

5/83

IN THE PRIVY COUNCIL

No.3 of 1982

---

---

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD  
AND TOBAGO

---

---

B E T W E E N :

PONNAMPALAM SELVANAYAGAM

Appellant

- and -

THE UNIVERSITY OF THE WEST  
INDIES

Respondent

---

---

RECORD OF PROCEEDINGS

---

---

INGLEDEW, BROWN, BENNISON &  
GARRETT,  
International House,  
26 Creechurch Lane,  
London, EC3A 5AL

Barlow Lyde & Gilbert,  
Drake House,  
3/5 Dowgate Hill,  
LONDON EC4R 2SJ.

Solicitors for the Respondents

Solicitors for the Appellant

## O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND  
TOBAGO

## B E T W E E N :

PONNAMPALAM SELVANAYAGAM Appellant

- and -

THE UNIVERSITY OF THE WEST  
INDIES Respondent

## RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No. of Document	Description of Document	Date	Page No.
<u>IN THE HIGH COURT OF JUSTICE</u>			
1	Writ of Summons	17th February 1976	1
2	Statement of Claim	17th February 1976	3
3	Defence	March 1976	7
4	Further and Better Particulars	21st May 1976	9
5	Reply	2nd April 1976	11
6	Judge's Notes of Evidence	8th October 1976- 14th October 1976	12
7	Judge's reasons for decision	17th December 1976	42
8	Formal Order of Scott J.	17th December 1976	58

No. of Document	Description of Document	Date	Page No.
<u>EXHIBITS</u>			
9	Sketch Plan A	Undated	59
10	Sketch Plan B	Undated	60
11	R.M.L.1 Medical Report	11th October 1975	61
12	R.M.L.2 Medical Report	1st October 1976	63
13	S.G.1 Medical Report	16th September 1975	64
14	S.G.2 Medical Report	23rd September 1975	65
15	S.G.3 Medical Report	29th September 1975	65
16	S.G.4 Medical Report	6th October 1975	66
17	"C" Medical Report of Dr.Robertson	6th October 1976	67
18	"D" Copy of Agreed Costs	Undated	68
<u>IN THE COURT OF APPEAL</u>			
19	Notice of Appeal	28th January 1977	69
20	Notice to contend that Judgment should be varied	7th February 1977	71
21	Judgment of Corbin, J.A.	31st July 1980	72
22	Judgments of Kelsick J.A. and Hassanali J.A.	31st July 1980	86
23	Order by consent to amendment of Judgment	9th October 1980	87

No. of Document	Description of Document	Date	Page No.
24	Order granting conditional leave to appeal	9th October 1980	88
25	Order granting final leave to appeal to the Judicial Committee of the Privy Council	9th March 1981	90

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

B E T W E E N :

PONNAMPALAM SELVANAYAGAN Appellant

- and -

THE UNIVERSITY OF THE WEST INDIES Respondent

10

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS

C. SOOGRIM & CO.  
Solicitors & Conveyancers

In the High Court

No.1  
Writ of Summons

17th February  
1976

IN THE HIGH COURT OF JUSTICE No.402 of 1976

BETWEEN :

PONNAMPALAM SELVANAYAGAM  
Plaintiff

AND

THE UNIVERSITY OF THE WEST INDIES  
Defendant

20

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of our other realms and territories Queen, Head of the Commonwealth, Defender of the Faith :

TO: THE UNIVERSITY OF THE WEST INDIES, St. Augustine (service to be affected by delivering the same to, and leaving the same with the Secretary at St. Augustine, aforesaid)

In the High  
Court

No. 1  
Writ of Summons  
17th February  
1976  
(continued)

We command you that within 8 days after the service of this writ on you, inclusive of the day of service, you do cause an appearance to be entered for you in an action at the suit of PONNAMPALAM SELVANAYAGAM and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness The Hon. Sir Isaac Hyatali Chief Justice of Trinidad and Tobago the 17th day of February, 1976.

10

NOTE:- This writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

The defendant may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Red House, Port of Spain or (2) by sending them to that office by post.

The Plaintiff's Claim :-

20

(a) damages for negligence as a result of severe personal injuries sustained on the 5th August 1975 when the plaintiff being lawfully on premises owned and/or controlled and/or managed by the defendant on the campus of St. Augustine fell into an open, unmarked and unguarded pit excavated in a passageway connected to the Faculty of Engineering; alternatively, the plaintiff claims damages for nuisance;

30

(b) interest at 8% per centum per annum on the damages and/or costs awarded from the 5th August, 1975 to date of payment or at such other rate of or for such other period as may be considered just;

(c) such further or other relief as the justice of the case may require;

(d) costs.

This writ was issued by C. SOOGRIM & CO. of 14 St. Vincent Street, Port of Spain, Trinidad.

40

Solicitor for the said plaintiff whose address is 47 Dash Street, St. Augustine and is a Professor of Civil Engineering

Plaintiff's Solicitors

In the High Court

This writ was served by me at  
on the defendant  
on the day of 19  
Indorsed the day of 19

No. 1  
Writ of  
Summons  
17th February  
1976  
(continued)

No. 2

STATEMENT OF CLAIM

No. 2  
Statement of  
Claim  
17th February  
1976

Writ filed the 17th day of February 1976

TRINIDAD AND TOBAGO:

10 IN THE HIGH COURT OF JUSTICE No. of 1976

B E T W E E N :

PONNAMPALAM SELVANAYAGAM  
Plaintiff

AND

THE UNIVERSITY OF  
THE WEST INDIES Defendant

20 STATEMENT OF CLAIM of the above-named  
plaintiff filed with the Writ of Summons by his  
Solicitors Messrs. C. SOOGRIM & CO., of No.14  
St.Vincent Street, Port of Spain, this 17th  
day of February, 1976

Plaintiff's Solicitors

1. The plaintiff is a Consultant Civil  
Engineer and was on the 5th August 1975 and at  
all material times in the employment of the  
defendant as head of the Department of Civil  
Engineering.

2. The defendant is a corporate body incorp-  
orated by Royal Charter and is and was at all

In the High  
Court

No.2  
Statement of  
Claim  
17th February  
1976  
(continued)

material times owner and/or occupier of the premises and buildings comprising the campus at St. Augustine, Trinidad.

3. On or about the 5th August 1975 the defendant, its servants and/or agents excavated and/or kept and/or maintained in an unmarked, and unguarded condition an open pit in a passageway connected to the Department of Civil Engineering.

4. On the 5th August 1975 the plaintiff while in the course of his employment with the defendant was lawfully walking along the said passageway when he fell into the said unmarked and unguarded open pit and suffered severe personal injuries loss and damage. 10

5. The said open pit in its unmarked and unguarded condition was a continuing nuisance which caused the said injuries loss and damage to the plaintiff and the defendant is liable therefor. 20

6. Further or in the alternative the defendant by the negligence of itself its servant and/or agents caused the plaintiff the said severe personal injuries loss and damage.

PARTICULARS OF NEGLIGENCE

(1) Excavating or causing to be excavated a pit in a passageway ordinarily used for passing and repassing of persons on the campus and leaving the same in an open condition without any mark, or protection or indication to warn persons using the passageway of danger. 30

(2) Failed to take any or any reasonable or sufficient steps to prevent use of the said passageway while the pit was constructed thereon or to warn persons using or likely to use the passageway of its dangerous condition.

(3) Failing to place any sign, red flag or other notice of danger to identify the said open pit and to indicate the danger thereof to persons using or likely to use the passageway. 40

(4) Failure to provide for a safe system of travel and/or movement for employees of the defendant in the normal course of their employment on the campus.



- (5) Failure to take any or any reasonable or sufficient steps to secure the safety of employees using the said passageway.

In the High Court

No.2  
Statement of Claim

17th February 1976

(continued)

PARTICULARS OF INJURIES

10

- (i) multiple bruises of the left elbow;
- (ii) tenderness and swelling of the left ankle and foot;
- (iii) tenderness over the left hip;
- (iv) pain and limitation of movement in the region of the neck;
- (v) comminuted fracture of the left calcaneum involving the subtalar joints;
- (vi) herniated discs encroachment to the C C and C levels;  
4 5 and 6
- (vii) pain and suffering and continuing.

PARTICULARS OF SPECIAL DAMAGE

20

30

40

<u>ITEM</u>		<u>AMOUNT</u>
1. To General Hospital P.O.S.	5-12 Aug. and subsequently	10.76
2. To night nurse	5-11 Aug. 6 nights at \$40	240.00
3. To St.Elizabeth's Nursing Home	22-23 Sept.	184.20
4. To Medicines, etc.		
	12.8.75 No.002327	3.75
	13.8.75 001719	8.40
	27.9.75 2438	3.60
	27.9.75 6975	4.59
	6.10.75 1572	17.28
	6.10.75 005754	3.00
	24.10.75	18.00
	28.10.75 9350	26.10
	30.10.75	10.07
		84.79
		84.
5. To Doctor's fee		
	Dr. R. Lalla	290.00
	Dr.S.Ghouralal	280.00
	Dr. P.N.Rattan	100.00
		670.00

In the High Court

No.2  
Statement of  
Claim  
17th February  
1976  
(continued)

<u>ITEM</u>	<u>AMOUNT</u>
6. 5th to 12th August - Visit to General Hospital Carrying of meals to Hospital - 16 trips	
22nd-23rd Sept. - St. Elizabeth's Clinic - 4 trips	
August, Sept. Oct, Nov.7 - Visit to the Doctors and Pysio-therapist Department <u>- 14 trips</u> 34 trips	10
34 trips @ \$6.00 per trip	204.00
7. To Medicines 20.12.75	23.92
8. To Doctor's fees Dr. R.Lalla	75.00
9. To transport to the General Hospital and Doctors - 7 trips at \$6.00	<u>42.00</u>
	<u>1,534.67</u>

Loss of earnings to be calculated on the basis of approximately \$4,000.00 per month from January, 1976 and continuing.

And the Plaintiff claims from the Defendant :-

- (a) damages for negligence as a result of severe personal injuries sustained on the 5th August, 1975 when the plaintiff being lawfully on premises owned and/or controlled and/or managed by the defendant on the campus St. Augustine fell into an open, unmarked and unguarded pit excavated in a passageway connected to the faculty of engineering; alternatively, the plaintiff claims damages for nuisance; 30
- (b) interest at 8% per centum per annum on the damages and/or costs awarded from the 5th August 1975 to date of payment or at such other rate or for such other period as may be just; 40
- (c) such further or other relief as the justice of the case may require;
- (d) costs.

B.TOOLSIE  
OF COUNSEL

No. 3

In the High  
Court

DEFENCE

No.3  
Defence

TRINIDAD AND TOBAGO

March  
1976

IN THE HIGH COURT OF JUSTICE No.4012 OF 1976

BETWEEN

PONNAMPALAM SELVANAYAGAM Plaintiff

AND

THE UNIVERSITY OF THE  
WEST INDIES Defendant

D E F E N C E

10

1. The Defendant admits paragraphs 1 and 2 of the Statement of Claim.

20

2. The Defendant admits so much of paragraph 3 of the Statement of Claim as alleges that on or about the 5th day of August, 1975, it, its servants and/or agents kept and/or maintained an open pit in a passageway connected to the Department of Civil Engineering. Save as aforesaid paragraph 3 of the Statement of Claim is denied.

3. The Defendant admits so much of paragraph 4 of the Statement of Claim as alleges that at the time and place therein mentioned the Plaintiff fell into the said pit. Save as aforesaid paragraph 4 of the Statement of Claim is denied.

4. The Defendant denies that the said open pit was unmarked or unguarded or constituted a nuisance as alleged or at all.

30

5. The Defendant denies that it or any of its servants or agents was guilty of the alleged or any negligence or breach of duty or that the matters complained of were caused as alleged in the Statement of Claim.

6. Further or alternatively the said matters were caused wholly or in part by the Plaintiff's negligence.

P A R T I C U L A R S

a) Failing to observe or avoid the open pit;

In the High  
Court

No.3  
Defence

March  
1976  
(continued)

- b) Failing to look where he was going;
- c) Failing to take any or any sufficient steps to avoid falling.

7. If, which is denied, the said open pit was a danger as alleged in the Statement of Claim, such danger was patent and obvious to all persons using the said passageway and the Plaintiff knew or ought to have known thereof.

8. The Plaintiff knew or ought to have known that walking along the said passageway at the time mentioned in the Statement of Claim involved a risk of injury and the Plaintiff acting as he did impliedly consented to running the said risk.

10

9. The alleged injuries and loss and damage are denied.

10. Save as to admissions expressly made herein the Defendant denies each and every allegation of fact in the Statement of Claim contained as if the same were herein set forth and traversed seriatim.

20

David A.R. Patrick  
OF COUNSEL

DELIVERED the            day of March, 1976 by Messrs. Clarke Hannays & Co. of No.26 Sackville Street, Port-of-Spain, Solicitors for the Defendant.

DEFENDANT'S SOLICITORS

To: Messrs. C. Soogrim & Co.,  
14, St. Vincent Street,  
Port of Spain

Plaintiff's Solicitors

30

We hereby accept delivery of the Defence herein although the time for doing so has already expired.

Plaintiff's Solicitors.

No. 4

In the High Court

FURTHER AND BETTER PARTICULARS

No.4  
Further and Better Particulars

21st May 1976

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.4012 of 1976

Between

PONNAMPALAM SELVANAYAGAM Plaintiff

And

THE UNIVERSITY OF THE WEST INDIES Defendant

10

FURTHER AND BETTER PARTICULARS OF THE DEFENCE

Pursuant to the request dated the \_\_\_\_\_ day of \_\_\_\_\_ 1976

UNDER PARAGRAPH 7:

Of the facts and circumstances relied upon to show that the danger was patent and obvious to all persons using the said passageway so that the plaintiff knew, or ought to have known thereof.

20

The said danger was patent and obvious by reason of :

- (a) The presence of wooden form work and steel re-inforcements indicating that excavation work was in progress at the location where the Plaintiff fell;
- (b) The location where the Plaintiff fell being well known to the Plaintiff and by reason of his passing and repassing the same in the course of his duties in the days immediately preceding the 5th day of August 1975.

30

UNDER PARAGRAPH 8:

Of the facts and circumstances relied upon to show that the plaintiff knew, or ought to have known that walking along the said passageway at the time mentioned in the Statement of Claim involved a risk of injury and the plaintiff by acting as he

In the High  
Court

No.4  
Further and  
Better Parti-  
culars  
21st May 1976  
(continued)

did impliedly consented to running the  
said risk.

The Plaintiff knew or ought to have known  
that walking along the passageway at the  
time mentioned in the Statement of Claim  
involved a risk of injury and he, acting as  
he did, impliedly consented to run the said  
risk by reason of :

- (a) The presence of wooden form work and  
steel reinforcement indicating that  
excavation works was in progress at the  
location where the Plaintiff fell; 10
- (b) The location where the Plaintiff fell  
being well known to the Plaintiff and  
by reason of his passing and repassing  
the same in the course of his duties  
in the days immediately preceding the  
5th day of August 1975.

DAVID A. R. PATRICK  
OF COUNSEL

20

DELIVERED the 21st day of May, 1976 by  
Messrs. Clarke, Hannays and Company, of No.26  
Sackville Street, Port of Spain, Solicitors for  
the Defendant.

DEFENDANT'S SOLICITORS

To: C. Soogrim & Co.,  
14, St. Vincent Street,  
Port of Spain.

Plaintiff's Solicitors

No. 5

REPLY

In the High  
Court

No.5  
Reply

2nd April 1976

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No.402 of 1975

Between

PONNAMPALAM SELVANNAYAGAM

Plaintiff

And

THE UNIVERSITY OF THE  
WEST INDIES

Defendant

10

R E P L Y

1. The Plaintiff denies that he was negligent either as alleged in paragraph 6 of the defence or at all.

2. The Plaintiff denies the allegations and/or implication of fact contained in paragraphs 7 and 8 of the defence.

20 3. Save as to admissions herein the Plaintiff joins issue with the Defendant on his defence.

B. TOOLSIE  
of Counsel

Delivered this 2nd day of April, 1976  
by his Solicitors C. Soogrim & Co. of No.14  
St. Vincent Street, Port of Spain.

Plaintiff's Solicitors

To: Messrs. Clarke, Hannays & Co.  
26 Sackville Street,  
Port of Spain.

30

Defendant's Solicitors

In the High Court

No. 6

No.6  
Judge's Notes  
of Evidence

JUDGE'S NOTES OF  
EVIDENCE

8th October  
1976

IN THE HIGH COURT OF JUSTICE No.402 of 1976

BETWEEN

PONNAMPALAM SELVANAYAGAM Plaintiff

AND

THE UNIVERSITY OF THE  
WEST INDIES Defendant

Before the Honourable Mr. Justice GARVIN M. SCOTT 10

Ramsahoye S.C., with him Toolsie and Mohan for  
the plaintiff.

Wooding S.C., with him Patrick for his defendant.

NOTES OF EVIDENCE

Friday 8th October, 1976

Ramsahoye S.C.:

Case arises out of an accident at U.W.I. Campus on the 5th August, 1975. The plaintiff between 1965 - 1974 was Head of the Department of Civil Engineering at the University. At the time of the accident he was not Head but Professor of Civil Engineering. Aged 55 years now: about 54 at the time of the accident. He had gone to the workshop concerned with engineering to see the Superintendent but had to go to the Chemical Engineering Laboratory. He had to turn left into passageway which led directly to store. Road adjacent to Chemical Laboratory. He turned left, saw no obstruction, continued walking and when glancing to his right to look for Superintendent, he walked into an open pit. The passage was a covered passage - 4 1/2 feet wide. This was the only passage available. On the left side of the passage was the workshop. On the right side a structure was erected for conducting hydraulic research. Both tended to take away the natural light from the passage. The plaintiff walked into the open pit 4' x 4' and 2 1/2' deep, and was injured immediately and had to be assisted out. 20 30 40

The pit was unguarded. Nothing done to give





In the High Court

No. 6  
Judge's Notes  
of Evidence

8th October  
1976

(continued)

Professor and Head of the Department of Civil Engineering, St. Augustine. I ceased to be Head in 1974 and continued to be Professor after October, 1974, till the 31st December, 1975.

The accident occurred on the 5th August, 1975. Officially I was due to leave on the 31st December, 1975, but I had been given permission to leave anytime after July, 1975.

