BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1 OF 1996

BETWEEN:

MARTIN ALPHONSO **DENNIS ALPHONSO LTD** **DENNIS ALPHONSO trading as** **Dennis Alphonso Car Rentals Ltd**	**APPELLANTS**
and	
DEODAT RAMNATH	**RESPONDENT**

Before:	**The Hon. Mr. C. M. Dennis Byron**	**Chief Justice (Ag.)**
	The Hon. Mr. Satrohan Singh	**Justice of Appeal**
	The Hon. Mr. A. Matthew	**Justice of Appeal (Ag)**

Appearances: **Mr. Gerard Farrara, Q.C., Dr. Ralph Gonsalves and Mr. Andrew Boyce with him for the Appellants**
Mr. Joseph Archibald, Q.C., Mr. Sydney Bennett with him for the respondent

[June 25, 26; July 21: 1997]

JUDGMENT

SATROHAN SINGH

On November 27, 1991, Deodat Ramnath (the respondent) was riding his bicycle returning to his place of work at Pasea, Tortola, when he was struck by a Montero jeep driven by the first appellant Martin Alphonso and owned by the second appellant Dennis Alphonso Limited. Martin Alphonso is a director of Dennis Alphonso Limited. The respondent was severely injured as a result of the accident. On January 11, 1996, **Redhead J,** in a Suit brought by the respondent against the appellants, entered judgment for the respondent in the

sum of U.S. $439,462: with interest thereon and with costs. The suit was a claim for US$I.M: damages for personal injuries and consequential loss caused by the negligence and/or breach of statutory duty of the first appellant as servant or agent of second and/or third appellant. The appellants appeal from this judgment.

The Order of the Court signed by the Registrar, purporting to evidence the. judgment of **Redhead J,** entered judgment for the respondent against the three appellants. However, a perusal of the learned Judge's judgment reveals judgment only against the first and second named appellants. According to the findings of the judge, there was no company by the name of Dennis Alphonso Car Rentals Ltd., that the second and third named appellants were one and the same, and that the jeep driven by the first named appellant belonged to the second named appellant. There is therefore a mistake in the Order of Court that needs to be corrected.

The issues addressed in this appeal relate to:

1. Contributory negligence in the respondent:
2. Vicarious liability:
3. Quantum of damages:
4. Rates of Interest:

The finding of the Judge of negligence in the first named appellant has not been challenged.

1. **CONTRIBUTORY NEGLIGENCE:**

The negligence of the first named appellant as found by the judge, related to (1) the excessive speed at which he drove his jeep (2) the overtaking of a car in front of him when it was not safe to do so and (3) his inattentiveness in failing to see the appellant on his cycle in front of that car. The contributory negligence alleged against the respondent, was his attempt at riding across the

public road without first checking the traffic behind him and not ringing his bell or giving a signal to signify his intention to turn right. The learned Judge found that whether or not he did so check or give a signal, that the accident still would have occurred, because, in any event, the first named appellant's evidence was that he did not see the respondent. **Redhead J** therefore found no contributory negligence.

An excursion into the vineyard of the facts as found by the judge show that the appellant was riding his bicycle on the Blackburn public road on his correct side. Travelling some 20 to 30 feet, behind him was a car driven by one Fonseca. Somewhere behind Fonseca's car was the Montero jeep driven by the first named appellant. The respondent decided to cross the road and began by turning right diagonally, having verified that there was no oncoming traffic. This was a straight road with visibility about 500 feet ahead. The Montero jeep was higher off the ground than Fonseca's car. Fonseca, having observed this action of the respondent proceeded slowly until he was about 5 to 10 feet from the respondent. The first named appellant then undertook to overtake Fonseca. As he was alongside Fonseca's car, he applied his brakes but did not stop and he collided with the respondent. At the time of impact the front wheel of the respondent's cycle was almost to the other side of the road and the back portion that was struck, nearer to the centre of the road. The brake marks of the jeep were 58'. The respondent was knocked some 10' onto the grass verge. The appellant's jeep was severely damaged.

