

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE

SLUHCV2009/0814

BETWEEN:

JENNIFER PRESCOTT

Claimant

AND

ALDRICK PARRIS  
JOHN PRIMUS

Defendants

**Appearances:**

Ms. Lydia Faisal for the Claimant.  
Mr. Eghan Modeste for the Defendants.

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2013: April 30<sup>th</sup>; May 13<sup>th</sup> & 15<sup>th</sup>;  
2013: June 13<sup>th</sup> .  
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**JUDGMENT**

[1] **WILKINSON J.:** Ms. Jennifer Prescott filed her claim form and statement of claim on February 19<sup>th</sup> 2009. Therein she alleged that due to the negligent driving of Mr. Aldrick Primus, who was driving Mr. John Primus' Mitsubishi Pajero jeep registration number PB 448, on Sunday March 5<sup>th</sup> 2006, at approximately 9.00 p.m. along the Marc road she suffered personal injuries which resulted in loss and damage. She sought the following relief:

- I. Special damages totaling \$52,400.00;
- II. General damages to be assessed;
- III. Interest thereon
- IV. Costs hereof.

[2] At March 11<sup>th</sup> 2013, on application pursuant to CPR 2000 Rule 21 an order was made appointing Mr. Aldrick Parris the Representative of Mr. John Primus for the purpose of these

proceedings there being a medical report in support stating that Mr. Primus had been diagnosed with dementia.

### **Issues**

1. Whether Ms. Prescott or Mr. Parris or both were liable for the accident.
2. And if Mr. Parris is liable for the accident, whether Mr. Primus is vicariously liable.

### **Evidence**

The uncontested evidence is that (a) on March 5<sup>th</sup> 2006, at approximately 9.00 p.m. there occurred a motor vehicle accident on the Marc road while Ms. Prescott was walking along the road and Mr. Parris was driving a jeep registration number PB 448 on the said road; (b) Mr. Primus' owned the jeep involved in the accident, (c) Mr. Parris was employed by Mr. Primus as his maintenance man at the material time, (d) Ms. Prescott suffered injury and loss, (e) Mr. Primus' insurer, West Indies General Insurance Company Ltd. has paid certain of the bills presented to it by Ms. Prescott as part of her expenses incurred on obtaining medical treatment, and (f) Ms. Prescott has failed to provide any receipts or invoices to support her claim of special damages for fifty two thousand four hundred dollars (\$52,400.00).

### **The Claimant**

[3] At the material time, Ms. Prescott was a young woman aged thirty six (36) years old and the mother of three (3) young children. She lived along the Castries/Bexon Highway. According to Ms. Prescott, on the evening of March 5<sup>th</sup> 2006, at approximately 9.00 p.m. she was walking along the left side of the Marc road in the direction of the Castries/Bexon Highway enroute to her home. As she was walking she observed the jeep driven by Mr. Parris driving in the opposite direction as he drove into the Marc community. The jeep was travelling at great speed, off its left side of the road, it veered across the road and collided with her on the jeep's right side on the side of the road where she was walking. Ms. Prescott was injured in the accident. The accident happened approximately five (5) houses from the junction of the Marc road and its junction with the Castries/Bexon highway.

[4] Shortly after the accident Ms. Prescott was taken to the Victoria Hospital at Castries. There she was seen by a doctor, it was recommended that she keep her injured right leg elevated and on the same night she was discharged.

[5] Following the night of the accident, Ms. Prescott continued to suffer intense pain and discomfort and so she of her own accord decided to get an x-ray done of her right leg at Helen Diagnostic Centre where there were doctors in attendance. According to her, the x-ray did not reveal the full extent of her injury as she continued to suffer intense pain and her leg became black and blue. Approximately ten (10) days later she visited the St. Jude Hospital at Vieux Fort for medical attention. There she was referred by the General Practitioner to the consultant orthopedic surgeon, Dr. Ndidi Dagbue. She was informed that ligaments in her right leg were torn. She pursued the recommended course of physiotherapy for approximately two (2) months but there was no improvement. In her pursuit of treatment for her right leg Ms. Prescott on the recommendation of one Ms. Alfred of Mr. Primus' insurer saw another consultant orthopaedic surgeon, Dr. Horatius Jeffers and he recommended an MRI scan. There was at the time no facility at Saint Lucia for an MRI scan.

