

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A No. 924 of 1990**

**BETWEEN**

**VEDA MOHAN  
(Administratrix of the estate  
of RUSSELL MOHAN)**

**Plaintiff**

**AND**

**CARIBBEAN ISPAT LIMITED**

**Defendant**

*Before the Honourable Mr. Justice P. Moosai*

**Appearances:**

*Dr. Kenneth O'Brien for the Plaintiff*

*Mr. Darin Bissoondatt for the Defendant*

**JUDGMENT**

In this action the Plaintiff as Administratrix of the estate of Russell Mohan, deceased, brought this action on behalf of herself as a dependant of the deceased under the provisions of the Compensation for Injuries Act, Chapter 8:05, and for the benefit of the deceased's estate under the Supreme Court of Judicature Act, Chapter 4:01, for damages for negligence, breach of common duty of care and/or breach of statutory duty.

The Deceased, twenty-three years old at the time of his death, was employed with John Williams Construction Limited ("John Williams") as a labourer earning the weekly sum of four hundred and twenty dollars (\$420.00).

On 9th September, 1989, the Deceased and his brother, the late Basdeo Mohan, accompanied Ramesh Rampersad ("Rampersad"), a truck driver

employed with John Williams, to the Defendant Company's premises to vacuum an iron ore spill.

At approximately 2.30 p.m. Rampersad left the deceased and his brother vacuuming the iron ore spillage and returned to his truck to look over some documents he had to sign.

At around 2.45 p.m. the rain started to drizzle and when Rampersad looked up, he saw the deceased and his brother standing in front of the power station door. They were about one foot from the door. That was about ten feet away from where they were working earlier. Then Rampersad heard a loud explosion and when he looked up he heard someone shouting "Oh God". He saw a lot of smoke and dust coming from inside of the power station. Rampersad came out of the truck and then saw the deceased and his brother moving away from the power station. They were alight, their clothes were on fire and their skin was peeling off and falling. He began tearing off their clothes. He summoned help and the deceased and his brother were subsequently taken to the hospital where they both died.

Rampersad testified that both brothers were accustomed going to the Defendant Company's premises when there were spills. When he saw them standing outside the power station they had on their overalls, tall boots and helmets. When he saw them after he heard the explosion they did not have their helmets on. Both brothers smoked cigarettes.

On the day of the explosion Rampersad, who was a witness for the Defendant's company, testified that the doors to the power station room were

open. The front door has two doors, one was open, the other half-open. The doors at the back were also open.

Kenneth Cozier, an Electrical Inspector employed with the Government Electrical Inspectorate at the material time, testified on behalf of the Plaintiff. In 1985 he was part of a team from the Government Factory and Electrical Inspectorates which submitted a report to the Defendant Company's predecessors-in-title. With respect to the electrical systems the report provided:

“Lock-out and tagging procedures were not being followed when there was a risk of contact with live equipment. Such a situation existed in the MCC room of the Materials Stocking Sub- Station... Motor power panels and plant control panels were housed in the same room. This occurred in the MCC room of the Briqueting Plant and in that of the Oxide Screening Station. Further in the latter case, it was observed that operators and certain employees passed in front of and around these motor panels to reach the plant controls. This exposed these people to the risk of electrical shock whenever the panel covers were removed or opened.”

The report also recommended that lockout and tagging systems should be imposed and the associated procedures should be followed closely.

He visited the Defendant Company's premises on 11th September, 1989 in connection with the explosion of 9th September, 1989 and made three subsequent

visits. When he visited the power station the building housed both high voltage and low voltage equipment. When he visited on 11th September, 1989 the doors to the said building were wide open. In addition the room was also being used as a motor control centre. A person would have to go from time to time to that room to start or stop motors. That room was about 10' by 10'.

