THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Port of Spain

Claim No. CV2018-00203

Between

Atiba Purcell

(By his next Friend and Mother, Kim David-Purcell)

Claimant

And

The Attorney General of Trinidad and Tobago

Defendant

Before the Honourable Madam Justice Eleanor Joye Donaldson-Honeywell

Delivered on: 14 March 2024

Appearances:

Mr. Farai Hove Massaiai, Ms. Bernelle Joy La Foucade and Ms. Alisha Ponambalam for the Claimant

Ms. Natoya Moore-Belmar and Ms. Khadine Matthew for the Defendant

JUDGMENT

A. Introduction

1. In proceedings commenced on 18 January 2018 the Claimant, Atiba Purcell, sues by his next friend and mother Kim David-Purcell, to recover damages for injuries sustained in June 2008. He was then aged three (3) when he fell from an excavated 15-20 feet drop off at the back yard of the family home where he lived, sustaining severe injuries. The home was on lands owned by his father at LP 53 Pelican Extension, Morvant.

2. The excavation that left the drop off was created by the State ["the Defendant"] as part of a Ministry of Community Development retaining wall construction project on property occupied by the Defendant adjacent to the Claimant's family home. The Claimant's case is that the Defendant also removed a fence from his yard and left the drop off unfenced at the time of his fall. Accordingly, the cause of action is in occupier's liability for negligence.

3. The Defendant denies liability, contending that, in September 2007, the contractor employed for the construction project had installed a galvanize fence called a "hoarding" all around the construction site. They say this prevented access to the site and deny that the fall took place.

4. In denying the Claimant's allegation that the State's agents dug into the Claimant's father's land, there is no denial by the Defendant of the act of digging land. However, the Defendant denies the Claimant's father was the owner of the land and alleges he was a squatter.

B. Procedural History

5. There were a number of delays in the proceedings as the Court gave the Claimant time to secure medical records and expert reports relevant to the injuries sustained. Eventually, the two-day Trial concluded on 16 November 2023.

6. Thereafter, the parties made closing submissions in writing with the Claimant's filed on 18 January 2024 and the Defendant's on 23 February 2024. A final submission by the Claimant was then filed on 8 March 2024.

C. Issues and determination

7. The two main issues are whether the Defendant is liable in negligence for injuries sustained by the Claimant and, if so, what quantum of damages should be awarded to the Claimant. In deciding on liability, the following sub-issues must be considered:
    i. Was the Defendant, by its Ministry of Community Development construction project, an occupier of lands adjacent to the Claimant's home?
    ii. Was the Claimant's father and by extension the Claimant a squatter to whom the Defendant owed no duty of care?
    iii. If not, what was the extent of the Defendant's duty of care to the Claimant?
    iv. Did the Defendant breach the duty of care or were reasonable steps taken to minimize risk to the Claimant in the exercise of the duty of care?
    v. Did any negligence on the part of the Claimant or his mother break the chain of causation of his injuries such that the Defendant cannot be held liable?

8. The decision reached, having considered the pleadings, evidence and submissions on both sides is that the Defendant is liable to compensate the Claimant for his injuries. The reasons for the decision are further explained in this Judgment.

D. Law

Negligence

9. There are four elements of the tort of Negligence, as identified in **Winfield and Jolowicz on Tort** 20th Edition Goudkamp and Nolan, 5-002, namely:

    a. A duty of care owed by the Defendant to the Claimant;
    b. A breach of that duty;
    c. Damage suffered by the Claimant;

d. Which is caused by, and is a non-remote consequence of the breach.

10. The aforementioned elements must be proven in this case as the Claimant submits the Defendant's liability is in negligence arising from the occupation of the project site by agents of the Ministry of Community Development.

Occupier's liability

11. In **Wheat v Lacon [1966] All E.R. 582** at page 593**,** Lord Denning explained the nature of the occupation which is requisite for occupiers' liability. He noted that an Occupier's duty is:

> "… simply a particular instance of the general duty of care, which each man owes to his "neighbour". … Translating this general principle into its particular application to dangerous premises, it becomes simply this: **wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an "occupier**" and the person coming lawfully there is his "visitor"; and the "occupier" is under a duty to his "visitor" to use reasonable care. In order to be an "occupier" it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control." [Emphasis added]

12. Later in the same Judgment, at page 601, Pearson J explained that at common law:

> "**occupier's liability has been attributed or envisaged as attributable to** persons, such as building or ship-repairing or **road-working contractors**, **who were or might have been in temporary control** and therefore for this purpose "in occupation" of premises or parts of premises or ships or roadways or road verges, although they would not be held to be "in occupation" for the purpose of rating or tax law. *(Canter v J Gardner & Co Ltd* ([1940] 1 All ER 325 at p 329, letter *e)*; *Duncan v Cammell Laird & Co Ltd*; *Hartwell v Grayson Rollo and Clover Docks Ltd*; *Creed v John McGeoch & Sons Ltd* ([1955] 3 All ER 123 at pp 125–127).) The foundation of occupiers' liability is occupational control, ie**, control**

associated with and arising from presence in and use of or activity in the premises." [Emphasis added]

13. In **Aaron Jairam v Trincan Oil Limited and ors CV2010-04153,** after citing **Ana Barry Laso v THA CV 2008-02722 at para 141-142,** Kokaram J, as he then was, summarized the occupier's duty of care as "*to take such care as in all the circumstances of the case as is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he is invited or permitted by the occupier to be there*."