[6] At June 26<sup>th</sup> 2006, Ms. Prescott travelled to Martinique for the MRI scan and presented letters from both Dr. Ndidi Dagbue and Dr. Jeffers to Dr. Ditimille under whose care she was while at Martinique. An MRI scan was done. Upon the results of the MRI scan being seen by Dr. Ditimille, surgery was recommended and she had the surgery at October 2<sup>nd</sup> 2006. Ms. Prescott said that the surgery involved taking a strip of tendon to graft to the inner ligament from the tibia to the femur. There were also affixed in her right leg two (2) metal staples used to re-attach a ligament and a screw was used to hold the graft in place. The metal staples and screw remain in her leg up to the date of trial. At February 2008, there was a follow-up visit at Martinique with Dr. Ditimille.

[7] Ms. Prescott was assisted by her mother, Ms. Matilda Emmanuel who travelled with her to Martinique as she was unable to care for herself or move around without assistance. Her mother assisted her for twenty two (22) days at Martinique and then returned to Saint Lucia to assist in looking after Ms. Prescott's children who had on her departure to Martinique been left in the care of her eighty four (84) year old grandmother. Ms. Emmanuel returned to Martinique on the day of Ms. Prescott's surgery and remained there for a further twelve (12) days assisting Ms. Prescott. The airfare for Ms. Emmanuel's travel to Martinique was not paid for by the Mr. Primus' insurer.

[8] Post surgery Ms. Prescott's doctor prescribed physical therapy of walking and various exercises together with a brace which kept her right leg straight for support of her knee which

would collapse. She purchased this brace. She was to use this brace when walking downhill, in stoney areas and sometimes when at home and in pain. She has great discomfort when she walks in the straight brace for by keeping her leg straight when she is walking, she becomes tired very fast. More recently, Ms. Prescott has been prescribed a hinged brace which would allow her knee to bend on walking. She has not purchased this hinged brace due to lack of money.

- [9] At the time of the accident, Ms. Prescott had been employed approximately three (3) months as a sales assistance/shop attendant by Mr. Philious Francis in his small seafood parlour/restaurant near Praslin Bay in the Quarter of Micoud. There she earned seven hundred dollars (\$700.00) per month breaking down to thirty five dollars (\$35.00) per day and she worked five (5) days per week. At November 2012, Ms. Prescott obtained a job through the NICE programme and it is caring for an elderly person at a salary of one thousand dollars (\$1000.00) per month. Her job involves cooking, dusting, and administering medication to the elderly person. She has been relieved of the duty on her job of lifting any heavy objects.

#### **The Defendants**

- [10] The Court during the course of Mr. Parris' testimony both in his own regard and as Representative for Mr. Primus made certain observations and finally asked Mr. Parris if he could read? He responded that he could not read "too good". The Court then read out to him in full the witness statement he had filed on behalf of Mr. John Primus. The Court records this against the background that when Mr. Parris' Counsel put him on the witness stand to give his evidence, there was no indication that Mr. Parris' own witness statement and that which he filed on behalf of Mr. Primus had been read over to him before he signed them.
- [11] Mr. Parris at the material time worked as a maintenance man for Mr. Primus. His hours of work were Monday to Friday 8.00 a.m. to 4.30 p.m. Mr. Parris as maintenance man took care of such matters as painting and repairs to the plumbing and electrical works at Mr. Primus' house, he also did the gardening, and sometimes he would look after Mr. Primus' person.
- [12] Mr. Primus owned the jeep registered as PB 448 and at some point it needed repairs and fell into disuse. It was subsequently repaired but by this time Mr. Primus no longer drove and he gave Mr. Parris the jeep to use for his job as maintenance man and in this regard Mr. Parris was recorded as a driver on Mr. Primus' insurance policy. Mr. Parris was also permitted to use the jeep for his personal affairs. Mr. Parris had been in possession of the jeep in excess of one

(1) year at the time of the accident, and he was permitted to keep the jeep at his home when not using it for Mr. Primus' benefit. The state of the jeep at date of trial was that it was no longer owned by Mr. Primus.