On the 5th August, 1974, I had gone to my office. My office was at the eastern side of the Chemical Engineering Laboratory shown at N.E. on Ex. "A". I worked in my office until 11.00 a.m. I then went to the Civil Engineering Laboratory and after that I walked North, turned left and went to the Workshop to see Hinds; Supt. of the Workshop, and entered the door marked "B" on plan "A" and found he was not there. I was told something. I left the Workshop, turned left and I intended to go to the Chemical Engineering Laboratory. I had expected my wife to bring my car to the front of the Chemical Engineering Laboratory. I looked straight. I did not see anything unusual. It was then 11.15 a.m. Light was diffused because of the nature of the structures. The top floor of the lectur room had been completed - between the Laboratories on the eastern side and the Workshop on the western side and completely covered the roadway North to South which had existed before that period. On the West of the passageway there were aluminium (I believe) louvres on the Workshop. Louvres were aluminium or steel. I was then walking along the passageway on my East, there was a hydraulic experimental water tank - rather large and had been put up by one of the lecturers for purposes of research. It had temporary concrete walls to retain water and had equipment for setting up wave motion. The passage way light was dull or diffused, direct light was completely cut off because of the nature of the structures. Because of the louvres on the Workshop and the Hydraulic tank and equipment, the floor of the passageway had lesser light. On the eastern side there are a series of two lines of columns cutting off even indirect light. The passage-way had a covered roof and direct light was completely cut off. I had left the workshop and was walking North. I saw nothing unusual. I looked in the direction of the Chemical Laboratory about 25° to the East. As I was looking in that direction to locate Hinds I suddenly found myself falling into a trench, left foot first. I felt sudden severe pain in my left leg

10

20

30

40

50

and ankle. I had a sudden shock as to where I was. I looked in the trench. There were pieces of stone and I felt some steel rods on my left on the side going to the bottom of the trench. Trench was over 2' deep. I tried to get out and looked at the floor in southerly direction. Floor was clear and free from any obstruction. I was giddy. I shouted for help. I received help. I was lying down, semi-unconscious. Some technicians from the Workshop carried me to the Workshop door. I measured at Christmas time and the trench measured 29 1/2' from the Workshop door. Trench measured 23'4" from the store counter. From the Workshop I was taken to the General Hospital, Port of Spain. I was admitted. I saw Dr.R. Lalla, Dr. Perrera, Dr. Ghouralal, Mr. Rattan.

In the High Court

No.6

Judge's Notes of Evidence

8th October 1976

(continued)

10

20

At this stage Dr. Ramsahoye asks for leave to interpose and have medical evidence of Dr. Lalla taken.

Wooding - I have no objection

Leave granted.

P.W.1.

ROOPNARINE MAHASE LALLA sworn states :

30

I am a member of the Medical Board of Trinidad and Tobago - M.B., B.S., F.R.C.S. Edinburgh. I am at present a Consultant Orthopaedic Surgeon since 1969. I know the plaintiff as a patient. This is a copy of the Report I prepared in respect of plaintiff dated the 11th October, 1975. By consent put in and marked R.M.L.1.  
By consent Report dated 1st October, 1976 put in and marked R.M.L.2.

40

I prepared report on 1st October, 1976 as a result of an examination. His injury occurred a year ago and there is X-ray evidence of arthritis in the joints and in my view this can become progressive. There are problems for treatment. Surgery can be performed and though this may give him a solid and fixed ankle there will be limitations in movement in walking or climbing, at the same time there is also likely to be as a result of surgery permanent swelling in the region of the ankle and foot. The patient is also a diabetic which may complicate surgical procedures - e.g. complications of infection which normally may not be present, is likely to become a complication. He has to keep on taking

In the High Court

No.6

Judge's Notes of Evidence

8th October 1976

(continued)

analgesic tablets for pain all his life which he is having at present and giving rise to gastric discomfort.

Cross-examined Wooding:

Report R.M.L.1 was 2 months after the accident. I looked mainly after his problems with his ankle. I did refer the plaintiff to Dr.Ghouralal. As far as multiple bruises externally on left elbow region and tenderness and swelling of left ankle and foot would be now completely cleared up. Sub-talar joint is joint beneath ankle joint and that was the principal area of injury in lower region of plaintiff's body. X-ray showed fracture was healing satisfactorily. In October, 1976 fracture had not healed satisfactorily but appeared to be on its way to being satisfactorily healed. In October, 1976 I would say the fracture had healed with deformity and radiological change to joint. The fracture has healed but not with same structural symmetry it had before. As a result of deformity there has eversion and inversion i.e. inability of ankle to deal with rough surface. On smooth surface there would be no difficulty. Other difficulty would be weight bearing and the constant pain there. He would have disability and discomfort. He can't take weight he used to on his left foot. He has generalized discomfort. Result of injury to adaneum and sub-talar joint. I consider surgery ill-advised. Progression of arthritis is a direct result of his injury. Herniated disc is a slipped disc on his neck. He wore a collar for some time. He still has stiffness of his neck and his movements would be limited. He would not be able to turn his neck quickly nor would he have full movement. Initially he had greater movement of the neck. There is pain associated with that area at this time. He has a lot of pain but my recent examination was not directed to his neck. On the 11th October 1975 he complained of numbness of both hands I made no examination on the 1st October, 1976 into this aspect. This may well be related to the neck.

10

20

30

40

Not re-examined by Ramsahoye:

Plaintiff re-called - reminded of former oath:

PONNAMPALAM SELVANAYAGAM continuing to Ramsahoye:

When I fell I had severe pain in my left foot and ankle. Pain continued. Up to now I

50

continue to have pain. Even though initially it subsided due to pain killers, later putting weight partially on the foot pain increased. I had to use crutches. I feel it is now getting worse. I have discomfort when I lie down and when I walk I have pain. Sometimes suddenly I have severe pain and I am unable to walk and I rest. I am still taking pain killers. After the fall that night I felt slight pain - in my neck and slight numbness and pain in my fingers, and in my left shoulder. As I reduced pain killers which I was taking for my leg, pain in my neck and fingers increased. I complained to Dr. Lalla and he referred me to Dr. Ghouralal. I was Dr. Ghouralal's patient. I went to him on the 15th September, 1975 after the accident. I still have pain in my neck and my fingers. When I try to turn my neck on either side pain increases in the neck and I can only move my neck slightly vertical, upwards or downwards as I get pain. I can write but when I grip my grip is weak. When I grip my neck pains. That is when I am asked by doctors to grip. As far as reading is concerned, I cannot bend down to read. I cannot bend down to write. I am unable to do professional calculations, to do designs of structures in consultation. I cannot bend down to do drawings or designs. I can read when in an upright position. When I travel in a car I suffer pain when there is a jerk. When I walk I go home the pain persists for which I take extra doses of pain killers which cause complication to my stomach. Pain goes to my shoulders and hands, and the back of my head and upper spine. Sometimes I feel my shoulders and hands very weak. I had planned when I left the University to start a consulting practice in Sri-Lanka. I was already on the Roster of the United Nations in three agencies United Nations Educational, Scientific and Cultural Organization - Paris; United Nations Building Section - New York; World Development Bank; as an International Expert in Civil Engineering and Low Cost Housing. In relation to U.N.E.S.C.O. that related to consultancy with Universities.

At the time of the accident I earned a gross salary as Professor of Civil Engineering - \$46,605 per year.

As a United Nations Consultant a person of my standard could have obtained a salary of \$60,000 Trinidad and Tobago dollars per year - tax free.

In the High  
Court

No.6  
Judge's Notes  
of Evidence

8th October  
1976

(continued)

As a Consultant in Ceylon, I was hoping that I could make between \$60,000 and \$75,000 T.T. I had worked in Sri-Lanka before. Prospects for person of my standing were good.

I will not now be able to undertake the work of a Consultant. I had been an energetic person - active. I can now only dictate papers on which I have information. Prospects financially for this is almost nil.

Papers enable one to maintain prestige in international world but are not a source of income. Greater part of money in Civil Engineering comes from Consulting - design and construction of structures - which I can no longer do. My medical expenses up to date of Statement of Claim was \$1,534.67.

Wooding - Particulars of special damage agreed in the sum of \$1,534.67. No agreement reached in respect of loss of earnings.

Continuing:

I received salary from the University of the West Indies up to the 31st December, 1975. I used to do gardening to keep myself fit. I enjoyed it. I can no longer do it. I used to swim which I can no longer do. My wife and I liked dancing. We enjoyed participating in social activities. I cannot participate in parties with friends. My visits to friends are limited. With a stick I walk in my house with a lot of pain. I used to drive a car up to a day before the accident. I cannot drive now. I have to employ a chauffeur now.

I am forced to remain in Trinidad on account of this case. Up to the time of the accident I enjoyed good health and during the 10 years here I enjoyed very good health. I have incurred medical expenses since January, 1967.

Adjourned 11/10/76:

11th October,  
1976

Monday 11th October, 1976

Appearances as before:

P.W.2:

SAMUEL GHOURALAL sworn states :

I am a member of the Medical Board of

Trinidad and Tobago for the past 20 years.  
I am a Consultant Neuro-Surgeon.

In the High  
Court

By consent Letters dated 16th September, 1975,  
23rd September, 1975 and 6th October, 1975 from  
Dr. Ghouralal to Mr. Lalla marked S.G.1,  
S.G.2 and S.G.3 respectively. Report dated  
29th September, 1976 marked S.G.4.

No.6  
Judge's Notes  
of Evidence  
11th October,  
1976

(continued)

10 The plaintiff was my patient from  
September, 1975. The last time I examined him  
was in September, 1976. He was referred to me  
by Mr. Lalla. If surgical therapy is not  
carried out, the condition to his neck would  
worsen. It would be the removal of damaged  
degenerated tissue from between the 4th and  
5th cervical vertebrae and 5th and 6th cervical  
vertebrae. This tissue is known as the inter  
vertebral disc and is associated with the  
astophytes. Functions of inter vertebral disc  
are to maintain space between each vertebrae  
20 and also to act as a cushion so that movements  
of vertebral column there would be certain  
degree of elasticity and also a softening of  
blow which may be received to the body and  
transmitted to the vertebral column. When these  
tissues are damaged they may cause difficulties  
in that they take up space, tend to protrude  
beyond their normal boundaries and may encroach  
on nervous elements resulting in a neurological  
30 deficit. Effect of removal is to ensure they  
do not occupy the space they occupy, relieve  
pain and arrest diminution of neurologic  
deficit. Operation is a major procedure but  
not very risky. Chances of success in patient  
like the plaintiff are quite good. Successful  
operation would increase his movement of the  
neck to about 80%. In a young person there  
would be 100%. In S.G.4 the plaintiff complained  
of shakiness or tremor of the left upper  
40 extremity (left hand) when he sought to do  
something. Type of tremor - intention tremor -  
associated with cerebellar disease and if left  
upper extremity usually left cerebellar disease.  
Cervical spondylosis used to disclose disc  
changes and encroachment on areas where these  
changes should preferably not be.

50 The plaintiff is a diabetic. Risk of  
doing surgery to diabetic patient would increase  
as compared to non diabetic patient. In my  
experience I see several patients with diabetics  
on whom operations have been carried out with  
success. At the plaintiff's age from time of  
surgery it would take about 6 months for his  
complete recovery. He may complain even after

In the High Court

No.6  
Judge's Notes  
of Evidence

11th October  
1976

(continued)

of some pain. He may have free movement of neck but might still complain of pain. He would remain no more than a week in hospital for surgery. Operation of that nature in Trinidad would probably cost \$5,000.00.

Cross-examined Wooding:

In respect of damage to his cervical vertebrae I would recommend surgery. Assuming operation is successful it would dispose of cervical spondylosis in those particular areas. Movement of his neck would be almost back to normal. I would expect around 80%. When I first saw in in 1975, his neck movements were limited. He has been wearing a collar which is palliative treatment. In 1976 I found no reduction of pain from the neck. In 1976 he complained of pain in his hands. I would tend to believe there was no connection between pain in hands and neck. Pain in his hands may have been as a result from the fall he suffered. Pain in his hands would have had no neurological source. Pain in his hands may persist as he has complained of pain over a year. Pain in his hands is like arthritic pains. He complained of shakiness in his left hand which I associate with early cerebellar atrophy. Intention tremor could occur without person falling into hole. Intention tremor in plaintiff in my view is not related to the fall which he had. I found no wasting of muscles. I found he had not lost ability to pinch e.g. paper, pen. Index thumb functions as far as power is concerned. Plaintiff is right handed. His left hand was weaker than his right. He complained of shakiness in his left hand. Power in right arm is good. I saw him write. I could read his handwriting. I found nothing wrong with his handwriting. I would have recommended operation taking place before now and as a fact I did make that recommendation in September, 1975, Plaintiff said he was not a local resident and wanted to go home. If he had that operation in 1975 he would have been almost in the clear.

Re-examined Ramsahoye:

Operation would have been related to cervical spondylosis - neck. When I recommended operation I had all the risks in mind. I have successfully operated on several diabetics before, and he knew of the risks which diabetic might have. It is for the patient to decide on whether he should have the operation or not.



At this stage - By consent Medical Report of Dr. Robertson put in and marked "C".

In the High Court

PONNAMPALAM SELVANAYAGAM re-sworn and cross-examined by Wooding:

No.6  
Judge's Notes  
of Evidence

11th October  
1976

(continued)

10 Accident was on the 5th August, 1975. By mid-October, 1975 I had received attention from Mr. Lalla and Dr. Ghouralal. Before August, 1976, I last saw Dr. Ghouralal in September, 1975. In September, 1975, Dr. Ghouralal gave me prognosis of my neck injury and he gave me recommendation. I retired in 1975 from my job at U.W.I. I had been granted special permission to retire from any time from July, 1975 before actual date 31st December, 1975. I received all my emoluments from U.W.I. up to 31st December, 1975. I had planned to start consulting practice in Sri-Lanka - Private Practice. I had hoped to open a practice of my own with assistance. I had not contacted 20 any one to act as an assistant. I had planned to work in Colombo. I come from Colombo. I had been there last in long vacation in 1974. Before 1974 I was there in 1971. I had planned to put my plans in effect when I returned to Colombo. My name was on the United Nations Roster - Roster is of International Advisers. Normally I would be called on from time to time by one of the United Nations Agencies. Having 30 my name on the U.N. Roster is not a guarantee of employment. I can read. I can write. I can talk. I am unable to bend down to write, to read, to design calculations and drawings.

40 In any consultancy an engineer must be able to go to site of construction before and during the construction to supervise the building climbing ladders, steps. I could not do any climbing. I have injury to my leg. As a result I am unable to move as I could before. Inability to do designs and drawing is due to limitation of movement in my neck. Assistants in my consultancy practice would be younger than me. There would have been limitations as I get older. Ex."A" is tracing from original. I prepared Ex."A": two weeks ago. Plans were prepared from memory. Location of trench was put in from memory - two weeks ago.

50 By Xmas 1975 staircase to north of corridor was completed. It was finished a few days after the accident. When I took measurements in Xmas 1975 I was able to establish location of trench from construction joints in corridor. By Xmas wave tank experiment had been removed and was not

In the High  
Court

No.6  
Judge's Notes  
of Evidence

11th October  
1976

(continued)

there when I took measurements. I inserted hydraulic experiment in my plan from memory. I am not sure in August, 1975 whether there were being constructed a staircase North of corridor when I fell in trench. Building, Workshop, Store counter, Laboratories were all familiar to me. In September, 1974 or on the 1st October, 1974, I ceased to be Head of Department. When I became Professor my office was on the eastern side of Chemical Engineering Laboratory about 50' - 60' away. Bruce's office was not in the same building. Bruce was Assistant Dean of the Faculty of Engineering. On the 5th August, 1975 I had been in the workshop in search of Hinds - Superintendent of Workshop. When I had important work to do I would speak to Hinds and go to the workshop. I had gone to the Workshop a few times after I ceased to be Head of Department. At "C" in plan Ex."A" there is a window. I had never been to store window. After I had ceased to be Head of Department I had never been along a corridor from B to C. I had never been from Y to A. I had been from A to X. I had never been from B to E, or B to C in plan Ex. "A". I had no necessity to go down those corridors. My wife collected me in the car sometimes. Car was Peugeot - Off white. None of those times caught me in the Workshop. She was to have come in front of the Chemical Engineering Laboratory shown at Y on plan Ex."A". Going from B to C was the shortest way to Y on Ex. "A". It was first time in 10 months that I had gone down that corridor. I have worked in University of Sri Lanka and U.W.I., I have visited several Universities in the world. Basically architecture at U.W.I. is the same as most Universities. Corridor shown at B to C on plan Ex. "A". was available for use by students, technicians and faculty members. During term time students are frequently seen on corridors. It was natural thing for person to use short cut B to C. I know nothing of trench until accident. As far as I know I was only person to fall in that trench. Light in the area was diffused. Workshop on West had louvres from top to bottom. Louvres at base are aluminium or steel and louvres at top. I am not sure if they are glass. Corridor from B to C on eastern and western side there are old columns. Above hydraulic experiment there was a lecture room, and board room. Ceiling of passageway was 8' - 10'. There was opportunity for light to be diffused. Corridor was not very dark. I wanted to get Hinds. I was hurrying along. I had known the route when I was Head. I was not hurrying. I was walking in the normal way. I could not see store counter

In the High  
Court

No.6  
Judge's Notes  
of Evidence

11th October  
1976

(continued)

10 ahead of me because of diffused light. I  
looked forward and could see nothing at the  
end of the corridor. I could only see 7' - 10'  
ahead because of bad light. If Hinds had  
been 12' ahead I could have seen a form. I  
would have recognized Mr. Hinds. Corridor was  
like cinema without house lights on. On 5th  
August, 1975 I knew that trench was intended  
to be foundation of staircase going up to  
upper floor. On 5th August, 1975 as far as I  
was aware there were not twelve treads boxed  
in that trench. When I looked towards Chemical  
Engineering Laboratory and I walked in. At  
some stage suddenly mentally I felt a faint  
shadow and before I could turn to see what it  
was I suddenly found myself in the trench.  
After my accident I found out that the faint  
shadow was a frame-work for putting up stairs.  
20 I did not learn that trench would be the landing.  
Location of trench is not landing before first  
tread. From trench to C measured 23'4". On  
5th August 1975 I did not see columns on East  
and West of trench and 4 lathes across columns  
North of trench.

Adjourned:

By consent further medical expenses in the sum  
of \$933.25 agreed - 17th January, 1976 to 4th  
October, 1976, Ex. "D"

Adjourned - 12/10/76:

30 Tuesday 12th October, 1976:

12th October  
1976

Appearances as before:

Ramsahoye:

I ask that particulars of Special Damages  
be amended by adding items of 17th January,  
1976 to 4th October, 1976 as set out in Ex."D".

Wooding:

I have no objection.

Court:

Amendment granted as prayed.

