impacted. In the circumstances, the court was of the view that this case fell towards the lower end of the range and that the sum of \$40,000.00 would do justice in this case.

**Did the claimant prove that he had lost earnings in the sum of \$40,000.00?**

*Loss of Earnings*

59. The claimant claimed loss of earnings for the period 27<sup>th</sup> November, 2014 to 15<sup>th</sup> January, 2015 at \$20,000.00 per month (total of \$40,000.00) as a truck driver of We Care Services Limited contracted with NP.

60. In his principal witness statement, he said that at the material time of the accident he was contracted to work for NP to deliver lubricants on its behalf and the '*monthly salary paid to me as per my contract of employment was twenty thousand dollars (\$20,000.00)*'. He produced a copy of an agreement. The agreement was made between We Care Services Limited and NP. By the terms of the agreement, \$50,000.00 (vat exclusive) was the total agreed sum for the provision of services by We Care Services Limited commencing on or before the 1<sup>st</sup> of October, 2014 to be completed no later than 3 months after commencement of the service. The agreement did not contain an option to renew clause and expressly set out that *that* document, Appendices A, B and C and the General Conditions of contract formed the entire agreement between the parties. The General Conditions of contract were not produced to the Court.

61. Under cross-examination, the claimant also stated that he earned a salary from We Care Services Limited in the sum of \$10,000.00 per month. He did not indicate whether that sum represented his gross or net but in any event, he did not make a claim for loss of earnings with respect to his salary from We Care Services Limited.

62. The claimant relied on the said agreement in support of his claim for loss of earnings, however, the Court found that the claimant had failed to prove that he had suffered a loss of earnings as claimed for the following reasons:



1. The consideration in the agreement was for \$50,000.00 (VAT exclusive) over three months and not \$20,000.00 per month;
2. In any event, the consideration of \$50,000.00 (VAT exclusive) did not represent a loss of earnings to the claimant but tended towards a loss of revenue for We Care Services Limited; and
3. The claimant was not a party to the agreement for services despite his claim that he had been contracted by NP.

**Which special damages claims were proven?**

*Costs for physiotherapy and medication*

63. The claimant gave evidence of having sustained certain out-of-pocket expenses. In some instances, he made no special damages claim for the items in his statement of case and in others he did not prove to the satisfaction of the Court, that the expenses had been incurred.

64. The claimant said his medical expenses associated with medication and physiotherapy was \$3,000.00. As discussed above, he neither showed that the hospital nor Dr. Toby recommended physiotherapy. With respect to medication, there was evidence that he received oral analgesia at the hospital and was treated symptomatically by Dr. Toby and that one of his symptoms was pain. However, the claimant did not disaggregate the sum of \$3,000.00 or give some indication as to how he arrived at that figure. What medication did he purchase or was he prescribed going forward and how much did such medication cost and how regularly was he required to purchase medication, for example. Moreover, there was no claim in special damages for medical expenses in the statement of case.

*Cost for Dr. Toby*

65. The claimant said his medical expenses associated with Dr. Toby amounted to \$1,000.00. He produced no receipt evidencing the expenditure. While there was clear evidence that he saw Dr. Toby on two occasions, he did not make a claim for this sum in his pleaded case.

*Transportation costs*

66. The claimant testified that due to his injuries, his neighbours, whom he identified by their nicknames, would take him for his medical appointments, physiotherapy sessions and visits to his lawyers' offices and he would pay them \$150.00 per trip. He estimated that his neighbours made about 15 trips on his behalf. His neighbours were not called as witnesses.

67. As indicated earlier, there was no supporting evidence that the claimant had ongoing medical appointments and the only evidence of medical appointments were the two on the day of the incident (to the hospital and Dr. Toby's) and a visit to Dr. Toby's six years later. He did not make a claim for transportation costs (to see his lawyers or otherwise) in his claim.

**Could this claimant recover for the costs to repair the truck?**

68. The claimant pleaded that at the material time, he was driving his 10 tonne truck, which sustained damage to the left side tray and back bumper and claimed the sum of \$10,380.00. The estimate to carry out repairs was annexed to the pleadings.

69. The claimant testified that he *'went to Rajack's Auto Garage to obtain an for the repairs required. I was charged by Rajack's Garage the sum of Ten Thousand Three Hundred and Eighty dollars (\$10,380.00) for the repairs to my truck and the estimate provided to me by Rajack's Garage confirmed this'*. He also stated that the damage to his truck was so extensive, he was unable to use it from the date of the incident to the 15<sup>th</sup> of January, 2015, when it was repaired. The estimate from the garage was produced and showed the estimated cost of repair as \$10,380.00.

70. Under cross-examination, the claimant eventually stated that the truck was in fact registered to We Care Services Limited.

71. The claimant did not establish that he was the owner of the truck but rather it was owned by a stranger to the proceedings. The claim for cost of repair was therefore not upheld. That apart, he did not produce an invoice nor a receipt as proof that he had incurred sums towards repair of the vehicle. Although he said in cross-examination that he had misplaced the receipt, in his evidence-in-chief there was no

mention of a receipt, he had relied squarely on the estimate as proof of having been charged the sums stated therein.

**Disposition**

72. In the circumstances, the first defendant will pay the claimant the sum of \$40,000.00 in general damages with interest thereon at the rate 2.5% from the date of service of claim to date of judgment and costs calculated on a prescribed scale in the sum of \$13,127.40.

73. By consent, there will be a stay of execution of 28 days.

**Sherlanne Pierre**

**Master**