NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. J004 OF 2001

BETWEEN	OLGA JAMES-REID	CLAIMANT
A N D	STEPHEN CLARKE	1ST DEFENDANT
A N D	DAVID DAVIS	2ND DEFENDANT

Ms Vinette Grant instructed by Bartholomew & Co. for Claimant.

Keith Bishop instructed by Bishop & Fullerton for 1st Defendant.

Heard: 21st September, 5th October, 2007

MANGATAL, J

1. This trial is concerned with a motor vehicle accident which took place on the 30th of October, 1996. On that date there was a collision between the Claimant's motor vehicle registration #7103 AR and the 1st Defendant's motor bus registration# Temp. 121C at the intersection of Constant Spring Road and South Avenue in the parish of Kingston.

2. The Claimant had in 2002 obtained interlocutory judgment against the 2nd Defendant who was the driver of the 1st Defendant's motor vehicle. The matter was fixed for trial against the 1st Defendant when the matter came before me and I conducted the trial against the 1st Defendant. The Claimant elected not to proceed to assessment of damages against the 2nd Defendant as the 2nd Defendant had not been served with notice of this Court date.

3. In this case the Claimant and her son had filed Witness Statements which I ordered to stand as examination-in-chief. The 1st Defendant had filed a witness summary and not a witness statement. The 1st Defendant's attorney Mr. Bishop indicated that the 1st Defendant was present in Court and sought the Court's permission for the 1st Defendant to give oral evidence. Miss Grant for the Claimant on the other hand, submitted that the Witness Summary consists of opinion evidence from the 1st Defendant and is as yet unsigned and that there is nothing in it to negative her client's assertion that the 2nd Defendant was the negligent party. She submitted that the matter ought to proceed by way of assessment and not trial. It is to be noted that the 2nd Defendant, the driver of the 1st Defendant's motor vehicle was not present to give evidence at the trial. The 1st Defendant was not at the scene when the accident occurred and therefore did not witness the accident.

4. Rule 29.6 of the C.P.R. 2002 which deals with Witness Summaries states as follows:-

Witness Summaries

" 29.6(1) A party who is –

(a) required to serve; but

(b) not able to obtain;

A witness statement may serve a witness summary instead.

(2) That party must certify on the witness summary the reason why a witness statement could not be obtained.

(3) A "witness summary" is a summary of –

(a) the evidence, so far as is known, which would otherwise be included in a witness statement; or

(b) If the evidence is not known the matters about which the party serving the witness summary proposes to question the witness."

5. My ruling at the trial was that the 1st Defendant, has not certified the reason why a witness statement could not be obtained to accord with Rule 29.6(2) of the C.P.R. It is to be noted that the 1st Defendant is a party, and not just an ordinary witness so it would seem even more crucial for an explanation to be forthcoming as to why a witness statement could not be obtained. Nor has the 1st Defendant's attorney in what purports to be a certification attached to the witness summary, complied with the Rule. In addition, the witness summary does not comply with Rule 29.6(3)(a) of the C.P.R. in that it does not state the evidence so far as is known, which would otherwise be included in a witness statement. The summary speaks about the 1st Defendant's conclusions and opinions based on his observations of the scene after the accident without disclosing what those observations were in any manner whatsoever. I therefore ruled that it would not be fair or in keeping with the overriding objective set out in the C.P.R. for the Court to now allow the 1st Defendant to range large in oral evidence, potentially taking the Claimant by surprise. To rule otherwise would have been to place the litigants right back in the "bad old days" of trial by ambush before the advent of the C.P.R. My ruling was that the 1st Defendant would not be permitted to give evidence.

However, in my judgment it did not follow that the matter was to proceed to assessment as opposed to trial since the 1st Defendant had filed a Defence and was entitled to have the Claimant prove her case and had the right to cross-examine the witnesses. The matter therefore proceeded to trial.

6. At the end of hearing evidence on the 21st September, 2007, I directed the parties to file written closing submissions. In the submissions filed on behalf of the 1st Defendant, Counsel seeks to raise a point which he did not raise before my ruling, regarding the 1st Defendant's witness summary. In his submission Counsel says that at the pre-trial review "there was an order that the witness summary (order said witness statement) should stand," which Counsel says he understood to mean that the witness summary should be admitted as the evidence of the 1st Defendant.

