

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2016-03883**

BETWEEN

**ANGENIE JOSEPH-DOOKRAM**

Claimant

AND

**JOANN BARSATIE**

Defendant

**Before Master Sherlanne Pierre**

**Date of Delivery:** 2 November 2021

**Appearances:**

Claimant: Mr. Jared Jagroo

Defendant: Mr. Ronnie Vindra Persad instructed by Ms. Nalini Jaggernauth

**RULING**

1. This was a ruling on a preliminary point raised by the defendant who sought to have the claimant's claim struck out as an abuse of process on the basis that the claimant sought to recover damages in respect of losses for which she had already been compensated in a previous action (hereinafter the first action).<sup>1</sup> It was dealt with before any directions were given for disclosure or the filing of witness statements.
  
2. The issue was referred to this court by consent order <sup>2</sup> of Aboud J (as he was then) who ordered that:

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<sup>1</sup> CV2015-01547 Angenie Joseph-Dookram and Poonamdaai Maya Siewcharan Ramchrn v. Dwayne Lee Foon and Colonial Fire and General Insurance Company Limited

<sup>2</sup> Order dated 19 March 2020

*[3] The issues encompassed in paragraph ‘A’ of the defendant’s aforesaid Amended Defence and wherever else therein appearing- to which the claimant has issued a reply dated and filed on 29 January, 2020-be determined by the Master at the stage of the claimant’s assessment of damages aforesaid.*

3. Paragraph A of the defendant’s amended defence stated-

In full answer to the claimant’s claim, the defendant avers or contends that the claimant is-or properly ought to be –debarred or estopped from pursuing this action and/or from being granted the, or any, relief as sought therein and/or from recovering the, or any, or the full extent of the damages [general and special] interest thereon and/or costs as claimed; and/or further that the claimant’s claim form and/or statement of case and/or amended claim form and/or amended statement of case ought properly to be struck out and/or that the claimant’s claim be dismissed upon the grounds that:

- i. The claimant’s claim for damages [general and special] interest thereon and/or costs and/or this action is an abuse of the process of the court; and/or
- ii. The issues encompassed by this action are res judicata and/or are subject to the principles of issue estoppel.

4. Several reasons in support of the grounds were also set out at paragraph ‘A’ of the amended defence.

5. The main question to be determined was whether the claimant was seeking relief for the same damage in respect of which she had already been compensated in the first action which had been compromised on the morning of trial.<sup>3</sup>

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<sup>3</sup> Order of Kokaram J dated 14 October, 2016

6. The defendant submitted that the answer was ‘yes’ and in which case, the claimant had brought a fraudulent claim. Her actions therefore amounted to an abuse of process and her claim should consequently be struck out. The defendant pointed out that the trial process is costly and the court is duty-bound to save time and costs in furtherance of the overriding objective. Further, if a trial proceeded and it was found that the instant action was in respect of the same damage, any costs order would likely be an empty one because of the claimant’s impecuniosity.
7. The claimant submitted ‘no’ but in any event, the court could not determine whether the instant claim was in respect of the same injuries, losses and effects in the absence of findings of fact. Accordingly, the proper course was to embark on an assessment of the claimant’s damages.
8. The defendant’s abuse of process argument<sup>4</sup> raised several important issues about the instant claim:
  - i. Was the ‘severe and permanent injury to [the claimant’s] back which required surgical insertion of metal components to correct/relieve spinal injuries sustained’<sup>5</sup> claimed in the instant action, the same injury as the traumatic spondylolisthesis at L5/S and T11 and T12 degenerative changes causing significant right-side compression of the spinal cord, which were compensated for in the first action?
  - ii. What weight should the court attach to four medical reports upon which the claimant sought to rely in support of her alleged injuries in this action given that the very reports were relied on in support of her case in the first action?
  - iii. Was the claimant unable to walk or sit for long periods, bend or perform household tasks and did she require a cane to ambulate? If so, were those disabilities a result of injuries she sustained from the subject accident?
  - iv. If in fact the claimant was unable to perform her job as a caterer, was any such incapacity due to injuries caused by the subject accident?

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<sup>44</sup> See Para. 10 of defendant’s submissions

<sup>5</sup> See Particulars of Injury in the claimant’s statement of case

v. Was home care provided to the claimant by Parbatie Joseph, and if so, for what period and was any such care in respect of injuries which arose from the subject accident?

