

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE  
Sub-Registry, San Fernando

H.C.A. No. S463 of 1999

Between

RIAZ RAE ABDOOL

Plaintiff

AND

FARAAZ MOHAMMED  
NIZAM MOHAMMED

Defendants

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**JUDGMENT**

Before the Honourable Mr. Justice V. Kokaram

Appearances:

Mr. Winston Seenath instructed by Mr. Hansraj Bhola for the Plaintiff

Mr. Roger Mark Kawalsingh instructed by Mrs. Cheryl Ryan Baptiste for the Defendants.

1. **THE ACTION:**

- 1.1 By writ of 7<sup>th</sup> May 1999 the Plaintiff, Mr. Riaz Rae Abdool, claims damages for personal injuries and consequential loss suffered as a result of the negligence of Mr. Faraaz Mohammed, the first named Defendant, the servant and/or agent of Mr. Nizam Mohammed, the second named Defendant in the use and management and control of the second named Defendant's motor vehicle registration number PAX 6767 (hereinafter referred to as "the motor vehicle") along Ciperio Road and Balisier Avenue, San Fernando on 22<sup>nd</sup> November 1996 causing same to collide with the Plaintiff's motor cycle registration number PAK 423 (hereinafter referred to as "the motor cycle.")
- 1.2 This action was set down for trial on 8<sup>th</sup> January 2004. The pre trial review was held on 12<sup>th</sup> December 2005 before the Honourable Mr. Justice Smith when the trial of this action on both the issues of liability and damages was fixed for 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> February 2006. At that stage the parties indicated that there were four (4) witnesses for the Plaintiff and two (2) witnesses for the Defendants.
- 1.3 Unfortunately when this matter came on for trial on 1<sup>st</sup> February 2005 the Plaintiff was not ready to proceed with the trial of both liability and the assessment of damages. The Plaintiff's Attorney-at-Law indicated that he did not have any updated medical reports and that the Plaintiff's medical expert, Mr. Pierre, whom he expected to have been available to give evidence as his fourth witness, was out of the jurisdiction. In the circumstances it was the Plaintiff's application to "split" the trial, deal with the issue of liability alone and adjourn the assessment of damages. To his credit instructing Attorney-at-Law for the Plaintiff conceded that the Plaintiff did indicate at the pre-trial hearing his readiness to proceed with a complete trial and that the present application was being made with the "greatest reluctance". This application was resisted by the Defendants' Attorney at Law. Among his reasons in opposition to the application, Attorney for the Defendants cited increased costs of a prolonged hearing, the prejudice to his clients who were prepared to deal with both issues in the time allotted by the

Court and the exposure to increasing interest attendant on the delay in making any award against his clients.

- 1.4 The Court ruled that this was an unsatisfactory state of affairs for the following reasons: (a) the Plaintiff was clearly not ready to proceed with a full trial in this matter which was fixed for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> February 2006 on the issue of both liability and damages. (b) The Plaintiff knew of this development 2 to 3 weeks prior to the trial and did not inform the Defendants nor this Court thus depriving it and other litigants of an opportunity to utilize the machinery of the Court in other matters. (c) Further the Court learnt through Attorney for the Defendants that until the morning of 1<sup>st</sup> February 2006, it was always represented to the Defendants that Mr. Pierre would be available for the trial and in any event there were other available doctors in this matter who can give evidence.
- 1.5 There is indeed an obligation on the parties to make full disclosure to the pre trial Judge and to make full disclosure of all the impediments in the path to achieving a full resolution of the case within the time allotted. Time in the present administration of justice is at a premium. When matters are scheduled for hearing, Judges, Lawyers and Litigants plan their lives around these schedules. There is an opportunity cost to all parties and indeed to the machinery of justice with the limited resources available to it when matters are not conducted in the manner scheduled. Although the Court was reluctant to allow this matter to go beyond the three days allotted to it, it was mindful to exercise its powers under **Order 33 rule 3 of the Rules of Supreme Court** and to “split” the trial in the interest of justice. The Court must not, except for exceptional reasons, deprive itself of available forensic or expert evidence which will assist it in arriving at an accurate and just award or assessment. To do otherwise will be an injustice to both the Plaintiff and indeed the Defendant who will not have a proper appreciation of the extent and nature of the Plaintiff’s alleged injuries or the extent to which its effects have diminished. See *Stevens v William Nash Limited* [1966] 3 AER 1109 and *Cornen v Payne* [1974] 2 AER 112. The costs of this application is dealt with at the end of this judgment.

