THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

(Sub-Registry San Fernando)

Claim No. CV2019-02143

Between

ALLISON HENRY

Claimant

And

NORTH CENTRAL REGIONAL HEALTH AUTHORITY

Defendant

Before the Honourable Justice R. Rahim

Date of Delivery: April 23, 2026.

Appearances:

Claimant: Mr. J. Camacho instructed by Mr. V. Bridgemohan

Defendant: Mr. F. Hove Masaisai and Mr. C. George instructed by Ms. J. Farah-Tull and Ms E. Constantine

REASONS

1. By Order dated July 24 2024, the court ordered that:

    a. The defendant shall pay to the claimant damages for negligence for injuries suffered while in the employment of the defendant on June 3 2015, which exacerbated a pre-existing injury, reduced by a contribution of Thirty Per cent (30%) on the part of the claimant's negligence.

    b. Owing to the non-filing of submissions by the claimant and there being no application for an extension of time, more than a reasonable period of time having elapsed for same, it being in the interest of fairness to the claimant to do so in relation to damages, damages are to be assessed and costs quantified by a Master on a date to be fixed by the Court Office.

    c. The defendant shall pay to the claimant Seventy Per cent (70%) of the prescribed costs of the claim.

2. By Amended Claim Form and Re-Re-Amended Statement of Case, filed on July 31, 2020, the claimant claimed damages for personal injuries sustained together with consequential losses and damages suffered by the claimant on June 3 2015, during the course of her employment and or duties as a Nursing Assistant for the defendant, which was caused by the negligence and breach of contract and or breach of statutory duty of employment on the part of the defendant, its servants and/or agents and/or employees, interest and costs.

3. The claimant's case was that she was 43 years old at the time she was involved in an accident on 3 June 2015 while she was employed by the defendant. She was acting in the course of her duties as an Enrolled Nursing Assistant, responsible for escorting and providing non-technical nursing care to an infant patient, accompanied by his mother,

who was being transported by ambulance from the Eric Williams Medical Science Complex to the Arima Diagnostic Centre for a procedure.

4. The defendant, in denying the pleaded case on the facts of the incident, pleaded that the claimant had a pre-existing injury and therefore exposed herself to the risk of exacerbating the injury by lifting the infant away from his mother while being transported and placing the infant on her lap. The defendant also asserted that the claimant's prior injuries are statute-barred. The defendant denied that the ambulance was not outfitted to standard specifications and that the driver drove recklessly.

Evidence

Claimant's Evidence

5. The claimant filed a witness statement and was cross-examined. She also called her common-law husband, Mr Richard Bancroft, along with Dr David Santana, Orthopaedic Surgeon and Mr Kerne Ramnath, a fellow nurse.

Allison Henry (Allison)

2015 INJURY

6. Allison was 50 years old at the time of initiating the claim. While working at the Just Because Foundation (JBF), she was presented with an infant patient (who was around 3 months old and weighing around 10-11 pounds), connected to intravenous fluids via a bag, which itself was hung on an IV pole. She was instructed to escort the infant and his mother via ambulance to the Arima Diagnostic Centre to have a procedure done.

7. Prior to the transfer, she was informed that the infant was NPO (nothing per oral) and must remain on IV fluids. This meant that the infant could not consume anything orally and must remain on the IV fluids until the procedure is completed. She stated that, prior to entering the ambulance, she adjusted the height of the IV pole so it would fit in the

ambulance cabin while the infant patient was being held by his mother. Upon entering the ambulance, she asserted that she could not stand upright and thus had to crouch and face the back of the ambulance. This, the court understood to mean that the ambulance did not admit of anyone standing upright. She illustrated that there was a sliding window to the outside and a single seat behind a window between the main cabin and the driver's area, used to communicate with the driver.

8. The ambulance was outfitted with a standard cot used to transport adult patients, and there were overhead IV hooks above the sliding window. She testified that she held onto the IV pole to ensure that it remained secure for the duration of the transport. She further mentioned that she noted that there was nothing available to properly secure the infant throughout the transfer. Allison and the infant's mother both fastened their seatbelts, and the mother placed the infant on her lap. She testified that in order to secure the IV pole, she held it with her left hand and placed her left foot on the pole.

9. Upon departure, Allison observed that the siren and lights remained active throughout the journey. The infant began crying and moving his arms and legs erratically, showing signs of irritability, which concerned the mother regarding the stability of the intravenous lines. The infant's mother pleaded with Allison to help control him, causing her to take him from his mother's lap onto her right hand, supported by her lap, while simultaneously pressing down on the IV pole with her left foot and wrapping her right leg around the IV pole. Eventually, the infant patient fell asleep in her arms.

10. Allison stated that the driver was driving at a high speed on the Priority Bus Route throughout the journey, and she was unable to ask him to slow down. She also stated that the driver did not stop at any red lights and jerked the vehicle whenever approaching each traffic light. This caused Allison's body to suddenly slide about the seat or bounce on the seat. This sudden movement would wake the infant patient and cause him to cry. She further testified that they waited until the procedure on the infant patient was

completed before making their way back to the EWMSC. They sat in the same position they had on the way to the Arima Diagnostic Clinic; the infant patient was no longer acting erratically because he could breastfeed.

11. Upon returning, she stated that she was fatigued and asked Registered Nurse Michelle Sylvester for permission to leave work. When she arrived home, she took a nap and, upon waking around 5:00 p.m., she experienced difficulty walking and pain in her left leg, buttocks, and severe pain in her lower back.

12. Allison explained that she had submitted a statement of this incident to the OSHA department on July 6, 2015 and completed an incident report form. Before instituting this claim, she requested from the OSHA department copies of her medical file, OSHA reports, and her personal file and received the OSHA Accident/Incident Investigation Report[1]. That report showed that she returned to work on June 4, 2015 (the following day), visited the Accident and Emergency of EWMSC and was diagnosed with "an acute medical condition". She received a medical certificate for 3 days' sick leave and was treated for Sciatica by Dr Santana. It goes further to say that Allison had an MRI conducted, which found that she had a Sacral Cyst causing Nerve Root Impingement. The report mentioned that she has a documented history of back injury and that the accident protocol was incorrectly followed.

13. In her witness statement, Allison explained that when she returned to work on the following day, she continued to experience severe lower back pain, pain in her buttocks, and pain in her left leg. Her life became difficult as she could no longer move around as she once could without experiencing severe pain. She would spend most of her days lying on her right side or sitting down. Allison's movements were limited, and she was required to use a walking stick to move around, placing most of her body weight on her right leg.

[1] Trial Bundle 3, Page 26

14. She could no longer fall asleep easily as a result of the pain she experienced. The pain caused her to have to sleep on her right side and also caused her to experience difficulty while taking a shower. She could no longer wash herself and would seek assistance from her husband.

15. Household tasks that Allison would usually do were impossible, such as cooking, sweeping, mopping and washing wares. She would assist her husband when possible, but the pain she experienced limited her everyday routine.

16. She visited Dr Santana's office on June 8, 2015, where she was examined and received an injection. On June 19, 2015, when Allison returned to work, she experienced pain. She visited the Priority Care Facility (APCF), where she received an injection and a referral letter to join the Orthopaedic Clinic to have an MRI request filed.

17. On the following days, Allison visited Dr Santana's office and received medication and injury leave certificates for various amounts of time:

    a. June 22, 2015, injury leave for a period of 10 days starting June 9, 2015 and fourteen days starting June 21, 2015;
    b. July 3, 2015, injury leave for a period of 28 days.

18. Allison attended the Radiology Department of the EWMSC on July 23, 2015, to undergo an MRI, which was subsequently collected on the following day. She provided the MRI results to Dr Santana, who reviewed, examined, and treated her, and provided her with further injury leave for 29 days[2]. Allison was subsequently referred to Dr Robert Ramchararan by letter dated July 24, 2015[3], which identified that she has right-sided

[2] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021. Item No.30.
[3] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 93

sciatica, and her MRI results show a sacral cyst causing nerve root impingement. Dr Santana further called for De Ramcharan's expert management.

19. During her appointment at Dr Ramcharan's office on August 7, 2015, Allison was examined and received medical treatment.

20. Allison underwent a CT scan at the Port of Spain General Hospital on August 24, 2015, and obtained a CT Scan Report which illustrated that at least two cortical cysts were noted in the left hemisphere, with the larger one measuring 1.2cm. This CT Scan Report was interpreted by Dr Hopsy C. Dimaculangan-Bolastig on August 21, 2015[4].

21. On November 30, 2015, she attended the office of Dr Santana, who determined that Allison would be fit to resume light duties and provided her with a Fitness to Resume Light Duty letter dated November 30, 2015[5].

22. Upon request, Allison provided her employer with a letter dated May 4, 2016[6], by Dr Santana, who explained that she suffered an on-the-job injury, where she was at the back of an ambulance, which was jerking up and down. He determined her MRI was normal and diagnosed her with facet joint syndrome, and as a result of this, she was referred to Dr Mohammed of the Chronic Pain Centre at the Sangre Grande Hospital. However, he went further to say that her prognosis was unknown at the time of the requested letter.

23. Allison attended the Malmonides Medical Centre in Brooklyn, New York, on August 24, 2016, where she had to undergo an EMG test conducted by Dr Jacoby. The EMG Report dated August 24, 2016[7], by Dr Jacoby showed the process of this test, which involved small electric shocks on a patient's arms and legs. The conclusion of this report stated

[4] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 121
[5] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 122
[6] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 123
[7] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 122-125

that it was an abnormal study and that there are electrodiagnostic findings consistent with a mild, chronic, left L2-L3 radiculopathy.