The brake marks and the severe damage to the jeep, after a collision with a mere slow moving bicycle, indicate excessive speed on the part of the first named appellant. Unobstructed visibility for some 500 feet in a jeep that was higher off the ground than the car in front, indicate inattentiveness in this

appellant when he failed to see the cyclist before he actually struck him. The question is, did the respondent, by not checking behind him or giving any signal of his intention to cross, contribute to his injuries. Prima facie, these acts of omissions on his part could be said to be negligent acts by him. However, in the context of this case, I am minded to agree with the learned judge that had these omissions not existed the accident would still have occurred as it did.

My reasons for so agreeing are not dissimilar to these of the judge. They relate to the appellant's excessive speed, his serious inattention, the fact that the cyclist attempted slowly to cross the road and that at time of impact the cyclist was almost across the road. Taking the evidence as a whole, I share the view of the Judge that had the respondent rung his bell or given a hand signal, it would not have mattered as Martin Alphonso was not paying attention and never saw the respondent until just before the collision. It is also my opinion, that had the respondent checked behind him before undertaking the risk of crossing it still would not have mattered. The reasonable inference or conclusion to be drawn from the evidence, is that at the time the respondent decided to cross the road, he posed no threat to Fonseca's car behind him and Fonseca's car posed no threat to him. That Fonseca had started slowing down to allow him to cross. That Martin Alphonso in his jeep had not as yet attempted to overtake Fonseca and therefore would have been somewhere behind Fonseca's car. That would have been the scenario that would have met the eyes of the respondent had he checked behind. A scenario that evidenced no danger to the respondent when he undertook the risk, thereby making it safe for him to cross. Having undertaken the risk quite safely and started to cross, if he, in the act of crossing, had then decided to check behind, he would have

observed the appellant's vehicle racing down at him. In my view, the only avoiding action he could have taken then was to continue his course which he did. Were he to stop or turn back would have put him in greater peril not only of the appellant's jeep but also of Fonseca's car. The accepted evidence is that Fonseca, having observed the respondent's motion to cross the road, saw no danger to himself and slowed down to allow him to cross. Martin Alphonso, observing Fonseca's reduced rate of speed, then decided to overtake paying no heed to the respondent, thereby with sheer speed and inattentiveness unilaterally converting what was a safe situation into a highly dangerous one, ergo, the collision.

In his submissions to this Court, Mr. Farrara made much ado that in the trial Judge's judgment, he seemed to have approached the issue of contributory negligence on the principle that such negligence had to contribute to the accident rather than to the respondent's injuries. I say "much ado" because whilst the submission has merit, it is my view that this apparently wrong legal premise created no problem in the context of this case.

It is accepted that the guiding principle in proving contributory negligence, is whether the respondent by his acts or omissions contributed to his injuries, in the sense that he failed to take reasonable care for his own safety taking into account, as he must, that other users of road are likely to be negligent. It is also a very salutary principle that when one man by his negligence puts another in a position of difficulty, the Court ought to be slow to find that other man negligent merely b.-.cause lie may have failed to do something which looking back on it afterwards, might possibly have reduced the amount of damage. Contributory negligence did not depend on a breach of duty to the defendant but on lack of care by plaintiff for his own safety.

Although contributory negligence does not depend on duty of care, it does depend on foreseeability. Just as actionable negligence requires foreseeability of harm to others so contributory negligence requires foreseeability to oneself. **[The Older (1949) WN 488: Davies v Swan Motor Co. (1949) 2 KB: Jones v Livon (1952) 1 TLR 1371.**

Given the circumstances of this case, I consider the very thin line between the two concepts to be nebulous. All the injuries sustained by the respondent were as a result of the accident. The respondent 's omissions and his injuries were all inextricably bound up with the accident. Therefore, even though the judge might have approached the issue on the wrong legal premise, no injustice was done to the appellants. For all these reasons I would uphold the finding of the learned judge of no contributory negligence in the respondent. I now propose to address the issue of vicarious liability.

