

REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
(Sub-Registry-San Fernando)**

H.C.A. No. S822 of 1996

BETWEEN

**LALCHAND RAMOUTAR in his
Personal capacity and the said
LALCHAND RAMOUTAR in his capacity
As Administrator of the Estate of
Phyllis Ramoutar, deceased**

Plaintiff

And

**TRINIDAD AND TOBAGO
ELECTRICITY COMMISSION**

Defendant

Before the Honourable Mr. Justice Gregory Smith

Appearances:

Mr. K. Harrikisoon for the Plaintiff

Mr. N. Bisnath for the Defendant

JUDGMENT

Introduction:

1. On the 28th July 1995 the Plaintiff's house was destroyed by fire. Tragically, the fire also claimed the life of the Plaintiff's wife.

The Plaintiff alleged that the fire was caused by the negligence and/or nuisance and/or breach of statutory duty of the Defendant, and claimed the following losses:

- (i) Special damages to his property in excess of 1 million dollars.
- (ii) General and special damages arising from the death of his wife.

The Defendant Commission which was responsible for the supply of electricity to the Plaintiff's premises, denied any negligence, nuisance and/or breach of statutory duty on its part and further denied the losses allegedly suffered by the Plaintiff.

2. A notable feature in this case which distinguished it from all the other similar cases I had seen is that there is no dispute that at the time of the fire, the electricity supply to the Plaintiff's premises had been disconnected; in fact the Plaintiff's electricity supply had been disconnected since the 25th April 1995 for non-payment of bills due.

Another point of note is that even though the causes of action pleaded were in negligence, nuisance and breach of statutory duty, all the arguments were centered on the issue of negligence and all Counsel admitted that even for

the other cause of action, one had to establish negligence as a prerequisite element for pursuing those other causes of action.

3. The issues which fell for decision in this case were:
 - (A) Did the doctrine of “res ipsa loquitur” apply to the facts of this case so as to shift the evidential burden of proof on to the Defendant?
 - (B) If so, did the Defendant discharge the evidential burden placed upon it?
 - (C) If the Defendant failed to discharge this evidential burden and thereby incurred liability to the Plaintiff, what was the quantum of such loss?

4. For the reasons that will appear hereafter I concluded that:
 - (A) The doctrine of res ipsa loquitur did apply to the facts of this case.
 - (B) The Defendant failed to discharge the evidential burden placed upon it.
 - (C) The quantum of the Plaintiff’s loss was assessed at \$233,150.00 with interest at the rate of 3% per annum from the 28th August 1995 to the 28th January 2003.

A. **RES IPSA LOQUITUR**

5. Before beginning the discussion on the doctrine of “res ipsa loquitur”, it is appropriate to mention at this stage that the doctrine is a factor in the law of tort and more specifically to the cause of action in negligence. As was stated before, it was accepted by both Counsel that negligence was the basis of this claim. Further, the action in negligence was specifically provided for by section 49(3) of the Trinidad and Tobago Electricity Commissions Act Ch 54:70 which provides that:

“The Commission are not liable for any damage to person or property or for any cessation of the supply of energy, if the damage or cessation is due to unavoidable accident, fair wear and tear or overloading due to the unauthorized connection of apparatus, or to the reasonable requirement of the system, or to defects in any installation not provided by the Commission; and the Commission are only liable when the damage or cessation results from negligence on the part of persons employed by the Commission, its servants or agents, or from faulty construction of the installation.”

6. The doctrine of res ipsa loquitur has been described as a method of assessing the effect of evidence in certain cases. “It means that a plaintiff prima facie establishes negligence where: (i) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; but (ii) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or

omission constitutes a failure to take proper care for the Plaintiff's safety" (per Megaw L.J. in Lloyde v West Midlands Gas Board (1971) 2 All E.R. 1240 @ 1246 D.

7. At a trial, the appropriate stage at which the doctrine is to be applied is at the close of the Plaintiff's evidence. This was stated by Megaw L. J. in the Lloyde v West Midlands Gas Board case, (cited above,) where, the passage quoted continues:

"I have used the words 'evidence as it stands at the relevant time.' I think this can most conveniently be taken as being at the close of the plaintiff's case. On the assumption that a submission of no case is then made, would, the evidence, as it then stands, enable the plaintiff to succeed because, although the precise cause of the accident cannot be established, the proper inference on a balance of probability is that that cause, whatever it may have been, involved a failure by the defendant to take due care for the plaintiff's safety? If so, res ipsa loquitur. If not, the plaintiff fails."

8. I will now briefly examine the evidence as it stood at the close of the Plaintiff's case to decide if the doctrine of res ipsa loquitur applied to this case so as to shift the onus of proof on to the Defendant.

