

JSC- THE PEACE CIRCLE

The Honourable Justice of Appeal Vasheist Kokaram

Khamatie Singh (JRC II)

October 2023

LEARNING OBJECTIVES

This session offers a basic introduction to some of the principles and processes of the JSC and explains the basic level of preparation required by the attorney at law.

PRINCIPLES

- ✚ Understand the philosophy and principles of the JSC.

PROCESS

- ✚ Understand the process and practice of the JSC.

PREPARATION

- ✚ Learn how to prepare and make use of the JSC process.
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CASE STUDY

MUCH ADO ABOUT SHOPPING



Ms. Maria Hill is a 37 year old accountant. On 5th March 2022, she was shopping at “Value Dollar” located in Peacevalley. At the time she was two months pregnant.

After shopping, she was waiting for her transportation on the ground floor of the building when she felt a jolt followed by excruciating pain in her lower back. She turned around and saw that

the blow was from the metal edge of a loading cart which had been propelled forward by a line of sixty shopping carts which were being loaded into a cart corral.

She reported the incident to the manager, Mr. Richie Rich who informed her to notify him of any medical injuries arising from the incident.

She was taken to West Shore Medical Hospital where she was diagnosed with acute lumbar para spinal muscle spasms. She had a miscarriage some months later. She continued to experience pain in her lower back and legs.

On 20th March 2022, she informed Mr. Rich via email of the initial bills she incurred as a result of the incident. Mr. Rich replied to her indicating that he had forwarded the documents to the relevant persons, however, she never received any further correspondence from him.

Value Dollar's position is that at the time of the incident, Maria was in the company of a companion and standing at the head of the trolley area with her handbag on top of one of the Defendant's shopping trolleys. The companion gave instructions and hand signals to Maria and then proceeded to move the trolley. This caused Maria to step back from where she was standing and closer to the trolleys at the storage area.

At the head of the trolley area were two loading carts and those carts were in close proximity to Maria. One of Value Dollar's employees rolled a stack of trolleys into the storage area and stacked them with another line of twenty trolleys. This caused the twenty trolleys in the storage area to roll forward and come into contact with the loading cart close to Maria. The contact from the trolleys caused the cart to slowly roll forward and made minimal contact with Maria's lower back. Maria turned around and moved the cart backwards before she walked away touching her upper back. This was recorded on their CCTC system.

Maria is now claiming damages from injuries sustained in the incident. The matter was referred to mediation but did not settle. The Defendant's offer of \$100,000.00 was refused.

The case has been later referred to a JSC by the Judge at the PTR.

How will you prepare for the JSC?

Will it make a difference if (a) at the PTR the docketed Judge struck out reference to the CCTV footage as a sanction for Value Dollar's failure to disclose the footage to Maria in standard

disclosure. That decision is pending an appeal (b) the claimant has filed one witness statement that is her own account of the accident and injury.

How do the following instructions impact upon a just resolution of the dispute?

A.

CONFIDENTIAL NOTE TO MARIA'S ATTORNEY

Maria has always wanted to be a mother. It is her life's dream. She and her partner Ro have been married for ten years. Maria suffered two miscarriages in the past. She finally became pregnant for a third time and they were extra cautious with the pregnancy. Maria had a great fear of losing her baby. She was upset that no one apologised to her for the incident and no one seemed to care and so she berated Mr. Rich for the incident.

A month before the incident, her partner, who worked with an oil and gas company, Trumpogen was let off because the company became insolvent. This placed a strain on their finances.

Value Dollar has been unable to produce the CCTV footage in a workable format. The two DVD's which they submitted were corrupted and could not play.

B.

CONFIDENTIAL NOTE TO VALUE DOLLAR'S ATTORNEY

Value Dollar does not want to set a precedent for settling cases but in this case they consider the claim to be trivial. They value their reputation as a good corporate citizen and would rather avoid negative publicity. They have recently launched a customer appreciation drive to increase sales as recent competition with other supermarkets are challenging their customer base. Mr. Rich was upset by the way Maria spoke to him about the incident. They are prepared to look at an economic solution to resolving the dispute rather than expend resources at a trial.