[13] At the material time of the accident Mr. Parris was returning to his home in Marc from Trois Piton, Forestierre, Castries where he had gone to drop off a friend.

[14] In his witness statement Mr. Parris said that on approaching the corner leading into the Marc road he slowed the jeep, was driving within the speed limit, and was keeping a proper lookout; he observed that there were no other vehicles on the Marc road and proceeded to complete the turn at the corner into the Marc road. As he was completing the turn into the Marc road, still on his side of the road, he noticed Ms. Prescott crossing from the left side of the road to the right side of the road. By the time he completed the turn Ms. Prescott was already in the middle of the road. He applied his brakes and swerved to avoid the accident but despite his efforts the accident happened as Ms. Prescott was directly in the path of the jeep. Under cross-examination his evidence was contrary.

[15] Under cross-examination Counsel for Ms. Prescott asked Mr. Parris the following questions and received the answers indicated:

Counsel: "And you hit Ms. Prescott, Mr. Parris when she was not walking in the road?"

He answered: "Yes".

Counsel: "You are here to speak the truth, are you not?"

He answered: "Yes."

Counsel: "Would you Mr. Parris in those circumstances put the blame on Ms. Prescott for the accident?"

He answered "No."

Counsel: "So Mr. Parris when in your witness statement you say that the lady page 41, paragraphs 13 and 14, 'By the time I completed the turn into the Marc road she was already in the middle of the road. I applied my brakes and swerved in order to prevent the lady from making contact with the vehicle.' So from what you have told us, you are saying that those 2 statements are not correct?"

He answered: "No".

Counsel: "You mean they are not correct?"

He answered: "No".

[16] After the accident Mr. Parris said that he got out of the jeep and tried to assist Ms. Prescott but a young man ran towards him and tried to attack him; that man had to be restrained by a police officer who happened to be nearby.

[17] Mr. Parris said that he was not drunk at the time of the accident.

[18] Mr. Parris visited Ms. Prescott the night of the accident at the Victoria Hospital. He visited her again on the day after the accident and at that time he observed that she had put an ointment on her leg and on inquiry of her, she told him that it was Iodex.

[19] Mr. Parris was aware that the accident had been reported to Mr. Primus' insurance company and that the insurance company had paid certain of Ms. Prescott's medical and other associated expenses.

[20] As the appointed Representative for Mr. Primus, Mr. Parris said that at the time of the accident, Mr. Primus had no interest in the purpose for which he was using the jeep, namely to drop off a friend at Tros Piton, Forestierre and indeed the accident took place on a day and at a time when Mr. Parris was not required to work. At the time of the accident, to the best of Mr. Parris' knowledge Mr. Primus was at his home.

[21] The Court observed that Mr. Primus in his acknowledgement of service filed March 3<sup>rd</sup> 2009, stated:

"As I was not present at the time of the accident I am not in a position to answer questions 6 to 9. I understand that the Police were called to the scene and the matter was reported to my insurer. I was the owner of the vehicle (PB448) at the time. Mr. Parris was driving with my consent & was covered by my insurance policy."

### **The Law**

[22] In a motor vehicle accident as that under consideration, the Court where negligence has been pleaded has to look to see if the three (3) elements of negligence have been made out and they are (a) a duty to the person injured, (b) breach of that duty, and (c) causation of

recoverable damage. The duty of care which a driver owes to a pedestrian is to be found in the locus classicus **Donoghue v. Stevenson** [1932] AC 562 where Lord Atkin said:

“The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour; and the lawyer’s question, who is my neighbour? Receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.”