9. The Plaintiff testified that on the day of the fire, 28th July 1995, there was no electricity supply inside his premises as the same had been previously disconnected by the Defendant for non-payment of bills. As was stated above, it was accepted that this electricity supply had been disconnected since the 25th

April 1995. The Plaintiff stated that on the morning of the 28th July 1995 he noticed sparking on the electricity pole nearest to his house and also near to the dashboard of his house. He called the Defendant twice and complained of this but was told to get a private electrician to cut the wire or to disconnect the electricity. He also stated that he had called the Defendant previously, on the 19th July 1995 about sparking that he saw in the same areas and got basically the same response. He contacted an electrician privately but the electrician could not cut the wire or otherwise assist the Plaintiff. The Plaintiff stated that between the 19th July 1995 to the 28th July 1995 no one from the Defendant came to examine the pole, wires or other apparatus belonging to the Defendant. On the 28th July 1995, the Plaintiff left his home to go to collect his pension cheque in Port-of-Spain and when he returned home some time between 4 to 5 p.m. his house was already destroyed by fire and he found, what was later verified as his wife's body, burnt beyond recognition. The Plaintiff described his house as a two storey structure made of concrete, with wooden partitions inside and the outer walls were of concrete. His evidence in cross-examination was basically confirmatory of his testimony in chief. He also stated that he noticed the sparking as a continuous occurrence since the 19th July 1995. He stated that the floors of his house were partly of concrete and partly of wood and that there was a wooden ceiling throughout. I noticed one area of inconsistency in his testimony. He had testified in chief that on the day after the fire, an electrical inspector came to the premises and "took out" the electricity meter and went away with it along with the wires. Soon after, he stated that he was not present

when the electrical inspector came to the premises and also that he could not say who “took out” the meter and then later, he stated that it was the Defendant’s employees who came on the day after the fire and took away the electricity meter and the wires before the electrical inspector came to the premises. In cross-examination he stated that he did not see the Defendant’s employees moving the meter; he also stated that he was present when the electrical inspector came to the premises and that the Defendant’s employees came there after the electrical inspector had left, contrary to what he had said in chief; further, the Plaintiff then stated that he could not remember if the Defendant’s employees were on the premises at the same time as the electrical inspector.

10. Charran Rampersad testified in chief that around 3 p.m. on the 28th July 1995 he was coming from his garden nearby when he saw sparks on the electricity pole near to the Plaintiff’s house. About two seconds after, he saw fire at the Plaintiff’s bashboard then heavy fire thereafter. He presented his evidence with apparent candour and ease and maintained an even temperament throughout his cross-examination; his testimony was unshaken by cross-examination. In cross-examination, he stated that he passed in front of the Plaintiff’s house regularly and that prior to this date he had never seen sparks on the pole; this contradicted what the Plaintiff had said about the continuous sparking between the 19th and 28th July 1995. He was also asked to give a more detailed account of the start of the fire from a vantage point of some 20 feet away standing in the road in front of the Plaintiff’s house. He stated that he saw sparks

on the pole where the wires from the house joined the pole. The sparking made a noise similar to that made by welding equipment. The sparking lasted about two minutes and he then saw fire at the point where the wires joined on to the Plaintiff's bashboard. There were sparks by the bashboard at first, then about five seconds later he saw the bashboard catch fire then the roof caught fire. He was clear that the fire, started in the front of the house by the bashboard. He stated openly that while he knew the Plaintiff casually he was not his friend nor did he ever visit the Plaintiff's home.

11. One Yvonne Goodrich, the Customer Accounts Administration Manager of the Telecommunications Services of Trinidad and Tobago, San Fernando office, was called to verify that on the 19th July 1995 a call was made from the Plaintiff's phone line to the Defendant at about 8.12 p.m.; and that on the 28th July 1997, two calls were made from the Plaintiff's phone line to the Defendant at 11.47 a.m. and at 11.55 a.m. respectively.

12. One Frankie Atwell of Coorosal Road, Whiteland, testified that around 8.30 a.m. on the 28th July, 1995 he observed pigeons fly on to the wire between the electricity pole and the Plaintiff's house and the wire then sparked. He drove the pigeons away from the wire and he saw more sparks on the wire closer to the bashboard. In cross-examination Mr. Atwell stated that he passed in front of the Plaintiff's premises regularly and that this was the first time he observed the sparks. Further he never reported any such sparking to the Defendant. This

testimony seemed to be in direct contradiction to the Plaintiff's pleaded case where in the Further and Better Particulars of the Statement of Claim it was stated that one F. Atwell of Coorasal Road, Whiteland, had made reports to the Defendant of sparking on the wires in question on the 24th and 25th July 1995.