40 PONNAMPALAM SELVANAYAGAM re-sworn and continuing  
in cross-examination

To Wooding:

In the High Court

No.6  
Judge's Notes  
of Evidence

12th October  
1976

(continued)

Before I went to London to Imperial College of Technology I spent most of my life in Sri Lanka. I was 27 - 28 years old then. I did a lot of reading. I was interested in listening to music. I used to play the violin. I am not interested in art, painting or sculpture. I am interested in conversation. I can still enjoy listening to music. For the past 14 months I have not been able to visit friends, apart from 2 or 3 University friends. I was unable to visit because of lingering pain in my neck and pain in my leg and discomfort. When I lie down or sit down I feel uncomfortable. It does prevent me from carrying on conversation. Up to a point. If my condition improved I would be able to enjoy company of my friends. Xmas and Carnival times were major times I danced with my wife. My wife and I went to private swimming pool and sea before accident. I would not risk swimming now even if my neck was better as my left leg is unsteady. I have been to Court since last Tuesday. I have never been to these Courts before. I have come up by stair case in the middle of the building from West to East. When I leave Court I turn right proceed North and then enter corridor going from West to East. I have not noticed in the corridor going West to East a little room with green shutters. I have not noticed sign at end of corridor; eastern end with sign marked - "LAW LIBRARY". I had no interest in that. Light in corridor going West to East from Court is good. I would not describe it as diffused. To the south of this corridor there are rooms. On the East there are rooms. On the north there is the staircase. On the West there is a wall at eye level. On the southern side there are doors, windows and wall. There is no direct lighting in corridor going West or East to West. There is cupola in Red House Light in corridor B to C in plan Ex. "A" is not of a kind found in corridor in Red House I have spoken about going West to East. Light in University passageway - quality - B to C in plan Ex. "A" was very much darker than corridor going West to East in Red House that I have described. I have had no difficulty in seeing way ahead in corridor East to West and West to East in Red House. On 5th August, 1975 I did not see mounds of earth, rubble and gravel to East of corridor B to C. When I was in trench I turned anti-clockwise. My back was to South. In plan "A" trench is next to Hydraulic Experiment. Trench was not 5' - 6' North of hydraulic equipment. When Ex. "A" was prepared both hydraulic experiment and trench had disappeared.



In the High Court

No.6  
Judge's Notes  
of Evidence  
12th October  
1976  
(continued)

Not re-examined Ramsahoye:

Ramsahoye:

I wish to ask leave to lead new evidence in respect of plaintiff not having operation in 1975. I wish to ask whether Dr. Ghouralal informed plaintiff of risks involved and.....

Wooding: I object.

Court: Application refused. Dr.Ghouralal's evidence on re-examination clear on the point.

P.W.3:

10

WINSTON SUITE sworn states:

I live at Tunapuna. I am a Research Assistant at U.W.I. I have B.Sc. in engineering - graduated June, 1974 with first class honours. After graduation I registered as Research Assistant. I am pursuing a PH.D. in Faculty of Engineering. I am familiar with workshop area at U.W.I. I see plan Ex. "A". I knew plaintiff since October, 1970. I saw him on 5th August, 1975, sitting approximately at the doorway of the workshop - workshop shown on plan Ex. "A". I spoke to him. We placed him in backseat of car to have him taken to hospital. I did not go to hospital. I knew he was injured. I did work in area adjoining workshop. I supervised the erection of a concrete stairway. Stairway led from ground level to first floor leading to lecture room 6. Beginning of stairway was about 30' North of doorway of workshop. Two weeks or 1 1/2 weeks after Professor's accident commencement of casting of steps took place. I was familiar with area on date of accident. On date of accident area of location of staircase was poorly lit, actual formwork steel had to be cleaned and changed. There was a hole on the ground level. Around 3rd Bay series of columns. There were 4 columns from doorway of workshop going North to base of step. Some steel was in hole and steel for enclosed beam to bear the steps and treaders. In relation to hole - steel was north of hole. From workshop you walk North along corridor before getting to hole. As you walk North you come to hole and then framework for stairs. I saw no signs in corridor indicating work was in progress. There was no guard around the hole. There was no red light indicating there was a hole in the passage. When I carried out work after accident I had people working with me.

20

30

40

In the High  
Court

No.6  
Judge's Notes  
of Evidence

12th October  
1976

(continued)

10 I asked for plans for initial design. I did  
not get them. I made enquiries as to how I  
could proceed without plans. I was persuaded  
to proceed with job and re-design it. Corridor  
had been poorly lit. I did the job with  
artificial light. I installed a line with  
electric light bulbs. (1) Slabs on steps were  
very thin and it was necessary to ensure that  
steel remained at a precise distance from the  
base formed to contain the step. (2) I could  
not see the re-inforcements in the hole - hole  
was 3' deep and it was very dark in the hole.  
20 (3) There was need to ensure full compaction of  
concrete beam itself and it was necessary to  
have light to achieve this. At the date of  
accident there was a makeshift experimental tank  
East of corridor with some equipment attached  
to it. In relation to tank - tank was approxi-  
mately 20' - 30' wide. Southern end of tank  
was slightly North of doorway of workshop.  
Northern end of tank was in the vicinity of  
proposed base of steps. I refer to hole.

To Court:

Tank would have been 3' - 5' east of edge  
of the hole. I can't say precisely but tank  
may have been 3' - 5' north of hole.

Cross-examined Wooding:

30 Tank was between 25' - 30' long. Southern  
end of tank was less than 10' from doorway to  
workshop. Hole was intended to be leading for  
stairway going up to first floor. I don't  
remember number of treaders to staircase. Top  
treaders would have been 10' south of the store  
counter and there would have been stairs coming  
down to counter. Hole would be 20' from store  
counter. Trench would have been a few feet  
south of northern end of hydraulic experiment.  
I am drawing on my memory for position of  
hydraulic experiment. I do not know when  
40 hydraulic experiment was removed. I never  
assisted in preparation of any plan of the  
general area. I have not given statement in this  
matter to Counsel but sent Solicitor a written  
statement some months ago. The early part of  
this year. I sent statement at the request of  
the plaintiff. Construction of staircase was  
completed in one day. It was completed in  
August, 1975. When I sent my statement to  
Solicitor I was drawing on my recollections of  
50 matters going back to August, 1975....  
I roughly located the position of the experimental  
tank. Actual framework had to be changed and

In the High  
Court

No.6  
Judge's Notes  
of Evidence

12th October  
1976

(continued)

steel had to be cleaned steel and form-work had been lying on the hole some considerable time before the accident. Steel and framework also extended from hole to first floor. There may have been 10-15 treaders going up to the first floor. Formwork is boxing and reinforcement - steel is in boxing. There was a double cantilever stairway which might be described in lay language as fish bone type of stairway. Framework boxing did have reinforcement. Main rib came down straight from treader on first floor down to the hole. All that had been there for some considerable time before 5th August, 1975. I would say definitely it was there in the first week of July, 1975. It had been there months before July, 1975. I know Hinds - Superintendent of Workshop. He had been in charge of stairway before I took over. He would have been carrying out instructions of Bruce. There are 4 columns in the corridor going North from the workshop to the trench. Fourth column is quite close to the base of the step. At the base of the stairway was the trench. Trench was in third box between third and fourth column. Trench would run south of bottom treader below staircase - a little distance to the North. I had to add to the boxing, remove all the steel, clean the steel, replace steel and add more steel. Casting of concrete was what was done in one day. If work had not to be changed all that was necessary to complete the job was to cast the concrete. From the third column at eye level you could not see reinforcement in boxing but you could see boxing. One should, on leaving workshop and turning north, see boxing and main rib at North in corridor. I would agree as physicist that light in corridor was diffused. There were columns on East and West side of corridor. There was column on West side in vicinity of bottom treader. On 5th August, 1975 there were 4 strips of lathes between the two columns East and West in vicinity of bottom treader and North of that treader to best of my recollection. I do not know if Hinds constructed lathes. When you not turn left out of doorway you could see framework North in corridor, if there were lathes across column North of hole you should have been able to see them. Store window was North of or behind the treaders. On 5th August, 1975, it was possible to turn right by framework and go around treaders to the store window. One would turn right before getting to trench. There was space between northern end of experimental tank and trench. Rubble and earth had been excavated from trench. Gravel was also there - East of

10

20

30

40

50



trench and North of tank. Tank was only 2'6" high. It was possible to see earth, gravel and rubble East of the corridor in the vicinity of the trench and stairway. Sand and gravel were there. Trench was 3' deep.

In the High Court  
No.6  
Judge's Notes of Evidence

12th October 1976

(continued)

10

There was no need to re-excavate trench. I took out re-inforcements. I measured trench before accident as I was asked to do job before accident. Trench was 3'6" to 4' wide. East to West and North to South about 3' and 2'3" deep. I did not keep any records. I would have seen records up to the end of August, 1975. Measurements I have given are dependent on my recollection up to August, 1975. I would not suggest that one would need light to walk down corridor. I needed light to proceed with the construction and I installed electric light - extension light, to supervise detail work. Hinds was there on 5th August, 1975 and took plaintiff to hospital.

20

Re-examined Ramsahoye:

One could walk along passageway and around treaders. There was a third series of columns - one to the West of corridor and 2 sets of columns East of corridor and parallel to each other. There was space of approximately 2' between the two columns at East of corridor and this provided the distance between tank and North South edge of the trench.

30

CASE FOR THE PLAINTIFF CLOSED

Wooding:

D E F E N C E:

D.W.1.

PERCY NICHOLSON BRUCE sworn states:

40

I live at 28 Warner Street, St. Augustine. I am Assistant Dean at the Faculty of Engineering. I have a Bachelors Degree, Masters Degree and B.A. in chemistry and Physics, M.Sc. in Chemical Engineering and Ph.D. in Chemical Engineering. I have known plaintiff for a number of years. Up to 1974 he was head of Department of Civil Engineering and from October, 1974, to December 1975 a Professor. As Assistant Dean in Faculty of Engineering. I did have responsibility of maintenance of physical facilities of the Faculty. On 5th August, 1975 the plaintiff fell in a hole in the corridor East of the Workshop.

In the High Court

No.6  
Judge's Notes  
of Evidence

12th October  
1976

(continued)

I was on premises of U.W.I. on the date of the accident. It became necessary to maximise the use of available space. We were in the process of constructing stairway. Hole would have been 20' away from store window on store counter. Top leading of stairway would have been about 20' from the trench. I made a plan of the area on 6th August, 1975 Ex. "B" is plan I prepared. On West of B is workshop. There are louvres on western side of corridor forming part of eastern side of workshop. Louvres up to 4' are metal from ground level and above that are glass up to the top about 9'. On 5th August, 1975 glass windows were definitely open and metal louvres I expect would have been open as they are usually open for the purpose of ventilation. I am inclined to think metal louvres were open. Wave tank experiment was about 1' from ground. That 1' was built up with concrete, blocks and rubberised tarpaulin. Total height of tank was 1' and East of corridor. Turning left from workshop entrance and going North, wave tank was about 27'. On plan B, I have marked excavation - which represents trench in which plaintiff fell. Between northern end of wave tank experiment and southern end of trench was about 7' on eastern side of corridor. Between northern end of tank to North West of tank was open space. I measured trench on 6th August, 1975. Trench was in width North to South 3'4"; East to West in length 6'6"; depth was 1'6". I made a note of all these measurements on the 6th August, 1975. Immediately North of trench was formwork of stairway. Window shutters which started and extended upward to the upper level of building -20'; North of bottom treader. There were approximately 12 treaders. Formwork formed enclosure for the steel work. On 5th August, 1975 steel work was in boxing from top treader to bottom treader which extended to bottom of trench. Each treader has boxing with steel reinforcement lying horizontally in the treaders. On 5th August, 1975 I went to the trench about 1.00 to 1.15 p.m. shortly after accident. Corridor extended to store window before excavation. North of water tank was a pile of gravel and close to East of excavation pile of rubble and pile of sand. One could clearly see sand, gravel and rubble when one turns left from the workshop door and walks North. Without a doubt in that position one could clearly see the framework of the staircase. There are columns on the eastern and western side of the corridor. On the eastern side of the corridor there are 4 columns. On plan "B" I have marked a Red column on the eastern side.

10

20

30

40

50

In the High  
Court

No.6  
Judge's Notes  
of Evidence

12th October  
1976

(continued)

10 Further North I have indicated in Blue on  
plan "B" another column. To my recollection  
on the western side in the vicinity of the  
trench there were no columns. Walking North  
along the corridor, if the trench was negotiated  
one could actually walk up the treads to the  
first floor and students were actually doing  
this for part of the third term and during  
examinations in late May, to 3rd week in June.  
Prior to accident to prevent students from  
going upstairs I had erected a barricade of  
window lathes. I had instructed Hinds to do so  
in April, 1975. Lathes were nailed to front  
of boxing and vertical to ensure students could  
not ascend treads to go up to first floor.  
As you turned left from the workshop going North  
lathes would have been visible. Such rubble  
had been replaced in trench. 5th August, 1975,  
was a clear day, ordinary day. Light in  
20 corridor North of trench was diffused and  
satisfactory. I knew corridor North of this  
Court room running West to East. In terms of  
light time of day for time of day light at  
western end of this corridor is similar to light  
in corridor around excavation. Shown in plan  
Ex. "B". Light in corridor was not dull and  
visibility in corridor shown in Ex. "B" would  
certainly not be limited to 7'. If I came out  
of the workshop door and anyone was in the  
30 corridor at any point that person could be  
clearly seen.

Excavation work in trench had been done in  
January, 1975. Examinations were in June.  
From January to June 1975 students were using  
staircase as access point to lecture room  
upstairs to my disapproval. From January, 1975  
up to 5th August, 1975 no one had fallen in  
trench.

Adjourned 13.10.76:

40 Wednesday 13th October, 1976:

13th October  
1976

Appearances as before:

PERCY NICHOLSON BRUCE re-sworn and continuing  
in examination in chief

To Wooding:

On turning left from door of workshop one  
could see gravel rubble and lathes at the end  
of the corridor. As far as trench is concerned  
on turning left out of workshop door it would  
be clearly evident that trench was there. I

In the High Court

No.6  
Judge's Notes  
of Evidence

13th October  
1976

(continued)

see B to C on plan "A". Walking northwards from B to C, trench would be even more visible. There was reinforcement in trench. The central spine - plinth entering trench extended into trench. That was not clearly visible from workshop door but walking North along corridor B to C you could see it. You could in any event clearly see what was above trench. Plaintiff and I had conversation about a visit to Amoco off-shore installation at southern end of trench. This conversation was after examinations in 1975 which terminated in Mid-June and conversation was before accident on 5th August, 1975. I had to go to Jamaica to University Meeting late June till 10th July. Conversation would have taken place between us probably last week in June. Conversation took place at southern end of trench. I was inspecting steel at project site - which inadvertently had oil on it. I was there before the plaintiff came there. When he first came to me I was facing North and he was to my right to my East in the corridor. I don't know from what direction he came. Conversation was in respect of date of visit to Amoco. I gave him a date. I did not accompany him on visit. He asked about steel reinforcements. He made comment about suitability for steel for the job. Plaintiff said we had constructed since that stairway had failed he did not think that the steel work as designed was adequate for the job. Stairway which had collapsed was on southern side and shown on plan "A" at E. In October 1974 he had given up his post as Head of Department. Between October 1974 and August 1975 I have seen plaintiff walking southwards along passageway marked Y to A and proceeding further south to X. When Professor was asking about Amoco and making comment about steel work to me at southern edge of trench it would be totally inconceivable that he could not have seen the trench.

Cross-examined Ramsahoye:

I am a Chemical Engineer. Civil engineer techniques and practice are not my profession and field. Winston Suite is Civil Engineer Trainee. He is a graduate in Civil Engineering but requires three years on the job training to qualify as a Chartered Civil Engineer. Professionally he is not an engineer until he is chartered. As a member of the Association of Professional Engineers of Trinidad and Tobago I can say that definitely that it is a ruling of the Association, but he can't be considered an engineer until he

In the High  
Court

No.6

Judge's Notes  
of Evidence

13th October  
1976

(continued)

has done 3 years on the job training. Degree  
in Civil Engineering given by U.W.I. is equal  
to degree of any of the great Universities  
of the world. I was not one of the first  
people to know the project of building stair-  
case was to be undertaken. Plan to introduce  
stairway was prior to my becoming involved  
with the physical facilities of the Faculty.  
I assumed that responsibility in October, 1974.  
10 When I assumed responsibility actual construc-  
tion of staircase had not yet begun. Work did  
begin in January, 1975. It was commenced then  
with my full knowledge. I was responsible for  
seeing it constructed and completed. I don't  
know when work actually began. I have no  
records of time of construction or its progress.  
I delegate work to workshop Superintendent who  
is responsible to me as Assistant Dean of the  
Faculty of Engineering and I have other multi-  
20 farious duties to perform. As far as my time  
is allowed I did take personal interest in  
project site. I ensured materials were made  
available, that required labour was supplied  
and advice was forthcoming from the Department  
of Civil Engineering on construction details.  
Labour and materials were not adequately  
provided and for this reason the project took  
a long time to complete. I was of the opinion  
that when that work commenced it had to be  
30 speedily completed. Lack of finance and avail-  
ability of man-power contributed to the delay.  
These disabilities persisted from June, 1975 to  
August, 1975. We were in full academic session  
from January, 1975 to June, 1975. Presence of  
open pit was a source of danger. I don't think  
it was absolutely necessary to have the hole  
covered as quickly as possible. I stopped  
students from using incomplete stairway not  
because it was dangerous to them but because  
40 they were disrupting the arrangement of the  
steel reinforcement. Students to get on frame  
would step in pit and then on to the stairway.  
After accident on 5th August, 1975 finance and  
labour were not suddenly available. Materials  
for casting were on the site. Labour was found  
because we were in August recess and technicians  
and handymen were available. Exams had ended  
in June. Help would not necessarily have been  
available from July because our technicians  
50 accumulated their vacation and some would have  
been away in July, and in August, Hinds, Work-  
shop Superintendent arranged for Suite to  
complete staircase. I did approve of Suite's  
appointment before he began. I had full confidence  
in his ability to make a good job of it.  
Persons 18-65 are students at University.

In the High  
Court

No.6  
Judge's Notes  
of Evidence

13th October  
1976

(continued)

Generally - structurally speaking the premises are safe. I did think at one time that the pit ought to have been guarded to prevent any one from falling in.

To Court:

I thought so around May 1975 prior to examinations, because at that time the pit was around 2' deep and formwork boxing was not complete.

Continuing to Ramsahoye:

I have known plaintiff since 1967. He was one of the older members of the Faculty of Engineering - very likely the oldest. Corridor B to C in which trench was, was used by persons having business at the University including members of the public. Some persons - members of the public, may have passed there for the very first time. I took measurements in corridor the day after the accident for the purpose of making a report to the University. I sent plan Ex. "B" to the University. Plaintiff did tell me at the site of the trench that construction was inadequate. He had absolutely nothing to do with the design of the staircase. He was not involved in its actual construction. I am not certain whether he was involved in staircase which collapsed, but I do not think he was. Plaintiff's office was far East of Workshop. His office was on North, his laboratory was in South but all East of corridor B to C on Plan "A". He could have got to his laboratory by route further East not shown on Plan Ex. "A". In the month of August, 1975, plaintiff was winding up his affairs to leave for Sri Lanka. His need to go to the workshop would not have been less, usually officers leaving go there for assistance to have crates built and for assistance in packing. Plaintiff spoke to me in the corridor B to C, at the end of June. It was not the only time he spoke to me of visit to Amoco.