24. Dr Santana provided a further update to the Defendant about Allison's diagnosis on January 22, 2018[8]. His report stated that Allison's complications started after her recent complaint and injury in 2015, which instigated an MRI done in New York to reveal a left-sided prolapsed intervertebral disc, and that she required surgery to deal with her problem. Dr Santana recommended that the continuity of her employment should be determined after she has had the surgery and an adequate period of post-surgical physiotherapy.

25. The Defendant requested a further update from Dr Santana, which he provided by Medical Report dated February 1, 2019[9]. In his report, he referred to his previous reports and stated that Allison's complaints remain unchanged and that she is referred to Dr Phillip St Louis, Neurosurgeon, for further management.

26. Allison continued to experience pain, numbness and weakness in her lower back and lower body and attended the office of Dr St. Louis, who treated and examined her. Dr St Louis referred her to the St Augustine Radiology Services to conduct a further MRI Scan on July 23, 2019 and was provided with a medical report of Dr Ramroop dated July 23, 2019[10]. Dr Ramroop determined from the MRI Scan that there existed a Tarlov cyst posterior to the S2 vertebra measuring 1.5cm.

27. Allison travelled to Brooklyn, New York, in November 2019, where she attended the office of Dr Agarrwal from Downstate University Hospital, Brooklyn, who evaluated her. In his

[8] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 126
[9] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 127
[10] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 128

medical report dated November 8, 2019[11]She was diagnosed with Lumbosacral Radiolapathy and Piriformis Syndrome (left).

28. On December 2, 2019, Dr St Louis prepared a further medical report[12] which determined that she is experiencing a small central and slightly left-sided disc herniation at L5-S1, suggesting a mild chronic left L2-L3 radiculopathy.

29. Further, Dr Santana prepared another medical record dated March 6, 2020[13], which stated that Allison had been attending physiotherapy and aqua therapy and that her condition would not improve. Dr Santana determined her permanent partial disability at 40%.

30. Dr Santana indicated to Allison that she required surgery, which was estimated to cost around $170,000.00.

PRIOR INJURIES

2013 Injury

31. After being examined by the medical staff and having an X-ray performed, she was diagnosed with muscle spasms and prescribed medication.

32. On August 19, 2013, Allison visited Medical Associates Hospital and was examined by Dr Santana, who gave her an injection in her back and advised that she does not work. Dr Santana also recommended that she be allowed 14 sick leave days from August 18, 2013 and that she return to receive a Fitness Certificate. Upon her return to receive a Fitness Certificate, she was provided with a medical report dated September 2, 2013[14],

[11] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 129
[12] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 130-132
[13] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021, Page 133
[14] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021. Item No. 78

recommending that she be reassigned to any area that does not require heavy lifting, for fear that the injury may recur. The medical report also stated that she was treated with an intra-articular injection of triamcinolone with some improvement.

33. In August 2013, Allison was required to complete an Internal Accident/Incident Investigation Report to be submitted to her Nursing Supervisor, RN Patterson and to the OSHA Department. The Internal Accident/Incident Investigation Report[15] indicates that she sustained a sprain/strain of her lower back while performing normal work activities.

2012 Injury

34. On February 6, 2013, she experienced further lower back pain, which caused her to visit Dr Nunes, who diagnosed her with low back syndrome and provided her with 3 days' sick leave. She revisited Dr Nunes' office when she experienced an asthma attack in June 2013. In August 2013, she experienced pain in her lower back and was examined again by Dr Nunes, who diagnosed her with lower back syndrome again and provided her with 5 days' sick leave.

Cross-examination

35. Allison admitted that her injuries in 2012 and 2013 were outside of the limitation period to bring a claim within four years.

36. As it relates to her incident in June 2015, she testified that she was assigned lighter duties at the JBF than at the adult ward. She also stated that the driver was driving recklessly, but did not report this reckless driving. She admitted to having reported the 2012 incident, according to her, because of the timeframe and the 2015 incident. She accepted that her lower back injuries were present before the 2015 incident. She testified that she visited one Dr Perez in 2012 for asthma, as she was severely asthmatic, and not for back

[15] Trial Bundle 3, Claimant's List of Documents dated June 1, 2021 Item No.2

pain, as suggested by the attorney for the defendant. When confronted with the medical report of Dr Perez, she maintained that he mentioned lower back pain in his report in addition to other medical issues such as asthma, but she was never treated by him for lower back pain.

37. She testified that the journey to Arima took about 30 minutes. She complained to the driver when they arrived in Arima, but she could not reach him to touch his shoulder while he was driving. She was not in a position to move without difficulty. She admitted that, in her statement of case, she did not plead that she complained to the driver. She denied that she failed to tell the OSH investigator that the driver was driving recklessly. She testified that she told the OSH investigator that he was jerking driving and stopping at every light, and put it in the HR report to OSH, but OSH did not put it in their report. She stated the ambulance would jerk stop at the light, slow down, press the brakes and then the driver would break the light. Later in cross-examination, Allison admitted that the first time she complained to the driver was upon arrival at the Arima Facility. She further stated that she was in a position that prevented her from being able to complain to the driver. She also accepted that there was no record showing the driver had broken traffic regulations, but she maintained that the driver had driven recklessly.

38. She agreed that there is no mention of issues regarding the IV pole in the OSH report. It was put to her that the IV pole could not fit in the ambulance, and she disagreed. Allison further testified that the ambulance was not outfitted for infants.

39. No one instructed Allison to take the infant from the parent and place it on her lap. The mother had asked her because the infant was irritated by the IV in his hand, and she did not want anything to happen to her child. She admitted that she did not bring the mother to testify because she was unaware of her identity. She testified that she had the patient's file and would have known his name, but she did not mention it in any of her complaints because that would be a breach of confidentiality.

40. In further answer, she explained that the IV pole was on wheels and she was keeping it stable with her left leg and her arm. She placed the child on her left leg, the same leg with which she was steadying the pole and used her right hand to steady the pole. The following was instructive:

> *Q And my instructions are that it's your act. You did that on your own choice.*
> *A How did I -- let me rephrase that. I am instructed not to let anything happen to that child while it is in my care.*
> *Q Right.*
> *A Anything happen to that child, I could be placed under arrest or my license could be taken away from me*[16]*.*

41. She testified that before reaching Curepe, not long after leaving the Mt. Hope hospital, the infant became irritable, and the mother asked her to take the infant. The IV pole was switched to her right hand and the child in her left hand. The following discourse was important;

> *Q Has anyone, any of your superiors ever instructed you to hold a child like that, with an IV pole?*
> *A Sir, ah have never been in that situation before.*
> *Q I never asked you if you have been in that situation before. I've asked you if any of your superiors ever instructed you to hold a child in an ambulance with an IV pole in that manner?*
> *A I would not get that instruction, sir.*
> *Q So they have never instructed you to do such a thing. Agreed?*
> *A Agreed*[17]*.*

[16] Transcript January 4, 2023 page 44 lines 27 to 34.
[17] Transcript January 4, 2023 page 45 lines 12 to 22.

42. Allison further admitted that the ambulance was equipped with apparatus to hold the IV fluid but it was not in reach from where they were seated.

43. Allison admitted that around the year 2015, her doctor, Dr Santana, informed her employers that she was fit to work. Subsequently, she returned to work on December 1, 2015, but went on vacation leave from December 2, 2015. She further testified that upon her return to work on December 1st, she reported to JBF to complete paperwork in order to proceed on vacation the following day. She agreed that Dr Santana indicated that she be placed on lighter duties and that there is no evidence that shows she was made to perform heavy duties after Dr Santana indicated that she was fit to return. She also testified that she can perform light duties at her home and that she is recovering.

44. She testified that she would take a four-hour (approx.) flight to New York around twice a year to visit a specialist and occasionally get treatment for her back pain. She also admitted that she has the benefit of insurance in New York to cover her injuries, as it is required to be able to visit a doctor. Later in this discussion about insurance, she explained that every person in America is provided with an insurance card, even though she cannot afford the insurance fee. Though claiming damages for injuries sustained, she did not see it relevant to disclose that she has insurance which covers her injuries, due to her also seeking medical attention in Trinidad. She explained that the US Government is paying the insurance bill in USA and that most of the medical care that she undergoes for her back injuries are however in Trinidad. Allison admitted that her general practitioner in New York, Dr Jerry, referred her to a specialist in New York, who performed a pain conduction test, which was paid for by her US insurance.

45. Relative to her treatment in Trinidad, she received injections from 2015 until 2017 from Dr Mohammed through the Sangre Grande Hospital, which she was not required to pay for. She later reminded the court of a steroid injection she received in August 2013 for pain in her lower back administered to her by Dr Santana.

46. Allison did physiotherapy at the Eric Williams Medical Sciences Complex which is paid for by the State as she could not afford to have it done privately. She stopped physiotherapy around 2017 or 2018. She explained that in 2015, she was given a referral from the Priority Care Facility to see the orthopaedic surgeon in Eric Williams Medical Sciences Complex to do physiotherapy. She also stated that she received massage therapy through the prison by paying a minimum of $100.00.

47. Allison confirmed that she is not employed in New York or Trinidad. While in New York, she stays with her family, who take care of her. Due to her illness/injuries, she was able to receive benefits such as a food stamp, which is connected to her insurance in New York. While in Trinidad, she is dependent on her husband. She also suffers from asthma, allergies and high cholesterol. She refused to disclose other ailments that she suffers from.

