

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. S-1085 of 1986

BETWEEN

Baboonie Bhagwandeen

Plaintiff

AND

**Deodath Ramlogan
Rampersad Moonan**

Defendant

Before the Honourable Mr. Justice Ventour

Appearances:

Mr. P. Deonarine for the Plaintiff

Mr. L. Sanguinette for the first Defendant

Mr. W. Seenath for second Defendant

JUDGMENT

This is an assessment of damages resulting from injuries suffered by the Plaintiff in a motor vehicular accident which occurred on 14th August, 1984 along the St. Joseph Road in San Fernando.

By consent several medical reports were tendered into evidence. They are as follows:

- (1) Medical Report of Dr. De dated 16th November, 1994 tendered and marked "A";
- (2) Medical Report of Dr. Collymore dated 10th April, 1987 tendered and marked "B";

- (3) Medical Report of Dr. Collymore dated 28th April, 1987 tendered and marked "C";
- (4) Medical Report of Dr. Collymore dated 14th November, 1996 tendered and marked "D";
- (5) Medical Report of Dr. Collymore dated 2nd December, 1997 tendered and marked "E".

There have also been agreement on special damages in terms of items (a), (b) and (c) of the particulars of special damages itemized in the amended statement of claim. The Defendants are contesting the claim made under (d) in the said particulars with respect to the cost of the hip replacement.

In assessing special damages for the injuries suffered by the Plaintiff this Court is guided by the principles which have been laid down by the Court of Appeal in the well known case of **Cornilliac –vs- St. Louis (1965) 7 WIR 491**. In assessing such damages the Court ought to consider:

- (a) The nature and the extent of the injuries sustained;
- (b) The nature and the gravity of the resulting disability;
- (c) The pain and suffering which the injured party endured and is likely to continue to endure;
- (d) The lost of amenity;
- (e) The extent to which the pecuniary prospects of the injured party have been affected;

I propose to look at other cases for appropriate range of awards but at the same time I wish to bear in mind the words of Chief Justice Wooding to the effect that other

cases serve no more than a guide. See **Aziz Ahamad Ltd. –vs- Raghunanan Raghubar (1969) 12 WIR 352.** They are helpful only when and because they establish a trend. In deciding the quantum of damages I must also consider the effect of inflation on the value of the dollar; the economic situation in the country and the fact that the Court is dealing with an award which is being made once and for all.

(i) The nature and extent of the injuries sustained.

The Medical Reports confirmed that the Plaintiff suffered injury to her left knee joint and was admitted to the Female Orthopaedic Ward at the San Fernando General Hospital on 14th August, 1984 with an acute haemarthrosis of the left knee joint. The leg was put in a cast. The Plaintiff also testified that she suffered injuries to her left hip but there is some dispute as to whether the hip injury was caused by the accident which occurred on 14th August, 1984. In her evidence in chief she said:

“I was sitting in the back seat of the vehicle. Two vehicles hit the car.

The first hit my foot got damaged and my hip. My foot swell up.....

**My foot went through by the front seat. On the second hit I got the
lash on my hip, the left side.”**

(ii) The nature and the gravity of the resulting disability

The Plaintiff testified that prior to the accident in 1984 she used to attend to her garden, make market, go to the cinema and prayers but after the accident she was unable to do any of those things. She alleges that she is unable to move about as she used to. She can no longer carry out her normal domestic chores. Her daughter-in-law does the work for her. She is unable to carry anything heavy or to climb stairs as good as she used to before the accident. She now has to take one step at a time to go up or down the stairs.

There are times when her husband had to pick her up physically to carry her to use the bathroom which is located outside the house.

What seems quite obvious in the view of this Court is that the evidence of the Plaintiff on the nature and the gravity of the resulting disability is not consistent with the medical reports tendered into evidence. For example, the medical report of Dr. De (Exhibit "A") shows clearly that when the patient was seen on or about November 16th, 1984 "she walked well and she had a full range of the left knee movements." She had been discharged from the clinic on 11th October, 1984. However, the Plaintiff under cross-examination denied that she walked well when she visited Dr. De around November 1984. Her evidence in that regard does not appear to be very reliable. She said under cross-examination:

"On 16th November, 1984 Dr. De examined me. He told me to walk up and down to see how the knee is. Yes I had pain. He raised my leg and turned it from side to side."

Almost in the same breath she said:

"He did not tell me to walk up and down. My husband hold me and carried me inside. No, I never walked in front the doctor."

Having regard to the contents of Exhibit "A" it is indeed inconceivable that Dr. De would record that the patient walked well when in fact she did not. It is also strange that nothing is mentioned in Dr. De's report (Exhibit "A") concerning the Plaintiff's injury to her left hip. Counsel for the first and second Defendant question whether in fact the hip injury was caused by the accident of 14th August, 1984. The Plaintiff however, admits during her examination in chief that when she was thirty years old she had

fractured her left hip in an accident but she insist that the injury had healed and that she was moving about "OK" prior to the accident of 14th August, 1984.