That seems to be an odd understanding of the Court's order. What was actually ordered at the pre-trial Review, based on the wording of the 1st Defendant's own application filed March 9, 2007, and heard on 13th March, 2007 was as follows:-

> "The witness statements, Statements of Facts and Issues, List of Documents, Listing Questionnaire and Pre-trial Memorandum filed in this Honourable Court by the 1st Defendant to Stand."

7. There was no witness statement filed by the 1st Defendant. However, even if the order meant that the Witness Summary, along with the other documents filed on behalf of the 1st Defendant stand, this would simply mean that these documents were allowed to stand notwithstanding that they were

filed outside of the time ordered at the Case Management Conference held on the 24th November, 2004. It is not a reasonable interpretation, one which as I have said incidentally was not argued before me at the trial, that the Court was ordering that the witness summary of the 1st Defendant should be admitted as the evidence of the 1st Defendant. Unlike a witness statement, which has to be signed and authenticated by the intended witness, and has to include a statement by the intended witness that the intended witness believes the statements of facts in it to be true (29.5(1)(f) and (g) of the C.P.R.), it is my understanding that the Court ought not ordinarily to order a witness summary to stand as evidence-in-chief since the summary is simply what the witness is expected to say. The summary is of a quite different nature than a witness statement. In any event, as Counsel appears to concede in paragraphs 6 and 7 of his written submissions, the trial judge has the authority to admit and exclude evidence, especially where the effect of admitting the evidence may raise matters that should have been raised before, and which may take the opponent by surprise.

8. The Claimant's evidence is that she was driving her left-hand drive Toyota Corolla motor vehicle along South Avenue towards the intersection of Constant Spring Road and South Avenue. This intersection is governed by traffic lights. With the Claimant was her son Cleyon-Paul Reid who was seated in the front passenger seat. As she approached the intersection the light was on green and the cars immediately before the Claimant went through the intersection. Before she could get across, the traffic lights changed to amber

and then to red so the Claimant stopped at the intersection to await the green light. There was at this time no other vehicle ahead of her.

9. While the Claimant waited on the traffic light to change to green, she observed that the traffic was going along Constant Spring Road, and through the intersection along Constant Spring Road which accommodates at that point one-way traffic from north to south i.e. heading towards Half Way Tree. There came a time when the Claimant saw that the vehicles traveling along Constant Spring Road had stopped at the intersection which was to her right, and the Claimant saw that the traffic light showing to her had changed to green.

10. The Claimant then began to enter the intersection which was now clear to go across. The Claimant was crossing through the intersection when her son shouted to her. The Claimant then saw a bus to her right. The next thing she knew was that she felt an impact to her car and she felt her car change direction.

11. The Claimant felt her car come to a stop. She was wearing her seat belt and the impact threw her on her left knee. Her right hip was thrown against the gear lever between the two front seats. The Claimant says that she was unable to come out of her vehicle because she was strapped in by the seatbelt and also because she was feeling severe pain to her right hip and could not move.

12. The Claimant was assisted from her vehicle by persons who came on the scene and she and her son were taken to the University Hospital of the West Indies. The Claimant said that as a result of the accident she suffered greatly

and is still suffering from the effects of the accident. In her witness statement the Claimant referred to an attached list detailing the main effect of her injuries.

13. The Claimant's son Cleyon Paul Reid also gave evidence and the son corroborated his mother's account. Cleyon-Paul Reid indicated that a bus travelling in the number 2 lane along Constant Spring Road was travelling at a fast rate of speed. The vehicles ahead of the bus in lane 2 had already stopped and Mr. Reid saw the bus switch to lane number 1 where there were no vehicles. Lane number 1 was the lane which was closest to the vehicle Mr. Reid was in. When he saw this bus switch lanes and fail to slow down, he shouted to his mother. He then saw the bus hit the right side of his mother's car and he felt a heavy impact to the right side of the car.

13A. The Claimant and Mr. Reid were both cross-examined. In cross-examination, the Claimant indicated that the lights were working and that she drove the same route in the evenings on a regular basis. She had driven there the evening before and at that time the lights were working.