48. Dr Nunes, her family physician, treated her for lower back pain, but he was not brought as a witness as she is unaware of his whereabouts, as she has not seen him for some time.

Re-examination

49. During re-examination, the court was shown the medical report dated June 22, 2016, by Dr Jerry, a doctor of Internal Medicine, which clarified that he could not have been treating the claimant for back pain.

Richard Bancroft (Bancroft)

50. Bancroft, the common law husband of Allison, testified that upon his return from work as a Prison Officer on June 3, 2015, he met Allison at their home asleep. When she woke up, she complained of lower back pain and left leg pain, and she could not walk as she had previously. He provided her with a walking stick he had in his possession, which she has continued to use.

51. Allison continued to complain to Bancroft about the pain she experienced in her lower back, left leg, and buttocks after her June 3, 2015, injury. She could not move around or stand for long periods. He would assist her with daily routines such as bathing and dressing.

52. Bancroft noted that sleeping with Allison was no longer the same, and she would move her body from a seated to a lying position and back repeatedly throughout the night.

53. Bancroft stated that he would transport Allison to her medical clinic appointments, physiotherapy appointments, and to her lawyer's office.

54. He confirmed that Allison could no longer perform household tasks and could not participate in recreational activities with him since the occurrence of the 2015 injury. Maintenance of their home rested primarily on Bancroft, including household chores (cooking, sweeping and mopping) as she could not assist.

55. He stated that before the 2015 injury, he and Allison would frequent recreational events such as attending restaurants. Since being injured, Allison spends the majority of her time at home and would often express feelings of sadness.

56. Allison directed Bancroft's attention to an ambulance located at the Chaguanas Health Facility on January 8, 2020. On this occasion, Bancroft photographed the ambulance in question, stating that the one she rode in was similar.

Cross-examination

57. Bancroft confirmed that he has been in a common-law relationship with Allison since 2007. He admitted that Allison had complained to him about lower back pain on June 3, 2015. Initially, Bancroft could not say with certainty whether Allison complained about lower back pain in 2012. This can be seen as an inconsistency by Bancroft, as he later

admitted that he was aware of Allison receiving treatment in New York since 2012 for her lower back.

Q Has she ever complained to you about her lower back in the year 2012?

A I can't say. I can't recollect.

Q You can't recollect. Can you recollect the earliest time that you have ever heard her complain to you about her lower back?

A Again, dah is not something I would save in my memory to say that, okay, this is the first time you saying that you in pain. Right. Ah don't keep a pain log.

Q You don't keep a pain log.

A Right. May I continue?

Q No. I asked you a simple question. If you don't know, you don't know. All right. So you are saying that the first time that you have a recollection of Ms. Henry complaining about her lower back is in June 2013; correct?

A June 2013 would have been --

Q 2015. June 2015.

A June 2015 --

Q Correct?

A -- would have been, according to mih statement, right, when I would have picked her up and she was complaining about her back.

Q Okay. But can you recall any complaints prior to the 2015 complaint?

A It may have had complaints, and as I'm saying, I don't keep a log of when my wife was in pain, sir.

Q Okay. So you are unfamiliar of any of her medical reports?

A I have an idea of them.

Q Are you aware of her treatment in New York?

A Yes, I am, sir.

Q All right. And are you aware that she has been receiving treatment in New York since 2012 for the lower back?

A I am aware, sir.[18]

58. Bancroft agreed that his witness statement is silent on Allison receiving treatment in New York in 2012 and silent on whether she has experienced lower back pain since 2012. Bancroft further admitted that he was aware that Allison had lower back pain in 2012 and that her prior injuries were caused by an incident at work.

59. Bancroft stated that he is aware that Allison was out of the jurisdiction and that she travels to the United States often, as she is the holder of a green card. He went further to say that she is required to travel every six months to maintain her status. Bancroft further admitted that she travels twice per year and on these trips, she would access the medical services available to her. Bancroft travelled with Allison in 2012 and visited a doctor's office, but could not recall whether the visit concerned her lower back pain. He recalled an African doctor named Dr Jerry Udevbo, whom they visited, but stated that Allison would keep the medical records.

60. He admitted that when he returned home from work on June 3, 2015, he met Allison sleeping, and when she woke up, she complained about pain in her lower back and left leg. He disagreed that those pains had been prevalent with Allison since 2012.

61. Bancroft admitted that he was aware that Dr Santana indicated to Allison that she was fit to return to work to perform light duties after her 2015 injury. He further stated that he was familiar with Dr Santana's certificate dated November 30, 2015, which indicated that Allison is fit to resume light duties as of December 1, 2015. Bancroft indicated that Allison did not inform him of any further incidents after December 2015. He further confirmed that, since June 3, 2015, the burden of maintaining their home has rested on him and continues to do so. Bancroft explained that when she is in the jurisdiction, she is able to do some work around the home, but it takes much longer than she would.

[18] Transcript dated 3rd January 2023, Page 29 lines 15-48

62. Bancroft admitted that he was not in the ambulance on June 3, 2015 and that the pictures he took were in 2020. He indicated that the ambulance he photographed was outfitted to hold the pole and IV fluid at certain points. He confirmed that the pictures were of an ambulance similar to the one Allison pointed out, taken five years after the incident.

63. Bancroft indicated that Allison told him that she had to escort a parent and infant from Mt Hope to Arima, which took about 30 minutes via the Priority Bus Route. He testified that the claimant began complaining about back pain around June 3, 2015 and that he could not recall whether she complained of any back or leg pain prior to this. He also clarified that he would transport her to her medical visits when needed and that he was familiar with the resumption of work certificate by Dr Santana in November 2015, which stated that his wife may resume light duties. He further testified that when he took pictures of the ambulance, he saw that it was outfitted to hold IV fluid.

Dr David R. Santana (Dr Santana)

64. Dr Santana, an Orthopaedic Surgeon since 1994, practices at Same Day Surgery Centre. He is a well-known expert in his field and has testified in many matters before these courts. The purpose of his evidence was to set out the findings from his evaluations of Allison.

65. Dr Santana, after seeing Allison on August 19, 2013, who sought his attention due to severe pain in her right sacro-iliac joint, recommended that she be granted sick leave for fourteen days starting August 18, 2013. Allison visited Dr Santana again on September 2, 2013, during which he recommended that she be reassigned to an area where she would not have to perform heavy lifting, as she was fit to resume duty. Furthermore, Allison presented herself again to Dr Santana on June 8, 2015, with left-sided sacro-iliitis and was treated with an intra-articular injection of steroids.

66. On June 22, 2015, Allison visited Dr Santana again for his opinion, where she was treated for sciatica. He recommended that she be granted injury leave for 10 days starting on 9 June 2015, and an additional 14 days starting on June 21, 2015. She returned on July 3 2015, and was treated for sciatica, with a recommendation for leave for twenty-eight days from July 5, 2015. Again, on 24 July 2015, she was treated for sciatica, and her MRI results showed a sacral cyst causing nerve root impingement. She was referred to Dr Robert Ramcharran, and she was granted injury leave of twenty-nine days starting August 3, 2015. Allison returned to see Dr Santana on November 30, 2015, during which he reviewed her clinical progress and recommended that she resume light duties effective December 1, 2015.

67. Dr Santana stated that Allison had been in his care since June 8, 2015 and that she continued to complain of left-sided pain and began having radicular symptoms in her left leg, which is consistent with peripheral nerve root impingement. He explained that an MRI was performed in Trinidad, which showed no prolapsed disc. He went further to say that the MRI performed in New York on June 18, 2016, revealed a left-sided prolapsed intervertebral disc.

68. Dr Santana reported that Allison failed conservative treatment, including facet joint injections and physical therapy, and therefore requires surgery to address her injury. He went further and stated that her fitness to resume or continue employment as an Enrolled Nursing Assistant should be determined after surgery and an adequate period of post-surgical physiotherapy. Dr Santana produced a medical report dated January 22, 2018.

69. On January 4, 2019, she was examined by Dr Santana, where her complaint remained consistent. He referred her to Dr Phillip St Louis, a neurosurgeon, for further management. He produced a medical report dated February 1, 2019, following this visit.

70. On March 1, 2020, Dr Santana examined Allison upon her visiting his office. He noted that she was seen by Dr St Louis, who recommended conservative management. Still, due to her inability to recover, he advised that she has a permanent partial disability (PPD) of 40% because of her spinal instability and the need for spinal fusion surgery. He produced a medical report regarding the above on March 6, 2020.

71. Allison returned to Dr Santana on May 20, 2022, where she presented with complaints of it being troublesome for her to sit for more than 15 minutes or stand in one position for more than 10 minutes. She stated that she was unable to lie on her back for more than 5 minutes, had to take her time with housework, and found it painful because she was unable to bend or stoop for any length of time. Upon being examined, Dr Santana found that her range of motion was severely limited. After a straight leg test was performed, it showed 80^{o} on the right and 45^{o} on the left leg. The sciatic stretch test was positive on her left leg, and there was weakness of her left extensor hallucis longus along with decreased sensation on the lateral side of her left foot. He later assessed that she had a 40% PPD and illustrated in a medical report dated May 27, 2022.

Cross-examination

72. Dr Santana testified that she started treating Allison on August 19, 2013, for mechanical lower back pain. He testified that she visited his offices for another incident in 2015. The following discussion explains his position:

    Q: Now you have provided a report on that incident, now that report would be in your original WS. Now take it from me that, in that report.