10

20

30

40

To Court:

On the first occasion he asked when it could be arranged - once in my office and once along the corridor to my office two doors away from his office and other time in corridor B to C by trench when I gave him date.

Continuing to Ramsahoye:

In May hole was 2' deep. On date of

10 accident, 5th August, 1975 maximum depth of  
hole was 18" because in intervening period  
rubble, broken concrete had been dumped into  
hole. It was a continuous construction job.  
Rubble was poured in between May and August.  
There was re-arrangement of horizontal steel  
rods on stair-treaders. I can't recall the  
exact time. Form oil was applied to woodwork.  
Form oil had got on steel-affected building of  
concrete with steel and steel had to be cleaned  
out. About 2 weeks before the accident Suite  
was asked to look at project. He may have  
asked for engineering drawings. I have no  
personal knowledge of the engineering drawings.  
I have never seen them. I understand they were  
done by a lecturer in the Department of Civil  
Engineering. There was no need for Suite to see  
drawings to complete work. It may be likely  
20 that he did not see the drawings. Trench was not  
opposite hydraulic experimental tank. There is  
no artificial lighting in the passage.

Re-examine Wooding:

30 In May 1975 there was formwork which was  
not complete in trench. Formwork was complete  
in July. At the end of June, 1975 when I had  
conversation with the plaintiff at the trench  
formwork was not as it was in May. Formwork  
was up but change had to be made to increase  
the closeness of treaders. Plinth was boxed in  
June. Individual treaders were also boxed -  
all 12. In June 1975 when I had conversation  
with plaintiff sand and gravel were on project  
site in area of trench.

CASE FOR THE DEFENDANT CLOSED

Adjourned - 14.10.76:

Thursday 14th October, 1976

Appearances as before:

Ramsahoye S.C.:

40 Report of Mr. Robertson Ex. "C" dated 6th  
October, 1976. Plaintiff was examined by Mr.  
Robertson at the request of the defendant on  
6th October, 1976. By consent.

Wooding Q.C.

That was the position. Opening was as to  
facts. No law. Defendant put at a disadvantage.  
If case law is referred to by Counsel for the  
plaintiff - option to reply. Action founded

In the High  
Court

No.6  
Judge's Notes  
of Evidence

13th October  
1976

(continued)

14th October  
1976

In the High Court

No.6  
Judge's Notes  
of Evidence

14th October  
1976

(continued)

in negligence and nuisance. Statement of Claim - paras. 1-5. Particulars of negligence - paras. 4-5. Case appeared to be invitor - invitee. Case of master and servant. Master has duties at common law. Action first being tried extensively by rules of common law. Incontrovertible - Duty of master to provide safe system of work. 14th Edition - Salmon on Torts, p.672. (This action in tort) p.674-5; Duties of Master. Latimer v A.E.C. Ltd. 1953 - 2 A.E.R. p.449 (H.L.). Factory flooded in exceptional storm - all reasonable care and skill taken - no negligence at common law.

10

In the circumstances of this case duty to make workplace higher than invitor and invitee must be conceded - duty fell short of that required in Master and Servant. 3rd Edition - Charlesworth on Negligence; p.394 - Contributory Negligence. Available to defendant in case founded in Negligence - nuisance even in breach of statutory duty. This is not the case here. Contributory negligence - no defence if allegation. Plaintiff guilty of conduct causing own injury takes consequence. 3rd Edition Charlesworth - p.507; para.828. Meaning of contributory negligence. Admission by defendant failing to guard pit. Fell short of degree of care imposed in Master and Servant. Question of fact - contribution of plaintiff to his own injury. 3rd Edition Charlesworth - para.829 - negligence. Failure to use reasonable care. Sudden falling into open hatchway - para.866 para. 830; para.841 - Burden of Proof of contributory negligence. paras.840-845. Para. 6 of Statement of Defence - "Wholly or in part by plaintiff's negligence. P.531 - para.865 - Charlesworth para.869 (Before Law Reform Act) 1956 - 2 W.L.R. - Stevely Iron and Chemical Co.Ltd. H.L. p.479 (Workman) Jones. No contributory negligence on part of workman. (Not very risky thing workman may do -Contributory negligence - Breach of statutory duty). (Para.866 - Charlesworth) Dew v. United British Steamship Co. 1929 - 98 L.T.; K.B.; p.88 (Aware of open hatchway).

20

30

40

Mullard v. Benline Steamers Ltd. 1071 - W.L.R. p.1414 p.1417. Para. 878 - Charlesworth - Volentt non fit injuria  
Plaintiff does not see danger.  
4th Edition - Munkman (middle of page) p.53<sup>a</sup>.  
Employer's liability at common law. Knowledge establishing contributory negligence. Disregard of obvious danger. (para.7 of Defence) (Trench patent and obvious p.538 - para.8 of Defence.

50



10 Knowledge of trench. Particulars of Defence filed. Knowledge of trench. Conversation with Bruce at site - 5 weeks before accident. Substantial contributory negligence. Facts hardly in dispute. Apart from location of trench in relation to tank experiment very little difference between Ex. "A" and Ex."B". Defendant's plan made on 6th August, 1975, day after the accident. Measurement etc. True location of Wave Tank experiment shown - plan drawn to scale. Plaintiff's plan prepared 2 weeks ago from memory - Not drawn to scale. Evidence of Suite. Postition of experimental tank - relying on memory. Bruce - guard should have been there at one time. Trench without guard. Concede: Defendant had not discharged duty to plaintiff.

20 Lighting diffused but enough light to make walking down dorridor 5th August, 1975 voyage in which trench could be clearly seen. Formwork visible when turning left from door of workshop.

Bruce's evidence - sand, gravel and rubble visible - trench visible. Reinforcement in trench visible.

Suite - rubble, gravel and sand could be seen in corridor.

30 Plaintiff - could not see more than seven feet ahead. Not worthy of belief. Aware of faint frame. Finding of Court should be - Failure to keep proper look out. Evidence of plaintiff directed to conceal that - evasive. No lathes. Suite - no memory of lathes. Plaintiff - Evidence evasive as to true condition of corridor. From January, 1975 to August, 1975 no one falling in pit. Knowledge on part of plaintiff.

40 Conversation at trench between plaintiff and Bruce. Date for visit to Amoco, after examinations. Plaintiff himself - 1st July, 1975. Only area of disagreement as to where conversation took place, Bruce's evidence should be accepted. Plaintiff on 1st July, 1975 must have been aware of trench, of formwork, of gravel and of sand. Pre-existing knowledge of plaintiff.

50 Argument may be advanced that knowledge on 1st July, 1975 would be expected to be aware that work incomplete on 5th August, 1975. But on 5th August, 1975, formwork, etc. could be seen.

In the High Court  
                      
No.6  
Judge's Notes  
of Evidence  
14th October  
1976  
(continued)

Physical attribute. Court should hold -  
conceded by defendant some knowledge of  
negligence on the part of the defendant having  
regard to relationship of master and servant  
and duty of care in those circumstances.  
Plaintiff is guilty of contributory negligence  
and substantial in this case; appropriate  
apportionment from Court.  
Damages - duty on part of plaintiff to mitigate  
damages.  
Para.157 - 13 of 12th Edition Mayne McGregor  
on Damages.  
(Plaintiff unreasonable not having operation)

10

McAuley v. London Transport Executive - 1975,  
2 Lloyd's List p.500. Personal injuries  
suffered by Plaintiff - plaintiff advised to  
have operation.

P.505 - Question of fact.

Marcroft v. Struttons Ltd. 1954 - 1 Lloyd's  
List Report p.395.

20

Plaintiff's refusal to undergo operation.

Reasonableness - question of fact.

Steel v. Robert Gray; 1942 A.C.497.

Richardson v. D. Redpath; 1944 A.C.62

Savage v. Walhis Ltd. 1966 - 1 Lloyd's List  
Reports; p.357, at p.361 (Remote chances of  
successful operation) Support from plaintiff's  
doctor is to likelihood of failure of operation  
performed.

30

In this case medical evidence - Dr. Ghouralal  
advised of risks and recommended operation as  
no incident of failure. No evidence that  
plaintiff refused to have operation. Plaintiff  
postponed point of time. He was not resident  
here and wanted to go home. No justification  
for plaintiff's not having operation.

Ghouralal - recommended operation in September,  
1975 - one week in hospital, 6 months later  
should be back to normal - 80° reduction of  
movement. Cost of operation around \$5,000.00.  
Defeats plaintiff's case for loss of earnings.  
Plaintiff's evidence - he could not bend down  
due to injury to neck.

40

Evidence of his own doctor - Dr. Ghouralal by  
April, 1976 if operation performed plaintiff  
would have been able to embark on work as  
Consultant Engineer.

(1) Extent of University liability, Cost  
of operation - \$5,000.00

(2) Seven (7) months earnings - August,  
1975 to April 1976 - (October,  
November, December - 3 months - full  
emoluments received) No loss of  
earning for 3 of the 7 months.

50

In respect of 4 months - January - April, 1976 - Consulting Practice not set up. Plans to do so on arrival in Sri Lanka. Earnings (impossible to earn \$5,000.00 a month; figure assessed should be lowered)  
General damages - injury to neck.

In the High Court

No.6  
Judge's Notes of Evidence

14th October 1976

(continued)

Wieland v. Cyril Lord Carpets - 1969 3 A.E.R. 1006.

10

4th Edition - Munkman - Damages for personal injuries - p.209.

Housekeeper - 61 - General Damages \$600.

Pains up to time operation should have taken place. Estimate of Dr.Ghouralal. Dominant injuries - injury to leg. Mr. Lalla 20% permanent partial disability.

4th Edition - Munkman - p.223.

Cornilliac v. St.Louis; 7 W.I.R. p.492 - Heads of Damage.

20

Loss of amenities. Plaintiff is 55 - 56 years of age. Dancing Xmas and Carnival - swimming - going to beach. Reduction - but not substantial. Not a case in which large award merited.

Liability should be apportioned.

Any shakiness of hand unrelated to accident.

Plaintiff right handed. No loss of pinch - power to write.

Plaintiff:

Dr. Ramsahoye:

Agree with Wooding on 2 questions.

30

(1) Defendant fell short of care and safety which plaintiff was entitled to expect - higher duty than otherwise the case. Even if case were that of invitor and invitee.

(2) Court entitled to investigate question of contributory negligence.

Standard of care.

Xmas and General Cleaning Contractors - C.A.1952 - 1 A.E.R. p.39.

40

H.L. General Cleaning Contractors and Xmas - 1952 - 2 A.E.R. p. 1110.

Standard required of employer.

Agreed contributory negligence to be investigated.

Every fact to be taken into account. Question

whether Professor turned his head to look for

Hinds to be taken into account as at that stage

he fell in trench.

3rd Edition - Charlesworth; para.867, pp.533-534 at p.534. Lord Wright - "Some carelessness or

50

inattention not contributory negligence."

Cases cited by Counsel for plaintiff that of Workmen - pursuing calling which was their

In the High Court  
No.6  
Judge's Notes of Evidence  
14th October 1976  
(continued)

vocation. Present case - Isolated instance and law different.  
1858 - Chapman and Rothwell Ellis, Blackburn and Ellis p.168 (invitor and invitee).  
Morgan and Incorporated Central Council of Girls Friendly Society; 1936 1 A.E.R. p.404  
(Plaintiff - Licensee and not Invitee)  
Left partially open.  
Plaintiff not guilty of contributory negligence. 10  
Fairman and Perpetual Investment Building Society, 1923 A.C. p.74 at p.96.  
(No one could reasonably expect)  
Entitlement to assume danger. Not enough to say if Professor had been looking he would not have fallen in ditch.  
Stowell and Railway Executive, 1949, A.E.R. p.193 - Lynsney J. "Oily patch on platform" at 195 - Letter G to p.196 - duty to protect invitee. (Acting reasonably, dependant on circumstances in each case) "Looking down on ground at every step they take." 20  
In this case passage becoming trench - trench extended over entire width of passage. Plaintiff had seen form of steps going up. Seeing faint form making ditch a trap. Not unreasonable to turn head around to look for Hinds. Not unreasonable.  
Daniel v. Rickett Cockerell & Co.Ltd. and Raymond, 1938, 2 A.E.R. p.631 at p.633.  
Coal cellar left open. Pedestrian stepping into hole. No contributory negligence. 30  
Farrell and John Mowler Ltd. 1954 - 1 Lloyd's List Reports p.437 (Compressor pipe left across pavement) - at p.440. No contributory negligence. (Plaintiff in group of people) thoughtlessness or carelessness not sufficient. Contributory negligence should not be found. May well be had he had not been looking for Hinds accident would have been averted. If contributory negligence found - finding should not be substantial. 40

Damages:

Case is a tragic one. Injuries very severe. Plaintiff's professional life ruined. In present condition - stiffness of neck. Disability in foot and pains and discomfort. Plaintiff unable to live life of scholarship. Unable to draw designs. Disability of movement and continuing pain and discomfort for rest of his life. Plaintiff aged 55. 50

It is important to assess the extent of working life had he not been injured. Probably between 7 and 10 years of professional life.  
7 W.I.R. Cornillac v. St.Louis p.492 - Pain and Suffering, Loss of Amenities, Deprivation.

Report of Dr. Robertson - sort of neurosis - difficult for him to work again. Plaintiff can still write. Unable to do designs and go on sites. Multiplier to be found. How much plaintiff likely to have lost. Plaintiff earned around \$48,000.00 per year at U.W.I. Not unreasonable that he would earn similar sum in future career.

In the High Court

No.6  
Judge's Notes  
of Evidence  
14th October  
1976

(continued)

10 Submission - Plaintiff not entitled to loss of future earnings as he would have been fit after 7 months. Question of operation no issue in this case. Only evidence that plaintiff diabetic and risks involved in operation. Issue would have been if plaintiff unreasonably refused to have operation, which in all probability would have been successful. On evidence of Dr. Ghouralal. Plaintiff's conduct cannot be held to be unreasonable. Pain and suffering and deprivation. (Quantum of damages £10,000.00 reduced to

20 £7,000.)

Rushton and National Coal Board, 1953, 1 A.E.R. at p.314 at p.316 - L.J. Singleton.  
Quantum - West and Son v. Shepherd, 1963, 2 A.E.R. p.625 Lord Pierce. 1968 - 12 W.I.R., A 212 p.352 - Ahamad v. Raghubar; Ramsawack v. Carnarvon 1959 - 1960 - W.I.R. p. 426 (amount awarded)  
4th Edition, Vol.2 - Kemp and Kemp Part 2 136 - 139.

30 Multiple injuries. Tables given of ages of plaintiff, etc.  
Vol.4 - Part VI, Sec.A.  
Injuries to neck. Varying awards.  
Hall v. Lord Halsbury, Part 011 - £15,000.  
Wieland v. Cyril Lord Carpets - £600. Lower limbs. Part 10 - Sec. B - ankle. Awards between £2,000 - £3,000. Injury to ankle; inoperable. Severe injury - substantial award merited.

40 Gravity of injury to be considered. Inflation to be taken into account. Special damages all agreed. Plaintiff has not delayed in any way in bringing matter. Concede - plaintiff not entitled - not to earnings up to 31st October, 1975 but entitled from then up to present hearing. Loss of earnings to be taken into account - general damages.

Wooding:

Cases invitor and invitee. Unreasonable to postpone operation for three months.

50 Adjourned for judgment

Parties to be notified of date of delivery of judgment.

In the High  
Court

No.7  
Judgment of  
Scott J.

17th December  
1976

No. 7

JUDGMENT OF SCOTT J.

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE No. 402/76

BETWEEN

PONNAMPALAM SELVANAYAGAM Plaintiff

AND

THE UNIVERSITY OF THE  
WEST INDIES Defendant

Before the Honourable Mr. Justice  
Garvin M. Scott

10

Ramsahoye S.C. with him Toolsie and Mohan for  
Plaintiff.

Wooding S.C. with him Patrick for Defendant.

J U D G M E N T

In this action the plaintiff claims  
damages for negligence as a result of injuries  
sustained on the 5th August 1975 when he fell  
in an open pit on the premises of the defendant  
and in the alternative claimed damages for  
nuisance.

20

By consent -

- (1) A Sketch Plan of the plaintiff's with  
the location of the accident coloured  
RED was marked "A"; and
- (2) Sketch Plan of the defendant's with  
location of the accident shown by a  
curved arrow on western portion of  
plan. Marked Ex. B.

The area of dispute as to where the  
accident had occurred was reflected in plans  
Ex.A and Ex.B.

30

By consent - particulars of special damages  
were agreed in the sum of \$1,534.67 up to date  
of Statement of Claim and again in respect of  
Ex.D further medical expenses in the sum of  
\$933.25 for the period 17th January, 1976 to  
4th October, 1976.

The plaintiff to Consultant Civil Engineer had been in the employ of the defendant as a Professor and Head of the Department of Civil Engineering in St. Augustine from 1965. In 1975 he ceased to be the Head of the Department and continued to be a Professor after October 1974 to the 31st December, 1975.

In the High Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

10 On the 5th August 1975 he had gone to his office which was on the eastern side of the Chemical Engineering Laboratory shown in Ex.A. Some time later around 11 a.m. he went to the Civil Engineering Laboratory, after that he had walked north turned west to his left and went to the workshop the door of which is marked B on plan A to see Mr. Hinds, the Superintendent of the Workshop. He entered the door marked B on plan A. discovered Mr. Hinds was not there and was told something. He left the Workshop turned  
20 North to his left, intended to go to the Chemical Engineering Laboratory as his wife was expected there with his car.

30 It was then about 11.15 a.m. The light was diffused, he looked straight ahead and saw nothing unusual. He was walking north along the passageway, looked in the direction of the Chemical Engineering Laboratory about 25 feet to the east to locate Mr. Hinds and suddenly found himself falling into a trench left foot first. He felt a sudden pain in his left leg and ankle. The trench was about 2 feet deep. He looked in the trench saw some pieces of stone and felt some steel rods on his left side going to the bottom of the trench. He tried to get out, was giddy and shouted for help. He was lying down semi-unconscious, received help and was taken to the General Hospital Port of Spain and there admitted. He had been seen by Dr. Pierre, Dr. R.Lalla, Dr. Ghouralal and Dr. Rattan.