2. **VICARIOUS LIABILITY**

The case of the respondent against the second and third named appellants was one of vicarious liability. The evidence relevant to this issue reveal, that the first named appellant who was a director of the second named appellant was also an employee of both the second and third named appellants. The evidence also reveal that at the material time of the accident, the first named appellant drove a vehicle, belonging to the second and third named appellants with their permission. The factual issue was whether or not at the time of the accident the first named appellant was on a frolic of his own.

In order to fix vicarious liability for the negligence of the driver of a motor car on the owner of the vehicle, it must be shown that the driver was using it for the owner's purposes under a delegation of a task or duty. Mere

permission to use it is insufficient to establish vicarious liability. Mere knowledge of its use in the owner is not sufficient [See **Launchbury v Morgans (1973) AC 127** approving **Hewitt v Bonvin (1940) 1 KB 188.** Also **Norwood v Navan (1981) RTR 457 C.A.I.** In the **Launchbury case, Diplock J** said:

> I think that the true test can best be expressed in these words: was the [servant] doing something that he was employed to do? If so, however improper the manner in which he was doing it, whether negligent ... or even fraudulently ... or contrary to express orders . the master is liable. If, however, the servant is not doing what he is employed to do, the master does not become liable merely because the act of the servant is done with the master's knowledge, acquiescence, or permission.

There is a presumption that the vehicle is used for the master's purposes if the servant has authority to use it at all. The onus of proof then shifts to the owner to show that the employee was acting outside that scope. **(Laycock v Grayson (1939) 5 TLR).** This makes good sense because knowledge of the purpose of such use would be peculiarly within the bosom of the owner.

In the instant matter the only evidence relevant to this issue of "frolic" was from the first named appellant. Dennis Alphonso gave no evidence. This evidence disclosed that at the time of the accident, the first named appellant was purportedly returning to work from his lunch break. The evidence revealed that despite the fact that this appellant lived very close to his place of work, on this day he chose to have his lunch at the Sunrise Bakery some 1 1/2 miles away. The lunch consisted of bread, cheese and soda. There is evidence also that on the vehicle that he drove that day were "stickers" purporting to advertise the business of the third named appellant. This appellant also testified that at the material time he was not an employee of the third named appellant despite his pleadings that he was on his lunch break from that establishment.

His evidence was that he was a salesman employed by the second named appellant. The learned judge disbelieved the evidence of this appellant that he was on a frolic of his own i.e. his lunch break, and found that at the material time the appellant was driving the company s vehicle on company business. We are being asked to set aside this finding of fact of the judge.

It is axiomatic that where a trial judge had the advantage of seeing the witnesses, an advantage which this Court did not have, that an appeal court usually is, and should be, slow to reverse any finding of fact which appears to be based on the judge's assessment of the credibility of the witnesses. This general principle was referred to and elaborated on by **Byron C.J. in Louvinia Alexandra Raymond v Marie Ann Skelly and Marie Jose Combie Civil Appeal No. 8 of 1995 St. Lucia** dated **May 12, 1997.** It was also explained in the well known and often quoted case of **Watt v Thomas (1974) 1 All E.R. 582** in the speech of Lord Thankerton.

From these two cases I extract these principles: Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then

become at large for the appellate Court. If there is no evidence to support a particular conclusion, and this is really a question of law, the appellate court should not hesitate to so decide. If the evidence as a whole cannot justify the conclusion reached, or the trial Judge failed to draw conclusions of fact on matters which are material to the decision, or improper inferences are drawn from proved facts, it would be open to an appellate court to correct any resulting irrationality. An appellate court would be more inclined to substitute its own findings in such cases than in those where the trial Judge has decided on the basis of conclusions about the demeanour and veracity of witnesses. I accept and adopt these principles and apply the same to this matter.