14. In **Coope and Others v Ward and Another [2015] EWCA Civ 30,** cited by the Claimant, Lord Justice Christopher Clarke considered the occupier's duty of care to neighbours in relation to hazards. The case provides the following guidance,

> 23. *In order to trace the origin of the concept it is necessary to go back to* ***Goldman v Hargrave [1967] AC 645.*** *In that case a tree in the centre of the appellant's land was struck by lightning on February 25 and caught fire. The tree was cut down on February 27 but no steps were taken to prevent the fire from spreading. The fire was left to burn itself out when it could have been extinguished with water. On 1 March the weather changed; the fire revived and spread to the respondents' properties which were damaged. The Privy Council, upholding the decision of the High Court of Australia, and following Sedleigh-Denfield v O'Callaghan [1940] AC 880, held* ***that an occupier of land was under a general duty of care in relation to hazards, whether natural or man-made occurring on his land, to remove or reduce such hazards to his neighbour; that the existence of such duty must be based on knowledge of the hazard, ability to foresee the consequences of not checking or removing it and the ability to abate it; and that the standard of care applicable was what it was reasonable to expect of the occupier in the circumstances. …***
>
> *24. Liability in that case arose where the original hazard (lightning) was not one for which the occupant was responsible but where his failure to do anything in relation to it created a new hazard of which he should have been aware and which he could reasonably be expected to have taken steps to avert. Negligently he permitted it to continue. Lord Wilberforce, giving the*

*judgment of the Board, approved the recognition of "**a measured duty of care by occupiers to remove or reduce hazards to their neighbours**"…*

*28. **In Holbeck Hall Hotel Ltd v Scarborough Borough Council [2000] QB 836; [1980] 2 All ER 705** the claimants owned a hotel which stood on a cliff overlooking the sea. Between the hotel and the cliff was land owned and occupied by the local authority. Such land provided natural support to the hotel**.** Due to maritime erosion the cliff was inherently unstable. Slips occurred in 1982, 1986 and 1993. The 1993 slip was massive and caused the ground under the hotel's seaward wing to collapse as a result of which the rest of the hotel had to be demolished. The judge held that the local authority was, or ought to have been, aware of the hazard caused by the potential failure of support for the hotel, and that it had breached a measured duty of care by failing to investigate the danger to the claimants' land after the 1986 slip when, if such investigation had been carried out, it would have discovered that a slip of the type that took place in 1993 was imminent.*

*29. The Court of Appeal allowed the appeal holding that **an occupier's duty to prevent a potential hazard to the claimant's land arises if the defect was patent and was or should have been observed.** In the case of a latent defect the occupier would not be liable merely because he would have discovered the defect on further investigation. The local authority in that case had not foreseen a danger of anything like the magnitude of what had occurred and it was neither just, fair nor reasonable to impose liability for damage which was greater in extent than anything foreseen or foreseeable without further geological investigation [51]. **The authority's duty was to take care to avoid damage which it ought to have foreseen** without such investigation. **That duty might also have been limited to warning the adjoining occupiers** of such risk as it was aware of or ought to have foreseen rather than carrying out expensive and extensive remedial work itself [54].* [Emphasis added]

Occupier's liability in cases involving children

15. Counsel for the Claimant cited **Latham v Richard Johnson & Nephew Ltd, [1911-13] All ER Rep 117** where, at page 126, Hamilton LJ observed:

"Children's cases are always troublesome. English law has been very ready to find remedies for their injuries; Scottish law, as might have been expected, has been less indulgent. … They are the commonest cases of the general rule, which is as old as Scott v Shepherd (39) that a person, who, in neglect of ordinary care puts or **leaves his property in a condition which may be dangerous to another, may be answerable for resulting injury, even though, but for the intervening act of a third person, or of the plaintiff himself: Bird v Holbrook (40); Lynch v Nurdin (4); that injury would not have occurred**. **Children acting in the wantonness of infancy**, and adults, acting on the impulse of personal peril, may be and **often are only links in a chain of causation extending from such initial negligence to the subsequent injury**. No doubt each intervener is a cause sine qua non, **but unless the intervention is a fresh independent cause the person guilty of the original negligence will still be the effective cause, if he ought reasonably to have anticipated such interventions and to have foreseen that if they occurred, the result would be that his negligence would lead to mischief**." [Emphasis added]

16. Hamilton LJ further observed at page 127 that:

"the presence, in a place **where he lawfully is**, of some object of attraction, tempting him to meddle when he ought to abstain, may well constitute a trap, and **in the case of a child too young to be capable of contributory negligence it may impose full liability on the owner or occupier**, if he ought as a reasonable man to have anticipated the presence of the child and the attractiveness and peril of the object." [Emphasis added]

Contributory negligence by children or their parents

17. In **Gough v Thorne [1966] 3 All ER 398,** Denning LJ said at page 399:

"A very young child cannot be guilty of contributory negligence. An older child may be; but it depends on the circumstances. A judge should only find a child guilty of contributory negligence if he or she is of such an age as reasonably to be expected to take precautions for his or her own safety: and then he or she is only to be found guilty if blame should be attached to him or her."

18. Counsel for the Defendant relied on learning from **Halsbury's Laws of England, Tort (Volume 97A (2021)) at [36]** in support of her submission that there was contributory negligence on the part of Atiba's mother in any injury he may have sustained if the fall occurred. The authority is as follows:

> *"A parent owes a duty of care to his child whilst the child is under his responsibility, and may be liable for failing to guard against and prevent the child suffering injury.* ***However, there is an area of parental discretion in which the courts should not intrude.*** *A duty of care to the child may also be assumed by others who take responsibility for him.* ***Liability may also arise on the part of strangers who negligently expose the child to a danger****, even where there would be no danger to an adult."[Emphasis mine].*

Res Ipsa Loquitor

19. In seeking to establish that it was the Defendant's negligence that caused Atiba's injuries, the Claimant further relies on the doctrine of *res ipsa loquitor*. In **Annie Kellman v Dr. Robert Downes and North Central Regional Health Authority (CV2007-01036)** at pages 7-9, the Hon. Des Vignes J (as he then was) explained:

> "Res ipsa Loquitur:
>
> 17. It is clear from the authorities that **the burden of proving negligence lay at all times upon the Claimant**. In certain circumstances, a Claimant who has sustained injuries in circumstances where such injuries would not have happened if the Defendant had taken due care, **the Claimant may discharge that burden by inviting the court to draw the inference that on a balance of probabilities the Defendant must have failed to exercise due care**. Ng Chun Pui v. Lee Chuen Tat [1988] RTR 298 (P.C.) However, the Claimant must adduce evidence to establish a prima facie case and then, **if the Defendant does not adduce any evidence, there will not be any evidence to rebut the inference of negligence and the court will be entitled to conclude that the Claimant has proved his/her case**. Where, however, a Defendant adduces evidence, the court must then assess that evidence to determine whether it is still reasonable to draw the inference of negligence.

18. In Ng Chun Pui v. Lee Chuen Tat (ibid), the Privy Council adopted two passages from the decided cases as a clear exposition of the true meaning and effect of the so-called doctrine of res ipsa loquitur.