It is not in dispute that the Plaintiff spent three days at the General Hospital after the accident and that she wore a cast for six weeks and thereafter continued to walk on crutches for approximately seven to eight months. But when she was seen by Dr. Collymore for the first time on 21st February, 1987 there was no complaint to him about the hip injury not any pain relative thereto and it was only after she had been referred back by the physiotherapist to Dr. Collymore that she indicated to the latter that she had been experiencing pain in the left hip while exercising. Dr. Collymore himself testified under cross-examination that if the Plaintiff had suffered a fractured acetabulum as a result of the accident of 14th August, 1984 she would not have been walking well at the time she had been seen by Dr. De on 16th November, 1984. Dr. Collymore's evidence is that if the Plaintiff had suffered a fractured acetabulum she would have experienced "real pain" between the years 1984 through to 1987 if the injury had not been attended to medically.

Indeed, there is no evidence before this Court that the Plaintiff sought medical attention for any injury to the hip between the years 1984 to 1987; neither is there any evidence that the Plaintiff suffered a fractured acetabulum as a result of the accident on 14th August, 1984. She did complain of pain in the left hip area while attending the physiotherapist in 1987 and was referred back to Dr. Collymore who from an x-tray taken on 9th April, 1987 found that there was in fact a healed fracture of the acetabulum with inward displacement. He found that there was irregularity of the head of the femur and narrowing of the joint space, indicative of osteoarthritis of the hip.

On the evidence I believe that it is reasonable to conclude that the old injury, that is, the fractured acetabulum which the Plaintiff admits having suffered when she was thirty years old was merely aggravated by the second accident on 14th August, 1984.

(iii) Pain and Suffering

I have absolutely no doubt that the Plaintiff experienced considerable pain and suffering as a result of the injury to her left leg which necessitated her having to wear a cast for six weeks and walking on crutches for seven to eight months. During her testimony she said she used to have "real pain, strong pain." She attended the health center at Cunupia where she was given tablets to ease the pain and medicine to rub the leg. Because of the constant pain, she had to sit down quite often. She also experienced pain when she walks or attempts to climb stairs.

I have carefully observed the Plaintiff while she stood in the witness box giving her evidence. I observed that at no time did she complain of pain or any discomfort in her left knee or hip while giving her evidence. At every opportunity during her testimony she spoke about the amount of pain she had to endure as a result of her injuries. There are times when the Court was left to wonder whether or not the witness was not exaggerating the intensity of her pain. For example, during examination in chief she said:

"I went to the hospital. I had pain at that time. I had plenty pain in my hip and knee. I stayed in hospital for three days."

Later on in her testimony she said:

**"Yes I had plenty pain. The cast remain on for 6 weeks.....
at home I was on the bed during the time I had on the cast.**

I had pain in my foot and knee. I use to take tablets when I

**Had pain to rest. After they take out cast I come clinic once or
Two times and then they stop me from clinic. I use to have real
Pain, strong pain.”**

If in fact the Plaintiff had been experiencing the kind of pain in her hip and knee as she alleges why is it that the medical report of Dr. De dated 16th November, 1984 (Exhibit “A”) made no reference to such pain? And stranger still why is it that in Dr. Collymore’s report of the 10th April, 1987 no mention is made of any complaint about the hip injury nor pain in the hip area when he first saw the Plaintiff on 21st February, 1987. (See Exhibit “B”). As I have indicated earlier the evidence points to an aggravated injury to the left hip and it may very well be that the pain, if any, to her left hip was not serious enough to complain either to Dr. De nor to Dr. Collymore between the period of August 14th 1984 to 21st February, 1987. I believe that the pain that she endured and of which she choose to complain during that period of time related specifically to the knee injury.

However, the evidence showed that at a later stage she experienced pain in the left hip and subsequent x-rays showed the healed fracture of the acetabulum with inward displacement and osteoarthritis. I have already found as a fact on the evidence that the fracture of the acetabulum was not as a result of the accident of 14th August, 1984. It is quite possible however that on the evidence I am prepared to accept that the accident of August 14th 1984 did aggravate the old injury of the Plaintiff to the extent that what developed at a later stage was an inward displacement of the acetabulum together with irregularity of the head of the femur and narrowing of the joints space indicative of osteoarthritis of the hip. See Exhibit “B”.

The medical report of Dr. Collymore (Exhibit "E") shows that in December of 1997 the Plaintiff continues to experience pain in the left knee. The examination performed at that time showed that there was crepitus, a positive patello-femoral friction sign and tenderness of the medial facet of the patella. Even though the prognosis for the knee injury appeared to be good in 1987 (the knee showing no sign of abnormality) it was not unusual that in 1996 the medical findings were different because as Dr. Collymore testified damage to the patella would show up on an x-ray but damage to the cartilage would not.

Due to the deterioration of the hip Dr. Collymore has recommended a total hip replacement and assessed the Plaintiff partial disability at a revised 40%. His earlier assessment was 30%. (See Exhibit "B").