13. This synopsis of the evidence presented by the Plaintiff established that (1) at the relevant time, the Plaintiff's electricity supply had been disconnected and there ought not to have been any flow of electricity there. (2) There was credible evidence that there had been sparking from the Defendant's installations and that on the 28th July 1995, this sparking produced a fire at the Plaintiff's bashboard, which fire then spread to the roof and the rest of the house. (3) There had been prior complaints by the Plaintiff to the Defendant about the sparking problem.

Given these factors, there was at least a prima facie case that there had been a fire that was electrical in origin, emanating from the Defendant's apparatus, and even though the exact and scientific cause of the fire had not been established, it was more likely than not that it had occurred as a result of the failure, default or faulty construction of the Defendant's installations rather than those of the Plaintiff, especially since the Plaintiff was supposed to have had no electricity supply to his premises at the time. In these circumstances, I found that the doctrine of *res ipsa loquitur* was applicable to this case to shift the evidential onus of proof on to the Defendant.

B. DID THE DEFENDANT DISCHARGE THE EVIDENTIAL BURDEN OF PROOF

14. Once the doctrine of res ipsa loquitur was applied, the Defendant had to rebut the presumption of negligence either (i) By explaining how the incident occurred, which explanation must connote that there was no negligence on its part or (ii) If it could point to no specific cause for the incident, by showing that it had used all reasonable care in the circumstances to prevent such an incident from occurring (see Barkway v South Wales Transport Co. (1948) 2 All E.R. 460 per Asquith L.J. at 471 and see Sonny Mungroo v T & TEC H.C.A. S 1255 of 1988 at page 13).

I will now summarize the evidence led by the Defendant to displace the evidential burden of proof that was placed upon it.

15. One Stephen Hackshaw who was the Plaintiff's neighbour for about 30 years, testified that on the day of the fire he was coming from his brother's house which was situated up a hill and to the rear of both his and the Plaintiff's house. He saw thick black smoke coming from the right hand side of the Plaintiff's house. However, the witness seemed a little confused and soon after he stated that the smoke was coming from the left hand, rear side of the Plaintiff's house. He had a view of the entire roof of the house and could see the connection between the Defendant's lines and the Plaintiff's house from where he was. When he saw the thick black smoke, there was no fire at the connection of the Defendant's lines and the Plaintiff's house. After this, he saw the fire starting to

blaze so he then had to go and wet his house down. He said that he noted that the Plaintiff's sister, teachers and school children were in the road witnessing the fire. He was asked to identify the Plaintiff's witness, Mr. Charran Rampersad, who he said he knew and he stated that Mr. Rampersad was no where around on the day of the fire. He also stated that he never saw any sparking on the T & TEC lines to the Plaintiff's house. Cross-examination of this witness proved eventful. Mr. Hackshaw admitted that he was not on good terms with the Plaintiff for a very long time but put the blame for this on the Plaintiff. There were also some serious inconsistencies revealed in his testimony.

(i) He stated that the galvanize of the Plaintiff's roof covered, but did not block the bashboard. This was to buttress his statements in chief that he had a clear view of the connection between the Defendant's and the Plaintiff's lines from the rear of the building. However, when shown a photograph of the house and asked to indicate where the connection was, he pointed out a spot which was clearly below the galvanize of the Plaintiff's house and in close proximity to the galvanize, which spot must have been blocked from view from any elevation from the rear of the house.

(ii) While in chief he stated at first that originally he had seen thick black smoke coming from the right hand side and then said from the left hand side to the rear of the Plaintiff's house, he admitted that he had signed a statement saying that he saw smoke coming from the center of the house from the Northern side. To complicate matters, he even insisted that there was no distinction between the statements.

(iii) He had stated in chief that he saw school children and teachers on the scene of the fire. In cross examination he expanded on this, saying that these children were in school uniform; yet he admitted that around the date of the fire, schools were closed for the long vacation.

(iv) In almost the same breath, this witness stated firstly that he recalled giving a statement on the night of the fire to an officer of T & TEC and it was the only such statement he made and then he contradicted this right after by saying that he did give a statement about the fire but not on the same night of the fire.

I found that the evidence of this witness was highly unsatisfactory. Quite apart from the serious inconsistencies mentioned above, I noted that in presenting his testimony he was smirking and smiling derisively at the Plaintiff and he seemed to be relishing the opportunity to settle his scores with the Plaintiff. He did not impress me as a witness of truth.