He prepared a report of his visit. This report stated inter alia:

1. Very easy access was available to unauthorised persons - to the interior of the switch room. Both doors of the switch room were usually kept unlocked.
2. The doors of the High Voltage switch gear in which the explosion took place carried five fixing bolts which could have been made loose by anyone and evidently the padlock which could keep out unauthorised persons was not in use at the time of the accident.
3. High voltage and low voltage equipment are housed in a room contrary to safety practices.
4. The live high voltage accessories - bus bars, bolts, contacts etc.- inside the housing cubicles are within easy reach and accidental contact of persons - technical staff or others, when the doors are opened. There are no interlocks or other fail-safe measures to ensure that these parts are isolated before the doors are opened, again contrary to safety practices.

5. At the time of the explosion the doors of the cubicle appeared to have been in the open position as we were assured that the cubicles are designed to contain such explosions.
6. An examination of the damaged switch gear now removed and stored in the main substation, showed that the contacts and insulators were badly burnt. The contacts showed signs of heavy arcing consistent with an attempt to operate such a gear, a load break switch, under conditions of severe load.

There was some dispute as to whether or not the switch room door had the warning sign “entry to only authorised persons”. Cozier says he saw none but I accept the evidence of the Defendants’ witnesses that there was such a sign. Cozier did in fact admit that when he went there both doors were wide open so that it was possible if there were a sign, he might not have seen it.

There was also some dispute as to whether there was a warning tag on the lever. On this aspect I prefer the evidence of Cozier to the Defendant’s witnesses. Cozier said if there were tags he would remember. I accept Cozier’s evidence in this regard. He appeared to me to be an honest witness with no interest to serve. Although tested in cross-examination, I was of the view that his evidence was not impeached in any material manner. I also note that as far back as 1985 the Government Factory and Electrical Inspectorate complained that lock-out and tagging procedures were not being followed where there was a risk of contact with

live equipment. In addition the Defendants' witnesses, Britton and Noel, gave conflicting evidence, the former stating that the tag stated "Danger do not close", the latter "Do not operate or do not close".

Cozier also testified in cross-examination that the handle of the switch gear was exposed and that if you try to operate the handle on heavy load conditions, you could have an explosion. If the doors are closed it is supposed to contain an explosion but there are situations in which, due to the extent of an explosion, doors are known to have blown off.

In answer to the Court Cozier said that if there was an explosion and the bolts had been removed around the same time, you would see the sheared bolts around the cubicle. Suffice it to say no trace of any bolts were found at the explosion site and Britton couldn't recall seeing any bolts after the explosion although he had had the explosion site secured. I therefore also find as a fact that there were no bolts attached to the switch gear at the time of the explosion.

It is clear that at common law the power station would be considered as dangerous premises. When persons were injured on premises their rights depended on the circumstances under which they came to be there. The different categories of duty at common law were described by Hamilton L.J. thus in Latham v. R. Johnson and Nephew Ltd. (1913) 1 K.B 398 at 410:

"The duty of the owner or occupier to use care, if it exists at all, is graduated distinctly, though never very definitely measured ...

Contractual obligations, of course, stand apart. The lowest is the duty towards a trespasser. More care, though not much, is owed to a licensee - more again to an invitee.”

An invitee is a person who is invited to go upon premises as a matter of business between himself and the occupier of the premises: Charlesworth on Negligence 3rd Edition pages 190 and 191. In Indermaur v Dames (1866) L.R. 1 C.P. 274 a workman sent by his employer, under contract with the occupier, to do work in a building was held to be an invitee.

In the instant case the deceased was sent by his employer, under contract with the occupier, to vacuum an iron ore spill. On the authority of **Indermaur v Dames** I hold that the deceased was an invitee.

At common law the occupier of premises owes towards an invitee a duty to exercise reasonable care to prevent damage to the invitee from an *unusual danger* known to the occupier or of which the occupier ought to have known: Kodilyne Caribbean Law of Tort, page 149. This duty to an invitee was described by Willes J. in **Indermaur v Dames** (supra) thus:

“..... that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that, where there is evidence of neglect, the question whether such reasonable care has been taken, by notice, lighting, guarding, or otherwise, and whether there was

contributory negligence in the sufferer, must be determined by the jury as a matter of fact.”