In disbelieving the evidence of the first named appellant on this issue the learned Judge gave these reasons: (1) Martin Alphonso was a very poor witness. (2) His demeanour in the witness box left much to be desired. (3) He was a very untruthful witness. The Judge then asked himself the question why would this appellant drive 1 1/2 miles to eat bread, cheese and soda in his jeep when his house was so close to his workplace. His Lordship then expressed the opinion that this appellant's "lunch break was tailor made to fit in his defence". The learned Judge also found that this appellant was bent on absolving the other two appellants and referred to the discrepancy in his evidence with that of his pleadings as to who was his true employer (already mentioned). The learned Judge found him to be untruthful when he denied any connection with the third named appellant (whom the Judge found to be the same as the second named appellant) especially when he was driving a vehicle belonging to that appellant. The Judge also-thought that driving the vehicle with the company stickers was advertisement of the Company which was part of his duty.

Of all the reasons given by the Judge for disbelieving the evidence of Martin Alphonso, I am somewhat skeptical of two of them. Firstly, generally speaking, without more, I can see nothing wrong in someone wanting to have his lunch somewhere else other than his home even at a bakery, despite the close proximity of his home to his workplace. Secondly, again without more, I do not accept that because this appellant was driving the company's vehicle with its stickers on, that he was thereby on duty advertising the business of the Company. However, despite these two skepticisms on my part, I am not prepared to fault the learned Judge on his finding of fact on the issue. This is not a situation where these were the only two factors relied on by the Judge. He placed great reliance for his conclusion on the lack of veracity and poor demeanour of this witness. This was an advantage which we were not privileged to enjoy. In my view, this was a case where the **Laycock v Grayson (supra)** principle should apply. Based on that principle the onus of proof was on the second and third named appellants to show that the first named appellant employee, when he drove the second appellant's jeep that day with permission, was acting outside the scope of his employment. In my considered opinion this onus was not discharged. Dennis Alphonso did not testify and Martin Alphonso 's impugned and unacceptable evidence stood alone. The learned Judge evaluated the facts, made a close analysis of the evidence, disbelieved Martin Alphonso, and then came to his conclusion. I am not prepared to substitute a contrary finding of fact.

For all these reasons I would uphold the Judge's conclusion on vicarious liability and would attach this liability to the second named appellant. I agree with the finding of the learned Judge that the second and third named appellants are one and the same. I now address the question of damages.

DAMAGES

Dr Gonsalves for the appellants dealt with the issue of damages before us and, using a method of comparison with previous awards from the region, with mathematical precision 'Sought to inflict a surgical incision on the Judge's award reducing it by almost 50%. Learned Counsel in his usual eloquent manner, inter alia, questioned mainly the Judge's multiplier of 15 for the respondent who at the time of the accident was 42 years old, and suggested a multiplier of nine. By this submission, learned counsel invited interference by this Court with the exercise of the Judge's discretion in ascertaining the true damages in this matter. There was no or no serious challenge to the Judge's understanding or application of the legal principles relevant to the assessment. What was challenged by Dr. Gonsalves was more or less the Judge's discretionary quantification upon the application of those principles.

In appeals, comparable in nature to the present one, it must be recognised that the burden on the appellant who invites interference with an award of damages that has commended itself to the trial Judge is indeed a heavy one. The assessment of those damages is peculiarly in the province of the judge. A Court of Appeal has not the advantage of seeing the witnesses especially the injured person, a matter which is of grave importance in drawing conclusions as to the quantum of damage from the evidence that they give. If the judge had taken all the proper elements of damage into consideration and had awarded what he deemed to be fair and reasonable compensation under all the circumstances of the case, we ought not,, unless under very exceptional circumstances, to disturb his award. The mere fact that the Judge's award is for a larger or smaller sum than we would have given is not of itself a sufficient reason for disturbing the award.

