IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM No. CL1996/C117

BETWEEN	VELORIS CRANSTAN	CLAIMANT
AND	MARS AUTO PARTS & TRANSMISSION SERVICES LTD.	DEFENDANT

Mr. Sylvester Morris for the Claimant

Mr. Anthony Pearson instructed by Pearson & Company for Defendant

Heard: November 30, 2005, December 2 and 16, 2005

Straw J (Ag.)

The claimant, Veloris Cranstan, 54 years old, is suing her employers, Mars Auto Parts & Transmission Services Limited in negligence for breach of their duty of care. In the alternative, she is alleging breach of the Occupier's Liability Act.

Ms. Cranstan was employed to the defendant company as an office helper. On May 26, 1995, she was so employed. Her duties included dusting, mopping the floor, cleaning windows and bathrooms. Her working hours were 9:00 a.m. to 6:00 p.m. During this time, she had expressed instructions to clean the building twice per day, at 12:00 p.m. and again at 4:00 p.m. and/or possible 5:00 p.m.

The building has a flight of stairs that connects the ground floor, second floor and third floor. At about 11:30 a.m., Ms. Cranstan fell on the stairway whilst proceeding from the third floor. She sustained injuries in the process which are the subject of this claim. She is alleging that she slipped on oil or grease on the staircase and that this was

due to the defendant's negligence and/or unsafe system of work at the defendant's premises.

In the alternative, she is claiming Breach of the Occupier's Liability Act, that is, the defendant failed to ensure that the claimant was safe in using the premises for which she was invited to be there.

Mrs. Claudette Marsh is one of the directors of the defendant company. Her duties include staffing the firm and providing the staff with the necessary work gear. Ms. Cranstan was provided with all the necessary tools for her job including a uniform but no safety gear. In her witness statement, Mrs. Marsh explained that the claimant was not provided with any safety gear as she did not think any was required for the type of tasks performed and the environment in which she worked.

The work place and general layout

The defendant company specializes in automatic transmission parts and services. There are three floors to the building. Parts are kept in a showroom on the third floor. There is a transmission room downstairs (apparently outside where the cars are fixed). The auto mechanic staff work in the transmission room. Staff members work in the office and also in the merchandise section.

According to Mrs. Marsh, only management and staff from the merchandise department have access to the parts on the third floor. If the auto mechanics require parts, they request it from the merchandise staff who would then retrieve the parts from the storeroom.

Ms. Cranstan, however, has stated that the auto mechanics take the oily and leaking parts (from the cars that are being repaired) into the office and up to the third

floor in order to collect parts and bring them downstairs. It is for this reason that she has stated that the stairs are usually full of liquid and oil leaked from the transmission.

According to her, this was the reason for her fall. She had gone up the stairs at about 11:30 a.m. to the restroom on the third floor to collect toilet tissues, disinfectant and a dust bin. She placed the articles in the dust bin and was descending the stairs. She cannot recall if there were any railings. At any rate, one hand was holding the dust bin and the other hand was by her side. She indicated that she only used the stairs at 12:00 p.m. and 4:00 p.m. (Her scheduled times of cleaning) and if Mrs. Marsh required her to do something. She said she did not see any grease on the floor. On reaching the second floor, she slid, rolled down the stairs and ended up on the floor of the ground floor. She noticed grease on her skirt and at the bottom of her leg, feet and her shoes. At the time she was wearing leather shoes with what she referred to as 'gritty, gritty bottom.' She had not yet started the 12:00 p.m. clean up.

The claimant is alleging that the defendant failed in its duty of care to provide and maintain a reasonable safe place to work. That the system which allowed oil/grease to be on the staircase was dangerous and that the defendant company was well aware of the hazards involved and failed to do anything about it.

Mr. Morris, the claimant's attorney, referred the court to the evidence of Mrs. Marsh. She stated, inter alia that Ms. Cranstan wore sneakers made of canvas and that she had spoken to her more than once about her choice of footwear. That, on the actual morning of the incident, she (Mrs. Marsh) said to Ms. Cranstan: "You still in those sneakers" and that Ms. Cranstan replied, "them comfy."

She further stated that Ms. Cranstan received no footwear and that she (Mrs. Marsh) had come to the conclusion that it was not necessary. She said the following:

> *"When oil gets on bottom of smooth sneakers or it gets rainy, it can be dangerous. ... In my opinion, she should wear something sturdier to prevent her from sliding. I am conscious she could slide. I never gave her the right shoe. ... I should think a gritty bottom shoes should be part of a safety gear. It would grip concrete and prevent chance of sliding less. People would walk on the stairs coming from outside. There was grease and water outside in transmission area....*
> *...I offered her shoe and she said she was comfortable. I was conscious she could fall based on gear she was wearing."*

At paragraph 7 of her witness statement, Mrs. Marsh stated that on the day of the incident she had warned Ms. Cranstan of wearing old sneakers with which the water and possible grease coming from outside could prove dangerous.

Under cross-examination she explained this to mean that water and grease coming from her feet from outside, not grease from the workmen. At any rate, the defendant has denied that oily parts are transported up the stairs, that no such system of work exists.