I have found that the power station’s doors were open. The deceased and his brother would not have been able to see the sign on the doors. The doors being open and the rain falling, it is clear to me that they went into the power station to shelter. They were not skilled employees but labourers. The deceased was a mere 23-year old. I am not of the view that they possessed such skill, knowledge or experience as to make them aware that they were walking into a death trap. It is true that they had been on the premises of the Defendant’s Company on several occasions, but this was to perform their tasks as labourers. There is no evidence as to how long the deceased and his brother were in the power station but it could not have been very long having regard to the evidence of Rampersad. I have already found that there was no warning tag on the lever. Cozier’s report suggests that the two people who sustained burns could only do so if the doors of the cubicle were open and they were standing very near to or in front of this open door. In addition the contacts showed signs of heavy arcing - consistent with an attempt to operate the switch gear under conditions of severe load. I am therefore of the view that the deceased and his brother were responsible for tampering with the lever, which caused their eventual deaths.

Having regard to the danger posed by a power station with open doors, the absence of a warning tag on the lever, the absence of a lock on the cabinet, the absence of bolts on the switch gear, the absence of interlocking bolts, and the recommendations in 1985 from the Government Factory and Electrical

Inspectorates, it could not reasonably nor sensibly be argued that the Defendant Company used reasonable care to prevent damage to the deceased from an unusual danger. Indeed the evidence shows that two days after the explosion the doors to the said power station were visibly open. The question that is left to be determined is the question of contributory negligence. Having regard to the facts of the instant case and to the death trap created by the Defendant's Company, I am of the view that the deceased has been guilty of contributory negligence to the extent of one-third.

#### BREACH OF STATUTORY DUTY

The Defendant's Company is a factory as defined in the Factories Ordinance Chapter 30 No. 2. Section 16 of the said Ordinance provides:

*“Every dangerous part of the ways, works or plant shall be so enclosed, covered, fenced, or otherwise effectively guarded as to prevent danger.”*

Having regard to the facts as already found I am of the view that every dangerous part of the plant was not so enclosed, covered, fenced or otherwise effectively guarded as to prevent danger.

In addition section 13 (1) (d) of the Electricity (Inspection) (Supply) Rules Chapter 54:72 provides:

*“13. (1) Where energy at high voltage is transformed, converted, regulated or otherwise controlled in substations or switch stations (including outdoor substations and outdoor switch stations), in street boxes constructed underground, or in fire-resisting cases on the premises of a consumer, the following provisions shall have effect:-*

*(d) fire-resisting casings on the premises of a consumer, preferably of metal connected with earth, shall completely enclose all electric lines (other than overhead lines) and apparatus on the premises designed to be electrically charged at high voltage and shall be secured so as to prevent access by any unauthorised person.” (Emphasis added).*

Having regard to the facts as already found, I am also of the view that the power station and the apparatus therein were not secured so as to prevent access by any unauthorised person. There was some argument as to whether the duty under the Factories Ordinance is owed not only to persons employed by the Defendant’s company but also to the deceased who, as the evidence shows, was employed by John Williams.

Subject to any provision to the contrary in any particular sections, the duty under the Factories Act [U.K] is owed not only to persons employed, but also to all persons working in the factory, whether employed by the occupier or not: John Summer and Sons Ltd. v. Frost [1955] A.C. 740, per Lord Simmonds.

The Defendant's Company therefore owed a duty to the deceased under the Factories Ordinance. Having regard to foregoing the Defendant's Company was also guilty of a breach of statutory duty.