19. In Henderson v. Henry E. Jenkins & Sons [1970] RTR 70, Lord Pearson said at pp. 81I-82A: "In an action for negligence the Plaintiff must allege, and has the burden of proving, that the accident was caused by negligence on the part of the Defendants. That is the issue throughout the trial, and in giving judgment at the end of the trial the judge has to decide whether he is satisfied on a balance of probabilities that the accident was caused by negligence on the part of the Defendants, and if he is not so satisfied the Plaintiff's action fails. The formal burden of proof does not shift. But **if in the course of the trial there is proved a set of facts which raises a prima facie inference that the accident was caused by negligence on the part of the Defendants, the issue will be decided in the Plaintiff's favour unless the Defendants by their evidence provide some answer which is adequate to displace the prima facie inference.** In this situation there is said to be an evidential burden of proof resting on the Defendants. I have some doubts whether it is strictly correct to use the expression 'burden of proof' with this meaning, as there is a risk of it being confused with the formal burden of proof, but it is a familiar and convenient usage."

20. In Lloyde v. West Midlands Gas Board [1971] 1 WLR 749, 755 Megaw LJ said: "I doubt whether it is right to describe res ipsa loquitur as a "doctrine". I think it is no more than an exotic, although convenient, phrase to describe what is in essence no more than a common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances, It means that **a Plaintiff prima facie establishes negligence where: (i) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; but (ii) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the Defendant** or of someone for whom the Defendant is responsible, which act or omission constitutes a failure to take proper care for the Plaintiff's safety. I

have used the words "evidence as it stands at the relevant time." I think that this can most conveniently be taken as being at the close of the Plaintiff's case. On the assumption that a submission of no case is then made, would the evidence, as it then stands, enable the Plaintiff to succeed because, **although the precise cause of the accident cannot be established, the proper inference on balance of probability is that that cause, whatever it may have been, involved a failure by the Defendant to take due care for the Plaintiff's safety**? **If so, res ipsa loquitur.** If not, the Plaintiff fails. Of course, if the Defendant does not make a submission of no case, the question still falls to be tested by the same criterion, but evidence for the Defendant, given thereafter, may rebut the inference. The res, which previously spoke for itself, may be silenced, or its voice may, on the whole of the evidence, become too weak or muted." [Emphasis Added]

E. <u>Pleaded case</u>

20. The Claimant's case is that he was born on 29 April 2005 and the incident complained of herein took place on 24 June 2008. According to the Claimant, it was around a month before the incident that the Ministry of Community Development decided to erect the retaining wall. Agents of the Defendant engaged by the Ministry encroached on the Claimant's father's land and removed fencing that was there with the intention of building the retaining wall.

21. The Claimant's basis for pleading that his father owned the land was explained in his pleadings in Reply after the Defendant pleaded that the Claimant's father was a squatter. The Claimant explained that his father's ownership of the land was based on 30 years of possession and a certificate of comfort issued on 16 October 2000, which conferred on him a personal right to occupy the land.

22. It is the Claimant's case that, after the Defendant's agents removed the fence as a precursor to building the retaining wall, they used a backhoe to dig into the Claimant's

father's land. That action created the drop off at the back yard of the property of approximately 15-20 feet.

23. In or around June 2008, construction of the retaining wall commenced. The Defendant's agents started the wall from the bottom up. At the time of filing of the instant Claim, the wall remained incomplete with the top row of bricks at the same level as the Claimant's back yard.

24. As pleaded on his behalf by his mother in the Statement of Case, the Claimant was playing in the yard "whilst being watched by his mother as usual" when he "fell off his unfenced yard" to the bottom of the drop off. He landed on a steel rod left exposed facing upwards.

25. The Claimant's case is that the Defendant was aware of the existing/pending danger posed by the un-fenced drop off because they spoke with his mother and they had promised her they would return to re-install the fence.

26. The injuries sustained from the fall included an extensive deep laceration wound just above his right eye extending to his forehead and a fracture to his right forearm. The Claimant's further claim is that continuing ill effects from the fall included developmental delays, headaches, nausea, vomiting, and sensitivity to light, dizziness, seizures and obstructive sleep apnea.

27. The case for the Defendant is pleaded in an Amended Defence filed on 26 September 2018. The Defendant contends that it was in March 2007 that it approved a contractor called Phoenix Marine Construction Limited to build the retaining wall as part of a larger community centre building project.

28. At paragraph 4 of the Amended Defence, there is a denial of having dug into the Claimant's father's land. The said denial refers to paragraph 3(b) of the Amended Defence which alleges that the Claimant's father is a squatter. Thus, although the father's ownership of the land is denied the act of digging into the land is not denied.

29. The Defendant denies that the Claimant's backyard was fenced prior to their building project and alleges that, in 2007, the contractor built a galvanized hoarding all around the project site. The fence was said to provide security for all concerned and prevented access to the site.

30. At paragraph 5(a), the Defendant denies that the wall was incomplete and attaches pictures at "B" to the Amended Defence. The pictures purport to depict the completed wall and also to show the galvanized hoarding which the Defendant pleads was still in place up to 2009.

31. The Claimant in Reply to the points pleaded about the wall being depicted in attachment "B" admits that galvanized hoarding was installed after the contractors tore down the existing backyard fence. The Claimant contends that at the time of the incident the hoarding had either blown away or been stolen.

32. Paragraph 11 of the Amended Defence contends that if there was any incident as alleged, it was contributed to and/or caused by the Claimant or his mother's negligence. The particulars of negligence alleged against the Claimant's mother are as follows:

    a) Failing to ensure that the Claimant was properly supervised;
    b) Failing to take proper measures to protect the safety of the Claimant when she knew or ought to have known that construction was taking place;
    c) Exposing the Claimant to a risk of injury of which she knew or ought to have known was present at the time;
    d) Failure to warn the Claimant of the possible risk of danger to his safety.

F. <u>Evidence</u>

33. The Claimant only reached the age of 18 near the end of the instant proceedings. All evidence on his behalf was tendered through his mother and elder brother Tray Sean David who were at home with him on the day of the fall, and three medical professionals. The Claimant himself attended the last day of the Trial as an observer.