[23] In regard to the matter of foreseeability in **Berrill v. Road Haulage Executive** [1952] 2 Lloyd’s Rep. 490, Slade J. said:

“Paraphrasing the words of Lord Uthwatt in *London Passenger Transport Board v. Upson* [1949] AC 155, [1949] 1 All ER 60, LJR 238, TLR 9, 93 Sol. Jo, HL, a driver is not bound to foresee every extremity of folly which occurs on the road. Equally he is certainly not entitled to drive upon the footing that other users of the road, either drivers or pedestrians, will exercise reasonable care. He is bound to anticipate any act which is reasonably foreseeable, which the experience of a road user teaches that people do, albeit negligently.”

[24] On the matter of breach of the duty, in **Bolton v. Stone** [1951] AC 850, [1951] 1 All ER 1078 Lord Porter said:

“It is not enough that the event should be such as can reasonably be foreseen; the further result that injury is likely to follow must also be such as a reasonable man would contemplate, before he can be convicted of actionable negligence. Nor is the remote possibility of injury occurring enough; there must be sufficient probability to lead a reasonable man to anticipate it. The existence of some risk is an ordinary incident of life, even when all due care has been taken, as it must be, taken”.

[25] The issue of vicarious liability is also under consideration. Ms. Prescott has alleged that Mr. Parris was driving with the knowledge, permission and authorization of Mr. Primus in the role of servant/employee or agent. Both Mr. Primus and Mr. Parris resist this allegation. Mr. Parris and Mr. Primus positions are that while at the material time Mr. Parris was an employee of Mr. Primus, his maintenance man, at the material time of approximately 9.00 p.m. on March 5<sup>th</sup> 2006, Mr. Parris was using the jeep on his own agenda and not as servant/employee or agent of Mr. Primus.

[26] In **Halsbury's Laws of England** 4<sup>th</sup> edition vol. 45(2) it is stated:

**"821. Employee engaged on his own business.** In order to render an employer liable for an employee's act it is necessary to show that the employee, in doing the act which occasioned the injury, was acting in the course of his employment...where, however, the employee, whilst using his employer's property in the course of his employment, embarks upon business of his own, and the injury is occasioned afterwards, the employer's liability continues unless the employee is deviating from the business which he was employed to perform, can no longer be considered to be acting in the course of his employment, and must be regarded in a separate transaction."

[27] In the Saint Vincent and The Grenadines High Court Civil Case 2002/250 **Rudolph Harry v. Noel Durrant & Vivian John Bruce-Lyle** J. at paragraph 13 said:

"[13] In recent cases from the House of Lords and the Privy Council, the fundamentals of vicarious liability have been revisited and reformulated. These were in the cases of (a) *Lister v. Hall* [2002] 1 AC 215, (b) *Dubai Aluminum C. Ltd. v. Salaam* [2004] 2 A.C. 366, (c) *Bernard v. A.G. of Jamaica* [2004] UKPC 47 (d) *Brown v. Robinson* [2004] UKPC 56. In these cases the new formulation of the additional test is this:- "can the wrongful conduct be fairly and reasonably be regarded as done by the employee while acting in the ordinary course of the employer's business".

### **Findings**

[28] At the outset, the Court must state that both Ms. Prescott and Mr. Parris struck the Court as two (2) simple and humble persons who spoke the truth while before the Court and the Court also believes that Mr. Parris was very sorry about the accident.

[29] The matter of whether Mr. Parris could or could not read the Court believes was evident in the matter of the evidence set out in his witness statement and his evidence under cross-examination. The evidence in his witness statement was a textbook statement making sure to cover all bases to discharge responsibility for negligent driving and it was all contradicted several times over by his evidence under cross examination.

[30] On both the evidence of Ms. Prescott and Mr. Parris under cross-examination, the Court finds that Mr. Parris drove negligently and was solely responsible for the accident.