But, we are powered to interfere with the award if we are clearly of the opinion that, having regard to all the circumstances of the case, we cannot find any reasonable proportion between the amount awarded and the loss sustained, or if the damages are out of all proportion to the circumstances of the case. This Court will also interfere if the Judge misapprehended the facts, took irrelevant factors into consideration or applied a wrong principle of law, or applied a wrong measure of damages which. made his award a wholly erroneous estimate of the damage suffered. The award of damages is a matter for the exercise of the trial judge's judicial discretion and unless we can say that the judge's award exceeded the generous ambit within which reasonable disagreement is possible and was therefore clearly and blatantly wrong we will not interfere. [See the judgment of this Court in **Bernard Nicholas v Kertist Augustus Civil Appeal No. 3 of 1994 Dominica dated April 15, 1996.]**

The injuries suffered by the respondent left him with pains to his head, back, abdomen and both legs. He lost one leg and he now wears a wooden leg. He may suffer from convulsive seizures for the rest of his life. The seizures are without warning and are violent. As a result of post traumatic sequel the following conditions were identified (a) Hemi paresis of the left hand side of the respondent's body. (b) Grand mal seizures (c) Urinary incontinence (sic). He has to wear pampers (d) Anosmia and a diminished sense of taste (e) Poor memory recall levels. Other injuries also reported were: (a) Amputation of the left leg below the knee (b) Fractured rib and (c) Fracture of the left Ulna. There is reduction in his sex drive. From the injuries a chronic pain syndrome has developed that could in the future develop arthritis. Further details of the injuries and their effect on the respondent's earning power and his future restricted way of life were fully considered by the learned judge in his very

careful and detailed judgment. Now to the quantification.

THE MULTIPLIER:

In determining the multiplier, the learned Judge treated this 45 year old respondent as having a, working life of up to 65 years. Addressing the uncertainties of life, the judge then discounted that by a quarter and arrived at a multiplier of 15: In arriving at this figure the learned judge seemed to have relied on one regional case only, that of **Franklyn Lloyd v. Nathaniel Phillip** a decision of the **High Court in St. Kitts Civil Suit 79 of 1991.** In that case a multiplier of 10 was used for a 57 year old doctor where the evidence disclosed a working life of approximately 70 years. It does not appear from **Redhead J's** judgment in the instant matter that he enjoyed the assistance given this Court by the legal advisors of the appellants on this issue.

Dr. Gonsalves presented this Court, for our guidance, with nine other unreported authorities from the region showing comparable injuries and the multipliers adopted e.g. 32 years old, multiplier 13, 33 years old, multiplier 13, 26 years old, multiplier 9, 30 years old, multiplier 13, 24 years old, multiplier 14, 52 years old, multiplier 5, 40 years old, multiplier 12, 31 years old, multiplier 10, 47 years old, multiplier 9 (but reduced to 6). It is obvious from these authorities that the identification of the true multiplier depended on the individual facts and circumstances of each case and that there was no rigid formula. In an effort at limiting prolixity, I have not mentioned the names of the cases, all being unreported cases.

In determining the multiplier a Court should be mindful that it is assessing general and not special damages. That it is evaluating prospects and that it is a once for all and final assessment. It must take into account the many contingencies, vicissitudes and imponderables of life. It must remember that

the plaintiff is getting a lump sum instead of several smaller sums spread over the years and that the award is intended to compensate the plaintiff for the money he would have earned during his normal working fife but for the accident. **{See Franklyn Lloyd v Phillip Supra}.**

I am of the view that the learned judge had these legal principles in his mind when he fixed the multiplier at 15. However, I am also of the view that given the circumstances of this case, had the judge been made aware of the aforementioned comparable awards there was the possibility that he may not have gone as high as 15. In my judgment, considering all the circumstances and applying the law as above stated, the appropriate multiplier should have been 12 and I so hold. I now address the head of damage of pecuniary loss and the relevant multiplicand.

PECUNIARY LOSS: THE MULTIPLICAND:

In his statement of claim, the respondent pleaded an average weekly earning prior to the accident of $308.95: The learned judge found from the evidence the average weekly earning to be between $330: to $350 per week and based his award on $350: per week. This basis is challenged by Dr. Gonsalves because of what is stated in the pleadings. To a certain extent I do not disagree with this challenge.