34. In addition to Witness Statements and oral testimony of his witnesses under cross-examination, the Claimant's evidence included a number of documents tendered into evidence through these witnesses. Importantly, the Claimant's pleadings that the Defendant's construction agents left the 15 to 20 foot drop off from his backyard and that the wall building project was incomplete were supported by pictures attached as "K.D.3" and "K.D.4" to the Witness Statement of his mother Kim David Purcell.

35. There was also extensive documentation of the Claimant's injuries which was un-contradicted by any evidence tendered by the Defendant.

36. By contrast, the Defendant relied on only one witness, Mr. Carl Lewis, a Project Officer at the Ministry of Community Development who was appointed on a three-year project commencing in 2007. Mr. Lewis died on 27 June 2020. Thereafter, the Defendant filed a hearsay notice on 22 July 2020 and Mr. Lewis's Witness Statement was admitted into evidence by consent.

37. By that time however, the Court had, by Order dated 29 May 2019, determined evidential objections filed on 15 May 2019 by the parties. Many parts of the Defendant's Witness Statement were struck out as inadmissible, including paragraphs 4, 5 and 6 and the photographs at "C.L.1".

38. Those photographs were undated but were said to have been taken by Mr. Lewis and attached to progress reports submitted to a Mr. Etienne Mendez, then Technical Director of the Project unit at the Ministry of Community Development. The reports were not disclosed and the Defendant failed to call Mr. Mendez or any other witness who could speak to the date and content of the photographs.

39. The evidence of Mr. Lewis that was not struck out was firstly, his testimony that he never received a report of an alleged incident involving the Claimant and secondly, that the galvanized hoarding was installed in September 2007. He said the hoarding was all around the site and was at the material time still present. Thus, the "retaining wall and/or construction site would not have been exposed with access to the

Claimant as alleged." Further, Mr. Lewis asserted that there had been no fence in place before that at the Claimant's address.

40. The only evidence tested by cross-examination was that of the Claimant's witnesses. Kim David Purcell's evidence in her Witness Statement and under cross-examination was not discredited by any material inconsistencies with her pleaded case. Her evidence about a fence being in place at her back yard and removed by the Defendant's agents was un-contradicted by any tested testimony.

41. There were two differences that Counsel for the Defendant questioned Kim David Purcell on with a view to discrediting her account. She was asked whether paragraph 7 of her Witness Statement where she said she was bathing when she heard her brother and son shouting as they saw the Claimant fall is different from the Statement of Case which pleads that she was watching Atiba as usual.

42. Then she was asked about paragraph 9 of the Witness Statement which asserts a point about seeing the dirt bank where Atiba fell broken along the edge after his fall, like a small landslide. That point was not included in the Statement of Case.

43. In response to these questions, Mrs. David Purcell did not agree that the Statement of Case said anything different. She had been watching Atiba that day. She admitted that the Statement of Case does not explain how the fall took place and says that is because, although she was watching Atiba, she was not there. In other words, she was not at the spot where the fall took place when it happened.

44. She disagreed with the suggestion that she was not supervising Atiba enough but admitted the point made in Mr. Lewis's Witness Statement that she never reported the fall to the Ministry. Her reason for not doing so was that she was in the hospital with her son for three months due to the fall.

45. The second witness for the Claimant, Trey Sean David, was nine years old at the time of the incident. He corroborated his mother's evidence that he was outside with Atiba

and his uncle was also there watching Atiba. Further, he corroborated that there was a fence in place before the Defendant removed it.

G. <u>Findings on Liability</u>

46. The Claimant's version of events leading to his injuries was supported in every material respect by first hand testimony of his witnesses. His mother was not discredited as there is no relevant inconsistency between the pleading that she was watching Atiba that day and that at the moment when he fell she was bathing. Mrs. David Purcell's testimony is not discredited by her addition to her Witness Statement of a detail that is neither self-serving nor harmful to her case. On the contrary, the addition enhances the credibility of her testimony since she honestly indicated in her Witness Statement that she was bathing at the point in time when she heard the outcry. That per se does not amount to an admission of any negligence on her part.

47. It defies logic and is not practical to conceive of circumstances where a mother's visit to the bathroom is deemed not watching her child. Moreover, the evidence is credible that in watching Atiba, Mrs. David Purcell relied on the help of others including her brother and son as well. Thus, the momentary absence to bathe does not amount to not watching Atiba. He was being watched.

48. The Defendant's case that Mrs. David Purcell willingly accepted the consequences of allowing the Claimant to play in an area where she knew construction was taking place also defies logic. As a three-year-old child, Atiba would be expected to play as part of his healthy development. The Court takes judicial notice, based on photographs provided by the Claimant, that the backyard to his home would be a place where Atiba could be expected to play.

49. It was the Defendant's negligence that rendered the backyard less safe for play by removing the fence and creating a steep drop off. However, this did not mean the Claimant's mother was required to deprive him of any opportunity for playing in the

back yard. There is no evidence from the Defendant that an alternate play area was available for Atiba.

50. This Court's finding is that the fact of a backyard with a steep drop off, consequent on excavation by the Defendant's agents leaving the bare edge where a fence previously kept in place by Atiba's parents was removed, suffices to prove negligence based on *res ipsa loquitor*. This conclusion would only apply, however, if, on a balance of probabilities, the Defendant failed to rebut the Claimant's prima facie case of negligence by proving that a galvanized fence was kept around the site.

51. Accordingly, the credibility of the evidence on both sides must be considered. Generally, there was no tested first-hand testimony to support the Defendant's case.

52. The case of **Wisniewski (A Minor) v Central Manchester Health Authority [1998] EWCA Civ 596** provides guidance on adverse inferences that can be drawn where a party fails to present evidence.

> "*There is a line of authority which shows that if a party does not call a witness who is not known to be unavailable and/or who has no good reason for not attending, and if the other side has adduced some evidence on a relevant matter, then in the absence of that witness a judge is entitled to draw an inference adverse to that party and to find that matter proved*."

53. In the instant case adverse inferences are drawn from the fact that the Defendant failed to call any witness other than Mr. Lewis who died. There was no explanation given for not calling Mr. Etienne Mendez, then Technical Director of the Project unit at the Ministry of Community Development or even a representative of the contractor, Phoenix Marine Construction Limited, to support the Defence that there was no fall because a galvanize hoarding would have prevented the possibility of Atiba's fall.