2. **THE COLLISION:**

2.1 Both the Plaintiff and the first Defendant, were driving their respective vehicles in opposite directions along Ciperio Road, San Fernando on 12 November 1996 at around 11.30 pm. The Plaintiff was driving a red Yamaha DT175 motorcycle heading in an Easterly direction proceeding from the San Fernando General Hospital on the East bound or Northern lane of Ciperio Road. He was dressed in a black jacket, “royal blue” coloured jeans and a red helmet. The first Defendant was driving the second Defendant’s motor vehicle proceeding West along the West bound or Southern lane of Ciperio Road. Both gentlemen were on their respective ways home when at the corner of Balliser Avenue and Ciperio Road misfortune struck. A collision took place between the motor vehicle and the motor cycle when the first Defendant was negotiating a turn from the Southern lane of Ciperio Road across the Northern lane into Balliser Avenue.

**3. THE PLEADINGS:**

3.1 The Plaintiff pleaded that the collision was caused by the negligence of the first Defendant. In paragraph 3 of its Statement of Claim dated and filed 7<sup>th</sup> May, 1999 the Plaintiff particularized the first Defendant’s negligence as follows:

- “(a) Driving too fast.*
- (b) Failing to keep any or any proper look out.*
- (c) Failing to have sufficient regard for other traffic that was upon Ciperio Road.*
- (d) Attempting to enter from Ciperio Road into Balisier Avenue in the face of and against oncoming traffic.*
- (e) Failing to give way to the Plaintiff’s motor cycle.*
- (f) Turning into the part of the Plaintiff’s motor cycle on Ciperio Road when it was unsafe and/or dangerous to do so and without caring whether it was unsafe and/or dangerous so to do.*
- (g) Failing to see the Plaintiff’s motor cycle in sufficient time to avoid the collision or at all.*

- (h) *Failing to give any warning that he intended to cross the Ciperio Road into Balisier Avenue in the path of oncoming traffic and thereby put the Plaintiff to unnecessary risk.*
- (i) *Failing to have or keep any proper control of the motor car.*
- (j) *Failing to give any opportunity to the Plaintiff to escape from an accident as a result of the manoeuvre undertaken by the driving of the car from Ciperio Road into Balisier avenue in the face of oncoming traffic.*
- (k) *Failing to stop slow down swerve or in any other way so to manage or control the motor car as to avoid the said collision.*
- (l) *Colliding with the Plaintiff's motor cycle by taking an unnecessary risk in making entry into Balisier Avenue from Ciperio Road.*

*Alternatively to the above, res ipsa loquitur”*

It is noted that at the trial no case was advanced by Attorney-at-Law for the Plaintiff on the issue of res ipsa loquitur.

3.2 The Defendants in their Defence filed on 7<sup>th</sup> June 1999 denied that they were negligent and pleaded that the Plaintiff was contributory negligent. In paragraph 5 of the Defence the Defendants contended that the collision was caused wholly or in part by the negligence of the Plaintiff in the riding management and/or control of motor cycle PAK 423. In support of this plea of contributory negligence the Defendants alleged that the Plaintiff was:

- “a. Driving too fast in the circumstances*
- b. Failing to keep any or any proper look out or to have any or any sufficient regard for motor vehicle PAX 6767 traveling along the said road*

- c. *Failing to observe or heed the indication given by the first defendant of his intention to turn into Balisier Avenue.*
- d. *Failing to have motor cycle PAK 423 lighted properly or at all and/or riding the same at the material time without proper lights.*
- e. *Failing to stop, to slow down, to swerve or in any other way so to manage or control the said motor cycle as to avoid the collision.*
- f. *Failing to steer a safe and proper course.”*

It is noted that at the trial the Defendants did not contest nor dispute that the first Defendant was the servant and/or agent of the second Defendant but focused on the issue of contributory negligence on the part of the Plaintiff or no negligence on the part of the first Defendant.

