

**IN THE COURT OF APPEAL OF THE SUPREME COURT OF  
JUDICATURE**

**APPELLATE JURISDICTION  
G U Y A N A**

**CIVIL APPEAL NOS. 44, 45 & 49 OF 1998**

BETWEEN:

- 1. ISHMATTIE GILL**
- 2. ULRIC MATHESON**

Appellants/Defendants

- and -

**BIBI NAZEELA HUSSAIN**, an infant suing  
herein by her father, guardian and next friend  
**JAMAL HUSSAIN**

Respondent/Plaintiff

- and -

- 1. GUYBRIDGE CIVIL ENGINEERING  
COMPANY LIMITED**
- 2. GENERAL CONSTRUCTION COMPANY  
LIMITED**

Respondents/Added Defendants

- and -

- 1. ISHMATTIE GILL**
- 2. ULRIC MATHESON**

Appellants/Defendants

- and -

**JAIRAM TEEKRAM**

Respondent/Plaintiff

- and -

- 1. GUYBRIDGE CIVIL ENGINEERING  
COMPANY LIMITED**
- 2. GENERAL CONSTRUCTION COMPANY  
LIMITED**

Respondents/Added Defendants

- and -

1. ISHMATTIE GILL
2. ULRIC MATHESON

Appellants/Defendants

- and -

**HAKIM MOHAMED HABIBODEEN**

Respondent/Plaintiff

- and -

1. GUYBRIDGE CIVIL ENGINEERING  
COMPANY LIMITED
2. GENERAL CONSTRUCTION COMPANY  
LIMITED

Respondents/Added Defendants

BEFORE

**Hon. Madam Justice Desiree P. Bernard** - Chancellor  
**Hon. Madam Justice Claudette M.C. Singh** - Justice of Appeal  
**Hon. Mr. Justice Nandram Kissoon** - Justice of Appeal

Mr. R. Stoby, SC with Mr. E. Luckhoo, SC for first-named Appellant  
 Mr. R. Stoby, SC for second-named Appellant  
 Mr. A. Chase, SC with Ms. P. Chase for Respondents  
 Mr. R. McKay, SC with Ms. A. Wong for Added Respondents

**2004:** January 13, 14, 27  
 February 12  
 March 25, 26  
 April 26, 27  
 October 29

**J U D G M E N T**

**BERNARD, C. delivered the judgment of the Court:**

On 5<sup>th</sup> April, 1989 the Respondents were involved in an accident on the Demerara Harbour Bridge, Access Road, at Schoon Ord., West Bank Demerara, and instituted proceedings against the Appellants and Defendants for damages arising out of the accident.

After a lengthy trial of consolidated actions a judge of the High Court awarded damages against the Appellants and Added Defendants jointly and

severally who have appealed to this Court challenging the award under the various heads of damages.

One of the main challenges by Counsel for the Appellants Gill and Matheson was the inadequacy or absence of reasons by the trial judge for the awards in all of the appeals; he submitted that reasons ought to have been given to show how he arrived at his findings. He contended that a trial judge must enter into, canvas and analyse the issues raised; a mere assertion or conclusion is insufficient. In relation to the Respondents Bibi Nazeela Hussein the trial judge had given no reasons or adequate reasons for reaching his findings, and none at all in relation to the Respondents Habiboodeen and Teekaram. One example in relation to the Respondent Hussein was that the only reason given by the trial judge in respect of her loss of earnings was based on a misconception of the evidence in that he found that she was a Guyanese resident in the U.S.A. and on holiday here when the accident occurred whereas in fact on her own evidence she was residing here with her father whom she assisted in his business.

Challenges were also made against the trial judge's finding that the Respondent Hussein was entitled to an award of damages for loss of future earnings and his failure to apply the correct principles in assessing the claim for loss of future earnings and loss of earning capacity in the result that the awards under both of these heads of damages were excessive. The awards of some of the items claimed as special damages were also challenged. The same challenges were made in respect of the other Respondents except that in the case of the Respondent Habiboodeen there was an additional challenge that the trial judge was wrong in law to make an award of general damages for loss of future earnings or loss of earning capacity in the light of the fact that the Respondent had died before the judgment was given.

There was also an appeal by the Added Defendants against the trial judge's finding of liability by them for the accident which he fixed at 30%. No reasons for this finding are available, and the trial judge himself stated in his judgment that he had written the reasons on this aspect of the case separately, but they could not be found.

In considering the issues raised in these appeals it would be appropriate to determine first the challenge of the Appellants (Added Defendants) to the trial judge's finding of liability for the accident.

As stated above the trial judge's finding on the apportionment of liability between the Appellants is not available. What is available from the record at page 180 is an analysis by the trial judge of the elements needed to be proved by an injured person who seeks to make a defendant liable for damages. No help is forthcoming in assessing the trial judge's reasons for arriving at the proportionality of liability, and as Counsel for the Appellants (Added Defendants) submitted this Court would be in as good a position as the trial judge to make a finding on the facts and draw inferences from them. He made reference to the case of **Benmax v. Austin Motor Co. Ltd. (1955)** **1 ALL ER, 326**. In that case it was held that an appellate court, on an appeal from a case tried before a judge alone, should not lightly differ from a finding of the trial judge on a question of fact, but a distinction in this respect must be drawn between the perception of facts and the evaluation of facts. Where there is no question of the credibility of witnesses, but the sole question is the proper inference to be drawn from specific facts, an appellate court is in as good a position to evaluate the evidence as the trial judge, and should form its own independent opinion, though it will give weight to the opinion of the trial judge.