    My lord, the report is at DS9 of Dr Santana's original Witness Statement, please my Lord. Exhibit DS9.

    Q: So Dr Santana, in that report you say Ms Henry, this is your 2nd paragraph, so in the first one you just reference your report of September 13th and then you go on to say that

Mrs. Henry, nursing assistant at the Eric Williams medical sciences complex initially presented with what appeared to be a left-sided sacroiliitis. When you say initially presented that would have been in or about august of 2013?

A: Yes

Q: As I said before, you indicated it was the 19th of August 2013. Yes? Because that is when she would have come for the opinion.

A: Yes

Q: Now this problem began on June 3rd 2015, yes?

A: Yes

Q: Now you did not know her around June of 2015.

A: No

Q: And you did not know her in July of 2015

A: No

Q: Then you say, this is after a very rough ride in an ambulance belonging to the Eric Williams Medical Sciences Complex, Mount Hope. Yes?

Judge: Mr Masaisai, I am a bit confused at the question. When you say he did not know her in July of 2015. Was it not his evidence that he first met her in August of 2013?

A: Yes, My Lord, I do apologise, please, My Lord and thank you for your sharpness.

Q: Yes you would have known her in June of 2015, agreed?

A: Yes

73. Dr Santana went further to testify that the only evidence in his report that concerns the rough ride was from Allison.

74. After reviewing Allison's medical reports and having sight of the reports by her doctors in New York, Dr Santana disagreed that her injuries had existed since 2012. Dr Santana, however, admitted to being aware of her receiving treatment (for lower back injuries) such as injections for pain since 2012. He also agreed that Allison experienced back pain and knew of a Tarlov cyst in her lower back prior to the June 2015 incident, from previous MRIs. He testified that the MRIs identify a central prolapsed disc at L5/S1. He agreed that all MRIs prior to the 2016 MRI show a Tarlov cyst, and that the MRIs concerning the June 2015 incident did not show what the MRIs in 2016 and 2022 did.

75. He also admitted that Allison's back pain was so severe that she had to receive treatment abroad for her back pain. Dr Santana also agreed that in 2013, Allison's back pain was aggravated when turning patients.

76. He explained that there is a difference in terms of symptomology between 2013 and 2015 and that she not only complained after that of back pain, but she was complaining of a particular pain in the left leg.

Q: So they have indicated in their reports that she has been complaining of this pain in her lower back and leg to them. Maybe not to you, but she has been complaining since before this 2015 incident to them. And to them she had said it was because of long-distance travel. Alright?
I would want to show you some of her documents. My Lord, it was the same documents I would have shown and questioned her on, I would like to show Dr Santana. That would be the documents we disclosed last month from Dr Matthew Lefkowitz.

Q: So, Dr Santana, can you see this document dated the 20th of October 2015?
A: Yes

Q: Now, if we go down to the subject, you will see that it reads that the patient presents with several years of bilateral lower back pain with a recent exacerbation in the past four months. Four months back will put you in the June timeline.

A: Yes

Q: And the patient believes this pain is secondary to what?

A: Long-distance travel

Q: And what does it say under that?

A: The patient denies pain secondary to trauma

Q: And this is what she is telling her doctor in 2015, the doctor treating her for the lower back pain. With the recent exacerbation in the previous four months, which we will say is the ambulance ride, the recent exacerbation. Right?

A: Yes

Q: And if we go down, she tells her doctor, then that on a scale of 1 to 10, she reports her pain as a 6 out of 10. Yes?

A: Yes

Q: And the sentence before that it says the pain is aggravated by lying and prolonged standing and sitting.

A: Yes

Q: And that will coincide with what the patient believes her pain is secondary to. That is the long-distance travel, and the long-distance travel will be from Trinidad to New York, I suggest. You agree?

A: That's a presumption

77. Dr Santana agreed that, following the November 18, 2015, report from Dr Lefkowitz, Allison's pain had decreased, and he subsequently provided her with a fit to resume light duties in December 2015.

Q: When the patient's lower back and left leg pain is exacerbated, now I will suggest to you that there was some event that took place in January of 2016 that exacerbated this pain in the lower back and left leg, based on the doctor's report. Will you agree?
A: I will not agree. It is the nature of the back pain to be intermittent. There are good days, and there are bad days. There are good times and bad times. That's the nature of the back pain.
Q: And this has been her position, unfortunately, since 2012, agreed?
A: Yes

Kerne Ramnath (Ramnath)

78. Ramnath was called as an expert witness, wherein he asserted that he obtained 15 years of experience in the field of nursing, among other qualifications and experience in and around nursing and midwifery practice. The purpose of his witness statement encompassed an analysis of the circumstances surrounding the claimant's injury, the nursing assistant's purpose, the procedure to be taken when an infant is admitted to the Just Because Foundation and being transported in the cabin of an ambulance, whether the cabin of the said ambulance was adequate and to highlight whether the nursing assistant was equipped with sufficient knowledge, experience and likelihood of success.

79. The following is Ramnath's expert analysis and responses to the claimant's questions posed to her[19]:
    a. He asserted that an Enrolled Nursing Assistant is free to remove an infant from the mother's lap at her request or independently upon any medical alert or emergency, such as in cases where the infant becomes irritable and attempts to calm him/her down by acceptable means. He went on to say that it is not always easy to have an infant or patient strapped in or onto a stretcher during transit.

[19] Witness Statement of Kerne Ramnath Page 90 No. 5.1

b. Mr Ramnath further specified that the Enrolled Nursing Assistant is primarily responsible for the infant during transit, as the parent is there for legal purposes, as neither the parent nor driver can provide emergency medical care to the infant in any given instance.
c. He asserts that there is no policy that limits the actions or practical needs of nursing personnel to any patient during the commute within in-house ambulances.
d. Ramnath stated that many intravenous poles can be adjusted due to poor maintenance and age of the equipment, and that they may encounter ambulances without hooks for intravenous infusions or poles that are not able to adjust to affect the flow of intravenous fluids effectively.
e. He further said that where a patient is NPO (Nothing per Oral), an intravenous access must be inserted and fluids must be administered to prevent dehydration and administer the necessary minerals and fluids until the patient can return to oral meals post-procedure.
f. A usual occurrence and a requirement for Enrolled Nursing Assistants is the need to push or pull patients.
g. Ramnath believed that Allison did not deviate from any standard safety procedure, policy, or the norms of the North Central Regional Health Authority under the circumstances faced. In fact, Ramnath stated that her actions were those that any responsible and reasonably minded nursing personnel would have taken if confronted with an irritable infant. He further mentioned that the claimant did not endanger the infant's life but rather attempted to enhance safety measures during transit.
h. Ramnath stated that the claimant would have been in breach of her duties if she refused to assist the mother with subduing and calming the infant patient.
i. Ramnath asserted that Allison would have qualified for the Nurse Intern program, and if she had participated, the possibility of her success would have been high.

Cross-examination

80. Ramnath has been a registered nurse since 2009, but has never worked for the Defendant Authority. He testified that he became aware of Allison's injury around 2016 when he was on the Central Executive of the Trinidad and Tobago Registered Nurses Association, and because of his interest in industrial relations. Ramnath went further to admit that he has no education or certification in occupational health and safety.

81. Ramnath indicated that he has never worked for the JBF but has been in an ambulance throughout his tenure as a registered nurse, both in private and public hospitals. He has never been in an ambulance associated with NCRHA, but has inspected one during his rotation as a student at the Accident and Emergency department around 2006 to 2009. Later, he admitted that he had not inspected any ambulance from the 2015 fleet of the NCRHA. The following extract is helpful:

> *Q Okay. Now, have you ever inspected an ambulance associated with the NCRHA?*
> *A If I would have had?*
>
> *Q When?*
> *A During my rotation as a student, of course, we would have been at the A and E department so we'd seen ambulances come in and out.*
> *Q No. Can you say in or about what year? Can you say in or about what year?*
> *A I would have been a student between 2006 to 2009, that's one. And then during transfer of patients from institution -- by institution to the NCRHA, I would have been in and around their ambulance fleet. So, of course, I would have take a look --*
> *A No. But can you tell us in or about when? What year?*
> *A That would be anywhere between, let's see 2012 to 2014.*
> *Q 2012 to 2014.*
> *A Could be earlier.*
> *Q It could be earlier than 2012 or it could be earlier than 2014?*

A I became an RA in 2009, so I would have been in service from 2009 up to now. So it could have been before 2012, as I said.

Q All right. But you have not -- you didn't -- when you became aware of the industrial matters -- so you said in your capacity as industrial relations person for the association, you became aware of the incident in 2015. Did you ever inspect any of the 2015 fleet of the NCRHA ambulances?

A Well, we would have -- I wouldn't have directly inspected a -- no.

Q You did not inspect -- you didn't then. No, I'm asking you. Did you inspect any of the fleet?

A No, sir. In no type of capacity. No.[20]

82. Ramnath indicated that he was not in contact with Allison as he communicates with her legal team. He admitted that he received information via telephone from an attorney concerning the June 3, 2015, incident and received a documented report. He confirmed that this report was attached to his witness statement.

83. He first became aware of Allison's situation within a few months of her incident. He stated that around 2020 and 2021, he received information about the litigation brewing after the attorney on the matter was referred to him by the Trinidad and Tobago Registered Nurse Association.