40 Up to the present time he continued to have pain in his left foot and ankle. Initially the pain had subsided due to pain killers, but putting weight partially on the foot caused an increase of pain. He had to use crutches and feels the pain is getting worse. He has discomfort when he lies down and when he walks he has pain. When he walks and he goes home the pain persists and he has to take extra doses of pain killers which cause stomach complications.

50 After the fall he felt slight pain in his neck, numbness and pains in his fingers and on his left shoulder. When he reduced pain killers he was taking for his leg, the pain in his neck

In the High Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

and fingers increased. He complained to Dr. Lalla and was referred to Dr. Ghouralal. He had gone to Dr. Ghouralal on the 15th September 1975. He still has pain in his neck and his fingers. When he attempts to turn his neck on either side, the pain increases in his neck. He could only move his neck slightly vertical upwards or downwards as he gets pain. He could write but his grip was weak. He was unable to bend down to read or write. He was unable to do professional calculations, to do designs of structures in consultation. He could not bend down to do drawings or designs. When he travels in a car, a jerk of the car produces pain. He had been paid by the defendant up to the 31st December, 1975 and had planned when he left the University to set up consulting practice in Sri Lanka. He had been placed on the Roster of the United Nations in respect of three agencies.

10

At the time of his accident his gross salary as Professor of Civil Engineering was \$46,605 per annum.

20

He had worked in Sri Lanka before, his prospects there would have been good and he estimated he could earn \$60,000.00 to \$75,000. Trinidad and Tobago currency per annum.

As a United Nations' Consultant a person of his standing could have obtained a salary of \$60,000. Trinidad and Tobago currency per annum tax free.

30

He had been an energetic and active person. He would not now be able to undertake the work of a consultant. He could now only dictate papers on which he had information. Papers of that nature enabled one to maintain prestige on the international world but prospects financially from this were nil and would provide no source of income.

He enjoyed gardening which he did to keep fit, he enjoyed swimming, dancing and participating in social activities all of which he was no longer able to do. He drove a car up to the day before the accident but since the accident had been compelled to employ a chauffeur. He had always enjoyed good health and particularly so for the past ten years in Trinidad.

40

He had retired from his job at the University of the West Indies in 1975. His actual date of retirement was the 31st December 1975, but he had been given special permission to retire at



any time from July 1975 and had received all his emoluments from the University of the West Indies up to the 31st December, 1975.

In the High Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

10

He admitted that while he had hoped to open a consulting practice on his own with assistants in Sri Lanka he had not contacted any one to act as an assistant. He had been born in Ceylon in 1921 and had planned to put his plans in effect when he returned to Colombo in Sri Lanka formerly Ceylon. While his name had been placed on the Roster of international Agencies of the United Nations that in itself was not a guarantee of employment but in the normal course of events he would have been called from time to time by one of the International Agencies of the United Nations.

20

In any consultancy an engineer must be able to go to the site of the construction to supervise climbing - climbing ladders and steps. As a result of the injury to his leg he could do no climbing as he could not move as he did before. Due to the limitation of movement in his neck he was now unable to do designs and drawings.

30

In respect of his plan Ex.A he admitted that he had prepared that plan two weeks previously and from memory. The location of the trench had been inserted in the plan from memory. By Christmas 1975 the wave tank experiment had been removed and was not there when he took measurements. The hydraulic experiment shown on his plan Ex.A had been inserted from memory.

40

He had ceased to be the Head of the Department in September 1974 or on 1st October, 1974 and his office was 50 to 60 feet east of the Chemical Engineering Laboratory. The office of Mr. Bruce, Assistant Director of the Faculty of Engineering was not in the same building.

50

On the 5th August 1975 he had been to the workshop in search of Hinds, the Superintendent of the workshop. He had gone there a few times after he ceased to be the Head of the Department as when ever he had important work to do, he would speak to Hinds and go to the workshop. At C in plan A there was a window, but he had never been to that store window.

After he had ceased to be Head of the Department he had never been along the corridors B to C shown in plan A. There was no necessity to go there as his wife collected him in his car

In the High Court

No.7  
Judgment of  
Scott J.  
17th December  
1976  
(continued)

in front of the Chemical Engineering Laboratory shown at Y in Ex. A.

It was the first time in ten months that he had gone along corridor shown as B to C in plan Ex.A and he had known nothing of the trench until the accident. He freely admitted that corridor B to C in Ex.A was available for use by students, technicians and faculty members and that it was a natural thing or for persons to use B to C on Ex.A as a short cut.

10

He again re-iterated that he had looked ahead and could see nothing at the end of the corridor as the light was diffused and the corridor was like a cinema without the house lights on. After his accident on the 5th August 1975 he learned that the trench was intended to be the foundation of the staircase going up to the upper floor. When he was walking and had looked towards the Chemical Engineering Laboratory at some stage he suddenly mentally felt a faint shadow and before he could turn to see what it was he found himself in the trench. After his accident he found out that the faint shadow was a framework for putting up stairs.

20

The plaintiff readily admitted that he had discussed with Mr. Bruce, a date for his visit to Amoco off shore installations on the 1st July 1975. He however, strongly denied that this conversation had taken place at the project site, and that he had told Bruce that the steps were very badly constructed and would collapse as did the one on the southern side.

30

Winston Suite a Research Assistant at the University of the West Indies called on behalf of the plaintiff stated he was familiar with the area on the date of the accident.

On the date of the accident the area of location near the staircase was poorly lit. On the 5th August 1975 he had seen the plaintiff who appeared to be injured and he had assisted in placing the plaintiff in a car for him to be taken to the hospital.

40

After the accident he carried out the work and did the job with artificial light. He installed a line with electric light bulbs to proceed with the construction and to supervise detailed work. It was very dark in the hole which was 3 feet deep and the reinforcements in the hole could not be seen. He would not suggest that one needed a light to walk down the corridor.

50

He admitted that on the 5th August 1975 on leaving the workshop and proceeding north and the boxing and main rib north in the corridor could be seen and that the light in that corridor was diffused. The boxing he described as the framework and reinforcement steel was in that boxing. Framework and steel had been lying in the unguarded hole some considerable time before the accident.

In the High  
Court  
No.7  
Judgment of  
Scott J.  
17th December  
1976  
(continued)

10 It had been necessary to add to the boxing, remove all the steel, clean the steel, replace the steel and add more steel. The casting of the concrete had been done in one day, which was all that was necessary if the work had been properly done in the first instance.

20 He had never assisted in the preparation of any plan of the general area. He had made enquiries for the plan of the initial design but did not get them and was told to proceed with the job and re-design it. He had not assisted in the preparation of any plan which included the hydraulic experiment and was drawing on his memory for its location. Hinds, the Superintendent of the workshop had been in charge of the stairway before he took over and would have been carrying out Bruce's instructions.

30 Rubble and earth had been excavated from the trench and gravel was also there east of the trench and north of the task. All the measurements he had given were dependant on his recollection up to August 1975.

The Plaintiff was a patient of Mr. Roopnarine Lalla, a Consultant Orthopaedic Surgeon who was called on his behalf.

40 By consent this Surgeon's Report was tendered and marked R.M.L.1. The report dated 11th October 1975 prepared some two months ago after the accident revealed that the plaintiff had sustained injury to his left foot and ankle, neck, left shoulder and elbow, and hip when he fell on the 5th August 1975.

50 He was admitted to the General Hospital on the 5th August 1975 and on examination there were multiple bruises on the left elbow region and tenderness and swelling of the left ankle and foot, tenderness over the left hip and pain and limitation of movement in the neck. The abrasions were cleaned and dressed and x-rays of the ankle and foot showed a comminuted fracture of the left calcaneum involving the

In the High Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

sub-talar joint. For the fractured calcaneum he was given a below knee Plaster of Paris and the limb was elevated. He complained of numbness in the fingers of both hands and was discharged on the 12th August, 1975.

On the 12th September 1975 he was seen by Mr. Lalla as an out-patient in his office. As the numbness and pins and needles had not settled, a consultation with Mr. S.Ghouralal, Consultant Neuro-Surgeon was arranged and the plaintiff was admitted to the St.Elizabeth Clinic where a myelogram was performed.

10

On the 26th September 1975 his plaster cast was removed and he started to attend the Physiotherapy Department for heat and exercises.

The plaintiff was seen by Mr. Lalla on the 11th October 1975 for the purposes of the Medical Report R.M.L.I. His findings were a persistent swelling in the region of the ankle and foot, movement of the ankle joint limited in all directions and pain being experienced on any attempt to weight bear. X-rays of the ankle showed the fracture to be healing satisfactorily.

20

In Mr. Lalla's opinion plaintiff's injury would lead to osteo-arthritis of the sub-talar joint of the left ankle which might become progressive. The plaintiff had been an active person, a Professor of Civil Engineering and a Consultant and would be handicapped by this disability.

30

He assessed the permanent partial disability to the plaintiff's ankle at twenty per cent.

The plaintiff had also suffered an injury to his neck region attributed to his fall.

By consent a further report of Mr. Lalla dated 1st October 1976 was tendered and marked R.M.L.2. The report stated that the plaintiff had been under Mr. Lalla's continued care for the injury to the left ankle, and that the plaintiff was now walking with a stick. The plaintiff had complained of pains in the joint made worse while walking, that the pain extended to his left knee, and that at times when he started walking the ankle became quite painful. Plaintiff was on tablets for the arthritis of his left ankle and was unable to take them at times because of gastric discomfort.

40

On examination of the left foot he found pain and limitation movement of the ankle in flexion and extension and was of the opinion that the arthritis of the subtalar joint was becoming progressive.

In the High Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

10 In his evidence Mr. Lalla declared that surgery could be performed and thought this might give him a solid and fixed ankle there would be limitation in movement in walking and climbing. Also as a result of surgery there would be permanent swelling in the region of the ankle and foot. The plaintiff was also a diabetic which might complicate surgical procedures; complication of infection which normally might not be present. He later asserted that he considered surgery ill-advised in respect of the injury to the calcaneum and subtalar joint. The plaintiff would have to keep on taking analgesic tablets for all his life from the pain he was having at present which tablets were giving rise to gastric discomfort.

20

30 He had looked mainly after the problems of the plaintiff's ankle. The multiple bruises externally on the left elbow region, tenderness and swelling of left ankle and foot were now cleared up. The subtalar joint was the joint beneath the ankle joint and was the principal area of injury in the lower region of the plaintiff's body. In October 1976 the fracture had healed with discomforts and radiological changes to joint. The fracture had healed but not with the same structural symmetry it had before, as a result of deformity there would be eversion and inversion, inability of ankle to deal with rough surfaces and there would be difficulty in weight bearing and constant pain there. The progression of arthritis was a direct result of his injury.

40 Mr. Samuel Ghouralal a Consultant Neuro Surgeon was also called by the plaintiff. By consent letters of the 16th September 1975, 23rd September 1975 and the 6th October 1975 from Mr. Ghouralal to Mr. Lalla were marked S.G.1, S.G.2 and S.G.3 respectively. In S.G.3 Mr. Ghouralal assessed the plaintiff's partial disability at 20 per cent.

50 By consent a report of Mr. Ghouralal dated 29th September 1976 was tendered and marked S.G.4. In that report Mr. Ghouralal stated he had seen the plaintiff on the 22nd September 1976. Among his findings were that the plaintiff's

In the High Court

No.7

Judgment of Scott J.

17th December 1976

(continued)

neck movements were limited to all directions especially forward flexion and extension. He diagnosed :

- (1) Cervical spondylosis.
- (2) Early cerebellum atrophy.
- (3) Peripheral neuropathy secondary to diabetes mellitus.

He testified that the plaintiff had been his patient from September 1975 having been referred to him by Mr. Lalla. These neck movements were limited and he wore a collar as palliative treatment.

10

If surgical therapy was not carried out, the condition of his neck would worsen. It would mean removal of damaged disintegrated tissue from between 4th and 5th cervical vertebrae and 5th and 6th cervical vertebrae. The effect of the removal was to ensure they did not occupy the space they occupied, relieve pain and arrest diminution of neurologic deficit. The operation was a major procedure but not very risky. The chances of success in the case of the plaintiff were quite good. A successful operation would increase the movement of his neck to about 80 per cent. The plaintiff was a diabetic, and the risk of doing surgery on a diabetic would increase as compared to non-diabetic patients. He had however operated successfully on several patients who had diabetes. At plaintiff's age from the time of surgery complete recovery would take about six months. After surgery he would have free movement but might still complain of pain. An operation of that nature in Trinidad would probably cost \$5,000. and the plaintiff would have to be hospitalised for about a week. He had recommended to the plaintiff in September 1975 that he should have that operation, but the plaintiff had said he was not a local resident and wanted to go home. When he had recommended the operation which related to cervical spondylosis he had all the risks in mind and the plaintiff knew of the risks which a diabetic might have. In Mr. Ghouralal's view it was for the patient to decide whether he should have an operation or not.

20

30

40

The pain in the hands of the plaintiff might have been as a result of the fall but had no neurological source and was like an arthritic pain. The shakiness in the left hand he associated with early cerebellum atrophy and the interior tremor in the plaintiff was not in his opinion related to the fall sustained by the

50

plaintiff.

In the High  
Court

At the request of the defendant the plaintiff has been examined by Mr. E.L.S. Robertson - an Orthopaedic Surgeon and by consent his report dated 6th October 1976 was tendered and marked "C".

No.7  
Judgment of  
Scott J.  
17th December  
1976

The following were his findings :-

(continued)

10 In respect of the left foot there is a fracture through the os calcis healed but with residual displacement and involving the talo calcaneal joint. The result is that he has lost inversion and eversion of the heel and there is pain on walking.

Operation will be ill-advised as after the age of fifty swelling of the leg persists indefinitely after arthrodesis and he would be worse than he now is. All be it he will be left with severe discomfort in the foot.

20 In respect of the neck injury his movements are grossly limited. Some weakness of his hands but not essentially due to neuropathy. His main problem in the neck is the pain and stiffness due to adhesion. In general apart from his severe injury to the left foot and neck, he has a severe traumatic neurosis which may make resuming work very difficult. His permanent partial ability was assessed at 40 per cent.

30 Mr. Percy Bruce, Assistant Director of the Faculty of Engineering testified on behalf of the Defence.

He had known the plaintiff for a number of years. The plaintiff had been Head of the Department of Civil Engineering up to 1974 and from October 1974 to December 1975 a Professor.

40 He had been on the premises on 5th August 1975, the date of the accident. On the day after the accident the 6th August 1975 Mr. Bruce took measurements in the corridor for the purpose of making a report to the University and plan Ex.B prepared on the same date was sent to the University.

He had gone to the site on the 5th August 1975 at 1.15 p.m. There was steel work in the boxing from the top treader to the bottom treader which extended to the bottom of the trench. North of the water tank was a pile of gravel and east of the excavation a pile of rubble and a pile of

In the High  
Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

sand. On turning left from the workshop and walking north the sand, gravel and rubble could clearly be seen as well as the framework of the staircase and lathes nailed to the front of the boxing. Light in the corridor on the date of the accident was diffused and satisfactory Mr. Bruce asserted that the conversation between the plaintiff and himself concerning the plaintiff's visit to Amoco off shore installation had taken place at the southern end of the trench on the last week of June 1975. At the trench the plaintiff had queried the adequacy of the steel work as designed for the job. 10

He agreed that he had been responsible for seeing that staircase constructed and completed and that the work had been commenced with his full knowledge. He had no records of its construction or progress but the work had been delegated to the Workshop Superintendent who was responsible to him. The project had taken a long time to complete as labour and materials had not been adequately provided. His disabilities persisted from January 1975 to June 1975 and the presence of the open pit was a source of danger. After the accident on the 5th August 1975 finances and labour were not made suddenly available. Labour was found as they were in recess in August and technicians and handymen were available. 20 30

In August 1975 the plaintiff was winding up his affairs to proceed to Sri Lanka. His need to go to the workshop would not have been less, as officers leaving usually went there to have crates built and to obtain assistance in packing.

At the conclusion of the case for the defence Mr. Wooding Senior Counsel conceded that having regard to the relationship of master and servant and some degree of negligence on the part of the defendant, the duty fell short of that required. 40

He however submitted :-

- (a) that the plaintiff was guilty of contributory negligence which was substantial in this case;
- (b) that there was a duty on his part to mitigate his damages and that he had acted unreasonably in not having the operation recommended by Mr. Ghouralal;



(c) in respect of loss of earnings plaintiff was only entitled to four months, January 1976 to April 1976 Consulting Practice not set up and figure suggested of ₹5,000.00 a month should be considerably lower;

In the High Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

(d) with regard to the injuries the dominant injury was the injury to his leg, there had been a reduction of his amenities but not substantial, the case did not merit a large award and that liability should be apportioned.

10

Dr. Ramsahoye Senior Counsel for the plaintiff agreed with Mr. Wooding in :-

(1) that the defendant had fallen short of the duty the plaintiff was entitled to expect;

(2) that the Court was entitled to investigate the question of contributory negligence;

20

He submitted :-

(1) that the Court should find no contributory negligence on the part of the plaintiff and if the Court so found that the finding should not be substantial;

(2) that the plaintiff had not acted unreasonably in respect of the operation recommended by Mr. Ghouralal;

30

(3) that the plaintiff would be entitled to loss of earnings for a period of some seven to ten years, the extent of his working life had he not been injured;

(4) that the plaintiff had suffered severe injuries with continuing pain and discomfort for the rest of his life, and had been deprived of amenities and that a substantial award was merited.

40

There has been an admission of negligence on the part of the defendant and what firstly falls to be considered is the question as to whether there was contributory negligence on the part of the plaintiff.

There is apart from the location of the trench in relation to the tank experiment very

In the High  
Court

No.7  
Judgment of  
Scott J.  
17th December  
1976  
(continued)

little difference between the plans Ex.A and Ex.B. Mr. Bruce's plan Ex.B was made on the 6th August 1975, the day after the accident, measurements taken on the same date and the plan drawn to scale. The plaintiff's plan Ex.A was drawn from memory two weeks before his evidence in this action. Consequently Ex.B must be preferred. Mr. Suite has testified as has Mr. Bruce that on leaving the workshop and walking north the boxing framework could be seen and that rubble and gravel were on the site. Mr. Bruce has further stated that on walking north on leaving the workshop, sand, rubble and gravel could clearly be seen on the site.

10

There has been some conflict in the evidence of the plaintiff and Mr. Bruce as to where the conversation at the end of June 1975 or 1st July 1975 in respect of the plaintiff's visit to the Amoco off shore installations took place.

20

The sole version as to how this accident occurred has come from the plaintiff. He had been in search of Hinds, was told something at the workshop, left the workshop, walked north, looked in the direction of the Chemical Laboratory about 25 feet to the east to locate Hinds and suddenly found himself falling into a trench.