#### **4. THE ISSUES:**

4.1 The issues to be determined in this matter are very narrow. The burden is on the Plaintiff to show on a balance of probabilities that the Defendants were negligent. See *Halsbury Laws of England* Fourth Ed Re Issue (1997) Volume 33 paragraph 662 and 663. It is clear however that motorists in the circumstances which obtained in the present case owe each other a duty of care. After hearing both parties and the evidence in this case the issues were narrowed further to the following:

- (a) Whether it is more probable than not that the Defendant was driving at a fast rate of speed;
- (b) Whether the Plaintiff established on a balance of probabilities that the Defendant suddenly swerved onto the Plaintiff;
- (c) Whether the Plaintiff established that the manoeuvre was executed without warning;

- (d) Whether the Plaintiff established on a balance of probabilities that first Defendant managed or controlled the vehicle in a negligent manner;
- (e) Whether the Defendant, established on a balance of probabilities that the Plaintiff failed to have his lights on or to have the motor cycle lighted properly and/or that he was negligent and entirely the author of or contributed to his own misfortune.

**5. THE EVIDENCE:**

5.1 Even though both parties presented with equal force their different versions of the collision, there are common areas of or uncontested facts which emerged from the testimony of both gentlemen from which useful inferences can be drawn for the resolution of the issues in this matter:

- (a) The accident occurred around 11:30 pm at the corner of Balisier Avenue and Ciperro Road San Fernando;
- (b) The parties' vehicles were at the time of the collision and immediately before the accident the only vehicular traffic on the Ciperro Road going in either direction.
- (c) The Plaintiff was heading East and the first Defendant was heading West. The first Defendant was immediately before the accident driving in the centre of his lane and not on the left side of the Western bound lane.
- (d) The condition of the road was dry.
- (e) Balisier Avenue was about 200 feet East of the bypass. The area under the bypass was dark.
- (f) At the point of the collision either lane of the Ciperro Road was approximately 25 feet in width.
- (g) The Plaintiff was aware that vehicular traffic heading West along Ciperro Road will usually turn North into Balisier Avenue and therefore cross the East bound lane of Ciperro Road.
- (h) There was a pavement to the West of Balisier avenue and a lawn to the East of Balisier Avenue.

- (i) Balisier Avenue itself was approximately 15 feet in width and accommodated two lanes of traffic.
- (j) The Defendant's motorcar was traveling West along Ciperio Road and turned right across the East bound lane of Ciperio Road heading into Balisier Avenue when the collision occurred.
- (k) The first Defendant did not come to a complete stop before executing his turn across the East bound lane of Ciperio Road.
- (l) The first Defendant was maneuvering the car to turn from Ciperio Road into the right or Eastern lane of Balisier Avenue.
- (m) The Plaintiff took a few seconds to travel from under the bypass to the point of impact.
- (n) The collision occurred well within the East bound lane of Ciperio Road, at the Eastern side of Balisier Avenue, after the Defendant had begun to execute the maneuver.
- (o) The motorcar collided with the Plaintiff's right leg.
- (p) The Plaintiff after the accident lay some 10-12 feet away from the point of impact, with the motor cycle a few feet further away. Both the plaintiff and his vehicle lay to the North East of the point of impact.

**6. THE ASSESSMENT OF THE EVIDENCE BY THE COURT:**

6.1 It is unfortunate that there was no independent evidence nor documents to corroborate the version of either gentleman. There was no police report, nor were measurements taken independently. It was discovered in the cross examination of the first Defendant that the parties returned to the collision site some time later but there was no explanation as to purpose of the visit. Having said that, the Court has had the opportunity to view the demeanor and disposition of the witnesses, the manner in which the evidence was led and the useful demonstration of different versions of how the accident is alleged to have happened through the use of model cars which both counsel used to advance their arguments.