14. I found both the Claimant and her son to be credible witnesses who gave their evidence in a plausible and forthright manner. At the end of the day, neither one of them was shaken in cross-examination. Based on the evidence, I am satisfied on a balance of probabilities that the traffic lights were showing green to the Claimant at the time when she was crossing through the intersection at South Avenue and Constant Spring Road. I find that the 1st Defendant's motor vehicle which was being driven along Constant Spring Road

collided with the Claimant's motor vehicle as the Claimant traversed the intersection. Based upon my finding that the lights were showing green to the Claimant, I am entitled to infer, and do so infer, that the traffic lights were at the time when the 2nd Defendant drove the 1st Defendant's motor bus through the intersection showing red to the 2nd Defendant and to traffic traveling along Constant Spring Road at the intersection with South Avenue. In **Tingle Jacobs & Co. v. Kennedy** [1964] 1 All. E.R. 888, a decision of the English Court of Appeal, Lord Denning M.R. indicated that when a device such as traffic lights have been set up for public use and are in active operation, the presumption should be that they are in proper working order unless there is evidence to the contrary. In the instant case, there is no evidence to the contrary.

15. In addition, in **Bingham & Berryman's Motor Claims Cases** 10th edition, at page 97, the learned authors refer to the case of **Wells v. Woodward** (1956) 54 LGR, 142, as authority for the proposition that where a court finds that traffic lights are showing green one way, the court is entitled to infer, unless the contrary is proved, that they are showing red the other way.

16. I find that this accident was solely caused by the negligence of the 2nd Defendant, the servant and or agent of the 1st Defendant, when he failed to conform to the red light signal which was then showing to him and emerged into the junction of roads at a time when it was unsafe and dangerous so to do.

17. The Claimant is therefore entitled to judgment against the 1st Defendant on the issue of liability. I now turn to examine the issue of damages.

Re: Damages

18. The Claimant's Attorney prepared filed and served on the 1st Defendant's Attorneys in April 2007, Notice of Intention to Tender Documents into evidence pursuant to Section 31E of the Evidence Act. On the morning of the trial the 1st Defendant's Attorney objected to the documents being admitted into evidence. He claimed that the documents could not be admitted unless the Claimant satisfied section 31E(4) of the Evidence Act. My ruling was that the documents ought to be admitted into evidence or alternatively that the Court ought to exercise its discretion to admit the documents into evidence. I also ruled that the Claimant did not have to satisfy the requirements of S.31E(4) of the Evidence Act because the 1st Defendant, having been served with the Notice of the Claimant's intention to tender the documents into evidence (the Claimant thereby complying with S.31E(2)), did not notify the Claimant's Attorneys that he required the persons who made the documents to be called as witnesses. In other words, the 1st Defendant did not comply with S.31E(3) by serving any Counter notice requiring the attendance of the makers of the documents. It is not the law or practice, nor indeed would it be just or fair, for a party to simply decline to serve in a time reasonably in advance of the trial a counter notice requiring the witness to attend court, and then turn up at the trial and say he is objecting. The 1st Defendant's attorney in his closing submissions (paragraph 17) is quite mistaken when he claims that I over-ruled his objection without reference to Section 31E(4). I certainly referred to sub-section 31E(4) but ruled that sub-section 31E(4) did not apply because the 1st

Defendant had not exercised prior to the trial his right to require attendance of the document-makers. I have set out the relevant sub-sections of Section 31E of the Evidence Act in full.

> *31 E(1) Subject to section 31G, in any civil proceedings, a statement made, whether orally or in a document or otherwise, by any person (whether called as a witness in those proceedings or not) shall subject to this section, be admissible as evidence of any facts stated therein of which direct oral evidence by him would be admissible.*
>
> *(2) Subject to subsection (6), the party intending to tender such statement in evidence shall, at least twenty-one days before the hearing at which the statement is to be tendered, notify every other party to the proceedings as to the statement to be tendered, and as to the person who made the statement.*
>
> *(3) Subject to subsection (4), every party so notified shall have the right to require that the person who made the statement be called as a witness.*
>
> *(4) The party intending to tender the statement in evidence shall not be obliged to call, as a witness, the person who made the statement if it is proved to the satisfaction of the court that such person –*
>
> *(a) is dead*
>
> *(b) is unfit, by reason of his bodily or mental condition, to attend as a witness;*
>
> *(c) is outside of Jamaica and it is not reasonably practicable to secure his attendance;*
>
> *(d) cannot be found after all reasonable steps have been taken to find*

him; or

(e) is kept away from the proceedings by threats of bodily harm ...

(6) The court may, where it thinks appropriate having regard to the circumstances of any particular case, dispense with the requirements for notification as specified in subsection (2).