54. Playing in his backyard would have been an irresistible attraction for the Claimant as it would be for any toddler. The said act of playing did not break the chain of causation

as it would be reasonably foreseeable to the Defendant's agents that a child would play in his backyard and could fall over the unfenced drop off point left by their construction.

55. Further, the Claimant's case establishes, on a balance of probabilities, that there was no contributory negligence by his mother. She took all reasonable steps to watch him with the assistance of two other relatives. He was in full sight of his relatives when he fell. Their view, based on observations after the fall, is that the unfenced drop off point crumbled under Atiba.

56. In closing submissions, Counsel for the Defendant made much of the fact that it was only in the Claimant's Witness Statements that the idea of crumbling of the edge of the ground forming a sort of landslide was raised. However, my finding is that there was neither any material inconsistency between pleadings and evidence nor discrediting of the Claimant's case by lack of expert proof of a landslide.

57. There was no need for an expert to prove a landslide or incomplete retaining wall as suggested by the Defendant. Although the word landslide was used, it is clear the Claimant's witnesses were not speaking about a major incident. Their evidence of what they saw merely serves to provide the court with a feel for the state of mind of the relatives after the fall.

58. They were trying to figure out how Atiba's fall happened and noticed the crumbling of the edge of the drop off point. Whether they noticed that crumbling effect or not is irrelevant to the fact that Atiba fell. The primary cause of the injury was the Defendant's creation of the drop off from the back yard and failing to keep it fenced. Thus, I find it immaterial whether the mother was bathing or not, whether relatives were outside and she was not on the spot at the moment of the fall or whether the edge of the drop off point crumbled or not.

59. The Defendant failed to establish that the Claimant's father's residence at the Morvant property was unlawful or that he was a squatter. On the contrary, the

Claimant's unrefuted evidence, supported by a document issued by the State, is that his father lawfully occupied the said lands, by express license from the State. There was no evidence from the Defendant to disprove that the Claimant's father was, prior to the grant of a certificate of comfort, entitled to a possessory title to the property.

60. The Claimant proved his case that, even if it is true that the Defendant initially placed a hoarding around the site, the said hoarding was not in place when the Claimant fell. As it was reasonable to foresee the danger of such a fall, particularly to a child, the Defendant's failure to take the reasonable step of re-installing the Claimant's fence and/or keeping the galvanize hoarding in place was negligent.

61. Accordingly, the Defendant, having a sufficient degree of control over the construction site for the community center project failed to discharge the common law duty of care owed to the Claimant as a lawful resident of the neighbouring property. The Claimant proved a set of facts, which went beyond a prima facie inference, that the accident was caused by negligence on the part of the Defendant. The Defendant failed to sufficiently provide evidence to displace the strong evidence and inference of negligence proven by the Claimant. The issue of liability for negligence will therefore be decided in the Plaintiff's favour.

H. <u>Assessment of Damages</u>

General Damages

62. In assessing general damages in personal injury claims, the Court is guided by the learning in **Cornilliac v St Louis (1996) 7 WIR 491at 492,** Wooding CJ stated the following factors which must be taken into account:

> "It is essential, therefore, to recapitulate the several considerations which the learned judge had to bear in mind when making his assessment…as follows:
>
> (i) the nature and extent of the injuries sustained;
>
> (ii) the nature and gravity of the resulting physical disability;
>
> (iii) the pain and suffering which had to be endured;
>
> (iv) the loss of amenities suffered, and

(v) the extent to which, consequentially, the appellant's pecuniary prospects have been materially affected."

Items (i) to (iv) above are the items of non-pecuniary losses. While item (v) is pecuniary loss.

63. The Claimant tendered into evidence a number of medical reports, records and psychological assessments to support the claim for general damages. Some of these documents are now summarised in turn.

64. A medical report from Dr. Lalla at the Eric Williams Medical Sciences complex, dated 19 November 2010[1], states *inter alia*:

- The Claimant was seen in the Paediatric Priority Care Facility on 24 June 2008 for a history of a fall from height with a laceration wound between both eyes.
- No history of loss of consciousness, no vomiting and no seizure effects.
- The Claimant was in severe painful distress. He looked drowsy and his heart and lungs were normal.
- Extensive deep laceration wound just above the right eye extending to the right forehead.
- CT Brain – Normal.
- Diagnosis deep laceration wound on right forehead extending to the right eye. Underwent surgery for repaired and suturing of laceration.
- Diagnosis grade 1 supra condylar, fracture right Humerus treated with Elbow slab.

65. A medical report from Mount Hope Radiology Services, dated 17 July 2013, and prepared by Dr. White[2] states:

- CT Brain – no abnormality detected.
- Sustained fracture to the right radius and laceration to the nose bridge and right upper lip.

[1] attached to the supplemental witness statement of Kim David-Purcell
[2] KD 9 - attached to the supplemental witness statement of Kim David-Purcell

- Currently experiencing development delay since fall as well as frequent headaches.
- Ruled out intracranial injury/hematoma.

66. A medical report, dated 8 January 2014 by Consultant Paediatrician and Eric Williams Medical Sciences Complex Paediatric Clinic (Child Development Clinic) Department Head, Dr. Ramcharan, sets out examination findings including the Claimant's sleep apnea and vision concerns. Dr. Ramcharan gave evidence confirming the medical report and the progress notes[3].

67. Under cross-examination, Dr. Ramcharan was asked about the statement in the medical report about: *"Currently experiencing development delay since fall as well as frequent headaches."* Counsel for the Defendant underscores that Dr. Ramcharan said before the fall the Claimant was experiencing developmental delays. However, it is obvious that since she had not examined Atiba before the fall such a diagnosis was not logical. My understanding of her evidence was that she meant to say Atiba suffered developmental delays long before she first met and examined him in 2013. Dr. Ramcharan stated that when she first saw the Claimant in 2013, he had a developmental delay. There were speech and language issues.

68. On 16 January 2014, Dr. Dumas and Dr. Persad compiled a Psycho-Educational Evaluation report after examining the Claimant. The report concluded as follows:

> *"Significant impairment in at least two areas of adaptive functioning as well as extremely low general intellectual functioning is usually suggestive of a Mental Disability. Overall analysis of the historical, familial, and observational information, synthesized with the psychometric results of Atiba's profile suggest features that are consistent with a diagnosis of Mild Mental Disability."*

[3] Pages 119- 213 - supplemental witness statement of Kim David-Purcell

69. Under cross-examination, Dr. Dumas stated the Claimant's mother provided the information to her. Dr. Dumas corrected the report and indicated that she was told that developmental delays in speech would have occurred after the accident.