84. Ramnath affirmed that where there is a need to transfer a patient from one institution to the next, there is a process, which is not documented. He is aware of this process from working in similar organisations and being in and around staff where this process is spoken about. However, he admits that he has never investigated this process and disagrees that he is not in a position to advise the proceedings on any processes involved.

[20] Transcript dated 4th January 2023 pages 14 & 15 lines 48-50 & 1- 33

85. He stated that although he had never worked for NCRHA, he had frequently encountered ambulances throughout his tenure as a registered nurse and inspected an NCRHA ambulance during his student rotation. He asserted that he was made aware through an industrial relations representative, but was unable to identify who brought the information to his attention.

DEFENCE

Defendant's Evidence

86. The Defendant Authority called witnesses Ms Michelle Sylvester, Mr Ishmael Dyett, and Mr Farid Hinds. The defence's case is that, at all material times, a safe work environment was maintained, the ambulance was properly equipped, no jerking was experienced, and the driver adhered to traffic regulations. Moreover, the defendant highlighted the claimant's pre-existing injuries in 2012 and 2013, noting that the claimant was promptly reassigned to lighter duties subsequent to these incidents.

Michelle Sylvester (Sylvester)

87. Sylvester, the Head Nurse assigned to the Just Because Foundation (JBF) Ward since 2010, is also a registered nurse for over 22 years. Sylvester testified that the JBF Ward is a Paediatric Speciality Unit located at the EWMSC, established to address specific care and treatment needs such as Paediatric Oncology, Cardiology, Nephrology and other Non-Communicable Patients and to focus on the provision of comprehensive and holistic support for families of such children in Trinidad and Tobago as well as the Caribbean region. She stated that the patients admitted to the JBF Ward are between 0-15 years of age and must be accompanied by parents.

88. As it relates to the Nursing staff assigned to the Ward, they are required to carry out duties in the form of taking patient vitals, assisting in simple procedures, transferring patients within the institution and transporting patients to various medical facilities via

ambulances. She testified that the rules regarding visitors differ and that parents usually volunteer to meet the children's hygiene needs. When parents are unavailable, hygiene needs are met by the nursing staff.

89. Allison was assigned to the JBF Ward as an Enrolled Nursing Assistant around November 2014. Sylvester was informed of Allison's assumption of duties, of her medical history of back pain. Sylvester, being aware of Allison's medical history, stated that though she was cognisant of the tasks assigned to her, it was rare for nursing staff to lift patients on the JFB Ward.

90. Sylvester stated that the two-month-old infant was NPO and not allowed to eat prior to his procedure. She testified that the infant weighed around ten pounds and required IV fluid during transfer. The infant patient also required a pump to ensure that he was receiving the right amount of fluid, which is usually placed on the seat close to the IV line.

91. Allison left with the infant around 8:00 a.m. on June 3 2015 and upon Allison's return around 2:30 p.m., she recalled her experience of the day where she informed her of the infant being fussy during the transfer, took him from the mother, and placed the infant in her lap to appease him. Sylvester stated that she enquired of the claimant why she took the infant, to which Allison responded that she wanted to calm him down. Sylvester stated that Allison made no complaints to her or about any other incident on that day.

92. Sylvester stated that as Head Nurse, she is obliged to take written notes of any complaints. As such, she confirmed that there were no notes regarding Allison's ambulance ride on the day in question, including any injury, the ambulance driver's reckless driving, or safety issues with the ambulance.

93. Sylvester emphasised that the ambulances are equipped with overhead hooks or IV bags for suspension. She clarified that the ambulances are not designed to transport IV poles, as these poles are typically taller than the cabin. Additionally, she mentioned that the ambulances are fitted with seat belts and cushioning on each seat in the cabin.

94. She explained that there are standard operating procedures to be observed when transporting patients from the JBF Ward via ambulance. She also stated that nursing staff are aware that patients are to be either fastened on a stretcher, seated with a seatbelt properly fastened or held by the parent. Nursing staff are not at any time required to hold a patient on their laps, and Allison was not authorised by her or any other lawful representative of the hospital to depart from this procedure.

95. Sylvester stated that she was only made aware of the situation when contacted by an OSH Officer, Mr Kiel Edwards, on September 14, 2015 who informed her of an investigation in the to report injuries by the claimant. She informed Edwards that she was not aware of any incident involving Allison, but was made aware that she proceeded on sick leave without making an incident report.

96. Sylvester emphasised that Allison did not comply with the authority's protocol when transporting patients and ought not to have moved away from such policy due to her pre-existing back injury. She went further to say that she had not been furnished with any incident report up to the date of filing her witness statement.

97. Regarding the protocol for transferring patients from one facility to another by way of ambulance, Sylvester explained that there is a mandatory national requirement for medical personnel, including nursing staff, to accompany patients. As it relates to JBF patients, a parent would usually accompany the patient since they are minors, and where the patient is non-critical, an Enrolled Nursing Assistant may be assigned to provide basic nursing care if needed. Sylvester stated that because the patient was being transferred

for a bone scan, he was required to be NPO. She stated that the patient was low risk and non-critical, and Allison was assigned for the transfer.

98. Sylvester stated that no complaints were made by Allison to the task being assigned and that on the material day, Allison made no complaints about the ambulance ride other than the infant's discomfort and her decision to take the infant patient from his mother.

Cross-examination

99. Sylvester testified that she is the supervisor of Allison, and Nurse Jahorie is below her in the chain of command. She testified that the ambulance, which transported the infant patient and Allison, was emptied before the transit and that it could not have an IV bag. Although the infant patient's transit required an IV pole to transport the bag, she testified that the IV pole was adjustable. She further testified that it was not possible to use the IV pole inside the ambulance, as the height of the pole would be higher than the ambulance. She disagreed that an IV pole was used in the ambulance, and Allison adjusted the height of the pole and was able to hold the pole with the IV bag attached to the infant in transit.

100. She agreed that there was no infant cart in the ambulance provided for transport and testified that the stretcher was for an adult with a railing running at the top of the ambulance. She testified that it is possible to place an IV bag on the railing.

101. She agreed that it was standard operating procedure that nursing staff are not required to hold a patient on their laps and that these procedures are not in writing. She testified that she did not give these specific instructions to Allison before entering the ambulance. She also testified that responsibility for the infant patient rested with Allison.

102. Sylvester testified that part of the responsibility on Allison, when asked to hold the infant patient in her care, would depend on the reason she was asked. She averred that when

the baby was in distress, crying and giving the mother trouble, it would not be a good enough reason to take the infant into her lap.

103. She then testified that part of Allison's duties is to perform procedures for the comfort and well-being of patients, such as taking the infant into her lap, which may fall in that category.

104. She testified that when Allison returned, there were no complaints, but she enquired as to why Allison held the infant patient. She also testified that there were no disciplinary letters against Allison for breach of protocol.

Ishmael Dyett (Dyett)

105. Dyett has been the Manager of Occupational Safety and Health in the North Central Regional Health Authority since 2009. His evidence focuses on the internal investigation processes undertaken by the OSH Department regarding the Authority. His searches within the OSH Department for any incident reports span between September 9, 2013, and June 8, 2015. His evidence was largely uncontested as it bore minimal relevance to the main issues to be decided.

106. First, he considered that when there is a report of any employee being injured in the course of their duty, there is an established policy and requirement to inform the OSH Department immediately. He stated that the policy was implemented by the NCRHA as a result of statutory requirements of the OSH Act, which stipulates the reporting of certain incidents within a set time frame. He goes on to say that once an employee reports an incident, the OSH Department is obliged to report it to the Occupational Safety and Health Authority and Agency (OSHAA). Reporting an incident is not contingent on whether there is any fault on the Authority; it is a requirement outlined in OSHA. Employees are reminded of the Authority's reporting procedure through training and workshop orientation programs.

107. Regarding Allison's injury, Dyett interviewed her, and she reported an incident that occurred on August 13, 2013. She stated that she was assisted by three other nursing staff members to move a patient who weighed around 200 pounds and was in a vegetative, immobile state, using a safe method called the log roll. While moving the patient, she felt pain in her lower back and later visited the Accident and Emergency Department for an X-ray, which diagnosed muscle spasms.

108. Allison also mentioned that she saw an Orthopaedic Specialist at Medical Associates, who treated her mechanical lower back and granted her 14 days of sick leave. She told the witness that she could not use the log roll method in future, as patients in a vegetative state tend to stiffen when being cleaned.

109. Dyett also interviewed Ms Ottley, a Registered Nurse, who stated that Allison reported severe back pain after engaging in patient tidying activities on the Adult Surgical Ward Five. She reported that Allison was in visible pain and ambulating with an unusual gait.

110. He stated that Allison's medical reports document that she was diagnosed with muscle spasms and was given pain medication for 7 days along with a fit to work from an orthopaedic specialist recommending that she be assigned to an area where she did not have to do heavy lifting. However, he noted that proper procedures were used by the nursing staff when moving patients after receiving reports of the 2013 incident.

111. Furthermore, Mr Dyett recommended the use of patient lifts and mechanical hoists to help the nursing staff lift patients who are difficult to manoeuvre due to their weight. He also recommended that refresher training be conducted for nursing staff to reinforce proper lifting techniques.

112. He stated that his findings did not indicate any safety breaches related to Allison's 2013 incident. He went further to say that his recommendations were general and designed to guide and assist similar instances going forward.

113. Relative to the 2013 investigation, he could not conclude that Allison suffered any injury as a result of moving a patient.