For the purpose of the multiplicand, the basis should be the least amount the respondent would have been earning if he had continued working without injuring. [See **Cookson v Knowles (1979) A.C. 556].** The evidence disclosed this figure to be $330: per week. What is stated in the pleading is not the evidence in the case. I therefore do not agree with Dr. Gonsalves that the sum should be $308.95. 1 would therefore use as the basis for the multiplicand the

average earning of $330 per week. The respondent's current earning capacity as found by the judge is $110: per week. Subtracting this sum from $330: leaves the multiplicand at $220: Multiplied by 52 weeks we have the figure of $11,440: Using the multiplier of 12, the loss of income is quantified at $137,280. The learned judge discounted his award under this head by 5 % because of its lump sum nature. Dr. Gonsalves suggested a discount of 20% based on the **Lloyd v. Phillip** judgment (supra). This discount is necessary to cater for the contingencies of life. Because of the younger age of the respondent when compared to **Lloyd** I do not agree that the discount should be 20%. At the same time I consider the learned judge's 5% too low. I would discount this sum by 10% and reduce the judge's award under this head to $123,552.

NURSING SERVICES:

The learned judge found, and it is not challenged, that the respondent will need nursing care for the rest of his life. Under this head, the judge on the evidence of an agreement between the respondent and one Mrs. Yamraj towards this end, awarded the sum of $800: per month or $9,600: per year. Using the multiplier of 15 % with a reduction of 5 % he arrived at the figure of $108,000: Dr. Gonsalves challenged this award and submitted a multiplicand of $400: with a multiplier of 9 less 20%.

The evidence disclosed an agreement of $800: per month with Mrs. Yamraj for her to provide the respondent with his meals and to watch over him (because of his epileptic seizures). Of this sum $400: was to be paid for watching over him. The reasonable inference is that the remaining $400: would be for his meals. I agree with the submission of Dr. Gonsalves that the respondent should not be paid the $400 per month for his meals as if he were

not injured he would have had to provide his own meals. Mr. Bennett suggested an inflation on the remaining $400: In the absence of evidence as to what this rate of inflation should be I cannot accede to this suggestion. I would therefore agree With Dr. Gonsalves that the multiplicand under this head should be $400 per month or $4800 per annum. And, applying the multiplier of 12 and the discount of 10% used by me under the heading of pecuniary loss I reduce the judge's award under this head from $108,000: to $51,840.

LOSS OF EARNING CAPACITY

Under the head of the respondent's loss of earning capacity, the learned judge considered the principles enunciated in the cases of **Moeliker v. A Rey Rolle and Co. Ltd (1977) 1 Ali E.R. 9 and Fairley v John Thompson (Design and Contracting Division Ltd)(1970) 2 Lloyds Rep. 40** and the facts that the respondent was not only an amputee but also a person suffering from grand mal seizures. He then concluded that there was a real risk of him losing his job and that his chances of getting another job was virtually nil. Given those circumstances he awarded the respondent $10,000: under this head. The learning from the aforementioned two cases is that this head of damage would arise where a plaintiff is, at the time of trial, in employment but there is a risk that he may lose this employment at some time in the future and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job. The cases show that it is a different head of damages from an actual loss of future earnings which can already be proved at the time of the trial. As **Denning MR** put it in the **Fairley** case.

> "It is important to realize that there is a difference between award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved

> by evidence. Compensation for diminution of earning capacity is awarded as part of general damages."

On the facts as found by the learned judge in this case, there can be no legal justification for interfering with his award under this head and I confirm it at $10,000:

SPECIAL DAMAGES:

As special damages, the respondent claimed $98,222.10. The learned judge found that receipts were produced to support most of the expenditures and awarded the respondent that sum as special damages. Dr. Gonsalves could not find evidence of $7,200: of this sum and Mr, Bennett for the respondent did not pursue the issue. I also do not find evidence of this $7,200. 1 would therefore reduce the special damages to $91,022.10.

GENERAL DAMAGES:

Redhead J in his judgment awarded the respondent general damages for pain, suffering and loss of amenities in the sum of $45,000: Before doing so he considered comparable cases to be found in **Kemp and Kemp The Quantum of Damages** Volume 3 and related those cases to the instant matter. Dr Gonsalves suggested to this Court the sum of $35,000:

I do not propose interfering with the judge's award of $45,000: This was a matter in the discretion of the judge. In my judgment, the learned judge exercised his discretion most carefully and advisedly and I cannot say that the award exceeded the generous ambit within which reasonable disagreement was possible. I therefore confirm the award of $45,000 as general damages. I now address the issue of interest.