[31] On examining the issue of whether Mr. Parris was at the material time acting as servant/employee or agent of Mr. Primus, on the evidence before the Court, the Court does not feel able to conclude that Mr. Parris was either. The only evidence before the Court as to Mr. Parris' activity at the material time was that he was driving on the Marc road because he had gone to drop off a friend at Trois Piton, Forestierre. Nothing in cross-examination elicited what



was the duty or work that Mr. Parris was in the process of carrying out on Mr. Primus' behalf at approximately 9.00 p.m. on March 5<sup>th</sup> 2006. On considering the authorities cited on the issue of vicarious liability, the Court holds that Mr. Primus is not vicariously liable for the accident and damages claimed.

[32] At the trial Counsel for Mr. Parris and Mr. Primus made heavy weather about the fact that Ms. Prescott had used Iodex and sought to suggest that Ms. Prescott exacerbated her injury by rubbing on her injured leg the common over the counter topical ointment. The Court observed at the trial that there was no evidence from Mr. Parris either in his own behalf or on the behalf of Mr. Primus that Iodex was known when applied to have any deleterious effects.

[33] This brings the Court to the matter of what damages it ought to award Ms. Prescott.

[34] Counsel for Mr. Primus and Mr. Parris in this regard only addressed what they said was Ms. Prescott's failure to wear her straight leg brace and that this failure should be held against her so as to discount any award of damages by thirty (30) percent. **Froom v. Butcher** [1976] Q.B. 286 which involved the failure of the claimant there to wear a seatbelt was cited in support of that approach. He provided no other authorities to assist the Court with its assessment.

### **Special damages**

[35] The Court looks first at the issue of what special damages it ought to award. The case of **Ilkin v. Samuels** 2 All E.R 879 states that where special damages are generally capable of exact calculation then they must be specifically pleaded and proved. In BVIHCA 2004/0023 **Cedric Dawson v. Cyprus Claxton** a personal injuries case Gordon JA said:

"I will, however make one comment in passing. It is the obligation of the Claimant in any claim for damages to provide the best evidence of which he is capable."

[36] Ms. Prescott did not disclose any invoices or receipts to support her claim for special damages in the sum of a fifty two thousand four hundred dollars (\$52,400.00) and which the Court understands were directly related to her medical treatment. While the Court has the power to make a nominal award in light of all the facts, the Court bears in mind that Mr. Primus' insurance company paid several bills presented by Ms. Prescott for her medical treatment and therefore the Court is hesitant to exercise its discretion to make a nominal award for medical

expenses incurred as it may bring about overpayment to Ms. Prescott under this head of her claim.

[37] Also covered under the head of special damages is the loss of income from date of the collision. Ms. Prescott said that she earned seven hundred dollars (\$700.00) per month. This evidence was not challenged and indeed in light of her occupation at the time, a sales assistant/shop attendant, it seems a reasonable sum to the Court. By date of trial Ms. Prescott had recently found alternative employment. The Court bearing in mind the description of the injuries and in particular the lack of stability in Ms. Prescott's right leg as described in the medical report, and her lack of money to pursue further treatment earlier which might have lessened or alleviated some of the problems with which she continues to suffer, believes that it would be fair to award Ms. Prescott, four (4) years wages. The Court therefore awards Ms. Prescott the sum of thirty three thousand six hundred dollars (\$33,600.00) for loss of wages.

#### **Pain and suffering and loss of amenities**

[38] In relation to the award for pain, suffering and loss of amenities, the Court refers to the locus classicus **Cornilliac v. St. Louis** (1965) 7 WIR 491 in which Wooding CJ provided us with the approach to be adopted in assessing general damages in a case such as Ms. Prescott's. Examination of the injuries he said should be under the following subheadings:

- a) the nature and extent of the injuries sustained;
- b) the nature and gravity of the resulting physical disability;
- c) the pain and suffering which had to be endured;
- d) the loss of amenities suffered; and
- e) the extent to which, consequentially, pecuniary prospects have been materially affected

[39] In **Wells v. Wells** Lord Hope of Craighead said:

"The amount of the award to be made for pain, suffering and loss of amenity cannot be precisely calculated. All that can be done is to award such sum, within the broad criterion of what is reasonable and in line with similar awards in comparable cases, as represents the Court's best estimate of the plaintiff's general damages."