Further, as a longstanding neighbour of the Plaintiff, he would have been a good witness to testify to one of the theories advanced by the Defendant, namely, that the Plaintiff had run extension cords from his other neighbour (the Plaintiff's sister) to use in his house and that this illegal supply was the cause of the fire. This witness never testified about anything of this nature.

16. One Balram Baldeo, acting Electrical Inspector II, then testified. He had examined the building the day after the fire. He did this pursuant to his statutory function under the Electricity (Inspection) Act Ch 54:72 and he prepared a report which was admitted into evidence. One of his main functions in visiting premises

after a fire was to verify where a fire may have started. He had been doing such inspections for 20 years. In this case, he noticed that the fire damage was mostly to the southern side of the building, in the kitchen/living room area. The roof and walls were all almost totally damaged in this area. On the Northern side of the building half of the wall was standing and there was a porch to the front of the building which received minimal damage. Mr. Baldeo opined that the fire was not electrical and interestingly enough, stated twice in his evidence in chief and repeated in cross-examination, that the supply cable from the T & TEC pole to the house burst off midway and fell in the yard. He also stated clearly that the point of entrance where the T & TEC wire was connected to the consumer terminals remained connected. Also, the T & TEC wire was thoroughly burnt and had fused. He concluded that the fire was not caused by electricity within the building and suggested that it started in the kitchen/living room area.

In cross-examination certain interesting points were noted. He stated that he was not told of a problem with sparking on the Defendant's wires but, if there was sparking at the connection to the bashboard, it would have made a difference to his report since this would have meant that there would have been shorting at the conductors and if the wire touched the bashboard, it could result in a fire. Further, if a wire shorted out in the middle of its connection, it would spark at that point and at other points too.

As a result of this new information Counsel for the Defendant entered upon a serious re-examination of this witness where certain other points

emerged the significance of which will be demonstrated later in this judgment namely:

- (i) Fused wires would occur if there were sparking.
- (ii) He examined the bashboarding in the consumer terminal area and it was slightly damaged.

In further cross-examination, the witness stated that external heat could cause a wire to burst in the middle, but this bursting could also occur without the external heat of a fire if for instance there is a strain on the conductor.

What is of note about this witness' testimony is that that while he concluded that the fire was not electrical in origin, this opinion was without information of sparking on the wires and connections to the Plaintiff's house and the witness admitted that if there was such sparking it would seriously have effected his conclusion as to the cause of the fire. Bearing in mind the evidence presented on behalf of the Plaintiff at the connections to the Plaintiff's house, especially so, the testimony of Mr. Charran Rampersad, the opinion of Mr. Baldeo as to the cause of the fire was deprived of much of its significance.

17. Edwin Chadee, who was a foreman in the Defendant's employment at the time of the fire testified that he was in charge of the emergency crew who went to the premises at about 4.30 p.m. on the day of the fire. The building was already burnt and the wires from the Plaintiff's house had also burnt off at the point of entry and were resting on the ground. The other end of the wire was still attached to the pole. He caused the hot wires to be disconnected from the pole.

He also examined the wires on the ground and found no burning except at the end of the connection where it met with the house. The Defendant's wire was not broken elsewhere. Cross-examination of this witness was uneventful. However, his testimony showed a major discrepancy from the evidence of Mr. Baldeo since the latter had stated that the wire had burst in the middle and was thoroughly burnt whereas Mr. Chadee testified that the wire burst only at the point of entrance to the house and that was the only area where the wire was burnt.

18. Clyde Gopaul who was an Estate Sergeant with the Defendant testified that after a fire, the Defendant did a complete investigation. He went to the site on the day after the fire with the Defendant's engineer, one Mr. Z. Mohammed, Mr. Baldeo (the electrical inspector) and other personnel from the Defendant. He noticed that the wire at the point of entrance was on the ground and the other side was connected to the pole by means of the neutral wire only, the other two hot wires were disconnected. He notice that the majority of the fire damage was to the rear, center of the building and the roof to the rear of the building had caved in. The roof to the front of the building was still up. Both Mr. Mohammed and Mr. Baldeo inspected the wire and when they were finished he marked it in the presence of the Plaintiff, Mr. Mohammed and Mr. Baldeo. He also took possession of the electricity meter and the wire and both items were admitted into evidence. He caused statements to be recorded and photographs to be taken. According to him, however, the wire was only taken down from the pole

on the day after his inspection. This latter statement seems to have been made in error since he had previously stated that the wire was marked on the day of his inspection which was the day after the fire.