INTEREST:

In his judgment, the learned judge awarded interest of 9% per annum of the total award from March 12, 1992 to date of judgment and 5 % per annum from date of judgment until payment. The 5% is not challenged for obvious reasons, that being the statutory rate as prescribed by s.7 of the Judgment Act Cap 35 of the Laws of the British Virgin Islands. However there is serious challenge to the 9 %. The learned judge gave no reasons for this rate of 9 %.

The general principle is that interest ought only to be awarded to a plaintiff for being kept out of money which ought to have been paid to him. With regard to general damages, no interest should be awarded before judgment on loss of future earnings. On damages for loss of amenity and pain and suffering, interest should be awarded from the date of the service of the writ to the date of trial at the rate payable on money in Court placed on short term investment. Regarding special damages interest should be awarded for the period from the date of the accident to the date of trial at half the above rate. [See **Jefford v. Gee (1970) 1 All E.R. 1202].**

There was no evidence led as to the rate of interest on a short term investment. In deciding the issue of the rate of interest before judgment therefore, I propose to use the statutory rate of 5% per annum as the yardstick and the awardable rate. And, in deciding the issue of what interest should be awarded under the respective heads in this matter, I propose doing so in accordance with the guidelines aforementioned. These will now be reflected in my conclusion of this matter.

CONCLUSION:

For all the reasons given, I would order that this appeal do stand

dismissed with costs to the respondent to be taxed certified fit if not agreed, and that they be paid by the first and second named appellants. The order of the learned judge is varied to read as follows:

Pecuniary Loss	$123,552:	No interest awarded before judgment.
Nursing Services	$ 51,840:	No interest awarded before judgment
Loss of earning capacity	$10,000:	No interest awarded before judgment
Special Damages	$91,022:10:	Interest at the rate of 2 1/2 per cent per annum from date of accident 27.1.91 to date of trial June 6, 1995.
General Damages for pain and suffering and Loss of Amenities	$45,000:00:	Interest at the rate of 5 per cent per annum from date of service of the Writ 23.3.92 to date of trial June 6, 1995.
Total Damages	$321,414.10	

There will be interest on this global sum at the rate of 5 per cent per annum from the date of **Redhead J's** judgment January 11, 1996 until payment.

I sincerely hope my mathematics are correct. I do not profess to possess the mathematical expertise of Dr. Gonsalvcs.

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SATROHAN SINGH
Justice of Appeal

I concur

C. M. DENNIS BYRON
Chief Justice (Ag.)

MATTHEW J.A. (Ag.)

I also agree with the decision of the learned trial Judge that liability should be attached to the first and second Appellants but I am of the firm view that the Respondent suffered damage as a result partly of his own fault and partly of the fault of the first Appellant**.**

The scenario on the day in question was that the Respondent was riding his bicycle on the left and correct side of the road going Eastwards. Fonseca was driving his car slowly behind him. The first Appellant was driving his jeep behind Fonseca's car and when he thought the road was clear he overtook Fonseca. About the same time the Respondent was turning right across the road when he came into collision with Alphonso.

It is accepted that the Respondent committed negligent acts by not checking behind him or giving any signal of his intention to cross the road. While it is true he posed no threat to Fonseca who was driving behind him it does not mean he was not driving negligently with regard to Fonseca who was no doubt exercising much caution. However, he did pose a threat to Martin Alphonso when he rode across the line of traffic in the path of Alphonso. In my judgment the Respondent was contributorily negligent.

I would hold that the Respondent was 25 per cent liable for the accident and the Appellants 75 per cent liable.

I agree with the computation of damages in the judgment of Singh J.A. as well as the award of interest and the order for costs.

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A.N.J.Matthew
JUSTICE OF APPEAL (Ag.)