(1) Mr. Bruce has categorically stated that between October 1974 and August 1975 he had seen the plaintiff walking southwards along passageway marked 'Y' to 'A' on Ex.A and then proceeding further south to X on Ex.A.

30

(2) Assuming that Mr. Bruce's evidence is accepted that the conversation in respect of the plaintiff's visit to Amoco took place at the site, that would be at least one month before the 5th August 1975 and the solitary occasion on which the plaintiff had been in corridor 'B' to 'C' on plan Ex.A before the accident.

40

(3) Mr. Suite's evidence in respect of the trench is that the hole was very dark and that he had installed artificial lights as he could not see the reinforcements in the hole. The construction was completed in August 1975.

50

(4) The duty of a master is to make the place of work as safe as reasonable care and skill will permit and is thus higher than the duty owed by an invitor to an invitee.

In the High Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

10

In Stowell v. Railway Executive (1949) 2 A.E.R. p.193 it was held that the plaintiff was an invitee, the oily patch should not have been on the platform and was an unusual danger in the circumstances because the plaintiff could not be looking on the ground at every step.

20

The plaintiff has sworn that he was in search of Hinds and on looking east in the corridor suddenly found himself in a hole. The hole had been unguarded for a considerable period and I accept the evidence of Mr. Suite who completed the construction that the hole was very dark and the reinforcement in the hole could only be seen by artificial light.

I find in all the circumstances of the present case that the hole constituted an unusual danger and that mere inattention on the part of the plaintiff would not render him contributorily negligent.

30

Mr. Lalla positively advised against surgery in respect of the injury to the plaintiff's left foot adding that the plaintiff was a diabetic, which might complicate surgical procedures. Mr. Robertson who on behalf of the defendant examined the plaintiff also advised against surgery in respect of the injury to the left foot. Mr. Ghouralal recommended surgery but had warned the plaintiff of the risks to be incurred as plaintiff was a diabetic.

40

In Steel v. Robert George & Company Ltd. (House of Lords) (1937) 1942 A.C. p.497 it was held that the question whether a workman is unreasonable in refusing to undergo a surgical operation with the object of diminishing an incapacity resulting from an accident is a question of fact to be decided on the evidence.

50

Mr. Ghouralal the plaintiff's surgeon recommended an operation to the neck. In his evidence he has declared that assuming the operation was successful the movement of his neck would have increased to about 80% per cent but there still might be pain. The plaintiff was a diabetic there would be an increased risk of doing surgery but he had successfully operated

In the High  
Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

on patients who were diabetics.

The plaintiff had been advised by Mr. Lalla that he should not have an operation performed on the left foot and further that being a diabetic might complicate surgical procedures.

While Mr. Ghouralal advised surgery to the neck he stated risk was involved as plaintiff was a diabetic. He concluded his evidence by stating that it was for the patient to decide whether he should have an operation or not.

10

Mr. Ghouralal clearly indicated the risk involved and in respect of the other operation the plaintiff was warned by Mr. Lalla against surgery not only on one ground but also of the complications likely to occur as the plaintiff was a diabetic. Faced and confronted with such a situation I hold that the plaintiff was not acting unreasonably in not accepting Mr. Ghouralal's recommendation.

Agreement has been reached in the sum of \$2,527.92 in respect of special damages.

20

I now turn to general damages. In Cornilliac v. St. Louis 7 W.I.R. p.492-3 it was held that in an award of general damages considerations which ought to be borne in mind by the Court are -

- (1) The nature and extent of the injuries sustained.
- (2) The nature and gravity of the resulting physical disability.
- (3) The pain and suffering which had to be endured.
- (4) The loss of amenities suffered
- (5) The extent to which consequentially the plaintiff's pecuniary prospects have been materially affected.

30

The plaintiff now aged 55 is undoubtedly a man of high standing in his profession and of wide international experience.

All the medical evidence including that of Mr. Robertson supplied by the defendant point conclusively to the severity of the injuries sustained by the plaintiff in his left foot and neck. His permanent partial disability in

40

respect of his ankle was assessed at 20 per cent and that of his neck at 20 per cent. He had been an active person and his movements are now severely limited. He experienced pain on walking and on any attempt to weight bear due to limitations of movement in his ankle joint.

In the High  
Court

No.7  
Judgment of  
Scott J.

17th December  
1976

(continued)

10

His neck movements are limited in all directions. His professional life was ruined as he could no longer undertake the work of a consultant. He could not bend down to do drawings or designs. He could not visit construction sites as climbing ladders and steps for supervisory purposes were entirely out of the question.

20

He suffered intense pain in his left foot and ankle after the fall necessitating his taking pain killers which produced gastric discomfort. For the rest of his life the plaintiff would have to keep on taking analgesic tablets for pain.

Prior to the accident he had enjoyed gardening, dancing, swimming and participating in social activities which were all now denied to him.

30

On his retirement he had planned to start a consulting practice in Sri Lanka. At the University of the West Indies he had earned \$46,605 per annum and had hoped to earn \$60,000 to \$75,000 in Sri Lanka. There were also prospects of a post in one of the United Nations' agencies at a salary of \$60,000 per annum tax free.

40

The plaintiff is now aged 55. He was at the time of the accident in receipt of about \$46,000 per annum subject to tax. He was a diabetic but enjoyed good health. Having regard to his qualifications I am sanguine that his consulting practice which he confidently hoped to set in motion might have been realised had not this unfortunate accident occurred. Again the possibility of his obtaining a post in one of the United Nations' agencies cannot be disregarded.

No. 8  
Formal Order  
of Scott J.  
17th December  
1976

No. 8  
FORMAL ORDER OF SCOTT J.

---

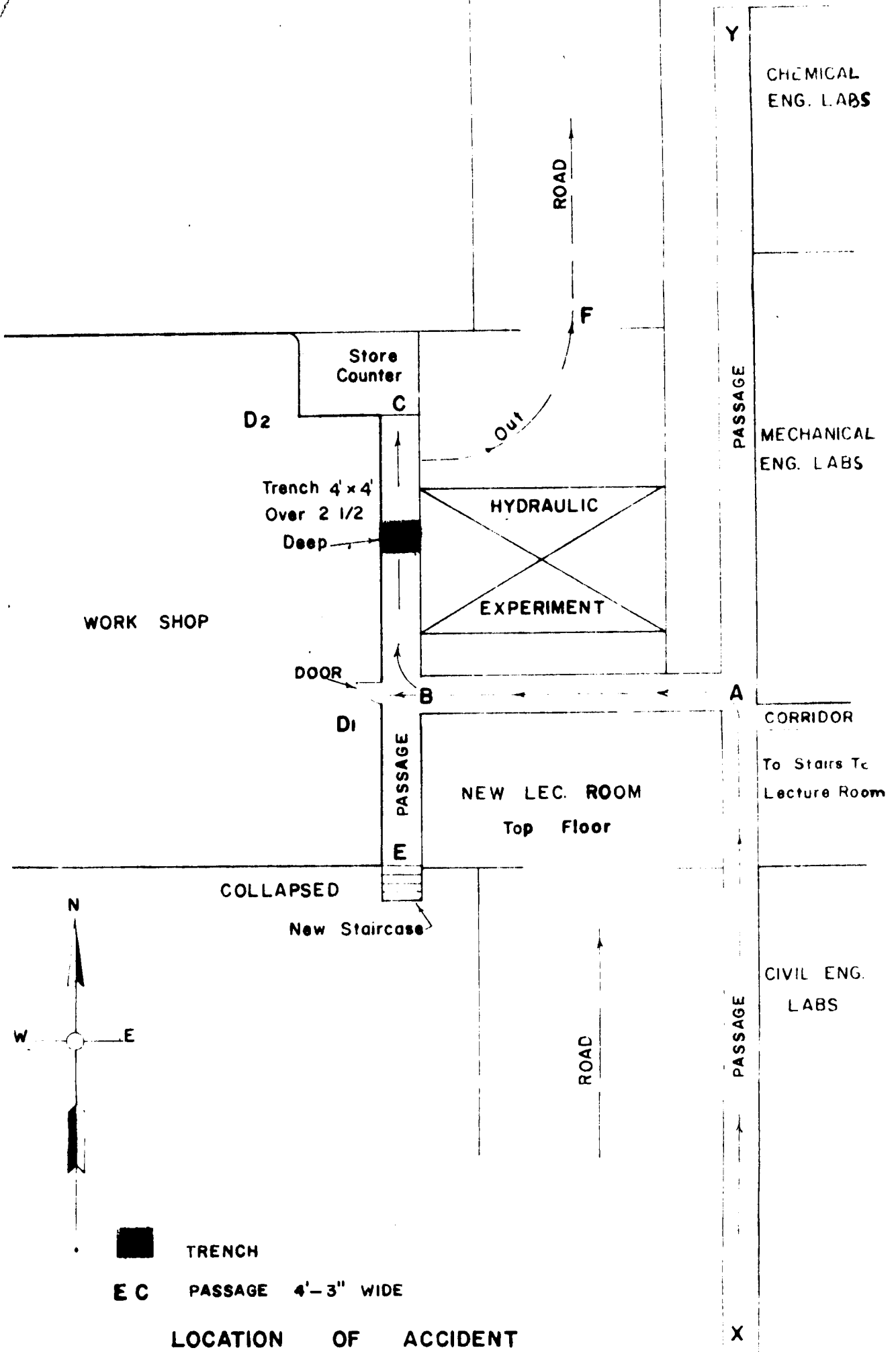
Taking all the factors into consideration I award General Damages the sum of Seventy-five thousand dollars (\$75,000.00) and Special Damages in the sum of Two thousand five hundred and twenty-seven dollars and ninety-two cents (\$2,527.92). Judgment for the plaintiff in the sum of Seventy-seven thousand five hundred and twenty-seven dollars and ninety-two cents (\$77,527.92) and costs to be taxed and to be paid by the Defendant to the Plaintiff fit for one (1) Senior Counsel and two (2) Junior Counsel. Interest at the rate of six (6) per centum per annum on the sum of One thousand five hundred and thirty-four dollars and sixty-seven cents (\$1,534.67) from the date of the filing of the writ. Execution stayed for twenty-eight (28) days upon payment of Special Damages of Two thousand five hundred and twenty-seven dollars and ninety-two cents (\$2,527.92) and the further sum of Twenty-five thousand dollars (\$25,000.00) and to continue in the event of an appeal.

10

20

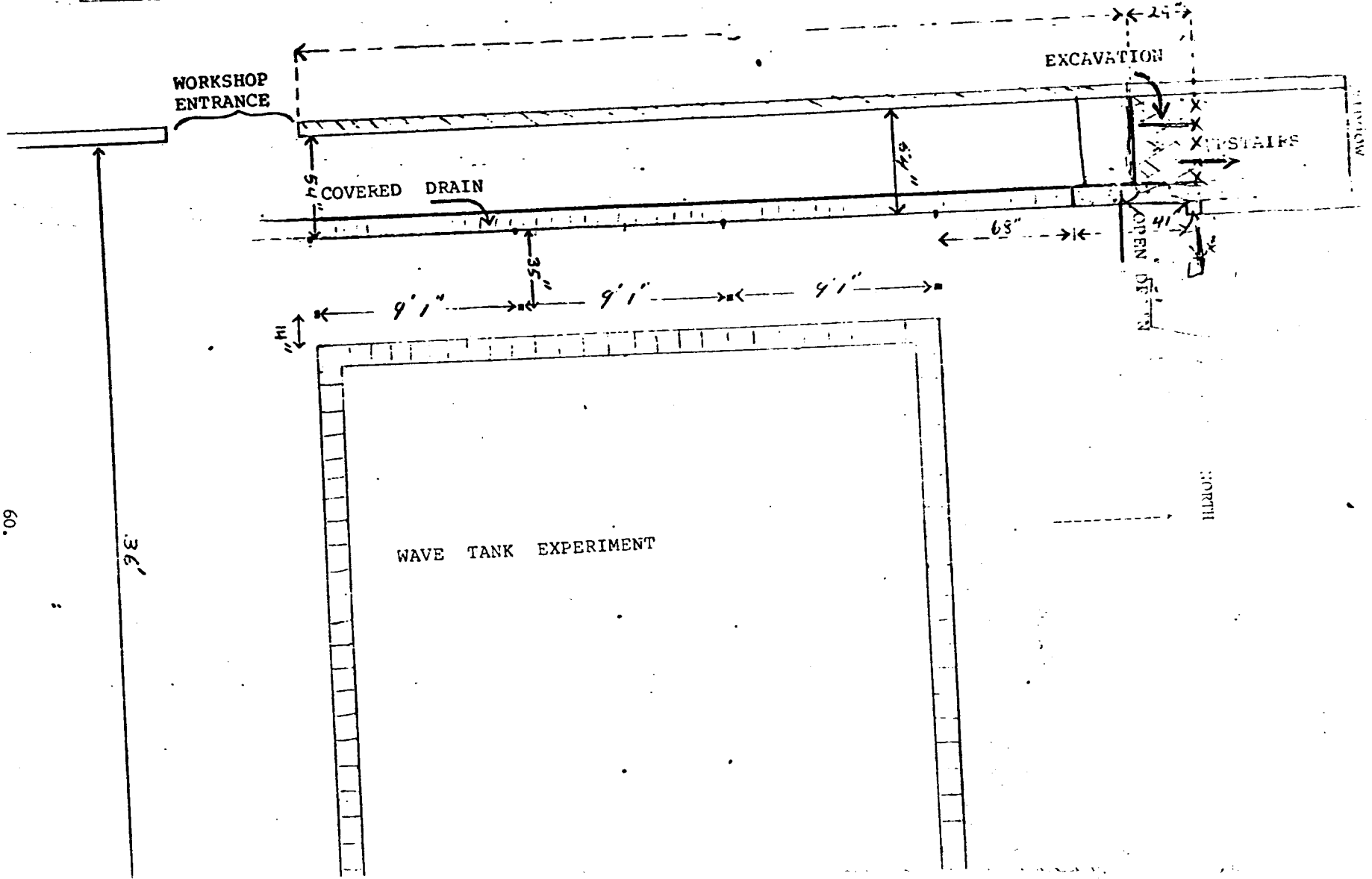
Dated this 17th day of December, 1976

Garvin M. Scott,  
Judge.



LOCATION OF ACCIDENT

No. 10 Exhibit  
Sketch Plan B



No. 10 Exhibit  
Sketch Plan 'B'

60.



No. 11

In the High  
Court

EXHIBIT "RML 1"  
MEDICAL REPORT

No.11  
Exhibit  
"RML 1"  
Medical Report

11th October, 1975

11th October  
1975

MEDICAL REPORT ON:

Professor Ponnampalam Selvanayagam

University of the West Indies,  
St. Augustine

10 This patient sustained an injury to his left foot and ankle, neck, left shoulder and elbow, and hip when he fell into an excavated pit in the University Campus on 5/8/75, and was admitted to the General Hospital, Port of Spain.

20 On examination there were multiple bruises on the left elbow region and tenderness and swelling of the left ankle and foot, tenderness over the left hip and pain and limitation of movement in the region of the neck.

PLASTER  
OF  
PARIS Treatment: Cleaning, dressing of the abrasions. X-rays of the ankle and foot shows a comminuted fracture of the left calcaneum involving the sub-talar joint. He was given a below knee P.O.P. for the fractured calcaneum and the limb was elevated. He complained of numbness in the fingers of both hands. He was discharged on 12/8/75.

30 On 12/9/75, I saw him as an out-patient in my office, as the numbness and pins and needles did not settle, it was decided to have a consultation with the Consultant Neuro-Surgeon, Dr. S. Ghourlal. He was admitted to the St. Elizabeth Clinic where a myelogram was performed, and copies of Dr. Ghourlal's reports are enclosed.

40 On 26/9/75, the patient's plastic cast was removed and he started to attend the physiotherapy department for heat and exercises.

In the High Court

No.11  
Exhibit "RML 1"  
Medical Report

11th October  
1976

(continued)

Seen today, 11/10/75, for the purpose of this medical report, there is still a persistent swelling in the region of the ankle and foot. Movements of the ankle joint is limited in all directions and the patient experiences pain on any attempt to weight-bear. X-rays of the ankle shows the fracture to be healing satisfactorily.

It is my opinion that this patient injury would lead to osteo arthritis of the sub-talar joint of the left ankle which may become progressive. The patient has been an active person, and will therefore be handicapped by this disability. He is a professor of Civil Engineering and a Consultant.

10

It is my opinion that the permanent partial disability of his ankle be assessed at twenty per cent (20%).

This patient has also suffered an injury to his neck region which has been attributed as a direct consequence of his fall. The disability for the region of his neck is estimated, by Dr. Ghourlal, at twenty per cent (20%).

20

Producing two (2) cervical disc lesions as seen on myelography.

ROOPNARINE M. LALLA,  
F.R.C.S.

No.12  
EXHIBIT "RML 2"  
MEDICAL REPORT

In the High  
Court

No.12  
Exhibit  
"RML 2"  
Medical Report

1st October  
1976

FURTHER MEDICAL REPORT ON:

Professor P.Selvanayagam 55  
St.Augustine

1st October 1976

10 This patient has been under my continual care for the injury of the left ankle. He is now walking with a stick full weight bearing. He complains of pain in the joint made worse while walking.

He also states that the pain extends to the left knee. He is on tablets for the arthritis of his left ankle and is unable to take them at times because of the gastric discomfort. At times when he starts walking the ankle becomes quite painful.

20 On examination of his left foot, there is pain and limitation in movement of the ankle in flexion and extension.

X-rays of both ankles and feet taken on the 28.9.76

Shows:

The right foot and right ankle are normal.

There is evidence of a healed fracture of the left os calois. The left os calois is deformed and there is evidence of arthritis between it and the left talus.

30 Left talo-calcaneal arthritis.

In addition, changes in the bases of the left foot denote impairment and limitation of use of the left foot.

.....

C.W. Peters

It is my opinion that the arthritis of the sub-taloid joint is becoming progressive.

Yours sincerely,  
Roopnarine M. Lalla F.R.C.S.  
Consultant Orthopaedics & Plastic Surgeon

40

In the High  
Court

No.13

No.13  
Exhibit  
"SG 1"  
Medical Report

EXHIBIT "SG 1"  
MEDICAL REPORT

16th September  
1975

SAMUEL GHOURALAL M.D.  
74-76 DUNDONALD STREET  
PORT OF SPAIN  
TRINIDAD W.I.

September 16th 1975

Mr. Roopnarine Lalla  
Port of Spain.

10

Dear Mr. Lalla,

Thank you for referring Professor Selvanaya-  
gam. The history he gave was that following  
a fall into about a two feet deep hole he  
injured his left foot, ankle and hip, both  
elbows and he was dazed. Since then one of his  
symptoms was pain in the neck. He also had  
numbness of fingers of both hands and pain in  
the joints. The numbness cleared up but the  
pain persisted. At no time did the pain in  
the neck appear to radiate down the upper limbs.  
Neck movements aggravated the pain in the neck.