In cross-examination, Mr. Gopaul accepted that he knew that it was important to submit reports in this case in the shortest possible time, and while he submitted his first report in early September 1995, a request was made by his superiors for a further report in early 1996, but this later report was submitted only some time after May or June 1996. He also proceeded to state that if the Plaintiff had made reports of trouble (as the Plaintiff alleged he did), during the normal working hours of 8.00 a.m. to 4.00 p.m., this would have been recorded in the Trouble Report Book. He had checked this book and the operators who made entries in this Book on the days when the Plaintiff allegedly called the Defendant's offices to complain about the sparking wires and he found no such trouble reports. This checking by him was not conclusive in my view since firstly, it was hearsay evidence and none of the Operators were called to testify; secondly the call on the 19th July 1995 was made out of normal working hours and Mr. Gopaul was only testifying as to what occurred during normal working hours; thirdly as counsel admitted, this 'Trouble Report Book' was never revealed on discovery and/or made available for inspection.

Mr. Gopaul was also eventually forced to admit that in certain areas of the house, the concrete partitions kept the galvanize from falling and where there were wooden partitions or where he saw no partitions standing, the roof fell in.

Mr. Gopaul's testimony also contradicted that of Mr. Baldeo (the Electrical Inspector) since he stated that the wire from the pole to the house did not burst or burn in the middle. Indeed, the wire put in evidence showed no such burning or bursting in the middle.

I should state at this stage that while Mr. Gopaul's testimony did not really advance the case much, his evidence took up an unnecessarily long period of time because of the hesitant and unusually defensive attitude he adopted to cross-examination where he tried not to admit anything, even when it became obvious that he had to do so and he seemed more interested in defending his employer's case than in attempting to render full assistance to the Court.

19. Zainool Mohammed, an Electrical Engineer by profession was the final witness called on behalf of the Defendant. He had been employed by the Defendant in various posts since 1983 and he listed his many qualifications. He visited the scene on the day after the fire along with Mr. Baldeo (the Electrical Inspector), Sergeant Gopaul and other officers of the Defendant. He inspected the scene and the installations and concluded that the fire was not caused by any fault of the Defendant. This was based primarily on the following:-

1. He saw no signs of electrical pitting and/or fusion consistent with the interal heating of the Defendant's lead wires.
2. From the point of entry of the Defendant's installations back to the Plaintiff's electrical fittings seemed intact.

3. The Plaintiff's supply of electricity had been disconnected so there was no flow of electricity and hence there could never have been any sparking to lead to a fire.

With respect to 1. Electrical pitting and/or fusion. He stated that pitting is a condition which occurs when heat is applied to metal in a concentrated way, so for instance if the heat "jumps" a wire it would leave a dig or pit in the wire. Fusion occurs in cases where extreme heat causes two metals or more to solidify as one. Heat from a source internal to the Defendant's wires could occur if these wires heated up over their specification. Heat from a source external to the Defendant's wires would cause their PVC insulation to melt but the metal conductors themselves would be normal. Using this distinction between internal and external heat he could easily determine in most cases if the cause of a fire was from internal or from external heat. In the case of the wires on the Plaintiff's premises, the Defendant's lead wire consisted of three metal conductors or wires, two of which were live and one was neutral; the live wires were wrapped in PVC insulation and were connected to the Plaintiff's premises at the point of entry. His examination of the Defendant's lead wire (which had been put in evidence) indicated that, at the house end of the wire (viz where it met the Plaintiff's house connections) one of the PVC conductors started to melt from the outside to the inside. Hence he concluded that the cause of this, was external heat and not internal heat generated from the Defendant's connections. He also stated quite categorically that if there were sparking on the Defendant's wire he

would have seen signs of fusion and possibly pitting. What then occurred was very strange.

The witness took the lead wire that was put in evidence and stated that on the end of the wire which was connected to the Plaintiff's connections, he saw a spot of molt on one of the live conductors (indicating fusion) and the other live conductor was still hidden in the PVC so he could not see it. Soon after this, however, he took the very end of the wire which he said had a spot of molt on the conductor which conductor he could see and stated that he couldn't see the conductor. He then took the other wire which he said he could not see inside of, and stated that it had slight burns and that he could see the conductor inside molting or fusing.

In addition to this apparent contradiction in his testimony, his conclusion that there was no fusion of the conductors (hence no internal heating) was put in serious doubt by this evidence of fusing or molting in the wires. Further, this conclusion conflicted with that of the Electrical Inspector, Mr. Baldeo who stated that there was fusion in the wires.