(iv) Loss of Amenity

The Plaintiff is now sixty-three years old; she was forty-eight years old at the time of the accident. While it is true that her life style has been affected by the injuries she has suffered, it does not appear on the evidence that she was engaged in such a varied life style so as to bring about any fundamental change. She no longer goes to the cinema she says neither does she attend prayer meetings. These are activities in which she indulged before the accident.

(v) The extent to which the pecuniary prospects of the injured party has been affected.

On the evidence it appears that the Plaintiff suffered no loss under this head.

How best can the Plaintiff be compensated for the non-pecuniary losses which she has suffered as a result of her injuries. On a balance of probability it is the finding of this

Court that the accident of 14th August, 1984 the Plaintiff merely aggravated an old hip injury (fractured acetabulum) resulting in some pain to the Plaintiff which became more pronounced after she had visited and had been treated by the physiotherapist sometime in 1987. The injury to the hip has deteriorated over the years and a total hip replacement has been recommended by Dr. Collymore at a cost of \$35,000.00. I have accepted the recommendation of Dr. Collymore and I am prepared to award to the Plaintiff the sum of \$35,000.00 to undergo the hip replacement. No doubt, any further surgery would bring about some pain and suffering to the Plaintiff and this must be taken into account in assessing her general damages. Unfortunate though it may be the Defendants have to accept the victim as they found her. **Smith –vs- Leechbrim & Co.**

Counsel for the Plaintiff has referred the Court to several authorities, which, in my respectful view, dealt with injuries far more serious than the injuries which this Plaintiff has suffered. For example, in the case of **Raymond Ottley -vs- Albert De Freitas and May De Freitas CA 63/76** the injuries were far more serious and the pain and suffering endured by the Plaintiff far more intense. The Court awarded the sum of \$8,500.00 as general damages in December 1968. Then there is the **CA 132/87 Elease John & Ucilla John –vs- John Solomon** in which case a nine year old girl suffered very serious injuries in the nature of fractures to her femur tibia and fibula; injury to her scull and injury to her right hip. Her permanent partial disability was assessed at 75% and she was awarded the sum of \$125,000.00 in general damages in 1996. There is also the case of **Jennifer Cole –vs- Albert Bujou HCA 2700/79** in which the Plaintiff suffered fracture of the left superior and inferior pubic rami with viascosis of the right sacro-iliac

joint and disruption of the pelvic ring. Her permanent partial disability was assessed at 15% and she was awarded the sum of \$38,000.00 in 1984.

On the other hand Counsel for the Defendant argued that the authorities cited by Counsel are all irrelevant having regard to the nature of the injuries the Plaintiff suffered in the instant case. The following authorities were relied upon:

- (i) **4261 of 1978 Clyde Ford –vs- Chagaramas Terminal Ltd.** In this case the Plaintiff suffered from instability of the left knee with ruptured collateral of the knee. General damages were assessed at \$18,000.00 in 1990;
- (ii) **HCA 581 of 1977 Overand Padmore –vs- Marjorie Jameson.** The Plaintiff suffered traumatic arthritis of the knee and a 3cm laceration of the upper lip. He was awarded general damages of \$4,500.00 in 1979;
- (iii) **HCA 117 of 1977 Rookmin Sammy –vs- Public Transport Service Corporation.** The Plaintiff was 46 years of age at the time of the accident. She suffered a severe contusion of the articulator of the left patella. The right knee was also injured. The Court assessed her permanent partial disability at 25% and awarded her general damages in the sum of \$2,400.00 in 1983.

In the view of this Court the authorities cited by Counsel for the parties are merely for the purpose of comparison in deciding the quantum of damages to be awarded for the pain and suffering endured by the Plaintiff in the instant case. As has been said in

other cases it is indeed rare to find two cases the same. In that regard I am guided by the observations of the learned Chief Justice in the case Aziz Ahamad (supra). At page 357 the learned Chief Justice said:

“..... in looking at past cases it is essential to remember that they serve no more than as a guide. They, so to speak, provide a general standard or judicial consensus but are nevertheless referable to their own particular facts. And it must be rear to find the facts in two cases the same. Thirdly, because money values are subject to change as all of us know only too well, that factor of change should never be lost sight of. And, fourthly, in weighing up all the relevant considerations, it should be borne in mind that every decision may have some effect one way or another in establishing a trend. Indeed, past decisions are helpful only when and because they establish a discernable trend.”

I have decided against using the very mathematical approach of a multiplier/multiplicand having regard to the nature of the case and I have chosen instead to make a lumpsum award which I believe would adequately compensate the Plaintiff for the pain and suffering and the loss of amenities she has had to endure as a result of the injuries she suffered.

Having carefully considered the authorities and bearing in mind the way in which the Trinidad and Tobago dollar has been affected over the years I have assessed the Plaintiff's general damages in the sum of \$65,000.00. I would award interest at the rate of 6% per annum from the date of service of the writ of summons to the date of judgment. In addition and as I have indicated earlier, I have allowed the sum of

\$35,000.00 as special damages for the cost of the total hip replacement. The Defendants will pay the cost of the Plaintiff certified fit for Counsel to be taxed in default of agreement.

Dated this day of September, 1999

**Sebastian Ventour
Judge**