19. In my judgment, in civil proceedings where the party intending to tender a document or statement in evidence without calling the maker of the document pursuant to Section 31E(1) gives notice to the other party of the statement or document it intends to tender, pursuant to 31E(2), where the party so notified does not give notice to the party intending to tender the document in evidence (in accordance with section 31E(3)), the party with the intended documents is not required to satisfy the court of the matters set out in section 31E(4) in order to have the document tendered without calling the maker.

20. This is to be contrasted with the Sections of the Evidence Act which deal with admissibility of documents in criminal proceedings, for example Section 31D of the Act which deals with the admissibility of first-hand hearsay statements in criminal proceedings. Section 31D states that the statement shall be admissible if it is proved to the satisfaction of the court that such person is dead or outside of Jamaica and it is not reasonably practicable to secure his attendance or other reasons listed. In criminal proceedings, the document is not admissible after notice and no counter-notice; it is only admissible after the court is satisfied of the criteria set out. In civil

proceedings, even where the other party serves a notice requiring the attendance of the maker of a document, the party will not be obliged to call the witness if any of the five reasons for not calling the witness are satisfactorily proved to the court.

21. I am bolstered in the view which I have taken by reference to the English Civil Evidence Act 1968, which has since been amended. The provisions of the 1968 Act were similar to the provisions of Sections of our Evidence Act, including S.31E. A party wishing to give in evidence statements falling within certain sections of that Act were required, within certain time limits to give notice of the intention so to do.

The learned authors of Phipson on Evidence, 13th Edition, Chapter 17, Para 17 -10–17– 12 discuss sections of the English Act of 1968 and state the following:-

> *17-10 The form and content of the notice differs according to the section under which it is sought to introduce it ...*
>
> *Where evidence is admissible under section 2,4 or 5, if it is intended to rely on any of the statutory grounds for not calling witness, the ground or grounds must be expressly set out in the notice. These grounds* are that *the witness is "dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as witness, or that despite the exercise of reasonable diligence it has not been possible to identify or find him, or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates ...*

17-11 All these provisions are designed to give the other party the opportunity to consider what action to take in response to the desire to give in evidence hearsay statements. It may be that the evidence is insufficiently adverse or important to justify any response, or the statement may contain facts which are admitted. However, where recipient of a Civil Evidence Act wishes to cross-examine the maker of the statement, he may in general serve a counter-notice requiring his attendance to give oral evidence, unless one of the reasons specified in Order 38, r.25 justifies the failure to call oral evidence. It is not completely clear from the wording of section 8(2)(b) whether the presence of one of these reasons prevents the other party from serving a counter notice, or merely from objecting to the introduction of hearsay evidence. The wording of Order 38, r.36 is based on the assumption that the latter is the correct construction, and this is thought to be correct.

17 – 12. It is important to appreciate where a notice has been properly served, the statement (if admissible) cannot be excluded. If one of the five reasons for not calling the witness is present, the court has no power to prevent a party from putting in the hearsay evidence. The five grounds are to be read disjunctively. There is no exclusionary discretion. If none of those reasons can be prayed in aid by the proponent of the evidence, he may tender the statement without more, if the other party serves no counter notice. (my emphasis)

22. In other words, albeit the reasons were put in the notice filed and served by the Claimant in this case, they being unable or unprepared to prove those

reasons at trial or pray them in aid, the Claimant was entitled to tender the documents without more since the 1st Defendant has served no counter notice. Although our Section 31E(3) does not specifically speak of a counter notice, it has been the practice in Jamaica for such counter notices to be done. Even if I am wrong in thinking that a counter notice is required, it could not be the case that sub-section 31E(3) is fulfilled by coming to trial and at that time orally requiring persons who made the statements to be called as witness. I would be exceedingly surprised if the law or practice were to support such an unfair position.

23. Time has led to a more relaxed and open application of rules of admissibility of evidence in civil trials, subject always to considerations of relevance, reliability and weight.

24. In his submissions on behalf of the 1st Defendant Mr. Bishop referred to one of the orders made at case management which was "permission granted to tender with evidence the expert report of Dr. Minott, Senior Orthopaedic Resident, University Hospital of the West Indies, Dr. K. Vaughn, Orthopaedic Consultant Agreed."