With respect to 2. The connections at the point of entry: Mr. Mohammed stated in Chief that the Defendant used standard compressor connections, called insulinks to connect the Plaintiff's wires and the Defendant's wires. The Plaintiff's wires or conduits were then connected to the meter (which was the Defendant's property) and from the meter the Plaintiff's conduits then went into the Plaintiff's house. According to Mr. Mohammed, the wires at the point of entry were partly burnt but in good condition and there was no damage on the Plaintiff's conduits

to the meter and/or the meter base. He concluded therefore that there was nothing unusual electrically on the Plaintiff's premises and the area from the Defendant's main wires to the meter base seemed normal. Given that the Plaintiff's installations seemed normal, if indeed there was a fault at the point of entry which caused a fire (as the testimony presented on behalf of the Plaintiff suggested) then it was more likely that such a fault did not originate from the Plaintiff's connections but from the Defendant's installations.

With respect to 3. Mr. Mohammed stated that the fact that the electricity supply to the Plaintiff's premises had been disconnected did not mean that there was no voltage in the lines. In fact disconnection was effected by inserting certain non-conducting sleeves over the connections in the Defendant's meter; therefore, there was electricity present all the way to the meter but since it was capped off at the meter, there was no flow of current or voltage. Mr. Mohammed went on to state categorically and more than once, that in such a case of disconnection at the meter, there could never be sparking on the Defendant's lines even from the pole end of the wire. This statement conflicted directly with the testimony of the electrical inspector, Mr. Baldeo, who admitted in cross-examination that given the disconnection of the Plaintiff's electricity supply there could have been sparking at the point of entry connection caused by the shorting of the Defendant's conductors and if the wires were touching the bashboard, it could result in a fire. Mr. Mohammed also ventured to suggest that since there appeared to be more fire damage to the rear center of the building the fire would

have started there rather than in the front of the building where the electrical connections were located.

Cross-examination of Mr. Mohammed was eventful. Whereas in chief he stated that standard compressors, called 'insulinks' were used to connect the Defendant's lead wire to the Plaintiff's wires he admitted that he could not say whether there were these insulinks used on the Plaintiff's premises or whether the two sets of wires were merely wrapped around each other. Later on in evidence he even had to admit that he was not familiar with the specifications of the insulinks, (if they had been used) and he couldn't say what level of heat they could withstand. In these circumstances he could not really account for the true cause of the separation of the Plaintiff's wires from the Defendant's wires. Similarly, he could not state the melting point of the conductors used in the Defendant's lead wires and in a round about way, admitted that serious heat could come from current supplied by the Defendant; so that he could not rule out that it was the Defendant's apparatus which may have caused the wires to burn off.

In respect of the lead wire that was put in evidence, he acknowledged that the pole end of that wire had been cut and he could not say what was the condition of, nor how much of the lead wire had been left attached to the pole so that he had nothing to look at to see if sparking had occurred on the pole end of the wire. Furthermore, he did not use a ladder to examine the connections at the house end, he merely looked at it from the ground. He even stated that he did not carefully examine the wire at the house end which was left hanging;

nevertheless, he ventured to state that the bare copper was showing and there was no insulation present. Given this perfunctory examination of the wires that were left attached to the pole and to the house, the force of his conclusions about there being no evidence of internal heat nor of sparking were somewhat undermined.

Mr. Mohammed could not say if the Plaintiff's conduits were attached to the bashboard because the bashboard had burnt away. Nevertheless, he contradicted this later in cross-examination by stating that he checked the bashboard area and saw no evidence of sparking.

Mr. Mohammed also stated categorically that it was not possible for sparks to cause a fire especially so a fire on a bashboard. This contradicted directly with the testimony of the electrical inspector, Mr. Baldeo.

Further, in answer to questions to the court, Mr. Mohammed admitted, contrary to what he had stated in chief, that it was possible to have sparking at the point of entry even when a consumer had been disconnected, but the only example given was, if there were a fault in the Plaintiff's entrance cables (which he did not examine).

20. In summary, the three major premises for Mr. Mohammed's conclusions as to the cause of the fire were shown to be faulty. Further, his testimony on technical matters conflicted in material areas from the testimony of the other expert on technical matters, namely, Mr. Baldeo; also, Mr. Mohammed

contradicted himself on some of these technical matters. His examination of the installations at the site was shown to be superficial and his testimony on some technical aspects that had relevance to the cause of the fire, such as the capacity of the conductors and connectors to withstand heat, proved deficient.

In the circumstances, I was not satisfied with the accuracy of his technical evidence and the conclusions drawn from it. Further he adopted a defensive demeanour to answering questions and seemed to be more interested in absolving the Defendant from any blame than in considering the matter in a neutral or impartial way.