#### ASSESSMENT OF DAMAGES

The deceased was 23 years old at the date of his death. He was a bachelor with no children. He was employed as a labourer with John Williams for about five years earning between three hundred and sixty dollars (\$360.00) to four hundred and twenty dollars (\$420.00) per week. In September 1989 he was earning four hundred and twenty dollars (\$420.00) per week. Out of that he gave his mother two hundred dollars (\$200.00) per week and spent the rest on himself. His mother used some of that two hundred dollars (\$200.00) to buy food for the deceased, and part was used to pay for common expenses such as land and building taxes, water rates and electricity.

I therefore look at the multiplier. Mr. Bissoondatt has suggested fourteen, Dr. O'Brien sixteen.

In H.C.A No. 4314 of 1983 Bachan Pragg v Felix Gomez and others, the deceased was 20 years old at the date of his death. A multiplier of fourteen was deemed appropriate by Master Best (as he then was).

In H.C.A No. 2475 of 1984 Ivan Ramjit v Richard Canhigh Master Lloyd Gopeesingh (as he then was) was of the view that a multiplier of sixteen was reasonable for a 25 year old school teacher.

In H.C.A. No. S1637 of 1979 Janice Leonard v Roodal Ramlogan et al Master Best considered a multiplier of twenty reasonable for a 20 year old.

Being a labourer with no special skills, the deceased would have been expected to work until age 55 or 60, giving him a working life expectancy of between 32 to 37 years. The prospect of the deceased receiving increments in pay, albeit on a smaller scale, must also be taken into account. I also take into consideration all other contingencies of life, both favourable and unfavourable, as I am required to do. I am of the view that a multiplier of fourteen years is reasonable in the circumstances.

I now proceed to determine a multiplicand or datum figure which would have remained at the disposal of the deceased after deductions of his living expenses, had his life not been brought to a premature end through the negligence of the Defendant: *Ivan Ramjit's* case (supra) at page 20 per Master Gopeesingh.

The net income is four hundred and twenty dollars (\$420.00) per week. Two hundred dollars (\$200.00) per week was given to the mother for expenses. We are not told what part was so used nor what was the surplus, if any, but the court must do the best it can in the circumstances. The mother's evidence is that she used part to buy food for the deceased and part for common expenses.

In Harris v. Empress Motors Ltd. [1983] 3 All E.R. 56 [C.A.] the relevant part of the headnote reads:

*"In assessing the damages recoverable by a deceased's estate under s 1(1) of the Law Reform (Miscellaneous Provisions) Act 1934 for the deceased's loss of earnings in the 'lost years', i.e. the years in which he would have been earning had he lived, the*

*following principles are to be applied in calculating the living expenses to be deducted from his net earnings in the lost years in order to reach the amount of recoverable damages: (i) the ingredients that go to make up 'living expenses' are the same whether the deceased was young or old, single or married, or with or without dependants; (ii) the sum to be deducted as living expenses is the proportion of the deceased's net earnings that he would have spent exclusively on himself to maintain himself at the standard of life appropriate to his situation; (iii) accordingly, any sums that he would have expended exclusively to maintain or benefit others will not form part of his living expenses and will not be deductible from his net earnings for the purposes of the 1934 Act. However, where the deceased expended the whole or part of his net earnings on living expenses (such as rent, mortgage interest, rates, heating, electricity, gas, telephone etc. and the cost of running a car) for the joint benefit of himself and his dependants, a proportion of that expenditure (the exact proportion being dependent on the number of dependants) should be treated as expenditure exclusively attributable to his living expenses and thus deductible from his net earnings in making the assessment under the 1934 Act; for example, where the only dependant is the deceased's wife one-half of the expenditure for their joint benefit should be deducted from his net earnings, but where there is a wife*

*and two dependent children one-quarter of the expenditure for the family's benefit should be deducted from his net earnings."*