114. Dyett mentioned receiving another report from Allison on June 8, 2015. Regarding the 2015 incident, Dyett reviewed the documents and reiterated the chronological events as described in Allison's report. He further noted that her immediate supervisor was unaware of her injury and that no documentation had been brought to her attention. While describing the incident, he stated that the procedure took place at Five Rivers and not Arima. He believed that it could not be determined that the claimant was injured due to any breach of the Authority.

115. Dyett stated that Allison reported that she was seen at A&E at EWMSC on June 5, 2015 and was diagnosed with an acute medical condition and was issued a 3-day medical certificate. She also reported that she sought treatment from her private physician and was treated for sciatica.

116. He explained that the OSH officer noted that Allison was diagnosed by way of MRI with a sacral cyst causing nerve root impingement, and that her supervisor was not aware of the details of her injury. He claimed there were no witnesses to confirm the details of Allison's report.

117. It was reported that the ambulance used to transport Allison was a new ambulance, and they received no complaints from any other member of staff regarding injuries. The OSH officer inspected a new ambulance in the fleet, and it was observed to have all necessary

seat belts and seat cushioning, rendering their findings to be that the ambulance was safe for transport.

118. He stated that ambulances are equipped with sliding windows that allow the rear passengers to communicate with the driver. He found after his investigation that the claimant did not report that the ambulance driver was driving recklessly and that she was diagnosed with tarlov cyst. He recommended that a medical practitioner further investigate the claimant's incident to determine whether the injury sustained was a direct result of the action of the employee while travelling in the ambulance.

Cross-examination

119. Dyett testified that the OSH Department received an incident report involving Allison and that it was in writing. He testified that Allison gave the statement to the OSH Department after the June 3, 2015, incident and that he reviewed it.

Farid Hinds (Hinds)

120. Hinds, the Regional Manager for Transport at the North Central Regional Health Authority, explained that every vehicle owned by the defendant authority falls under his purview and, as such, he is familiar with the components of the ambulances and the standard of care expected by each driver.

121. He testified that the ambulances are properly equipped and assembled in accordance with international standards. He also confirmed that the ambulances are not purchased from ambulance companies but are instead suitable vehicles from reputable companies that are then outfitted and inspected by the Ministry of Health. A checklist is used with specifications for seats, seatbelts, hooks, fire extinguishers, stretchers, etc. Such an inspection cannot be passed if any of the specifications are not in accordance with the Ministry's guidelines. Once the ambulances pass inspection, they are only then

registered with the Licensing Authority of Trinidad and Tobago and deemed fit for purpose.

122. Regarding the drivers, he stated that they are experienced drivers and have no traffic violations. The drivers must be employed by the defendant, possess a driver's license, have at least 5 years of experience, and have no traffic violations. They undergo a refresher course every two years and are guided towards an understanding of traffic laws to ensure they do not breach the law during their duties. The courses are geared towards ensuring they have an understanding of the road traffic laws and address how they are to execute their duty in emergency situations.

123. Hinds stated that on July 8, 2015, he was contacted by Mr Edwards, who informed him that he was tasked with investigating an incident concerning an Enrolled Nursing Assistant, Allison. Hinds informed Edwards that the ambulance used to transport Allison and the infant patient from the JBF ward was new, purchased around April 2015. He stated that it was equipped with all safety equipment including a minimum of 1 overhead cabinet with 3 compartments, sliding Plexiglas separating persons in the rear form the driver, a minimum of 1 floor cabinet, non-skid, seamless flooring cemented to the sub-floor, rubber mats for both driver and passenger, a full-length bench with seated cushion, backrest, lap and shoulder belts for 3 passengers and an overhead hook to suspend IV bags during transit. Hinds asserted that he was surprised to learn of the incident as no complaints were received by Allison, the driver or any other member of staff.

124. He went further to explain that the ambulance in question was equipped with a single seat, which is usually used by medical personnel or nursing personnel during transit. The seat has seatbelts that cross at the shoulders and across the passenger's waist, allowing the passenger to sit upright.

125. Discussing the ambulance relative to the NPO infant patient, he stated that the ambulance was equipped with hooks at the top to allow for IV bags to be suspended. He stated that the height of an ambulance does not allow for a long IV pole to fit in the cabin.

126. Regarding the investigation, he authorised the OSH officer to inspect a new ambulance in the fleet. Where the patient is secured, each ambulance is equipped with seat belts and seat cushioning for all seats in accordance with internationally accepted standards. He went further to say that persons being transported in the cabin, including nursing or medical personnel, patients, and any other accompanying persons, are required to secure themselves using seatbelts. Patients transported on stretchers are also strapped to the stretcher during transit.

127. He said that each ambulance is equipped with the aforementioned sliding window to allow clear communication between passengers and the driver, which is usually left open during transit.

128. He concludes his evidence saying that he is not aware of any report by Allison that the driver was driving recklessly, nor has he received any written or verbal report from her, the patient or any other staff regarding the driver's alleged recklessness.

Cross-examination

129. Hinds testified that in his 27 years of experience, he has had the opportunity to familiarise himself with the emergency ambulance service's emergency medical regulations. He also confirmed that the Defendant Authority is required to keep a record of the employees who drive ambulances and each instance of this. He further testified that the procedure undergone concerning the infant patient, herein, was that the driver had in his possession a logbook which would not have the patient's name but only the ward that requested the said patient. He confirmed that the ambulance driver's name

would be recorded on the roster and that he was only made aware of and received information about the incident in 2022.

130. Hinds further attested that he could not recall the telephone interview that occurred on July 8, 2015 and that he was not aware of any nurse being injured, as the nurse and the driver did not inform him of any incidents of the day. He also testified that the driver's name was not requested by anyone during the course of the proceedings.

131. He testified that the specifications for the purchase of ambulances did not require hooks for IV bags. Hinds also confirmed that the evidence (images of the ambulances) depicted an empty ambulance, the same one used on the day in question and that there were no stretchers for an infant patient. He further confirmed that the hooks may be used if an adult patient used the ambulance, as there was a hook above the adult patient stretcher. He testified that the ambulance was used not only for adult patients. The court clarified that above the adult stretcher was a railing that runs from the cavern, where the patients are kept, to the end of it and not a hold/hook.

132. Hinds confirmed that the area where Allison, the mother of the infant, and the infant patient were seated was not equipped with a railing above, as on the other side, to hook the IV bags.

Dr Alberto Perez (Dr Perez)

133. Dr Perez, a Consultant Neurosurgeon of NCRHA, gave evidence filed on January 27, 2023. He was asked by the court to review medical reports and notes herein, for the purpose of preparing a supplemental medical report.

134. Dr Perez was of the opinion that there was no need to prepare a new report or amend the submitted document[21], and as a result, his findings remain consistent. Dr Perez's report is illustrated below:

a. Allison was noted to have lower back pain after an ambulance transit on June 3, 3015, transporting a patient. This was reported to the Occupational Safety and Health Department of the NCRHA on June 8, 2015. Numerous diagnoses were submitted.

b. The condition, "sciatica" describes the impingement or compression of the sciatic nerve, which arises from the lumbosacral spinal nerves and runs posteriorly within the thigh and legs to give supply to various muscles of the lower limbs and provide sensory innervation. He stated that this condition may present with pain, weakness, or numbness from the lower back to the lower limbs. He further explains that lumbar radiculopathy refers to irritation or compression of the lumbar nerve roots arising from the spinal cord and may present with pain and weakness. He goes further to say that, unlike sciatica, this involves one or more individual nerve roots.

c. Based on Allison's pre-existing injuries in 2013, he found that it cannot be determined without any degree of certainty that this incident caused the tarlov cyst as they are largely idiopathic or unknown but may be associated with trauma. He stated that these Tarlov cysts are sporadic and spontaneous, with a small percentage exhibiting hereditary characteristics. He went further to say that it can be said with great confidence that the ambulance ride in 2015 did not cause cyst formation, as it was present on a 2013 MRI lumbar spine scan.

d. Allison has MRI lumbosacral spine scans in 2013, 2015 and 2022 and privately in 2019, which were scrutinised to determine a cause for her symptoms. He stated that her MRI scans were grossly normal except for the presence of a 1.5cmx x1.0cm tarlov cyst in the

[21] Medical Report dated October 27, 2022

sacrum. He noted there was no other radiologic abnormality that could have accounted for her symptoms.

e. Later in his findings, he stated that based on her serial MRI scans, it was concluded that she was not a candidate for surgical intervention. However, due to her chronic pain, it may negatively affect her occupation as an enrolled nursing assistant as her duties may exacerbate her condition.

f. He went further to say that she is not fully handicapped from the labour market as provisions can be made to provide seating for her, with further lumbar support and cushioning for improved comfort while performing her duties.

g. Dr Perez recommended that she undergo physical examination as well as responding to the Owestry Disability Index.

135. Dr Perez reviewed Allison's MRI findings from 2013 to 2022, during which she was also seen in the neurosurgical outpatient clinic at the EWMSC. She had serial MRI scans with no significant interval changes and the presence of a Tarlov's cyst. He explains that, because of its location, this cyst may have contributed to some of her symptoms over the years. He further testified that the remainder of her lumbosacral MRI scans are grossly normal. He opined that her Tarlov cyst was more likely spontaneous, with no relation to her ambulance ride.

136. Dr Perez explained that although Allison was managed conservatively, she has shown a less-than-ideal response and continues to experience pain.

Cross-examination

137. Dr Perez testified that based on his evidence, he did not find any evidence of a degenerative disc disease in Allison. He explained that the MRI from February 2012 is

the only one that mentioned is central with disc production, but it may occur if the degenerative issue is touching the nerve. The evidence he reviewed from 2013 did not show any evidence of back compression pain.