20

On examination all neck movements were full  
but painful. There was a suggestion of hypes-  
thesia on the lateral aspects of both forearms.  
His hand grasps were weak.

X-rays of the cervical spine showed  
discogenic changes at the C C and C C levels.  
5 6 6 7

I have planned a myelogram for him on the  
22nd of this month at the St. Elizabeth Clinic.

30

Sincerely yours,

S.Ghouralal, M.D.

SG/cs



In the High  
Court

No.15  
Exhibit "SG 3"  
Medical Report

29th September  
1975

(continued)

When he had pain the hands and shoulders would become weak. When he rode in a car the pain was worse. Rest would then ease the pain. He continues to have at times, involuntary movements of his left upper limb.

On examination his neck movements were limited in all directions especially forward flexion and extension. He was generally weak but especially the left upper limb. I saw no atrophy or fasciculations. There was diminished sensation to pinprick over the upper limbs in a glove distribution.

10

All tendon reflexes were + + +. There were no pathologic reflexes, there was an intention tremor of the left upper limb.

Diagnosis: (1) Cervical spondylosis.  
(2) Early cerebellum atrophy  
(3) Periphenal Neuropathy secondary to the diabetes mellitus.

S. Ghouralal M.D.

20

No.16  
Exhibit "SG 4"  
Medical Report

6th October  
1975

No. 16

EXHIBIT "SG 4"  
MEDICAL REPORT

SAMUEL GHOURALAL M.D.  
74-76 DUNDONALD STREET  
PORT OF SPAIN

October 6th 1975

Mr. Roopnarine Lalla,  
158A Henry Street,  
Port of Spain.

30

Dear Mr. Lalla,

Further to my reports on September 16th 1975 and September 23rd 1975 a reasonable assessment of permanent partial disability for Professor Selvanayagam is 20%.

Sincerely yours,  
S.Ghouralal, M.D.

SG/cs

No.17

EXHIBIT "C"  
MEDICAL REPORT OF  
DR. ROBERTSON

---

In the High  
Court

No.17  
Exhibit "C"  
Medical Report  
of Dr. Robertson

6th October  
1975

6th October, 1975

Medical Report

10 Professor Selvanayagam, 55  
c/o Clarke, Hannays & Co.  
26 Sackville St.  
Port of Spain.

Injury 5th August 1976 - Fell into a trench  
2½ feet.

- (1) Bruising both arms and left hip; pain and swelling, all these were of minor consequence.
- (2) Fracture left foot.
- (3) Injury to neck.

20 In respect of the left foot there is a fracture through the os calcis healed but with residual displacement and involving the Talo Calcaneal joint.

The result is he has lost inversion and eversion of the heel and there is pain on walking.

Operation will be ill advised as after the age of 50 swelling of the leg persists indefinitely after a tripple arthrodesis and he would be worse than he now is.

All be it he will be left with permanent discomfort in the foot.

30 In respect of the neck injury his movements are grossly limited. There is some weakness of his hands but this is not essentially due to Neuropathy as there is no wasting of the muscles nor has he lost power in pinch.

His main problem in the neck is the pain and stiffness due to adhesion.

In general apart from his severe injury to the left foot and neck, he has a severe traumatic Neurosis which may make resuming work very difficult.

In the High Court

I would say that this permanent Partial disability should be assessed at 40%.

No.17  
Exhibit "C"  
Medical Report  
6th October 1975  
(continued)

.....  
E.L.S.Robertson Esq,  
c.c. Professor Selvanayagam

No.18  
Exhibit "D"  
Copy of Agreed Costs  
Undated

No.18  
EXHIBIT "D"  
COPY OF AGREED COSTS

Interim Bill For Medical Expenses, Transport  
Etc. Of Professor P. Selvanayagam  
17th January - 4th October

10

<u>Item</u>	<u>Amount</u> ₹	<u>Amount</u> ₹	
1. To medicines			
19.2.76 No.12854	30.10		
21.2.76 No. 3459	14.96		
3.4.76 No.	40.50		
5.8.76 No. 5327	31.25		
9.8.76 No. 5649	4.20		
26.8.76 No. 5985	31.25		20
30.8.76 No. 3324	9.34		
30.9.76 No. 9097	<u>21.65</u>		
		183.25	
2. To Walking Aid			
4.6.76 No. 189	30.00	30.00	
3. To Doctor's fees			
Dr. R.Lallal	350.00		
Dr.S.Ghouralal	170.00		
Dr. P.Rattan	<u>50.00</u>		
		570.00	30
4. To Transport			
Visit to general hospital, Doctors etc., 25 trips @ ₹6.00		<u>150.00</u>	
	Total	933.25	

I certify that the above statement is correct.

P.Selvanayagam  
Roopnarine Lalla



No. 19

NOTICE OF APPEAL

In the Court  
of Appeal

No. 19  
Notice of  
Appeal

28th January  
1977

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF APPEAL No.8 of 1977

Between

THE UNIVERSITY OF THE Defendant/  
WEST INDIES Appellant

And

PONNAMPALAM SELVANAYAGAM  
Plaintiff/  
Respondent

10

TAKE NOTICE that the Defendant/Appellant being dissatisfied with the whole decision more particularly stated in paragraph 2 hereof of the High Court of Justice contained in the order of Mr. Justice Scott made in open court dated the 17th day of December, 1976, in the High Court Action No.402 of 1976 wherein the respondent is the plaintiff and the appellant the defendant, doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of appeal seek the relief set out in paragraph 4.

20

And the defendant/appellant further states that the names and addresses including its own of the persons directly affected by the appeal are those set out in paragraph 5.

GROUNDNS OF APPEAL

30

1. That the learned Judge erred in law in deciding that the evidence did not disclose contributory negligence on the part of the plaintiff.

2. That the learned trial Judge erred in law in failing to hold that the plaintiff was unjustified (in the circumstances obtained) in refusing to have the operation recommended by Mr. Sam Ghouralal, Specialist Neuro-Surgeon.

40

3. That the assessment of the damages made by the learned trial Judge was wrong and/or excessive and should be substantially reduced.

In the Court  
of Appeal

No. 19  
Notice of  
Appeal  
28th January  
1977  
(continued)

RELIEF SOUGHT

That the judgment be varied and in lieu thereof a finding that the plaintiff was contributorily negligent and a judgment in accordance with such finding be substituted and that there should be no order as to costs in the action and in the appeal.

NAMES AND ADDRESSES OR PERSONS  
DIRECTLY AFFECTED BY THE APPEAL

1. Ponnampalam Selvanayagam 47 Dash Street,  
St. Augustine 10
2. The University of the St. Augustine  
West Indies

Dated this 28th day of January, 1977

CLARKE, HANNAYS & CO.  
Defendant/Appellant's  
Solicitors

To: The Registrar of the High Court of APPEAL  
And to: Messrs. C. Soogrim & Co. 20  
14, St. Vincent Street,  
Port of Spain  
Plaintiff/Respondent's Solicitors

No.20

In the Court  
of Appeal

NOTICE TO CONTEND  
THAT JUDGMENT SHOULD  
BE VARIED

No. 20  
Notice to  
contend that  
Judgment  
should be  
varied

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL Civil Appeal No.  
8 of 1977

7th February  
1977

BETWEEN

10 THE UNIVERSITY OF THE Defendant/  
WEST INDIES Appellant

AND

PONNAMPALAM SELVANAYAGAM  
Plaintiff/  
Respondent

20 TAKE NOTICE that pursuant to Order II  
Rule 6(1) of the Court of Appeal Rules 1962  
that upon the hearing of this Appeal the  
Respondent will contend that the judgment of  
the trial Judge ought to be varied by the Court  
of Appeal by increasing the award of damages  
upon the following grounds amongst others.

GROUNDS:

1. The award of damages in the High Court of Justice was wholly inadequate and was made on wrong principles. The methods of computation used by the trial Judge were also erroneous.
- 30 2. The condition of the Plaintiff/Respondent has deteriorated since the hearing before the trial Judge and continues to deteriorate as a result of his injuries which are the subject to these proceedings.

AND FURTHER TAKE NOTICE that upon the hearing of this Appeal the Plaintiff/Respondent shall adduce such further evidence of matters arising since the hearing before the trial Judge as the Court of Appeal may admit in relation to the grounds specified herein.

40 Dated this 7th day of February, 1977.

/s/  
Solicitors for the Plaintiff/  
Respondent



engaged as Professor of Chemical Engineering with the appellant sustained injuries when he fell into a trench which had been left open and unguarded by workmen employed by the appellant to carry out construction work on one of its buildings.

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.

31st July 1980

(continued)

10

On that day the respondent had left his office on the eastern side of the Chemical Engineering Laboratory ("the Chemical Lab.") at about 11.00 a.m. and walked south along a passageway to the Civil Engineering Laboratory. From there he retraced some of his steps and turned west along another passageway to a workshop in order to speak to one Hinds, the Superintendent of the workshop. Discovering that Hinds was not there, he walked north along yet another passageway parallel to the one on which he had first set off from his office, with the intention of returning to the Chemical Lab. where he had arranged to meet his wife.

20

30

At the northern end of that passageway at approximately the point where anyone going from the workshop towards the Chemical Lab. would have to turn east, there was an open trench at the bottom of the framework of a staircase which was being constructed and which was to lead to the floor about fifteen feet above the level of the passageway. There are approximately twelve treads on those stairs, and the framework formed the enclosure for the steel steps. This work was completed shortly after the accident.

40

Into this open trench fell the respondent, which he says was entirely the fault of the appellant in leaving the trench open. The appellant admits it was at fault but says the respondent contributed to his own downfall by failing to pay sufficient attention to where he was walking. He suffered injuries described later in this judgment.

50

The evidence about the depth of the trench was conflicting. The respondent said 2 feet; his witness, Suite said 3 feet; and the appellant's witness, Bruce said 1 foot 6 inches. The judge made no finding. The evidence as to the amount of light and visibility in the passageway was also conflicting, but it was common ground that there were louvres in the wall of the workshop on the western side of the passageway which would admit some light, and an opening at the northern end through which people could pass to go outside. It was through

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980  
(continued)

this opening that the respondent intended to go

In his evidence before the trial judge  
the respondent said :-

"The passageway light was dull or diffused,  
direct light was completely cut off  
because of the nature of the structures.."  
"I saw nothing unusual. I looked in the  
direction of the Chemical Laboratory about  
25° to the East. As I was looking in that  
direction to locate Hinds I suddenly  
found myself falling into a trench, left  
foot first..." "The light in the area was  
diffused." "Corridor was not very dark",  
"I could only see 7 ft. to 10 ft. ahead  
because of the bad light. If Hinds had  
been 12 ft. ahead, I could have seen a  
form. I would have recognised Mr.Hinds."

10

His witness Suite, said :-

"On date of accident area of location of  
staircase was poorly lit, actual formwork  
(sic) steel had to be cleaned and changed.  
...I saw no signs in corridor indicating  
work was in progress. There was no guard  
around the hole....Actual framework had  
to be changed and steel had to be cleaned  
steel and form-work (sic) had been lying  
on the hole some considerable time before  
the accident. Steel and framework also  
extended from hole to first floor. There  
may have been 10 - 15 treaders going up to  
the first floor. Formwork is boxing and  
reinforcement - steel is in boxing. There  
was a double cantilever stairway which  
might be described in lay language as fish  
bone type of stairway. Framework boxing  
did have reinforcement. Main rib came  
down straight from treader on first floor  
down to the hole. All that had been there  
for some considerable time before 5th  
August, 1975. I would say definitely it  
was there in the first week of July, 1975.  
It had been there months before July, 1975  
.....When you turn left out of the doorway  
you could see framework North in corridor.  
If there were lathes across column North of  
hole you should have been able to see them."

20

30

40

On the other hand Percy Bruce, Asst. Dean  
at the Appellant's Faculty of Engineering, who  
gave evidence on behalf of the appellant, said:-

"Light in the corridor north of the trench  
was diffused and satisfactory....light in

50

corridor was not dull, and visibility would certainly not be limited to seven feet...on turning left from the door of the workshop one could see gravel, rubble and lathes at the end of the corridor" (A distance measured by the respondent as 29½ feet). "As far as the trench is concerned on turning left out of the workshop door it would be clearly evident that the trench was there. Walking north the trench would be even more visible."

10

It was in that state of the evidence that Counsel for the appellant having conceded that the appellant had not shown the respondent the high degree of care required of a master towards a servant, submitted that the respondent had contributed to his injury by failing on his part to exercise proper care. This was rejected by the trial judge who held that mere inattention on the part of the respondent would not constitute contributory negligence.

20

He also held that the respondent, faced and confronted with the situation that he was, did not act unreasonably in refusing to have an operation in an effort to minimise the effects of the injury, and he assessed damages on that basis.

On appeal the appellant relied on three grounds :-

30

(1) That the learned judge erred in law in deciding that the evidence did not disclose contributory negligence on the part of the plaintiff.

(2) That the learned trial judge erred in law in failing to hold that the plaintiff was unjustified (in the circumstances) in refusing to have the operation recommended by Mr. Sam Ghouralal, Specialist Neuro-Surgeon.

40

(3) That the assessment of the damages made by the learned trial judge was wrong and/or excessive and should be substantially reduced.

The respondent cross-appealed on the ground that "the award of damages in the High Court of Justice was wholly inadequate and was made on wrong principles. The methods of computation used by the trial judge were also erroneous."

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980  
(continued)

It is a well recognised principle that an appellate court should not lightly differ from the findings of a trial judge on a question of fact, but a distinction must be drawn between the finding of a specific fact and an evaluation of the evidence. A trial judge must first find facts and then draw proper inferences therefrom. A court of appeal will pay due regard to the advantage which the judge had of seeing and hearing the witnesses, but it is the duty of that court to make its own inferences if the judge had not drawn proper conclusions from the facts. This principle was very lucidly stated by Viscount Cave L.C. in Mersey Docks & Harbour Board v. Procter (1923) A.C. at p.258 thus :

10

"The procedure on an appeal from a judge sitting without a jury is not governed by the rules applicable to a motion for a new trial after a verdict of a jury. In such a case it is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inference from the fact proved or admitted and to decide accordingly."

20

Unfortunately, in considering the facts in this case the learned trial judge has omitted to make specific findings fundamental to the issues, and in his judgment has only recited the evidence given by each witness. It is difficult therefore to say which of the witnesses he believed and to what extent. There were unexplained contradictions and differences in the respondent's evidence which made his credibility open to question. For example, he said in reference to points shown as a plan of the area which he had made and which was put in as an exhibit :-

30

"Building, workshop, storecounter, laboratories were all familiar to me".....  
"I had gone to the workshop a few times after I ceased to be Head of Department."  
....."After I had ceased to be Head of Department I had never been along a corridor from B to C"....."I had never been from Y to A" .... "Going from B to C was the shortest way to Y. It was the first time in ten months that I had gone down that corridor." ...."I was hurrying along."

40

50



I had known the route when I was Head. I was not hurrying. I was walking in the normal way." ...."I could not see store counter ahead of me because of diffused light. I looked forward and could see nothing at the end of the corridor."

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980

(continued)

10

There was also conflict between the evidence of the respondent and his witness Suite on the one hand and that given by Bruce the witness called by the appellant on the other.

20

It was very important in those circumstances for the judge to make a careful assessment of the evidence and to state clearly which witnesses he found to be worthy of belief. He has not done so; in particular he has not made any finding as to the state of the lighting and visibility in the passage, an issue which was vital to the question of contributory negligence. Nor has he made any finding with regard to the difference between the evidence of the respondent and that of Bruce in relation to the place at which they had a conversation sometime prior to the accident about a visit by the respondent to an Amoco offshore drilling rig. Bruce said it was at the site where the staircase was being constructed; the respondent denied this but did not state where it had taken place. The judge has made no reference to this conflict which is most relevant because if Bruce's evidence is accepted it might indicate prior knowledge on the part of the respondent that there was an open trench at the end of the passageway.

30

40

The learned judge also omitted to advert to Bruce's evidence to the effect that in the period between October 1974 and August 1975 he had seen the respondent walking from Y to A (shown on the plan) which contradicted the respondent who said he had never been there. The relevance of this is that if the respondent had walked along that passageway he should have seen the stairs which were being constructed.

50

The bald statement by the trial judge that "mere inattention does not amount to contributory negligence" is not entirely accurate. There are varying degrees of inattention and in certain circumstances inattention may amount to negligence. This statement simply attributes inattention to the respondent without making a finding as to whether he knew about the trench, if he did see or should have seen the obstacles in his way,

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980  
(continued)

and if he would have been able to do so had he been paying proper attention.

Since the learned trial judge has not made any findings of fact on which he could have based his opinion it is open to this Court to draw proper inferences from the evidence on the record. It seems evident that the light in the passageway was sufficient for the respondent to have seen the trench if he was paying proper attention. There were also physical features like the staircase which should have alerted him to the need for caution. The respondent's witness Suite said it would not be necessary for anyone to use a light to walk along the passageway, and that the construction work for the stairs was visible from the door of the workshop 29½ feet away.

10

The correct inference to be drawn in my judgment is that the respondent fell because he was negligent in the way he was walking. If the lighting and visibility were as poor as the respondent testified that they were it was all the more incumbent on him to proceed with greater caution than he says he did. He would be guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a prudent man would, he might be hurt. On his own admission he was looking to the east to find Hinds when he fell.

20

I would apportion his share of the blame at one-third.

30

As to his injuries the respondent said that whereas before the accident he had been an active and mobile person, he was now considerably restricted in his movements due to the injury to his neck and leg. Before the accident he had been able to pursue his work as an engineer and his social activities to the fullest but now would be unable to climb ladders and do other things necessary for the proper performance of his work; he would have to rely on a job which necessitated only writing papers and acting as a Consultant. He said that even in that field he would be hampered, because when he tries to write his grip and fingers are weak, and when he bends over he gets giddy. He is no longer able to enjoy swimming and dancing, nor is he able to drive his car, all of which he did before the accident.

40

He further testified that he is in almost constant pain and can only move his neck

50

vertically, because if he tries to turn it on either side the pain increases. As a consequence he has to take pills frequently to reduce the pain, but these cause gastric disorders and he suffers even more.

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.

31st July 1980

(continued)

10 He was treated by two doctors, both of whom gave evidence on his behalf and tendered reports which they had prepared when they first examined him. Mr.Lalla's report dated 11th October, 1975 said :-

"This patient sustained an injury to his left foot and ankle, neck, left shoulder and elbow, and hip when he fell into an excavated pit in the University Campus on 5/8/75, and was admitted to the General Hospital, Port-of-Spain.