[40] Ms. Prescott's initial injuries were said to be (a) injury to the anterior cruciate ligament of the right knee; (b) lateral collateral ligament tear of the knee (anterio lateral instability of the knee); and (c) bone bruising to the upper tibia (shin bone). The injury was secondary to blunt trauma of a moderate to severe degree.

[41] There was filed in the Court an updated medical report issued on April 17<sup>th</sup> 2013, by the Consultant Orthopedic Surgeon, Dr. Ndidi Dagbue. The Court finds this report useful as it sets out some historical aspects of Ms. Prescott's injury and treatment for her injury and since Dr. Dagbue was not before the Court his report is worth citing:

"Several clinical and radiological assessments done when she presented to me at St. Jude Hospital confirmed that she sustained an anterior cruciate ligament and a lateral collateral ligament tear of the right knee (anterolateral knee instability).

She was initially managed by me with a knee brace, and non-weight bearing crutches. She was sent to Martinique for an MRI scan of the knee. She had the scan and also had surgical repair of the anterior cruciate ligament and lateral collateral ligament of the right knee in Martinique on 02<sup>nd</sup> October, 2006. She subsequently continued follow-up in Martinique and with me at St. Jude Hospital.

Her last visit to me was on 16<sup>th</sup> April, 2013 at which time she came for a re-assessment for this report.

At the time of her visit, she complained of:

- 1) Pain in the right knee, especially when she walks distances.
- 2) Difficulty in getting up from a sitting position, especially when she sits on a very low seat.
- 3) Recurrent incidents of her knee giving way.
- 4) Inability to run.

Clinical assessment on presentation, including x-ray, confirmed the following findings:

- 1) Mild patellofemoral osteoarthritis on x-ray.
- 2) Restricted range of motion of the right knee to 90°
- 3) Healed scar of previous surgery.
- 4) Mild persistent lateral ligament laxity.
- 5) Presence of a tendon/ligament staple in the anterior tibia and presence of a screw in the lateral condyle of the femur.

#### STABILITY OF MEDICAL CONDITION

At this point in time, her clinical condition remains stable. She has continued to complain of episodes of sudden giving away of the right knee with (which) caused her near falls. This is due to a combination of post traumatic patellofemoral osteoarthritis, and persistent weakness of her knee muscles...

The patellofemoral osteoarthritis noted in her x-rays is most likely as a result of trauma to the patella cartilage. This results in patellofemoral joint degeneration and the grating feeling on examination called "Crepitus". Patellofemoral osteoarthritis progresses with time, and may eventually require a total knee replacement, especially if it is combined

with generalized osteoarthritis of the knee, which would most likely occur eventually with the severity of her knee injuries.

Arthroscopic surgery of the knee to assess the condition of the cartilage of the patella and the tibio-femoral joints with possibly debridement may improve the pain she has in her knee. This will however be temporary, because with degeneration of the knee, she will ultimately require a total knee replacement.

Arthroscopic surgery is presently available in St. Jude Hospital and both arthroscopic surgery and total knee replacements are available at Tapion Hospital. Total knee replacement is not available at St. Jude Hospital....

Her inability to run is as a result of persistent instability of the knee, which could be improved to an extent with intensive rehabilitation. Her wearing a hinged knee brace will help prevent her knee giving way...

#### EFFECT OF CLINICAL CONDITION ON WORK AND LEISURE

At this point in time, she can perform activities of daily living, (ADL) like cooking, washing, bathing, brushing etc. but she will have some difficulty, as she cannot stand for prolonged periods of time and she cannot carry heavy items...

She cannot perform work or leisure activities that would require her to lift up heavy items, walk or run.

#### IMPAIRMENT EVALUATION

Considering the duration of her injuries (seven years), she can be considered to have reached maximum medical improvement (MMI) in spite of the fact that further surgeries may be required in the future.