21. I also noted that while Counsel for the Defendant indicated that he would have called an officer of the Fire Services of Trinidad and Tobago to give evidence, this was not done. In the circumstances, I was only left with the conjecture of the witnesses for the Defendant as to the likely seat of the fire and as to why there was more burning in one area than another. These very conjectures were answered by the cross-examination of Mr. Gopaul who grudgingly admitted that there was more fire damage in areas where the roof had collapsed and that the roof had collapsed in areas where there were wooden partitions or no partitions left standing, whereas the roof stood up over areas where there were concrete walls or partitions (such as at the front of the house where the Plaintiff's and Defendant's wires were connected).

22. To summarize the position, the evidence of the witnesses called by the Defendant proved to be inconsistent, contradictory and conflicting with each other. Also, the testimony of the Defendant's employees proved to be biased toward absolving the Defendant from liability rather than an objective assessment of the facts. The Defendant's evidence failed either (i) to explain how the fire occurred which explanation would have connoted that there was no negligence on their part or (ii) to show that the Defendant used all reasonable care in the circumstances to prevent a fire from occurring (and see paragraph 14 above). In the circumstances, the Defendant failed to displace the evidential burden of proof placed upon it by the application of the doctrine of *res ipsa loquitur* and the Plaintiff's claim succeeded.

C. Quantum of Loss/Damages

23. In his Statement of Claim, the Plaintiff's special damages comprised (1) 59 Main items representing items lost in the fire, the value of the house lost and the cost of certain interim repair, which items way exceed \$1 million in total. (2) Three items related to the death of his wife, namely, funeral expenses of (\$1,150.00) the cost of obtaining Letters of Administration (\$2,500.00) and Jewellery that belonged to his deceased wife, to the value of \$12,000.00.

Only the Funeral Expenses and the cost of obtaining Letters of Administration were agreed between the parties.

24. The Plaintiff's evidence about his losses can be separated into two areas, namely,

- (i) Loss of the House
- (ii) Loss of Items Destroyed in the fire

25. (i) The Claim for the loss of the House:-

The Plaintiff was, in essence, claiming the cost of rebuilding the house, which cost was pleaded as \$800,000.00.

The Plaintiff testified that the house was almost totally rebuilt and that he had spent about \$300,000.00 to date. Some minor works were left undone. In cross-examination when pressed as to how he arrived at this figure, he stated that it was an estimate he had arrived at after checking the prices of certain items like paint, sand and cement at hardware stores. He also 'spoke' to two builders

for about one minute each and they gave him the figure of \$300,000.00. He never made a record of the payments made in relation to the rebuilding of the house, nor did he keep any receipts.

One Sylvester Fifield, a building contractor of over 30 years experience and also now a Minister of Religion, testified that he had given assistance to his brother Lloyd Fifield in the building of the house that was destroyed by fire and had also passed on the road and saw the house after it had been destroyed. He recalled that the house had been built in the late 1980's and that in its finished condition, it would have cost about \$400,000.00 to build. His brother, Lloyd Fifield was abroad at present and he had only been approached to give evidence in this matter a day or two previously. He admitted that his estimate for the cost of building the original house was an "off the cuff estimate". Also, he could not say for sure how much more it would cost now, as a lot depended on whether he had to replace the foundations. He eventually stated that a complete rebuilding, without doing work on the foundations would have cost about \$600,000.00.

(ii) The claims for items destroyed in the fire:

26. Fifty-six items mentioned in the Statement of Claim were allegedly destroyed in the fire. The Plaintiff stated that this list was drawn up originally from another rough list which he had started to prepare about one month after the fire. To prepare this other rough list, he had gone around to various stores and priced items similar to the ones he had at home. This rough list took about two to three months to compile and was eventually discarded.

The Plaintiff then called his daughter who lived with him at the time of the fire, one Anjani Ramoutar, to testify as to the items that were in the house which were destroyed by the fire. She also gave evidence as to the jewellery which her mother had and stated that she priced these items by visiting jewellery stores fairly recently and obtaining similar prices; the total price of such jewellery amounted to approximately to \$11,000.00; she also testified that there were other minor items, the price of which she could not recall. She was only cross-examined as to the times at which the items of jewellery were bought and the time when she priced the items; no cross-examination was pursued with respect to other items such as the costs of the items which were lost in the fire or to the prices quoted for the jewellery.

One Neil Mohammed, the Managing Director of a popular furniture and appliance store prepared a list of items and their current cost.

Interestingly enough, Counsel for the Plaintiff in his address suggested that I make an award for only 16 of the items claimed from the list of the 56 items, the total of which added up to approximately \$94,000.00.