25. Counsel submits that if indeed Dr. Vaughn and Dr. Minott are to give expert reports same must conform to Part 32 of the CPR 2002 which relates to Expert Reports. According to Counsel these reports cannot be admitted or treated as expert reports as they would not have conformed to the Rules. He goes on to submit that they should both be excluded or very little weight attached as "it might not be safe for the court to rely on these medical reports

without any knowledge of the qualification, training and experience of these experts."

26. This is to my mind a strange and tardy submission to make at the trial stage. It is perplexing that Counsel raises such points now at trial instead of at the Case Management Conference where these 2 particular medical reports being tendered was agreed. In addition, the submission fails to take into account what the learned then acting Master Lindo was effecting, as is done by Judges up and down the Supreme Court in relation to personal injury matters. Our courts routinely order, where so agreed, that medical reports be accepted as expert reports without putting litigants in personal injury matters through the more rigorous and costly procedures set out in Part 32 relating to Expert Reports. It is to be noted that in England Practice Directions and Pre-action Protocols were passed in relation to personal injury or running down actions relaxing or varying some of the more formal requirements of the new English Civil Procedure Rules. Our Judges are, I daresay, acting in keeping with the overriding objective in making such orders as the learned Master made in personal injury matters regarding medical reports. There is in my view no merit to Counsel for the 1st Defendant's argument in this regard.

27. I turn therefore to consider the evidence regarding the Claimant's injuries. The Claimant suffered injury to her right buttock and hip region. She gave evidence that she was born on the 18th day of April, 1936 so at the time of the accident she was sixty years old. She is now seventy-one years old. She had abrasions to the right ischial region and there were abrasions seen on both

legs distally when seen by Dr. Minott. At the time of the accident, according to Dr. Minott's report, the Claimant required hospitalization for approximately five days and had a temporary disability which kept her from her employment as a Lecturer and Head of the Department of Education at the University of the West Indies for approximately three months. The Claimant continued to experience severe pain in the right buttock area and at the end of the day had difficulty in coping with the requirements of sitting for long periods at her desk or walking to lecture. The Claimant had to use a cane for approximately three and a half years. Her office was relocated to the ground floor when she resumed work, but her Department office where her secretary and assistants were, remained on the second floor and this limited the Claimant's ability to carry out her supervisory functions as Head of the Education Department. The Claimant also had to undergo physiotherapy. Dr. Minott closed his 1998 report by stating "Her impairment therefore is related to the frequent pain of moderate intensity and is estimated at approximately 10% of the whole person." Dr. Vaughan in his report of March 2, 2000, found that the Claimant's complaints remained essentially the same but "her clinical examination revealed tenderness over the buttock area which was exaggerated with internal rotation of the hip joint. There was some wasting of the right lower limb as well. Clinically Mrs. Reid has developed the Piriformis Syndrome as a result of the injury – that is compression of the sciatic nerve as it passes from the pelvis to the buttock enroute down the thigh. She therefore has an

impairment of the lower extremity which is due to the weakness of the muscles, and the sensory impairment which amounts to 12% of the whole man."

28. The Claimant also complained of experiencing itching and burning over the right hip and buttock area. She says she was unable to sleep properly and suffered from a loss of appetite and lost weight. She had weakening of first her right knee and then later the left, which buckled at times and caused her to fall frequently. She was unable to drive for over three years and for approximately four years had to give up leadership activities in community, church and professional organizations. After four years she resumed these activities on a limited basis.

29. The Claimant says she got no relief for over two years after receiving medical treatment in Jamaica so she decided to go to Florida to get a second opinion. She says that as a result of the treatment she received in Miami, she got some relief. The Claimant says she was placed in a wheel chair and when she got to the airport she was strapped in a chair and taken on the chair by two men who took her off the chair and placed her in the front area of the plane. This was because the Claimant was unable to walk. She returned to Jamaica in the same way.

30. The Claimant is now retired from the University. The Claimant says that to this day she still experiences pain in her right buttocks and sometimes gets burning, itching and painful sensations. She finds it hard to drive for long periods due to pain and numbness in the hip area. She still goes to Dr. Vaughan the last visit was August of this year. Dr. Vaughan prescribes

medication for the pain and numbness. Standing for long periods hurts and the Claimant sleeps with a pillow under her hip to reduce the pain and cramps she experiences.