## DISCUSSION

9. In assessing a claimant's damages for personal injuries, a court is required to take into account the whole of the claimant's claim and to consider-

- a. nature and gravity of injuries,
- b. extent of any resulting disability,
- c. pain and suffering,
- d. loss of amenity, and
- e. effect on pecuniary prospects.

10. In the instant claim, the claimant pleaded under 'particulars of injury' that she suffered severe and permanent injury to her back which required 'surgical insertion of metal components to correct/relieve spinal injuries sustained.'

11. The reference to surgery was found in the report of Dr. Ramnarine. The Ramnarine report stated that 'the need for this procedure was due to traumatic spondylolisthesis of L5/S1'. Traumatic spondylolisthesis was not one of the injuries claimed in the instant action, it was, however, one of the injuries claimed in the first action and in respect of which the claimant had been compensated.

12. The 'nature and gravity of the injury' is but one of the factors to be taken into account. In the instant claim, the claimant made several other complaints under 'particulars of personal injuries' and sought to rely on medical report(s) which referred to the subject accident and the complaints or symptoms with which she presented following the subject accident. The claimant also claimed she suffered:

- a. Severe pain, stiffness and limited mobility of the neck
- b. Dizziness and disillusionment
- c. Blood in her bodily fluids
- d. Blurred vision

- e. Psychological trauma

13. None of those injuries formed part of the first claim. The particulars of injury of the first claim were:

- a. Soft tissue injury, tenderness and pain in the chest, right shoulder joint and left wrist joint
- b. Lower back pain radiating to her right leg
- c. Traumatic spondylolisthesis at L5/S1
- d. T11 and T12 degenerative changes causing significant right side compression of the spinal cord
- e. Numerous cuts, lacerations and bruises

14. Were the new particulars of injuries claimed in the instant claim a result of the subject accident or the first accident as submitted by the defendant? That was precisely the sort of enquiry upon which a court embarks on an assessment of damages. In its assessment exercise, a court is concerned primarily with two matters: the fact of the loss and the quantum of it. A claimant bears the burden of proving that she *in fact* suffered the loss claimed *and* that any such loss resulted from the defendant's tort, whether directly or indirectly (subject to the usual considerations of remoteness). Where a claimant proves that she suffered a loss but does not establish a nexus between such loss and the defendant's wrong, she has not discharged her burden. A court is not concerned in a general way as to the cause of any particular injury but as to whether the injury in question was caused by the defendant's wrong.

15. A defendant is entitled to resist a claimant's claim for damages on any number of bases including existence of a pre-existing injury, novus actus interveniens or failure to establish sufficient evidential nexus between the loss and the tort for which the defendant is liable. Where a defendant successfully establishes any of those matters, through evidential scrutiny, the claimant's loss will not be held to his account.

16. The court was therefore of the view, that a rigorous trial process would insulate this defendant against the concerns she raised about double-compensation or even,

over-compensation. The claimant was also entitled to have her case weighed on a balance of probabilities in the civil trial process and not be driven from the judgment seat.

17. The issues raised by the defendant in support of its abuse of process argument were really matters which concerned the weight to be attached to evidence, whether the fact of any loss claimed could be established and whether nexus of any such loss to the subject accident could be established. Those were matters that could not be determined on the face of the pleadings and in the absence of any findings of fact.
18. In the circumstances, this Court was of the view that the question of whether the claimant sought relief for the same damage in respect of which she was already compensated, could not be answered with any certainty at this stage with respect to several of her claims. I could not find that the instant claim was an abuse of process because:
  - a. On the face of the papers, it could not be said with absolute certainty that the nature of the injury, the gravity of the injury, the resulting disability, pain and suffering, loss of amenities and effect on pecuniary prospects in the instant claim were the result of a previous accident or in particular, the accident in respect of which the claimant had already received full and final compensation; and
  - b. On the face of the papers, it could not be said with absolute certainty that the nature of the injury, the gravity of the injury, the resulting disability, pain and suffering, loss of amenities and effect on pecuniary prospects claimed in the instant action did *not* result from the subject accident.

Sherlanne Pierre

Master