70. Further, Dr. Dumas stated that the family's history of learning difficulties was brought to her attention during the intake sessions. The Claimant's brother has a learning disorder, and his mother cannot read or write (literacy skills).

71. Dr. Dumas was referred to her report under the heading "Under Development". It refers to complications during pregnancy, and it was suggested that the Claimant ingested meconium. In cross-examination, she was asked whether ingesting the said fluid could cause damage to the brain. In response, she stated: *"Yes, it can. If not immediately attended to, it can be a risk factor."*

72. Dr. Dumas was asked whether, with a CT scan result that revealed no brain abnormalities/injury, a person can still be assessed as having a mental disability. She replied: *"You can be diagnosed with an intellectual disability or any other neurological developmental disorder without having a brain injury once there are risk factors and once you undergo the process of assessment and meet the criteria. You can arrive at the same diagnosis with different conditions or environmental factors."*

73. Dr. Dumas agreed with Counsel for the Defendant that risk or environmental factors could include a family history of learning disability.

74. Ms. Roberts, a clinical psychologist, gave evidence based on her Psychoeducational Evaluation Report dated 24 March 2021 and supplemented on 10 October 2022.

75. Ms. Roberts stated, *"…based on my assessment, I can advise that the nature of Atiba's disability is significant and can be consistent with someone who suffered significant brain damage."*

76. Concerning the family history of learning difficulties, Ms. Roberts noted that the mother also experienced expressive and receptive language difficulties. Further, concerning the Claimant's low intellectual functioning, Ms. Roberts indicated that a family history where a mother or even a brother is unable to read or write, may suggest a correlation, and there is evidence that suggests that family history increases the likelihood of it, but she cannot establish causation.

77. The Court asked Ms. Roberts, based on her experience, whether a child sustaining such brain injuries at an early age could result in intellectual difficulties. Ms. Roberts replied: *"Yes, there is a strong causal link between traumatic brain injuries and manifestation of intellectual deficits: deficits in communication, cognition, executive functioning. A stronger causal link. However, it has to be assessed at the time, and so because I was not able to assess it at the time, I was not able to establish that relationship."*

78. Counsel for the Defendant then asked Ms. Roberts if a medical report stated that there was no brain injury as a result of the fall, what would be her assessment regarding the cause of his low intellectual functioning. Ms. Roberts replied: *"I would not be able to establish a cause. I would just say what his level of functioning is and how his brain has developed."*

79. When questioned about other contributing factors in the absence of a brain injury, she stated: *"In the absence of brain injuries…absence of proper educational exposure, the presence of abuse in the home, distortion to his early childhood such as moving around a lot, displacement, conflict in the school, things that disrupt what average child would experience."* She said those did not apply to the Claimant.

Pain and Suffering

80. The case for the Claimant is that he experienced a severe laceration to the face affecting his nose bridge and upper eye lid as well as fractured radius. He continues to suffer from various health complications such as headaches, nausea, vomiting, sensitivity to light and sound, dizziness, seizures and obstructive sleep apnea as

recorded in medical records[4]. In considering these injuries, the Court takes note of the following comparator cases:

a. **Chaitram et al v Guevara HCA No. S.53 of 1979 (Best J) (1990)** – The plaintiff was seven years old at the time when he was knocked down by a motor vehicle. A medical report indicated that on admission, he was comatose with small, equal reacting pupils, increased tone in all limbs, a deep laceration in his right temple and numerous abrasions about his body. The court found that due to the compound depressed fracture which he sustained and his post-traumatic amnesia, the plaintiff did indeed suffer a mild atrophy of the brain, but that, with the passage of time, there has been some healing without any occurrences of epileptic seizures, as the E.E.G. attested there was no focal abnormality in the brain.

   A neurosurgeon testified that he saw the plaintiff professionally and performed brain surgery. The doctor indicated that, in his opinion, the plaintiff was then fully conscious and well-oriented with no Neuro-surgical deficit. However, the doctor became seized with certain reports from the plaintiff's school life, which indicated deterioration. He was of the opinion that the plaintiff had complications associated with his injury, which seemingly affected his intelligence and performance.

   Further, although the plaintiff seemed physically normal, the evidence of degenerative damages in the brain and the time lapsed would suggest that the injury was permanent but could be progressive.

   Also, it was the doctor's view that the plaintiff was likely to suffer from headaches and dizziness. In cross-examination, the doctor indicated that the injury, although the E.E.G. showed no organic damage, could be bio-chemical in nature. However, after analysing the doctor's testimony, the court rejected his biochemical theory.

[4] See e.g. at page 119 of the supplemental trial bundle the entry on a visit with Dr Ramcharan on 19 July 2013.

Also, prior to his injury, he was a pupil at St Michael's Anglican School, Princes Town, where he excelled in Standard 1. The plaintiff was subjected to psychological testing, and it was revealed that his I.Q. was within the mentally defective range of intelligence and that his memory proved defective in the light of his immediate attention span and short-term and long-term ability to recall incidents.

After taking into account evidence concerning the plaintiff's intellectual abilities (pre and post-incident) and witnessing him in the box, the court was of the view that it is probable that his intellectual development may never keep pace with his age, thus depriving him of leading an independent life. Further, it is probable that he may never be able to gainfully enter the employment market, and therefore, he suffered substantial injury to his future earning capacity.

Awarded: General damages - $45,000.00 (non-pecuniary) (adjusted to 2020 - $163,925.00) and $95,000.00 (loss of future earning)

b. **Mohammed et al. v Singh S 318 of 1988 (Paray-Durity, M) (1996)** – The plaintiff was five years old at the time when she was involved in a motor vehicle accident. As a result of the accident, she sustained a laceration to the right forehead (7cm long to right cheek), right periorbital haematoma and extensive deep friction burns to the right upper arm, right wrist, and medial and lateral aspects of the right thigh. Also, a severe cerebral concussion.