According to the American Medical Association Guides to the evaluation of permanent impairment, she presently has a total of 34% lower extremity impairment, which translates to a whole person impairment of 14% ...

Jennifer Prescott has been under my care from 17<sup>th</sup> March 2006 till date. ..."


- [42] Bearing in mind the forecast of Dr. Dagbue, the Court reverts to Dr. Horatius Jeffers' letter dated October 19<sup>th</sup> 2010, wherein he stated that at that date the costs of (a) arthroscopic knee surgery including hospitalization and professional fees would be ten thousand dollars (\$10,000.00), and (b) total knee replacement inclusive of hospitalization, implant cost, in and out patient evaluation, physiotherapy and professional fees would be thirty one thousand dollars (\$31,000.00). A total costs of forty one thousand dollars (\$41,000.00). The Court accepts Dr. Jeffers' estimate and bearing in mind that the general cost of living has increased since 2010, the Court will add 10 percent to that sum. There is awarded for future surgery the sum of forty five thousand one hundred dollars (\$45,100.00).

- [43] The Court in bearing in mind the other considerations set out in **Cornilliac** takes into consideration the relative young age of Ms. Prescott at the time of the accident, the nature and extent of the injury, the surgery, suffering and discomfort she has had to cope with over the years, the depression she says she suffered as she became anxious about not being able to provide for her children, the way she has recovered, her prospects for continued medical treatments in the future and which would involve more pain and suffering, her level of permanent incapacity and disability and which incapacity and disability will indeed affect her employment and life overall.
- [44] Counsel for Ms. Prescott submitted that bearing in mind the handicap of Ms. Prescott which is a result of the accident that instead of the Court making an award for loss of future earnings to Ms. Prescott that the Court ought to consider making a **Smith v. Manchester** award (handicapped on the labour market award). She submitted that for such an award Ms. Prescott was required to show that there was a serious risk that at some point in the future she would be looking for a new job and her ability to find that job would be harder because of her disability when compared to an able bodied person. The Court tends to agree with Counsel that there could be a very strong possibility for loss of income due to Ms. Prescott's disability and the anticipated degeneration described by Dr. Dagbue. Both Ms. Prescott and Dr. Dagbue already state that she cannot stand for long periods or lift heavy things. Considering the age of Ms. Prescott, who is still a relatively young woman, and if she works to the retirement age of between 62 to 65 years will have approximately twenty (20) more working years ahead of her, and the Court in considering the nature of the work undertaken by Ms. Prescott before the accident and that undertaken after the accident, the Court will award one thousand dollars (\$1000.00) per year for twenty (20) years for a total loss of future earnings award of twenty thousand dollars (\$20,000.00).
- [45] Counsel for Ms. Prescott referred the Court to the Republic of Trinidad & Tobago decisions of HCA No. 1774/1998 H.C.A. 53 of 2002 **Dixon v. Nurse**, H.C.A No. 53 /2002 **Scully v. (1) Xtatic Limited & Others** and HCA No. 442/2000 **Baldeo. Prestige Car Rentals Ltd. & Others**. These cases are in general helpful and in particular **Scully**.

[46] Considering the medical report of Dr. Dagbue, the authorities cited and the Court having seen and heard Ms. Prescott, the Court will award Ms. Prescott sixty thousand dollars (\$60,000.00) for pain and suffering and twenty five thousand dollars (\$25,000.00) for loss of amenities.

[47] Court's order:

1. Judgment is entered for Ms. Jennifer Prescott.
2. Special damages for loss of income is awarded in the sum of \$33,600.00.
3. General damages is awarded as follows: (a) for future medical care the sum of \$45,100.00, (b) loss of future earnings the sum of \$20,000.00,(c) for pain and suffering the sum of \$60,000.00 and (d) loss of amenities the sum of \$25,000.00.
4. Interest is awarded at the rate of 6 percent on the total award.
5. Costs to be prescribed costs.

  
Rosalyn B. Wilkinson  
High Court Judge