138. He further testified that the cysts present cause pain, but that it was present before. He also confirmed that the symptoms expected from someone affected by cysts at the S1 distribution would include bladder and bowel dysfunction as well as sexual dysfunction, but Allison did not present with symptoms of bowel dysfunction.

139. He disagreed that the trauma of Allison's rough ride on June 3, 2015, resulted in the gradual development of peripheral nerve root compression in the left L5/S1 distribution, not in the left S2 distribution.

Dr Kimani White (Dr White)

140. Dr White, the Medical Chief of Staff for the EWMSC and Consultant Orthopaedic Surgeon, gave evidence on behalf of NCRHA. He prepared an expert medical report regarding Allison on October 31, 2022 and was tasked to review some further medical reports to prepare a supplemental medical report.

141. Dr White stated that he was only given the opportunity to review the historical and clinical data of Allison and that the MRI findings which assure confidence in the final diagnosis of Lumbar radiculopathy as a result of symptomatic lumbar perineural cysts and mechanical back pain from a symptomatic Tarlov cyst, is not thought to be related to the incident.

142. After reviewing Dr Santana's handwritten notes, he stated that they posed a challenge due to different date nomenclatures used, chronological disorder, the absence of a reliable indicator of note termination, and areas where additional notations are made.

He stated that Dr Santana did not have significant documentation of the progress of clinical findings, and thus, the evidence for clinical support of the diagnoses offered at those times was lacking.

143. He further found that the clinical findings documented appeared consistent with an individual with moderate disability and clinical evidence of a lumbar radiculopathy. He also found that after reviewing Dr Lefkowitz's reports, the same contributed significantly towards the definitive diagnosis, nor the temporal relationship to the incident trauma in the original report. He was of the view that they were consistent with pain management of a right and left lumbar radiculopathy with a variety of modalities.

144. He did not discount the existence or severity of the pain or disability as there was no opportunity to examine the patient himself. However, he stated that the pain may be caused by the related incidents described in August 2013 and June 2015. He also found that Dr Santana did not account for the medical certificate of Dr Nunes, August 2013, which predated the alleged first incident.

145. He stated that the prolapsed disc in Dr Santana's reports is not one that would be expected to be clinically significant, as they usually cause their limb symptomatology by contacting the nerve elements and causing compression or irritation. He was of the view that the MRI scans did not demonstrate any compressive disc pathology around any of the neural elements. He stated that Tarlov cysts are rare but do exist and that there is no other demonstrable pathology that could account for the features described by Allison.

146. He further found that Allison had an element of chronic or recurrent back pain prior to presentation, and given that history, it is more likely that her symptoms on presentation were either a contribution to or an exacerbation of her pre-existing condition, rather than a new condition.

Cross-examination

147. Dr White testified that the incident on June 3, 2015, aggravated Allison's pre-existing cysts, which he said is the underlying nature of the diseases discussed in his medical report. However, he went further to say that there was no evidence of a degenerative disease.

148. Dr White also explains that Allison has a cystic problem and that there is something in her intrinsic nature which causes her neural system to cause cysts. He mentions Allison's cyst at S2, which may present symptoms in the bladder. He further discussed that Allison's MRIs show that she has cysts in almost all of the nerves at L3, L4 and L5 in addition to the S2. She continues to develop cysts in multiple areas of the underlying system. He opined that those cysts at L4, L5 and L3 were the cause of her radiculopathy.

149. Dr White stated that in all of Allison's MRIs, there was no evidence of nerve root compression. Multiple MRIs show cystic disease in the nerve roots, but none shows nerve root compression.

150. He asserted that Allison had symptoms of nerve root pathology, and the findings are consistent with nerve root pathology. He explained that focus should be placed on the MRIs because nerve root pathology cannot be accounted for by S2 cysts. He said that the MRIs, which show cystic disease at L2, L3, L4 and L5, account for her symptoms and are unrelated to the June 2015 incident.

ISSUES

151. The issues were as follows:

a. Whether the defendant breached the duty of care owed to the claimant as its servant and/or agent relative to the incident of June 2015.
b. Whether the claimant sustained injuries in the 2015 incident.

c. If so, whether the claimant had a pre-existing injury which was exacerbated by the 2015 injury.
d. Whether any of the acts of the claimant in 2015 contributed to her injury.

ISSUE 1

Whether the defendant breached the duty of care owed to the claimant as its servant and/or agent relative to the incident of June 2015.

The Law

DUTY OF CARE

152. It is a well-known principle in law that an employer owes a non-delegable duty to take reasonable care for the safety of employees in all circumstances. This duty is personal and cannot be discharged by delegating responsibility to others. Thus, the standard is that of the ordinarily prudent employer, guided by the considerations that ordinarily regulate the conduct of human affairs.

153. The standard is that of the ordinarily prudent employer, guided by the considerations that ordinarily regulate the conduct of human affairs. In ***Paris v Stepney Borough Council***[22], Lord Oaksey asserted that an employer must exercise the care which an ordinarily prudent employer would take, having regard to the infinite variety of circumstances that may arise. Where evidence of ordinary industry practice is unavailable or inapplicable, as is often the case in unusual situations such as employing a one-eyed worker, the court must form its own judgment of what precautions a reasonable employer would adopt to protect the employee from foreseeable harm.

154. It is well settled that an employer may incur liability to an employee sustaining injuries in the course of employment[23]. This can be seen in one of the two following ways:

[22] [1951] AC 367
[23] Charlesworth & Percy on Negligence 13th Edition

a. Vicariously as a result of the negligence of another employee, or
b. Where personally in default of some non-delegable duty of care.

155. The duty owed to the claimant is based on employer liability and the relevant case law. One must consider foreseeability. The Supreme Court in ***Robinson*** [24] highlighted that settled authority had rejected the idea that there was a single test applicable to all cases for establishing a duty of care. The court further stated that courts should consider previous decisions and follow the precedent unless there is a need to question whether such precedents should be departed from. In the present case, the Authority, as the employer, owed a duty of care to the claimant to maintain a safe working environment by providing appropriate equipment.

156. In the case and evidence before me, the Authority may be liable in either of the two ways listed above, as set out in ***Charlesworth & Percy on Negligence***. This case directly hinges on the liability, and an employer must take reasonable care for the safety of their workmen.

157. The claimant herein was employed by the North Central Regional Health Authority, and the issue of a duty of care hinges on foreseeability. The court had to consider whether it was foreseeable that the claimant might suffer injury while performing her duties in the course of her employment. Therefore, when transporting the infant patient to the Arima Diagnostic Centre, is it reasonable and foreseeable that the claimant might incur or suffer some injury? The answer to this question is in the affirmative, as it is foreseeable that a nurse can sustain injury while performing her duties. In this regard, the Authority, as the employer of the claimant, owed her a duty of care to provide a safe system of work and adequate equipment to prevent injury as much as possible.

[24] Robinson v Chief Constable of West Yorkshire Police [2018] 2 All ER 1041

BREACH OF THE DUTY OF CARE

158. The assessment of whether the employer has violated this duty depends on what is reasonable under all the circumstances, including the nature of the work, the location where it is performed, the employee's experience and vulnerability, the extent of control that the employer can reasonably exercise, and the employer's actual or constructive knowledge of any hazards. In ***Cook v Square D Ltd***[25], Farquharson LJ highlighted that when employees are sent to work on third-party premises, the employer retains an overriding responsibility to avoid exposing them to unnecessary risks. This obligation includes establishing a safe system of work (as exemplified in ***General Cleaning Contractors Ltd v Christmas***[26]) and taking reasonable measures to protect against known or foreseeable dangers on those premises (as stated by Lord Denning in ***Smith v Austin Lifts Ltd***[27]). The standard is not absolute; it is proportionate to the level of risk and the circumstances, and the determination of reasonableness involves balancing these factors rather than adhering to a strict rule.

159. It appears that the claimant was not provided with adequate training to effectively manage her responsibilities in the circumstances she encountered. I accepted the evidence of the claimant that she was compelled to hold onto the intravenous fluids due to the inadequacies of the ambulance. I did not find the evidence of Michelle Sylvester to be helpful to the case for the defence. To the contrary, her evidence confirmed that the ambulance was not outfitted to contain an IV bag with a pole. I accepted the evidence of the claimant that there was a railing along the side of the ambulance for the IV bag to hook, but that it did not extend to the area in which the claimant was forced, as it were, to sit with the infant. Further, there was no infant cart for the transport of the infant. In fact, the witness, Farid Hinds, confirmed that the area where the claimant, mother, and infant were seated was not equipped with an overhead railing.

[25] [1992] ICR 262
[26] [1953] AC 180
[27] [1959] 1 WLR 100

160. It was clear to me that the vehicle was not equipped or designed to accommodate an infant patient. Furthermore, the absence of an IV pole in the ambulance necessitated that the claimant balance the pole, fluids, and the infant, thereby exceeding her usual duties. One was left with the impression that the vehicle was a panel van adapted and outfitted for use as an ambulance, as opposed to an ambulance fit for purpose, in which a human being can stand erect and which is outfitted with the necessary equipment in such a manner as to provide both safe transport for all users.