- 6.2 The Plaintiff described the lighting condition on the Ciperero road as bright. He contended that when he had just passed the intersection on Ciperero Road and Balliser Avenue, the motor vehicle coming in the opposite direction on the next side of the Road at a very fast rate, pulled suddenly on his side of the road without stopping or giving any indication that it was going to turn and hit him on the right leg and on the right side of the motor cycle.
- 6.3 The Plaintiff contended he was struck at the Eastern end of Balliser Avenue. He contended that the front and right of the motor vehicle collided with his motor cycle. He was hit in the centre of his vehicle. A “flush hit” as he described it.
- 6.4 The Court carefully observed this witness and found him prone to exaggeration in certain aspects of his case. Under cross examination it would appear that he overstated his initial case that the road was “bright” and conceded that there may not have been may lights, resting finally with the conclusion that it was “well lit”. He was unsure as to the measurements of the road, the number of lanes on either side of Ciperero Street and whether Balliser Avenue was a one way or two way street. Importantly he conceded that traffic proceeding West along Ciperero Road can turn North into Balisier Avenue across the East bound lane of Ciperero Road. Although he noticed the motor vehicle he was unsure as to its exact manoeuvre at the time of the accident. His case also wavered from one where the motor vehicle came to a complete stop at the point of collision to one where the motor vehicle continued after the impact onto Balisier Avenue some 60 feet away. This latter position appeared to be an afterthought upon hearing the evidence of the first Defendant. He also did not give any estimate of the rate of speed of the first Defendant.
- 6.5 For these reasons the Court is not entirely satisfied that the Plaintiff has discharged the burden on him that the Plaintiff was driving at a fast rate of speed and executed the manoeuvre without warning. However, to his credit the Plaintiff was unshaken with regard to his own speed and his lighting of the motor cycle. Together with certain other evidence, which is undisputed in this case, referred to above, certain favorable inferences can be made for the Plaintiff.

- 6.6 The Plaintiff's second witness gave evidence that he heard a loud engine coming from his right at Southern Sales which was some 200-300 feet away from the accident. The car came around the corner he contended very fast almost clipping the light pole in front of him and preceded onwards towards Balisier Avenue he "presumed". It was going in that direction when he heard a "bang." He jumped up on top the fence and saw someone lying on the lawn. His fellow officer Rhamdahanie went across to the lawn and stayed with the victim until the ambulance arrived.
- 6.7 This witness was not very helpful. I agree with the Defendant's Attorney-at-Law that lacking from this witness was a proper identification of the car, the time and the date of the accident. Moreover this witness was not in a position to see how the accident occurred, which is relevant to this case. His evidence with regard to speed is irrelevant to the actual point of impact. Even if it is accepted that this was the motor vehicle this witness did not establish the rate of speed of the vehicle. The first Defendant conceded that he was initially driving at 40mph. This may be consistent with the observations of the witness however it is dangerous for this Court to simply draw that inference without more.
- 6.8 The Plaintiff finally sought to adduce into evidence a witness statement through the means of a "Hearsay notice" dated and filed 31<sup>st</sup> January, 2006. This Notice did not comply with the requirements of **Order 38 rule 22** of the **Rules of Supreme Court**. Both Attorneys were invited to address the Court on the admissibility of this evidence under **Order 38 rule 29**. However the Court rejected the evidence for the following reasons: (a) the Court was not in possession of all the relevant facts in relation to the making of this statement before exercising its discretion. There was no explanation as to the date, time and circumstances of the making of the statement. (b) The statement was not a contemporaneous document and no sufficient explanation was advanced for that state of affairs. (c) In the interests of justice the document was not adduced into evidence. This was a trial which turned on the facts and hearsay evidence will not lightly be introduced which has not been tested causing prejudice to the other party. Moreover the Court indicated to Attorney-at-Law for the Plaintiff that even if the

statement was admitted into evidence the Court would have disregarded it and/or attached no weight to its contents.

- 6.9 For the Defendants, even though they indicated that there were initially two witnesses, the Defendants rest their case upon the evidence of a sole witness, the first Defendant. In summary, this Defendant was driving along Ciperro Road together with two friends in the motor vehicle. He was coming from Jenny's Wok after spending some three (3) hours there. He slowed down on his approach to Balisier Avenue. He indicated his right turn into Balisier Avenue. He did not see the Plaintiff. When he had executed his turn he saw a "flash" or "shadow" which was in fact the Plaintiff colliding with the left and front of the vehicle. After the collision he then parked his car some 60 feet away from the scene on Balisier Avenue and proceeded to render assistance to the victim.
- 6.10 This Defendant contended that the area of the collision was not well lit and that the Plaintiff did not have his lights on.
- 6.11 The dispute of fact that was the subject of more attention in the cross examination on both sides was the point of impact and the different versions of the point of impact on the vehicles described above. However, taking any version of the point of impact on the motor vehicle, the collision occurred well within the Plaintiff's lane, the East bound lane of Ciperro Road. If the first Defendant's version is to be wholly accepted then he had completed his manoeuvre of turning and the motor cycle hit the left front side. If the Plaintiff's version is to be accepted, it was the first Defendant that turned suddenly on the Plaintiff hitting him with the right front side of the motor vehicle. In any version it is clear that at and immediately prior to the point of impact neither driver had a proper look out for the other. The Plaintiff did not anticipate nor see the Defendant's turn until the last moment, even though he contended he had the motor vehicle under observation some 400 feet away. The first Defendant clearly did not see the motorcycle until he saw a "shadow flash across the left front of the vehicle". By then the collision had already happened.
- 6.12 The Court finds it difficult to believe that the Plaintiff did not have on his headlights while driving along the Ciperro Road from his journey from the San Fernando General