31. She says that she saw Dr. Nelson in Florida three times and he gave her a medical report. Although this Report was admitted in evidence, I am not attaching any weight to it since, although in my view it was admissible, the 1st Defendant was not able to check or investigate the credentials of this person, who the report states is a Podiatric Surgeon and this is not one of the reports which the 1st Defendant had agreed as an expert report at the Case Management Conference. The contents of the Report do not take the case much further in any event. I do not intend to allow the claims as to medication and treatment in the U.S. as I have no proper or sufficient basis for determining whether pursuing such a course was reasonable or indeed, whether in the circumstances it was reasonable for the Claimant to seek a second opinion.

32. As regards General Damages, Ms. Grant on behalf of the Claimant referred to the case of **Marie Jackson v. Glenroy Charlton** C.L. 1999 J 113, referred to at page 167 of Khan's Recent Personal Injury Awards made in the Supreme Court of Judicature of Jamaica, Volume 5. In **Jackson**, the Claimant was involved in a motor vehicle accident and suffered tenderness of the nape of her neck and left rib cage, tender swelling to the lateral epicondyle of he left elbow. She had tenderness of the lower back especially to the left sacro iliac joint. Dr. Dundas, Orthopaedic Surgeon found that she had significant

tenderness in area of left sacro iliac joint with spasm in the sacro-spinolis muscles bilaterally. She had limited forward and lateral flexion of the cervical spine and extension of the cervical spine aggravated her back pain.

33. Dr. Dundas diagnosed whiplash with sequelae and left sacro-iliac contusion. She was referred for physical therapy and her medication was changed. She was subsequently seen on several occasions when in view of her low persistent back discomfort, she was advised to use a spinal back support and to continue use of cervical collar for long journeys only. She developed dysaesthesia in the lower left extremity, causing her to limp.

34. Her permanent partial disability was assessed at 8% of the whole person. Over a year after the accident she saw Dr. Dundas complaining of pain and tenderness in the area of the left rectus abdominis which the client said was a gradual development since the accident and which was suddenly aggravated when she tried to lift her infant daughter. In this case damages were assessed by Dukharan J in May 2001. My learned brother awarded for general damages for pain and suffering and loss of amenities the sum of $1,800,000.00. In May 2001 the All Jamaica Consumer Price Index was 1380.4 and the Index for August 2007 was 2523.5. The award therefore converts to in the region of $3,290,567.95 in September 2007.

35. The Claimant's attorney has asked me to say that the instant case is more serious than the **Jackson** case and the 1st Defendant's attorney has asked me to say that it is less serious. It seems to me that I must bear in mind that the Claimant says that after she went for treatment in Florida she got

some relief. In addition, the most recent report which I take into account is of some antiquity, written in March 2000. There may well have been some downward adjustment to be made to the final assessment of the nature of the Claimant's disabilities, having regard to what she herself reported and to the lapse of time until trial, over seven and a half years.

36. I looked at other cases but found the **Jackson** case most useful as a guide and I award for general damages $4,000,000.00. I consider the Claimant's injuries somewhat more serious than those in **Jackson** although I have to bear in mind the matters which I have referred to above. With regard to Special Damages, I have allowed all of the items set out under 6(a) of the Notice of Intention Tender, (except for the 6th listed sum of $7,120.00 which is duplicated), as well as all of the items under 6(b), (e), (f), (h), (i), (j), (k) and (l). As regards 6(m), I have allowed the sum of $540,000.00 because the Tarren's Assessors Loss Adjuster's Report recommended that the vehicle be dealt with on a total loss basis, repairs being uneconomical. This report speaks of the pre-accident value of $600,000.00, with a salvage value of $60,000.00. On a total loss basis, the loss is therefore $600,000 less $60,000.00 which is $540,000.00. The total for special damages is therefore $590,198.12.

37. My award is therefore Judgment for the Claimant against the 1st Defendant with damages assessed as follows: -

General Damages	$4,000,000.00
Special Damages	$ 590,198.12

Interest on Special Damages from 30th October, 1996 to 5th October, 2007 at the rate of 3% per annum and on General damages at the rate of 3% per annum from the 20th March 2002, the date of entry of Appearance for the 1st Defendant, to 5th October 2007. Although the accident happened in 1996, the Claimant's Suit was not filed until 2001, so I use my discretion in relation to the rate of interest.

Costs to the Claimant to be taxed if not agreed.

Stay of Execution of judgment granted until the 26th October, 2007.