ORDER

UPON this matter coming on for Judicial Settlement Conference directions;

UPON HEARING Counsel for the Claimant and Counsel for the Defendant in the presence and hearing of the Claimant and the Defendant; the parties being ready for Judicial Settlement Conference directions;

AND UPON being informed by Counsel that the parties have complied with the order of Court dated 31st July 2023 to prepare their settlement conference memoranda;

IT IS HEREBY ORDERED THAT:

1. The Judicial Settlement Conference is fixed for hearing on 15th November 2023 via Zoom which all parties and their Counsel must attend; the Zoom details to be provided to the parties by the Court Office at least two days before said hearing date;
2. The matter is stayed pending the determination of the Judicial Settlement Conference;
3. This matter is adjourned to 24th November 2023 for a status report; and
4. The Claimant shall have conduct of this Order.

BY THE COURT

REGISTRAR

JUDICIAL SETTLEMENT CONFERENCE BASIC CHECKLIST FOR ATTORNEYS

When matter comes on for hearing at CMC or PTR:

- Parties discuss and agree on when is the best time for a JSC
- Parties exchange information to help inform their decision and assist in preparing for JSC
- Parties discuss estimated time for JSC and possible schedules
- Parties inform the court of their desire for a JSC

When Judge Makes a Referral to a Judicial Settlement Conference:

- All further correspondence and contact in relation to the JSC to be made to the court administrator. No documents in relation to the JSC are to be “filed” in the court system.
Settlement judge chosen by court office
- Attorney convenes client meeting to properly brief client on the JSC process manage expectations and work out parameters for settlement
- Further without prejudice offers can be exchanged prior to the JSC being convened
- Parties and attorneys sign the confidentiality agreement
- Attorneys must prepare a without prejudice memorandum or JSC brief for the settlement judge that will include
 - a brief statement of the facts and issues;
 - which issue is significantly affecting your ability to settle and explain why
 - any anticipated challenges the parties may face in the negotiations
 - what is the negotiating history and relevant offers of settlement
 - It is useful to annex the previous settlement offers, counter offers
 - A brief “will say” statement from key witnesses
 - Expert reports where necessary. Tab and highlight the relevant portions
 - For damages claim a brief statement on quantum
 - Relevant case law no more than your best 3 to 5 authorities
 - the trial date and expected length of trial
 - any relevant procedural orders such as injunctions/striking out evidence etc
 - a list identifying the parties who will attend the conference.
 - Keep memoranda brief.

At times the settlement judge may request copies of pleadings and witness statements

The Pre-Settlement Conference Call (optional step):

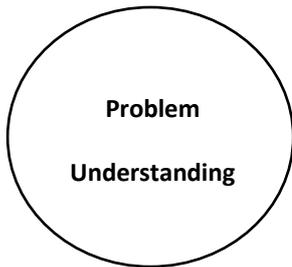
- The settlement judge may contact the parties to schedule a phone conference in advance of the settlement conference.
- Verify with settlement judge the date, time, and location of the settlement conference.
- Ensure that parties with settlement authority will attend the pre settlement conference.

At the Settlement Conference:

- At the beginning of the settlement conference, all parties, counsel, the settlement judge and other participants should have already signed the Agreement Concerning Settlement Conference which addresses confidentiality. No conference will proceed without it.
- All parties with authority to settle must be in attendance or suitable arrangements put in place to obtain authorisation within a reasonable period of time
- If the case settles, the parties must draft the agreement and the consent order and forward it to the settlement judge and to the court administrator
- If the case is not settled parties agree on either the next meeting and the agenda or the efficient management of the proceedings before the docketed judge
- At the conclusion of the settlement conference, parties/counsel complete exit surveys and mail, fax or email them to court administrator.

THE JSC PROCESS

**Problem
Defining**



**Problem
Resolving**