Hospital at that hour in the night. When confronted with this position in cross examination the first Defendant simply said that “at the point of collision” the Plaintiff did not have on his lights. When this Court also asked Attorney-at-Law for the Defendant whether the inference which he is seeking to draw is that the Plaintiff switched off his lights from under the overpass, the response was that he did not have proper lights. Even if the Plaintiff did not have on “proper lights” it does not absolve this Defendant from all liability.

6.13 The first Defendant however conceded that he turned right into Balisier Avenue without stopping, crossing the East bound lane of Ciper Road. This itself, although a common occurrence on our roads, is in the circumstances of this case an incautious manoeuvre. It is instructive to note that in answer to counsel why he turned on the indicator, when he did not see the Plaintiff nor had any traffic behind him, the first Defendant answered it was a “habit”. This suggests either of two things (a) that he did see the Plaintiff’s motorcycle coming towards him or (b) if he did not see the Plaintiff as he contended, he was not focused on the road as he was driving by instinct. I took a careful note of the manner in which the question and answer was given and it suggests one of instinct rather than a conscious act of putting on an indicator and then checking for traffic. His focus may not have been all that it should be at that hour of the night as he contended in a dimly lit area. This conclusion is consistent with this Defendant having two colleagues in his car, and coming from Jenny’s Wok at 11:30 pm at night having spent some three (3) hours there. Further it is more probable that the Defendant did have a proper look out for the Plaintiff as (a) the first Defendant had already turned heading North when the collision took place. (b) The area was not a brightly lit area (c) the Plaintiff was driving a motor cycle in dark clothing, proper lighting notwithstanding.

6.14 This Defendant was therefore executing a manoeuvre that necessarily put him in harms way or created a risk of accident. There is an onus on him to exercise a great degree of care. The Court drew to the attention of Attorneys-at-Law regulation 38 (5) (7)(9) of the *Motor Vehicles and Road Traffic Regulations* Chapter 48-50. The first Defendant was therefore executing a turn prima facie in breach of this regulation and

negative inferences can be drawn. See *C.A. 87 of 2002. Deodath Gopaulchan v Rochan Gaffoor* per Kangaloo J.A. p 8. This Defendant cannot deny that the Plaintiff was driving on the East bound lane at that time. However, in executing this manoeuvre at that hour in the circumstances of this case it may have been prudent for him to come to a complete stop or the very least turn into the West left side of Balisier Avenue at 23 m.p.h. This Defendant must cater for even unlighted vehicles, bikes, and pedestrians. It cannot be assumed that in the absence of lights there are no obstructions or traffic on the road.

6.15 The Court finds that both men were at the time of impact not driving at fast, immoderate or reckless speeds. Had either men been driving at any reckless or excessive rate of speed the damage to the vehicle, the Plaintiff and the distance and trajectory of the Plaintiff's spill would have been different to what obtained in this case. It is also more probable that the first Defendant did slow down. If he was traveling at a great rate of speed such a momentum would not be consistent with the distance between the point of impact and the place where the Plaintiff landed. It is reasonable to conclude from the evidence of both parties that the Plaintiff's own momentum heading East together with the collision pushed him to the North East of the point of impact away from his original Easterly direction. This suggests a "glance" rather than a "flush hit." Further at a greater rate of speed the first Defendant may be pulling more to the left of Balisier Avenue to accommodate the sharp turn. Accepting that the Defendant had begun his turning manoeuvre it would stand to reason that he might not have been able to see the Plaintiff, he would have placed himself in a position not to have a clear view of the Plaintiff and hence he saw the Plaintiff too late to take any evasive measure.