The Law:

27. Special damages must be specifically pleaded and strictly proved. On the question of the proof of special damages, while the court does not encourage a “laissez faire” approach to proof of loss, a court ought not to engage in a pedantic exercise in assessing such loss. Courts generally adopt a practical approach to proof and the strictness of the proof required depends on the character of the

acts themselves which produce the damage and the circumstances under which these acts are done (see Uris Grant v Motilal Moonal Ltd Civil Appeal No. 162 of 1985 and see Sonny Mungroo v T & TEC H.C.A. No. S1225 of 1988 pages 16 to 19).

In cases where one's house and its contents are destroyed, it is not unusual for bills and other supporting documents to have also been destroyed. Further, in the normal course of things, one would expect that different items were purchased from different places at different times and the actual value of the items lost would have varied according to their age and condition. Accordingly, in many cases, an estimate of the items lost and of the cost of replacement is the best evidence that can be provided. Further, in such cases it would not be fair to allow the present value of the items to represent the replacement costs of the items lost and a court could discount the value of such items. (See Sonny Mungroo v T & TEC cited above).

28. In the present matter, the Plaintiff produced no bills for items lost since he claimed that all the bills were lost in the fire. While this may have been understandable for the contents of the house, the same excuse could not be applied to the case of the claim for the replacement of the house, especially when, on the evidence presented, the Plaintiff would have been in the process of rebuilding the house during the period when litigation was contemplated. Further, the method of proving the loss, by calling a contractor to give an "off the cuff" estimate, was highly undesirable.

On the other hand, it cannot be denied that the Plaintiff must have incurred substantial costs in rebuilding the house. His estimate was a figure in excess of \$300,000.00. This figure, even though it is a rough estimate was much less than that suggested by the contractor as the cost of rebuilding, minus foundation work, in the sum of \$6000,000.00.

However, because of the unsatisfactory nature of the evidence presented in this regard, and the tendency of the Plaintiff to exaggerate his loss, I discounted the award for the replacement cost of the building by 50% of the minimum sum suggested by the Plaintiff (\$300,000.00) and I awarded \$150,000.00 as the loss for this item of damage.

29. With respect to the loss of the contents of the house, I accepted that 15 of the 16 items suggested by Counsel for the Plaintiff would have been lost, especially since they were the main items that Anjani Ramoutar had stated were lost and upon which she was not cross-examined. The item of the loss of clothing was not one vouched for by Anjani Ramoutar and I do not propose to allow it under this head of loss. As to the values suggested for the items, I accepted the figures of current values as stated by the witness Neil Mohammed, however, I made a discount of 25% of the stated current values as was done in the Sonny Mungroo case to cater for the decline in value of the items through age and wear and tear. The figure for this loss was calculated as follows:-

\$94,000.00

(28,000.00) (less clothes and uniforms)

66,000.00
(16,500.00) (less 25% discount)
49,500.00
\$50,000.00 (rounded off)

30. While I accept that the Plaintiff would have lost other personal and household items as stated in his list of 59 items in the Statement of Claim, his method of proving the loss of these items was compromised by the fact that he could not remember them all, nor were proper details given, and the fact that he threw away the original rough list he had used to compile the later list. Further, this rough list was finalised some 3 – 4 months after the fire and I had serious doubts as to its contemporaneity. In the circumstances, I awarded a sum of \$7,500.00 as nominal damages for the other items lost.

31. I accepted the testimony of Anjani Ramoutar on the question of jewellery belonging to the Plaintiff's deceased wife which was lost, and the value put on them, namely, \$11,000.00. Further, gold and other precious metal and stones appreciate in value, so that, unlike in the case of the other contents in a house such as furniture and appliances which depreciate in value, there was no need to discount these items in assessing their replacement cost. I also accepted her testimony that there were other items of jewellery lost which she could not price and I awarded the sum claimed for this loss, namely \$12,000.00.

32. I noted that no evidence was led, nor did Counsel for the Plaintiff address me on the question of general damages for the death of his wife and in the circumstances I made no award for general damages.

33. In all the circumstances, the award for damages was:-

\$	150,000.00	(replacement cost of the Plaintiff's house)
	50,000.00	(replacement costs of the proved contents of the house)
	7,500.00	(nominal damages for other contents of the house not specifically proved)
	12,000.00	(cost of jewellery)
	1,150.00	(Funeral Expenses)
	2,500.00	(Cost of obtaining Letters of Administration)
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\$	233,150.00	Total
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I also ordered that the Defendant pay interest on the damages awarded at the rate of 3% per annum from the 28th July 1995 to the 28th January 2003, and that the Defendant pay the Plaintiff's costs of the action.

By consent of the parties, there was to be a stay of execution for six weeks.

Dated this 7th day of July 2003

Gregory Smith
JUDGE