I therefore take no account of any sums that the deceased would have expended exclusively to maintain or benefit his mother, the sole dependant. In addition the deceased expended part of his net earnings on living expenses for the joint benefit of himself and his mother so that one-half of the expenditure for their joint benefit should be deducted from his net earnings. Out of the two hundred dollars (\$200.00) per week given to the mother I deduct the sum of seventy dollars (\$70.00) per week for food for the deceased. I adopt the formula in Harris's case for the remaining one hundred and thirty dollars (\$130.00) i.e. expenditure for their joint benefit, divide it in half viz. sixty-five dollars (\$65.00) That one hundred and thirty-five dollars (\$70 + \$65) would amount to the deceased's living expenses. In addition I deduct the sum of roughly one-third of the balance i.e. eighty-five dollars (\$85.00) per week for the deceased's personal expenses. The total deduction is therefore two hundred and twenty dollars (\$220.00)[\$70+\$65+\$85] per week. Consequently the total sum which will have accrued for the benefit of the deceased's estate will have amounted to **two hundred dollars (\$200.00) per week** [\$420-\$220] at the date of his death. This gives an annual datum figure or multiplicand of ten thousand four hundred dollars (\$10,400.00).

Applying a multiplier of 14 years to the multiplicand or datum figure of ten thousand four hundred dollars (\$10,400.00), I arrive at a figure of one hundred and forty-five thousand, six hundred dollars (\$145,600.00) for the deceased's loss of future earnings during the years of life

lost to him because of the Defendant's negligence.

In addition I make an award of seven thousand five hundred dollars (\$7,500.00) for loss of expectation of life.

I also award the sum of eight thousand dollars (\$8,000.00) which has not really been disputed as special damages for funeral expenses. Eight hundred dollars (\$800.00) is claimed as travelling expenses but the evidence establishes that the mother went to the hospital twice per day for six days at ten dollars. I therefore award sixty dollars (\$60.00) for travelling expenses.

With respect to damages for pain and suffering, Rampersad's evidence is that the deceased was alight and his skin was falling off after the explosion. The mother's evidence was that at the hospital she saw the Deceased but couldn't really make him out. His entire body was black, his skin was peeled off and "like blood pimples coming out". He was sitting naked on the bed with a net over him. There were needles in his foot. She was able to speak to the deceased for the entire six days but he did not seem to understand. He could talk but they were unable to understand anything he was saying. The deceased died six days later. There is an absence of the nature, intensity and severity of the pain but I am prepared to hold that the pain and suffering in the circumstances of this case was exceptional. In *Janice Leonard's* case the deceased died two days after a motor vehicle accident and was awarded four thousand five hundred dollars (\$4,500.00.)

In *Bachan Pragg's* case the deceased, Shirvan Pragg (a cricketer with enormous potential), died of head injuries four days after a motor vehicle accident without regaining consciousness and was awarded six thousand five hundred dollars (\$6,500.00).

Because of the exceptional circumstances of the instant case I am of the view that an award of fifteen thousand dollars (\$15,000.00) is reasonable.

In summary therefore I award under the Supreme Court of Judicature Act the following sums:

a) Funeral Expenses	\$ 8,000.00
b) Travelling Expenses	60.00
c) Loss of Expectation of Life	7,500.00
d) Pain and Suffering	15,000.00
e) The Lost years	<u>145,600.00</u>
	\$ <u>176,160.00</u>

Both sides have agreed that the award under the Compensation for Injuries Act would be considerably less so I do not propose to calculate same.

I have already found that the Plaintiff was contributorily negligent to the extent of one-third, so that the proportionate deduction would have to be made.

Interest on the award under the Supreme Court of Judicature Act, save for the award for lost years, will run at the rate of three per cent per annum from the date of service of the Writ of Summons herein to today's date. There would be no interest on the award for lost years.

The costs of this action are to be paid by the Defendant to the Plaintiff to be taxed in default of agreement.

Dated this 8<sup>th</sup> day of January, 1999.

PRAKASH MOOSAI

JUDGE