After the accident, she stayed at home for one year. The doctor who first saw the plaintiff testified that her complaints were headaches in the right frontal and temporal regions, which occurred very frequently and occasionally accompanied by dizziness. She also complained of pains in her right eye precipitated by reading and relieved by wearing spectacles. Neurological examination was normal.

There was a healed scar approximately 5 cm over her scalp's right frontal temporal region, a palpable depression in the bone beneath the scar and some tenderness over the right temporal region. There was another healed scar over the right temporal region measuring approximately 4 cm, a healed hypertrophic scar over the medial aspect of her right upper arm and another over the distal end of the right radius. There were healed abrasions over her right thigh's medial and lateral aspects. Skull X-rays revealed no evidence of fracture. In the doctor's opinion, this plaintiff sustained a moderately severe head injury, which resulted in a moderately severe brain injury. He estimated her permanent partial disability to be fifty per cent (50%) and concluded that she could suffer from a loss of ability to learn and to reason.

In cross-examination, the doctor testified that he did not at any time have the academic record of the plaintiff, who was about nine (9) years of age when he saw her. All the physical tests done on her were normal. However, she was unable to perform simple arithmetic and was slow in answering questions and concluded that there was some abnormality in that aspect of her brain. He found her to be not normal. He agreed that her environment and upbringing would contribute to her level of intelligence, and in assessing disability, one should make an effort to assess the mental state of the patient prior to injury.

Further, physiological tests were conducted on the plaintiff, placing her at a broad-line defective range, a level below normal intelligence. An analysis of the Bender visual motor gestalt test produced four instances of drawings commonly associated with brain damage.

The court accepted the evidence of her injuries and noted that she was a child of five (5) years of age at the time of the accident. The court was of the view that the pain, fear and discomfort felt by a child of such tender age would be acute.

From this evidence, the court inferred that there was neuropsychological impairment, but the expert evidence was not precise as to the extent of the damage. The court, therefore, gave the plaintiff the benefit of the doubt, that is, it did affect her academic performance to some extent. The court noted that there was some brain damage and minor personality changes.

Awarded: General damages: $70,000.00 (non-pecuniary) (adjusted to 2020 - $312,965.00) and $45,000.00 (loss of future earning)

c. **Mitchell et al. v Antoine et al. HCA No 1406 of 1991(Best, J) (2002)** – the plaintiff, eight years old, was involved in a motor vehicle accident. As a result, he sustained a linear fracture of the skull temporal, parietal region, fracture of the shaft of the left femur, multiple lacerations to the left side of the scalp, multiple superficial lacerations to the back, lacerated wound on the lateral aspect of the left ankle, some atrophy to the left frontal and temporal lobe of the brain. Assessed with a Permanent Partial Disability at 15%.

A neurosurgeon saw the child and, after scans, was of the opinion that the child's brain was consistent with residual brain injury of moderate severity. The doctor assessed the infant plaintiff with a Permanent Partial Disability at 35%.

A psychologist then saw the plaintiff. After tests, the results indicated that the plaintiff had an IQ level somewhat below the average but had made good progress in word recognition and skills. Further, there was a mild impairment of higher-level adaptive ability and mild generalizing brain dysfunction.

Awarded: General damages of $90,000.00 awarded (non-pecuniary) (adjusted to 2020 - $402,383.00) and $50,000.00 (loss of future earnings).

d. **Gosihe v Gorie HCA S-191 of 1974 (Iles, J) (1975)** – The plaintiff suffered an injury to the right eye, dimness of vision, severe headaches and bruising of the forehead, cheek, chin, shoulder and left leg. Her principal injury was a 1/2" skin

deep laceration above the right eye and haematoma of the right eye with damage to the sclera (the outermost membrane of the eyeball.

Awarded: General damages: $4,000.00 (adjusted to 2020 $91,630.00)

e. **Peters v Ramjohn and New India Assurance Company Ltd TT 2010 HC 243 (Best J) (2010)** - The Claimant was a back passenger in a motor vehicle when it collided with a motor vehicle. The Claimant suffered from a moderately severe head, neck and back injury. There was no clinical evidence of brain damage. However, the Claimant sustained a laceration on her head and lost consciousness for an unknown period of time. She was diagnosed as suffering from Post-Concussion Syndrome, which manifested itself with a consistent headache. Further, she suffered from dizziness, difficulty sleeping, sensitivity to noise and music, loss of consciousness, and personality problems with her husband.

Awarded: General damages - $90,000.00 (adjusted to 2020 $112,089.00); Special damages - $3,335.92; Loss of earning $85,917.36.

f. **Matthew Tambie v Joseph Coraspe and Motor One Insurance Company Limited CV2015–02989** (Donaldson-Honeywell J) (2018) – The Claimant diagnosed with post-traumatic stress disorder and cerebral irritability secondary to head injury was recommended to a neuro-psychologist after being involved in a collision that threw him from his bicycle and into a drain face down. He was dragged as the Defendant's vehicle continued. He suffered from constant pains in his neck and headaches and no longer had a positive interaction with his family and other persons. He lost interest in socializing and cycling after the accident.

Awarded: General damages - $52,964.00

81. In addition to the foregoing, the Court considered the comparators cited in the parties' submissions. The Claimant submitted the following comparators:
    a. **Ian Sieunarine v Doc's Engineering Works (1992) Ltd** – Awarded general damages of $200,000.00 in May 2005 (updated to 2023 $512,396.96)
    b. **Menraj Seemungal v Rawtee Mohess and Anil Beharry HCA S-2092 of 1987** – Awarded general damages $37000.00 in March 1993 (updated to 2023 $175,114.50)
    c. **Matthew Tambie** *(supra)* (updated to 2023 $61,321.53)
    d. **Toni Marie Salina and another v Presidential Insurance Company Limited CV2018-00059** – Awarded general damages $200,000.00 in April 2021 (updated to 2023 $224,841.34)
    e. **Sam v High Commissioner of India and others CV2007-00206** – Awarded general damages $220,000.00 in July 2008 (updated to 2023 $528,682.17)

82. Based on these authorities and the nature of the injury suffered, Counsel for the Claimant submits that **$350,000.00** in general damages is appropriate.