20 On examination there were multiple bruises of the left elbow region and tenderness and swelling of the left ankle and foot, tenderness over the left hip and pain and limitation of movement in the region of the neck.

30 Treatment: Cleaning, dressing of the abrasions. X-rays of the ankle and foot shows a comminuted fracture of the left calcaneum involving the sub-talar joint. He was given a below knee P.O.P. for the fractured calcaneum and the limb was elevated. He complained of numbness in the fingers of both hands. He was discharged on 12/8/75.

On 12/9/75, I saw him an an out-patient in my office, as the numbness and pins and needles did not settle, it was decided to have a consultation with the Consultant Neuro-Surgeon, Dr. S.Ghouralal. He was admitted to the St.Elizabeth Clinic where a myelogram was performed, and copies of Dr. Ghouralal's reports are enclosed.

40 On 26/9/75, the patient's plastic cast was removed and he started to attend the physio therapy department for heat and exercises.

Seen today, 11/10/75, for the purpose of this medical report, there is still a persistent swelling in the region of the ankle and foot. Movements of the ankle joint is limited in all directions and the patient experiences pain on any attempt to

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980  
(continued)

weight-bear. X-rays of the ankle shows  
the fracture to be healing satisfactorily.

It is my opinion that this patient's injury  
would lead to osteo arthritis of the  
sub-talar joint of the left ankle which  
may become progressive. The patient has  
been an active person, and will therefore  
be handicapped by this disability. He is  
a professor of Civil Engineering and a  
Consultant.

10

It is my opinion that the permanent partial  
disability to his ankle be assessed at  
twenty per cent (20%).

This patient has also suffered an injury  
to his neck region which has been attri-  
buted as a direct consequence of his fall.  
The disability for the region of his neck  
is estimated by Dr. Ghouralal, at twenty  
per cent (20%).

20

Producing two (2) cervical disc lesions  
as seen on myelography."

Mr. Ghouralal said in his report dated  
16th September, 1975 :-

"On examination all neck movements were  
full but painful. There was a suggestion  
of hypesthesia on the lateral aspects of  
both forearms. His hand grasps were weak.

X-rays of the cervical spine showed  
discogenic changes at the C C and C C  
levels. 5 6 6 7

30

I have planned a myelogram for him on the  
22nd of this month at the St. Elizabeth  
Clinic."

But in his evidence the doctor said :-

"In 1976 he complained of pain in his hand,  
I would tend to believe there was no  
connection between pain in hands and neck.  
I found he has not lost ability to pinch,  
e.g. paper, pen."

40

The main complaint by Counsel for the  
appellant about the judge's conclusions on the  
medical testimony was that whereas the evidence  
showed that the respondent had unreasonably  
refused to undergo an operation to alleviate  
his injury, the judge had failed to understand

what is meant by an unreasonable refusal, and to appreciate the full impact of the doctors' evidence.

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980

(continued)

In deciding this issue the judge found that Mr. Lalla had advised the respondent -

"That he should not have an operation performed on the left foot, and further that being a diabetic might complicate surgical procedures."

10 Unfortunately, the judge seems to have made a  
precis of the evidence which is not an accurate  
summary, and it may be helpful to report the  
relevant portions of the doctor's evidence  
fully :-

20 "His injury occurred a year ago and there  
is X-ray evidence of arthritis in the  
joints, and in my view this can become  
progressive. There are problems for  
treatment. Surgery can be performed and  
though this may give him a solid and  
fixed ankle, there will be limitations  
in movements in walking or climbing.  
At the same time there is also likely to  
be as a result of surgery permanent  
swelling in the region of the ankle and  
the foot. The patient is also a diabetic  
which may complicate surgical procedures,  
e.g., complications of infection which  
normally may not be present is likely to  
become a complication."

30  
40 Later in cross-examination after describ-  
ing the outlook for improvement in the ankle  
the doctor said "I consider surgery ill  
advised." It should be noted that this was in  
relation to the operation on the foot, not on  
the neck. I interpret this to mean that he was  
advising against an operation not because of  
the diabetic condition of the respondent, but  
because the result would be a solid fixed ankle  
with limitation of movements and a permanent  
swelling.

It is significant that Mr. Robertson, an  
orthopaedic surgeon whose report was put in  
by consent, also did not consider the operation  
advisable because at the respondent's age  
permanent swelling of the foot would be the  
result. I think the learned trial judge  
misunderstood the evidence.

Dealing with Mr. Ghouralal's opinion the

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980  
(continued)

judge once more paraphrased :

"While Mr. Ghouralal advised surgery to the neck he stated risk was involved as plaintiff was a diabetic. He concluded his evidence by stating that it was for the patient to decide whether he should have an operation or not."

The relevant portions of Mr.Ghouralal's evidence read :-

"If surgical therapy is not carried out the condition to his neck would worsen... Operation is a major procedure but not risky. Chances of success in a patient like the plaintiff are quite good. Successful operation would increase his movement of the neck to about 80%... The plaintiff is a diabetic. Risk of doing surgery to a diabetic patient would increase as compared to a non-diabetic patient. In my experience I see several patients with diabetes on whom operations have been carried out with success. At the plaintiff's age from time of surgery, it would take about six months for his complete recovery... In respect of damage to his cervical vertebrae I would recommend surgery."

10

20

The learned trial judge nevertheless went on to say :-

"Mr. Ghouralal clearly indicated the risk involved, and in respect of the other operation the plaintiff was warned by Mr. Lalla against surgery, not only on one ground, but also of the complications likely to occur as the plaintiff was a diabetic. Faced and confronted with such a situation I hold that the plaintiff was not acting unreasonably in not accepting Mr.Ghouralal's recommendation."

30

This was not supported by the evidence. The judge seems to have placed more emphasis on the respondent's right to decide rather than on the reasonableness of his decision and the effect of it.

40

Nowhere in the respondent's evidence did he say that he was not prepared to have the operation because the doctors had put fear into him about the risk involved by reason of his being a diabetic; in fact, far from it he did not give

any reason for his refusal, and there is no evidence that the doctors had put any fear into him. The only evidence as to any preference expressed by the respondent comes from Mr. Ghouralal who said :-

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.

31st July 1980

(continued)

10 "I would have recommended operation taking place before now, and as a fact I did make that recommendation in September 1975. Plaintiff said he was not a local resident and wanted to go home. If he had that operation in 1975 he would have been almost in the clear. It is for the patient to decide on whether he will have an operation or not."

20 This was not denied by the respondent, although there was ample opportunity for him to do so. The record shows that his evidence-in-chief was interrupted in order that Mr. Ghouralal's testimony could be interposed, and that at the end of Mr. Ghouralal's evidence the cross-examination of the respondent began; no application was made to examine him further in order that he could explain why he had not had an operation, and for him to say that it was not solely because he wanted to go home.

30 I must with respect hold that the learned trial judge erred in his evaluation of the evidence and in his conclusion drawn therefrom. The question is, therefore, at large and it is open to this Court to make its own inferences. In my judgment the respondent has not shown that, viewed objectively, he acted reasonably in not undergoing the operation, and damages must be assessed as if he had done so and it was as successful as opined. The question of what is reasonable is not a question of law but of fact in each case.

40 It is the duty of a plaintiff to act reasonably and to mitigate his loss. The corollary is that a defendant can minimise his damages by showing that the loss or part of it was the result of the unreasonable conduct by the plaintiff, subsequent to the defendant's negligence.

The relevant principles are reviewed in Morgan v. T. Wallis Ltd. [1974] 1 Lloyd's Rep. 165 in which several of the leading cases are discussed.

50 A person acts unreasonably if he refuses to follow competent advice to undergo surgical

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.

31st July 1980  
(continued)

or other medical treatment to remove a disability resulting from an accident; and he will not be entitled to any damages for any incapacity that such treatment was likely to remove.

Whether a person has acted unreasonably is a question of fact which is to be determined by the objective standard of the reasonable man on the balance of probabilities. The rationale of the rule is stated by Fletcher Moulton L.J. in Warncken v. R. Moreland & Son [1909] 1 K.B., 184, 189 :-

10

"if the incapacity or the continuance of the incapacity after a certain time is due to the fact that he has not behaved reasonably, then the continuing incapacity is not a consequence of the accident, but a consequence of his own unreasonableness."

It was expressed in another way by Farwell L.J. (ibid) at p.190 when he adopted and approved the following passage from the judgment of Lord M'Laren in Donnelly v. William Baird & Co.Ltd. (1905) 45 S.C.L.R. 395 at p.396 :-

20

"There is, of course, no question of compelling the party to submit to an operation, the question is whether a party who declines to undergo what would be described by experts as a reasonable and safe operation is to be considered as a sufferer from the effect of an injury received in the course of his employment, or whether his suffering and consequent inability to work at his trade ought not to be attributed to his voluntary action in declining to avail himself of reasonable surgical treatment."

30

An example of a reasonable refusal to undergo an operation is that of a person who was advised by his own doctor that the administration of anaesthetics to him would be dangerous to his life, because he suffered from kidney disease and had an enlarged heart - Tutton v. Steamship Majestic [1909] 2 K.B. 54 - per Cozens-Hardy M.R. at p.58.

40

It is necessary therefore to see what the respondent's position would have been now if he had undergone the operation.

The unchallenged medical evidence shows that if the respondent had done so, he would



have regained 80% mobility in his neck which is as much as he could normally expect to have at his age, even if there had been no injury.

In the Court  
of Appeal

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980  
(continued)

10 In that event the loss of pecuniary benefits arising from the accident would be limited to four months salary. Had the operation taken place in October, 1975 as recommended by Mr. Ghouralal, there would have been complete recovery in six months, that is by April, 1976, and the respondent having received his emoluments from the appellant up to 31st December, 1975, would therefore be entitled to only four months loss of earnings at \$3,883.75 per month i.e. \$15,535.00 less tax, which I would assess at \$1,560.00, leaving a balance of \$13,975.00.

20 Although the injury to his foot would not have prevented him entirely from carrying out his duties as an engineer, the medical evidence shows that he would suffer permanent partial disability because of the injury to his foot assessed at 20%, and permanent partial disability because of the injury to his neck also assessed at 20%. He is also entitled to some compensation for pain and suffering and loss of amenities.

30 The learned trial judge has given no indication as to how he arrived at the sum of \$75,000.00 awarded for general damages but, for the reasons I have indicated, I must hold that his award is inordinately high and represents a wholly erroneous assessment of the damages. I must therefore make my own assessment taking into account the fall in the value of the dollar, and paying regard to comparable local awards made for similar injuries, for example : Persad v. Bissoon (1975) H.C.864/71, May 23, 1975, \$10,000.00 Sahadeo v. Lazzari Ltd. HC 392/7 (S.F.), February 7, 1974 \$7,500.00. 40 Balwah v. Teelucksingh HC 643/74, November 28, 1974, \$10,000.00 with regard to foot injuries, and with regard to neck injury Dial v. Ali HC 1709/76, June 16, 1979 \$17,000.00, which would have to be scaled down to take into account the respondent's refusal to have an operation.

I would therefore assess damages as follows:-

50 Agreed special damages - \$ 2,527.92  
Loss of earnings - 13,975.00  
Disability to ankle and neck to include pain and suffering and loss of amenities 25,000.00

In the Court  
of Appeal

Cost of operation - \$ 5,000.00

\$46,502.92

No. 21  
Judgment of  
Corbin, J.A.  
31st July 1980  
(continued)

I would reduce this amount by \$15,500.97 because of the respondent's contributory negligence which I assess at one-third. He would therefore be entitled to \$31,001.95.

---

I would allow interest on the general damages of \$20,000.00 at 6% from 17th February 1976, the date of the writ to 17th December, 1976 the date of the judgment; and on the special damages of \$11,001.95 at 3% from 5th August, 1975, the date of the accident to 17th December, 1976.

10

No. 22  
Judgments of  
Corbin, J.A.  
Kelsick, J.A.  
Hassanali,  
J.A.  
31st July 1980

No. 22

JUDGMENTS OF CORBIN, J.A.  
KELSICK, J.A. and  
HASSANALI, J.A.

---

In the result, I would allow the appeal and dismiss the cross-appeal with costs here and in the Court below and substitute for the judge's aggregate award the sum of \$31,001.95 with the interest abovementioned.

20

MAURICE A. CORBIN  
Justice of Appeal

I agree  
C.A.KELSICK,  
Justice of Appeal.

I also agree  
N.M. HASSANALI,  
Justice of Appeal

No. 23

In the Court  
of Appeal

ORDER BY CONSENT TO  
AMENDMENT OF JUDGMENT

No. 23  
Order by  
consent to  
amendment of  
Judgment

9th October  
1980

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL  
ON APPEAL FROM THE COURT OF APPEAL  
Civil Appeal No.8 of 1977

Between

10 THE UNIVERSITY OF THE Defendant/  
WEST INDIES Appellant

And

PONNAMPALAM SELVANAYAGAM Plaintiff/  
Respondent

Entered the  
On the 9th October, 1980  
Before The Honourable

Mr. Justice M.A. Corbin,  
J.A.  
Mr. Justice C.A. Kelsick,  
J.A.  
20 Mr. Justice N.M.  
Hassanali, J.A.

Upon the joint oral application of Counsels  
for the Defendant/Appellant and the Plaintiff/  
Respondent made to the Court of Appeal this  
day for amendment of the order as to costs  
herein

30 IT IS HEREBY ORDERED BY CONSENT that the  
final paragraph of judgment of the Court of  
Appeal delivered herein on 31st July 1980 be  
amended by deleting the words "and in the  
Court below" and substituting therefor the  
words "to the Defendant/Appellant".

Registrar

In the Court  
of Appeal

No. 24

No. 24  
Order granting  
conditional  
leave to  
appeal

ORDER GRANTING  
CONDITIONAL LEAVE  
TO APPEAL

9th October  
1980

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL  
ON APPEAL FROM THE COURT OF APPEAL  
Civil Appeal No.8 of 1977

Between

THE UNIVERSITY OF THE WEST INDIES Defendant/  
Appellant 10

And

PONNAMPALAM SELVANAYAGAM Plaintiff/  
Respondent

Entered the 13th day of July, 1981  
On the 9th October 1980  
Before The Honourable

Mr. Justice M.A. Corbin, J.A.  
Mr. Justice C.A. Kelsick, J.A.  
Mr. Justice N.M. Hassanali, J.A. 20

UPON READING THE NOTICE OF MOTION of the  
above named Plaintiff/Respondent (hereinafter  
called "the Appellant") dated the 15th day of  
August 1980 preferred unto this Court this day  
for conditional leave to appeal to the Judicial  
Committee of the Privy Council against the  
Judgment of this Court made herein on the 31st  
July, 1980 (as amended as to costs on 9th  
October 1980) 30

AND the affidavit of Churchill Soogrim  
sworn the 18th day of August 1980 and the  
affidavit of David Seldon Hannays sworn the  
3rd day of October 1980 and filed herein.

AND UPON HEARING Counsel for the Appellant  
and Counsel for the Respondent

THIS COURT DOTH ORDER that subject to the  
performance by the Appellant of the conditions  
hereinafter mentioned and subject also to the  
final order of this Court upon due compliance  
with such conditions leave to appeal to the  
Judicial Committee of the Privy Council against 40

the said judgment is hereby granted to the  
Petitioner.

In the Court  
of Appeal

AND THIS COURT DOTH FURTHER BY CONSENT  
ORDER :

No.24  
Order granting  
conditional  
leave to  
appeal

9th October  
1980

(continued)

1. that the Appellant do within 90 days from  
the date hereof provide security in the sum of  
£500 sterling to the satisfaction of the  
Registrar or deposit into Court the said sum  
for the due prosecution of the said Appeal
- 10 2. That there be a stay of execution in  
respect of the balance of the judgment debt viz  
the sum of \$6,000.
- 20 3. That the Appellant do within One hundred  
and twenty days from the date hereof take out  
all appointments that may be necessary for the  
settling and preparation of the transcript  
record in such appeal to enable the Registrar  
to certify that the said transcript record has  
been settled and that the provisions of this  
order on the part of the Petitioner have been  
complied with and that the said transcript  
record which the Appellant proposes will be  
printed in Trinidad and Tobago be transmitted  
to the Registrar of the Privy Council within  
sixty days from the date of such certificate
4. That the Appellant do within One hundred  
and fifty days from the date hereof bring this  
application into Court upon an application for  
the final order for leave to appeal.
- 30 5. That the costs of and occasioned by this  
application be costs in the cause to abide the  
result of the appeal.
6. That each party may be at liberty to apply  
as may be advised.
7. That the Appellant do have and is hereby  
granted leave to write up this order.

Registrar.

In the Court  
Of Appeal

No. 25

No. 25  
Order granting  
final leave to  
appeal to the  
Judicial  
Committee of  
the Privy  
Council  
9th March 1981

ORDER GRANTING FINAL LEAVE  
TO APPEAL TO THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

---

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL      CIVIL APPEAL  
No. 8 of 1977

Between

THE UNIVERSITY OF THE  
WEST INDIES

Appellant/  
Respondent

10

And

PONNAMPALAM SELVANAYAGAM

Respondent/  
Applicant

---

Before The Honourables Mr. Justice M.A. Corbin,  
G.M. Scott and J. Braithwaite

Made on the 9th day of March 1981  
Entered on the 10th day of March, 1981

Upon reading the Notice of Motion dated  
the 13th day of February, 1981 filed by the  
above-named Applicant/Respondent and the  
affidavit of CHURCHILL SOOGRIM sworn on the  
9th day of February, 1981 and filed in support  
thereof and

20

Upon hearing Dr. Fenton Ramsahoye of  
Counsel for the Applicant, the Appellant/  
Respondent not appearing AND THE COURT being  
satisfied that the conditions set out in the  
Order of the Court made herein on 9th October,  
1980 granting Conditional leave to Appeal were  
duly complied with by the Applicant and that  
the Appellant/Respondent had notice of this  
application.

30

IT IS ORDERED:

That the Respondent/Applicant be granted  
final leave to Appeal to the Judicial Committee  
of the Privy Council against the Judgment of  
the Court of Appeal dated the 31st day of July,  
1980.

BY THE COURT  
REGISTRAR

40

IN THE PRIVY COUNCIL

No.3 of 1982

---

---

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD  
AND TOBAGO

---

---

B E T W E E N :

PONNAMPALAM SELVANAYAGAM

Appellant

- and -

THE UNIVERSITY OF THE WEST  
INDIES

Respondent

---

---

RECORD OF PROCEEDINGS

---

---

INGLEDEW, BROWN, BENNISON &  
GARRETT,  
International House,  
26 Creechurch Lane,  
London, EC3A 5AL

Solicitors for the Appellant

Barlow Lyde & Gilbert,  
Drake House,  
3/5 Dowgate Hill,  
LONDON EC4R 2SJ.

Solicitors for the Respondents