The court has considered the submissions of both counsel on the issue of liability. In deciding on the issue of liability, the court found it instructive that the defendant has admitted that the reason for Ms. Cranstan's instruction to clean at 4:00/5:00 p.m. is to prepare the building for the next workday. However, she is also instructed to clean at 12:00 p.m. as the place would be in need of cleaning at that time.

Secondly, her witness statement avers that at the time of Ms. Cranstan's fall, Ms. Cranstan had already been mopping the stairs and had completed wiping the stairs and that therefore there would be no grease on the staircase at that time. However, she also

admitted that the time of the incident which was sometime after 11:00 a.m., the steps would be dirty. Under re-examination she said as follows:

> *"On the day when Ms. Cranstan fell, the steps had not been wiped from evening so they would have been dirty but not with oil."*

The court has not found Mrs. Marsh to be a reliable witness. The court also has to consider why the stairs would be dirty by 11:30 a.m. if it is only staff on the inside who would use the stairs. In her evidence, Mrs. Marsh indicated that it was about six staff members.

The court therefore asked the following questions:

1. What caused the dirt on the stairs by 11:30 a.m.?

11. Why was it necessary for a twice daily clean up?

The defendant has given no explanation to this. The claimant has given an explanation from which the court can draw an inference that the premises are used in such a way that it is necessary for the stairs and other areas to be cleaned at 12:00 p.m.

The court further finds Mrs. Marsh discredited in relation to the issue of the footwear of Ms. Cranstan. She states on the one hand, that she did not think any particular safety gear was required by Ms. Cranstan for the type of tasks she performed and the environment in which she worked.

On the other hand, she also testified that she considered the footwear worn by Ms. Cranstan as being unsuitable and that she had spoken to her more than once about the issue.

However, she also stated that Ms. Cranstan received no footwear and she had come to the conclusion that it was not necessary. At another stage of her evidence she states that she offered Ms. Cranstan shoes and Ms. Cranstan said she was comfortable.

In **Paris v Stepney Borough Council**, 1951 1 ALL ER, 49 at page 50, Lord Oaksey explained the duty of the employer as follows:

> *"The duty of an employer towards his servant is to take reasonable care for the servant's safety, in all the circumstances of the case."*

This general duty of the employer to take reasonable care for the safety of his workmen extends in particular to the safety of the place of work, the plant and machinery and the method and conduct of the work although it is not restricted to these matters (per Lord Justice Nield in **Richardson v Stephenson Clarke Limited**, Volume 3, 1969 ALL ER).

The court accepts Ms. Cranstan as a credible and reliable witness on the issue of the work environment. The court is not so impressed with Mrs. Marsh, the defendant's witness. She has been totally inconsistent in regards to the issue of the footwear.

The court also accepts that the claimant fell as a result of this oily substance on the stairs. The court finds that the defendant was negligent especially in regard to the safety of the place of work and the method and conduct of work.

The issue of contributory negligence

Is the claimant guilty of contributory negligence? The defendant's attorney, Mr. Pearson, submitted that she ought to have been holding onto the railing of the stairs. Ms. Cranstan was employed to clean the stairs. She knew of the possible presence of oil and grease on the stairs.

Ms. Cranstan was obliged to clean the staircase at a particular time. The court finds that the defendant knew of the risk to her safety in relation to footwear. If she had been given the footwear and refused to wear it, then she could possibly be found guilty of contributory negligence. However, this was not the case. The court accepts that she was never offered suitable footwear. Under the circumstances, there was no act or omission on her part which has materially contributed to the injuries sustained. On the evidence, there was no failure by Ms. Cranstan to use reasonable care for her own safety (**Charlesworth and Perry on Negligence** 8th Edition, page 179 para. 3-03).

In relation to the issue of liability, the court therefore grants judgment to the claimant.

1. Assessment of Damages

General Damages

There were six medical reports tendered on behalf of Ms. Cranstan. Exhibit 6 is the medical report of Dr. Green. She was examined by him on July 13, 1995. As a result of the fall on the May 26 1995, she complained of moderately severe back pains. She had severe tenderness over lumber spine and restricted movements of her back because of pain and tenderness. An x-ray revealed that she had sustained a fracture to the tip of the third left lumber process. The injuries were considered to be moderately severe.

She was last seen by Dr. Green on the August 31, 1995. At that time she was still complaining of back ache. An x-ray done on the August 22, 1995 revealed that the fracture was fully united. He however, had suggested follow-up care by a specialist in view of her persistent symptoms.

Exhibit 2 is the medical certificate of Dr. Golding dated February 19, 1996. He first saw the claimant on January 18, 1996. At that time she was complaining of a chronic backache with tenderness over the left lumbar spine, numbness in the left lower extremity and pain and numbness in perineum

Dr. Golding's examination revealed no definite physical sign that any serious injury was caused by the fall in May 1995. In his opinion, her problem was particularly due to a poor relationship with her employers who had apparently laid her off work. He describes her discomfort as an anxiety reaction rather than due to physical damage.

2. <u>The claimant's evidence in regards to her condition</u>

Ms. Cranstan stated that she returned to work two weeks after the incident. However, she was still in pain so she was sent on further sick leave. She returned to work but was dismissed a couple months after.