83. The Defendant submits that, except for **Matthew Tambie** *(supra),* the authorities cited by the Claimant are not applicable as the injuries sustained are more serious than those sustained by the Claimant. Further, the Defendant submits that the Claimant's diagnosis of Intellectual Disability was not a proven result of the fall. The Defendant submits the following comparators as more applicable:
    a. **Dwain Kirby Henry v Attorney General CV2008-03079** - Awarded general damages $35,000.00
    b. **Frankie Bartholomew, Terrel Toney, Randy St Rose, and Leon King v Attorney General CV2009-04755** - awarded general damages of $35,000.00
    c. **Ryan Puncham v The Attorney General CV2016-04003** - Awarded general damages $10,000.00
    d. **Mahadeo Sookhai v The Attorney General CV2006-009886** - Awarded general damages $25,000.00

84. The Defendant therefore contends that $50,000.00 would be adequate compensation for the Claimant. There is merit to the submission of the Defendant. The comparators supplied by the Claimant concern injuries that are more extensive than those suffered by the Claimant.

85. The above-mentioned cases of **Chaitram, Mohammed and Mitchell** involving injuries to an infant/child, although of some vintage, demonstrate how the Court assessed brain injuries and the claim of developmental impairment. In those cases, there was evidence of brain dysfunction, which allowed the Court to find, on a balance of probabilities, that the accident or event resulted in decreased intellectual development.

86. For instance, in **Chaitram**, the Court analysed the evidence of a neurosurgeon, evidence of the child's educational standing prior to the accident, a report on psychological testing, medical reports and observations of the child in the witness box and concluded that it is probable that the accident caused impairment to the child's intellectual.

87. In the instant case, the clinical history from the CT scan of the brain revealed no abnormality of the brain, inter-cranial injury was ruled out and the brain was normal. While the psychological report diagnosed the Claimant with Mild Mental Disability, the report was based on the analysis of the historical, familial, and observational information. Dr. Dumas and Ms. Roberts agree that someone can be diagnosed with an intellectual disability or any other neurological developmental disorder without having a brain injury. There are other risk factors, which include genetics (a family history).

88. On a balance of probabilities, there is no causal link between the accident and the Claimant's intellectual disability. In the absence of diagnosed brain injury and since there is some evidence of a family history of learning difficulties, there is insufficient evidence to link the accident and the diagnosed developmental delays.

89. In assessing pain and suffering, I am mindful that pain is subjective. The Claimant was three years old at the time of the accident. As stated by Master Paray-Durity in **Mohammed et al. v Singh** *(supra)*, the pain, fear and discomfort felt by a child of such tender age would be acute. The medical report states the Claimant was in severe painful distress and that he looked drowsy. Further, the Claimant's mother states that the Claimant still experiences various health complications such as headaches, nausea, vomiting, sensitivity to light and sound, dizziness, seizures and obstructive sleep apnea.

90. In the circumstances, a fair and adequate compensation for the Claimant's injuries, pain and suffering is within the range of **$80,000 to $120,000.00**. based on the authorities of **Gosihe v Gorie**; **Peters v Ramjohn**; **Matthew Tambie v Joseph Coraspe**; and **Chaitram et al. v Guevara**.

Future Loss

91. The Claimant's pecuniary prospects hinge on the finding as to whether there is a causal link between the fall and the intellectual disability.

92. Counsel for the Defendant submits that the Claimant is not entitled to loss of earnings since the diagnosis of mild mental disability was not as a result of the fall.

93. Having concluded, based on a balance of probabilities, that the mild mental disability was not caused by the accident, the claim for an award for future loss fails.

Special Damages

94. Generally, special damages must be specially pleaded and proven. The learning by Archie CJ in **Rampersad v Willies Ice-Cream Ltd Civ App 20 of 2002** is instructive when determining the extent of proof required.

95. In **Ramnarine Singh v Ganesh Roopnarine and The Great Northern Insurance Company Limited CA No.169 of 2008**, Mendonça JA stated:

"90. Pretrial loss is an item of special damage. It has to be pleaded and particularized and strictly proved. The degree of strictness of proof that is required depends on the particular circumstances of each case. As Bowen L.J. said in **Ratcliffe v Evans (1892) 2 Q B 524, 532 - 533**:

> "In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles to insist upon more would be the vainest pedantry."

"97. From these cases it seems clear that the absence of evidence to support a plaintiff's viva voce evidence of special damage is not necessarily conclusive against him. While the absence of supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff's claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed, in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason."

96. The Claimant pleaded special damages in the amount of $14,975.00. This sum is broken down as follows:
    a. Transportation to and from doctor officers - $10,050.00 ($150.00 x 67 visits);
    b. Medical expenses - $325.00;
    c. Home care – $4,600.00 ($300 per day for 14 days).

97. Regarding each item of special damages, no receipts or documentary evidence were provided. As to the Claim for transportation expenses, the Claimant's mother said every time she carried the Claimant to the clinic, she hired a private vehicle and was charged $150.00. She asked the driver for receipts but did not receive any.

98. In my view, the sum claimed seems reasonable in all circumstances. The alternate of public transportation would have been impractical given the injuries sustained and the resulting discomfort. The 67 trips to the clinics claimed include the visits regarding the physical injuries and the visits for mental development assessments.

99. Regarding the home care, the Claimant's mother stated a nurse was hired to help with applying medical treatment to the Claimant. She tried to contact the nurse to have her testify but was unsuccessful. The Claimant has not produced any receipts in evidence nor the nurse's name.

100. As for the medical expenses, the Claimant relied solely on the written pleadings and evidence of his mother. There was no documentary evidence of the $325.00 in medical expenses.

101. Overall, the Claimant has established her claim as reasonable for home care and medical expenses. She will be awarded the full claim of special damages.

I. Conclusion

102. The Claimant has successfully proven the Claim on a balance of probabilities.

103. **IT IS HEREBY ORDERED** that:

i. There be judgment for the Claimant.

ii. The Defendant shall pay to the Claimant: -

a) General damages in the sum of $115,000.00 plus interest thereon at the rate of 2.5 % from 18 January 2018 to the date of this judgment calculated in the amount of $132,698.67

b) Special damages in the sum of $14,975.00 plus interest at 1.25% from 18 January 2018 to the date of this judgment, calculated in the amount of $16,127.36

iii. The Defendant is to pay to the Claimant the prescribed costs of the claim in the amount of $31,323.90

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Eleanor Joye Donaldson-Honeywell

Judge