6.16 The Court holds the view that the first Defendant could have avoided this accident had he exercised more diligence by ensuring no traffic was coming his way and by keeping a proper look out. The first Defendant failed to apply brakes even at the last moment when he did see this motorcycle. The Defendant also failed to keep to the left of Balisier Avenue. Accepting that the road was dimly lit, extra caution is required from

him. He turned into the path of the Plaintiff's motorcycle and failed to see the motorcycle in sufficient time to avoid the collision.

- 6.17 In these circumstances, the Court finds the first Defendant in driving and managing the second Defendant's motor vehicle negligent and in breach of his duty of care to the Plaintiff.

**7. CONTRIBUTION:**

- 7.1 The Plaintiff however, as is observed above, not entirely without blame. One must cater for the other man's follies See *L.P.T.B.v Llpson* [1949] AC 155. The Plaintiff did not keep a proper look out for a car he said was traveling at a great speed and which was not on its proper left side of the Western lane. He must anticipate the possibility of the Defendant turning. Also having found that the car did slow down, or decreased its speed and indicate he must anticipate a turn into Balisier Avenue. The Plaintiff did not slow down, he did not sound a horn nor give any warning of his approach. It is more probable that he did not have the car in his sight at all times. He was struck on the extreme left of the Eastern lane, which means the car had already made the turn. Had he noticed this he would have either stopped swerved or altered his course. The Plaintiff therefore is not blameless in these circumstances, moreover when he knew that this intersection was one where vehicles usually execute turns into Balisier Avenue. One will expect therefore a prudent motor cyclist to slow down or sound his horn as a precaution to oncoming traffic. This Plaintiff continued on his way oblivious to the other user of the road.

- 7.2 It is with these facts in mind and on the totality of the evidence the Court finds that the Plaintiff was contributory negligent and that the Plaintiff was part author of his own misfortune. However the extent of that authorship the Court ascribes at 30%. The Court therefore holds the first Defendant liable to the Plaintiff with a 70% contribution.

**8. CONCLUSION:**

8.1 Returning to the issues identified above the Court holds: That it is more probable than not that the Defendant was not driving at a fast rate of speed. The Plaintiff failed to demonstrate that the turn was executed without warning. However the first Defendant failed to take the necessary precaution or care attendant on the manoeuvre that he had embarked upon and did not demonstrate that the Plaintiff failed to have his light on or to have the motorcycle lighted properly. Also having regard to the circumstances this is a fitting case for contribution as the Plaintiff was contributed to his own misfortune.

**9. ORDER:**

9.1 The Court having ordered the trial of liability to be determined before the assessment of damages, it is hereby ordered that there be judgment for the Plaintiff against the Defendants to the extent of 70% contribution.

9.2 The assessment of damages shall take place in accordance with the following directions to allow for the expeditious resolution of this issue on 22<sup>nd</sup> February 2006:

- a. That the Plaintiff do file and serve its bundle of exhibits to be adduced into evidence at the assessment on or before 15<sup>th</sup> February, 2006 indicating which exhibits are agreed and not agreed.
- b. That the Plaintiff do file and serve witness statements of all its witnesses on or before 17<sup>th</sup> February, 2006.
- c. The witness statements shall stand as the witness' evidence in chief subject to the usual rules of evidence. Cross-examination of these witnesses shall be no longer than 1 hour each.
- d. The parties do file and exchange skeleton arguments and authorities on the issue of damages on or before 20<sup>th</sup> February, 2006
- e. Trial adjourned to 22<sup>nd</sup> February, 2006 to proceed with the assessment of damages.

9.3 Further upon hearing both parties on the issue of costs, it is ordered that:

- (a) The Plaintiff do pay to the Defendants all Costs thrown away occasioned by the Plaintiff's application to "split" the trial, to be taxed in default of agreement.

- (b) By consent, the Defendants do pay to the Plaintiff 70% of its Costs of the trial on the issue of liability, to be taxed in default of agreement.

DATED this 6<sup>th</sup> day of February, 2006.

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Vasheist Kokaram  
Judge.