161. Furthermore, due to the claimant's obligation to perform these duties while operating within a moving emergency vehicle equipped with sirens and emergency lights, significantly heightened the risk involved as related to injury to nurse and/or child. These dangers were clearly foreseeable. In that regard, it was also the evidence of Sylvester that it was not the claimant's duty to hold the infant, as this was not standard procedure. I am of the view that it is very easy to make this assertion post facto, but that it was reasonably foreseeable that, in the event the nurse had to assist the mother with the infant, she would. I could conceive of no circumstances in which a nurse would refuse to assist, especially when the mother asked for help. After evaluating the associated risks and the foreseeability expected of a reasonable and prudent employer, it is determined that her employer breached the duty owed to the claimant.

162. When this evidence is taken together with the evidence of the claimant as to the manner in which the ambulance was driven, it is clear that there was a breach of the duty of care on the part of the defendant. In that regard, the court noted that the allegations regarding the driver's manner of driving were clearly pleaded and led in evidence. It was therefore incumbent on the defence to call the driver to give evidence at trial, as he was likely to provide material evidence regarding his driving, but it failed to do so. There are two consequences which flow from that failure. The first is that it follows that the only first-hand account of his driving in evidence has been that given by the claimant. Secondly, in the absence of a reason being provided for his absence, the court is entitled

to and does, in fact, draw an adverse inference against the defence on the issue of his driving. The court also therefore finds that the driving of the driver when taken with the inadequate outfitting of the ambulance together amounted to a breach of duty on the part of the defendant.

CAUSATION

163. In ***Ryan Stanley & Anor v Petroleum Company of Trinidad and Tobago Limited***[28], where the Claimants alleged that hydrocarbon emissions from an abandoned oil well near their home caused respiratory illnesses, Smith J.A. highlighted the orthodox test for causation, at paragraph 35 he said, "*The burden on the Appellants was to prove that it was more likely than not that the wrongful conduct of the Respondent caused their diseases. As a step in determining that, the Court usually asks whether but for the wrongful conduct, would the damage complained of have occurred. This is the usual "but for" test and in this case required the Appellants to establish that but for the emissions from the well and the adjoining lands, they would not have contracted their diseases*." Although the Court of Appeal's decision was overturned by the Privy Council, the Board did not fault the test on causation. In ***Dr. Kong Sheik Achong Low v Brian Lezama***[29], the Privy Council, confirmed that causation is satisfied where the evidence shows that, on a balance of probabilities, the damage resulted from the Appellant's (the Defendant in the claim) failure to take reasonable steps to prevent the harm. The Board upheld findings that once postpartum haemorrhage occurred, the failure to obtain blood and provide adequate treatment in a timely manner resulted in the patient's death. So that the law on causation is well settled and was not an issue between the parties.

[28] Civil Appeal No. S-012 of 2011
[29] 2022 UKPC 15

THE PRE-EXISTING INJURY AND CAUSATION

164. A central issue consistently raised by the defence was the pre-existing injury. The court accepted and found that there was, in fact, a pre-existing injury, but that the actions of the driver and the defendant in breaching their duty of care would have caused the main injury, thereby exacerbating the pre-existing injury. In relation to the main injury, in summary of the evidence given by Dr. Santana, the court engaged in the following exchange:

"Judge: Doctor before you go, I need to understand. Can you let me know if this is a good, precise or relatively precise statement of what you have said to us in essence? You are saying that the cause of the condition was the gradual development of peripheral nerve root compression, and I think you said that happened at the left L5/S1 distribution. And this would have taken place after the 2015 incident. Is that correct?

A: That is correct

Judge: And you are also telling us that between the periods 2013 and 2015, the cause of her pain would have been the tarlov cyst at the time. You come to that conclusion because during that period she would not have symptoms of peripheral nerve root compression. Is that also correct?

A: That is exactly what I am saying

Judge: You are also saying that after 2015, peripheral nerve root compression deteriorated and became progressively worse, is that correct?

A: Yes sir, that is what I was saying"

165. The court also considered in relation to the evidence of Dr. Perez that:

a. He admitted that, based on Allison's pre-existing injuries, he found that it cannot be determined without any degree of certainty that the 2015 incident caused the Tarlov cyst.

b. The MRIs scans starting from 2013 -2022 were normal but showed a tarlov cyst present.

c. He testified that he did not find degenerative disc disease. He testified that the cysts were present before 2015 and that the symptoms she showed were expected.

d. Disagreed that the trauma of the 2015 incident caused a gradual development of peripheral nerve root compression.

166. The court also considered the very clear evidence of Dr White that the 2015 incident aggravated existing cysts, although he was of the view that there was no evidence of nerve root compression.

167. A court is entitled to accept part of what an expert says and reject other parts for good reasons. In this case, it is obvious that Dr Santana was the local expert whose interaction with the claimant was more than cursory. His medical assessments, attention, and care were constant. He is also well-experienced in the field. I therefore preferred his evidence in relation to the issue of the occurrence of peripheral nerve root compression having first appeared after the 2015 incident. In other words, it appears on the evidence more likely than not that, but for the 2015 incident, the claimant would not have suffered nerve root compression, which consistently deteriorated after the 2015 incident. This is so as all doctors appear to agree that there was no nerve root compression before the 2015 incident.

168. I therefore found that the 2015 incident resulted in nerve root compression and that although the claimant suffered from the Tarlov cyst prior to the 2015 incident, the damage or injury done during the 2015 incident was separate and apart from the effects

of the Tarlov cyst. It is also clear from the evidence that the pain caused by the Tarlov cyst would have been exacerbated by the consequences of the 2015 incident, resulting in more pain to the claimant as a result of a wholly different cause, namely, peripheral nerve root compression or impingement.

169. I therefore found the defendant to be liable in respect of the following particulars of negligence as pleaded:

    a. Failing to provide and maintain a safe place and system of work for the Claimant in that it failed to provide an ambulance that was fit for purpose on that occasion.

    b. Failing to provide suitable equipment or machinery or furniture to keep and secure the infant during the period of passage and to secure the intravenous pole during transport.

    c. Causing the Claimant to engage in heavy lifting and pulling and moving of patients and equipment thereby exposing the Claimant to risk further injury or exacerbate previous injuries.

CONTRIBUTORY NEGLIGENCE

170. At common law, contributory negligence operates as a partial defence where the court is placed in a position to apportion loss between parties. Where a person suffers damage as a result party of his own fault and partly the fault of another, a claim shall not be defeated by reason of the fault of the person suffering damage. The requirements of contributory negligence are as follows: the burden of proof is on the defendant to demonstrate:

    a. The claimant failed to take proper care in the circumstances for their own safety;

b. The failure to take care was a contributory cause of the damage suffered.

171. In ***Davis v Swan Motor Co***[30] Lord Bucknill LJ stated that when considering the issue of contributory negligence, it is not necessary to demonstrate that the negligence constituted a breach of duty to the defendant. Instead, it is sufficient to establish a lack of reasonable care by the claimant for their own safety.

172. Further ***Halsbury's Laws of England***[31] states that:

"76. In order to establish contributory negligence, the defendant has to prove that the claimant's negligence was a cause of the harm which he has suffered in consequence of the defendant's negligence. The question is not who had the last opportunity of avoiding the mischief, but whose act caused the harm. The question must be dealt with broadly and upon common sense principles. Where a clear line can be drawn, the subsequent negligence is the only one to be considered; however, there are cases in which the two acts come so closely together, and the second act of negligence is so much mixed up with the state of things brought about by the first act, that the person secondly negligent might invoke the prior negligence as being part of the cause of the damage so as to make it a case of apportionment. The test is whether, in the ordinary plain common sense, the claimant contributed to the damage.

77. The existence of contributory negligence does not depend on any duty owed by the claimant to the defendant, and ***all that is necessary to establish a plea of contributory negligence is for the defendant to prove that the claimant did not in his own interest take reasonable care of himself and contributed by this want of care to his own injury.***

[30] [1949] 2 KB 291
[31] Negligence, Volume 78 (2010), at para 76-80

78. The standard of care in contributory negligence is what is reasonable in the circumstances, and this usually corresponds to the standard of care in negligence. The standard of care depends upon foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonably prudent person, he might hurt himself. A claimant must take into account the possibility of others being careless. As with negligence, the standard of care is objective in that the claimant is assumed to be of normal intelligence and skill in the circumstances...

173. This means that some act or omission by the injured person which constituted a fault, in that it was a blameworthy failure to take reasonable care for his or her own safety and which has materially contributed to the damage caused as per ***Munkman: Employer's Liability at Common Law[32].***

174. In the present case, the claimant failed to exercise reasonable care for her own safety by unbuckling her seatbelt, upon request, immediately taking the infant patient into her lap and care while holding the IV fluid and pole without attempting alternatives such as communicating with the driver, and deviating from policy on parental handling. She, above all, was aware of her pre-existing condition and the associated pain. She must also have been aware of the policy or procedure of the defendant in relation to the limit of her participation in such circumstances, albeit whether the policy or procedure was a reasonable one is another issue. Although her actions may be considered justifiable in her own mind and as a matter of objective kindness, due to the infant's distress and her extensive experience, these actions increased her risk and demonstrated a disregard for her own safety.

[32] 15th Ed., Chapter 6, paragraph 6.10

175. I was therefore tasked with assessing the proportional blameworthiness and causative influence of each party's fault. In the present case, although the claimant's failure to remain seated and to communicate with the driver contributed to her injury, the primary responsibility lay with the defendant due to systemic deficiencies in equipment and work procedures. Consequently, liability was apportioned at 70% to the defendant and 30% to the claimant. Costs was ordered to follow the event.

Ricky Rahim
Judge