She further stated that she is still suffering severe pains over her body, that this has reduced her ability to work or take care of her home life; that her sex life has also been affected as any attempt to have sex would result in extreme pain. This has caused a lack of sexual activity and depression.

She could make no effort to find a job until the passage of one year, but because of the pain, she only worked for three weeks. She received physiotherapy for one year. At the present time, she cannot stand for long, walk or sit for a long period of time.

Dr. Neil's medical report dated September 23, 1996 (Exhibit 2) states that he saw the claimant in August 1995, as a result of her referral to the Orthopaedic Outpatient Clinic. He states that although she had been treated with analgesic and physiotherapy, there was no significant improvement. All investigations done revealed that everything

was normal but as of September 23, 1996, Ms. Cranstan continued to complain of back pain.

In Dr. Green's second medical report dated April 29, 1998 (Exhibit 4), he stated that, in his opinion, her injuries are of moderate severity and possible future complications include chronic lower back pain that may be refractory to treatment.

A third medical report from Dr. Ballin was dated June 30, 2000 (Exhibit 5). He states that an x-ray and MRI show no structural defects but that the patient has a persistent painful area in her lower back which has not responded to treatment and causes pain which radiates to her lower limb.

At that time he could not say if there would be any permanent disability. She was referred back to Dr. Dundas. His final report, Exhibit 7 is dated July 14, 2000. He saw Ms. Cranstan again in July 2000 after her treatment by Dr. Ballin. He reported that she was still complaining of low back pain and inability to do her domestic chores, that her pain was aggravated by forward flexion and prolonged standing.

He diagnosed her as having a possible lumbar disc prolapse. However, he could not confirm this as the procedure to establish this condition, which is a discogram, is not currently conducted in Jamaica. He gave an unequivocal estimate of her whole person disability as being in the range of 5%. Based on the medical reports, there is no accurate or current status report in relation to the claimant's health. It is quite clear, however, that she has experienced problems related to her back since the fall. This is confirmed by the medical reports.

Cases to assess award

Mr. Morris cited the case of **Merdella Grant v Wyndham Hotel** at Khan 4, pg. 194. The claimant in this case suffered a fall while sitting in a chair which collapsed beneath her causing her to fall backwards on March 19, 1988. She was diagnosed with a fracture of traverse process on the L 5.

On June 28, 1989 she saw Dr. Dunbar because of residual low back pain radiating in her left leg. She went to Canada where magnetic resonance showed median hernia of the L4 – L5 with degeneration. She was treated by injection which improved sciatic pain and decreased low back pain. In May 1994, she was still complaining of low back pain radiating to the left leg. In May 1995 she was diagnosed with chronic herniation of the L4 – L5 and assessed with permanent partial disability of 25 %.

It was the opinion of Dr. Fray that her condition would worsen with time and she would require physiotherapy for the rest of her life; that she would have to retire early from her present employment. The details of the medical condition of Ms. Cranstan suggests more serious injuries than in the present case. The updated award is about $3,000,000.00.

On the lower scale, Mr. Morris cited the **Gayle v Whiteman, Harrison,** page 48. This was a consent judgment, the updated award for pain and suffering and loss of amenities is in the region of $560,000.00.

The court also considered the following cases:

1. **Pearlman v Anglin,** Khan 4, page 197. The claimant in that case was assessed with a whole person disability of 14%. The updated award is $1,402,196.00 for pain and suffering.

In my opinion, the injuries suffered in this case are more serious than what was suffered by the claimant in the present case.

2. **Brown v Sydney Wilson,** Khan 5, page 149. The updated award is $1,076,966.83.

3 **Leslie v Chandra Panoe et al,** Khan 5, page 150. The updated award is $861,573.00.

4. **Stennett v Caribbean Products Company Limited,** Khan 5, page 245. The claimant suffered a whole personal disability of 5%. There was no fracture involved.

5. **Smith v McPherson**, Khan 5, page 246. The claimant was diagnosed as having lumbar strain. There was no fracture. There was 5% whole person disability. The updated award is $606,481.00.

6. **Brady v Barlig,** Khan 5, page 282. There was no fracture. Updated award is $581,537.00.

Having considered all the circumstances and the cases referred to above, I am of the opinion that an award of $850,000.00 for pain and suffering and loss of amenities is a just one.

Special Damages

Both parties have agreed the medical costs of $150,000.00. The claimant is also requesting an award for loss of earnings at $1,000.00 per week for 52 weeks. She states that she was dismissed six weeks after the incident and was unable to find work immediately, that she attempted to find work one year after.

In light of the claimant's persistent complaints to doctors between May 1995 to February 2000, the court will allow the loss of earnings for 12 months. The sum awarded is therefore $52,000.00.

The damages awarded are therefore as follows:

General Damages

1. Loss of pain and suffering and loss of amenities $850,000.00 with interest at 6% from April 10, 1996 to December 16, 2005.
2. Special Damages - $202,000.00 with interest at 6% from May 26, 1995 to December 16, 2005.

Costs to the claimant to be agreed or taxed.