THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2017/CLE/gen/00799

BETWEEN

TIMICA BURROWS

Claimant

AND

NATIONAL SPORTS AUTHORITY

THE COMMANDER OF THE ROYAL BAHAMAS DEFENCE FORCE

THE ATORNEY GENERAL OF THE BAHAMAS

Defendants

Before: The Honourable Chief Justice Sir Ian R. Winder

Appearances: Alton McKenzie for the Claimant
Dr David Whymms with Perry McHardy for the Defendants

Hearing date(s): 16 December 2025 and 30 January 2026

JUDGMENT

WINDER, CJ

This is the Claimant's (Burrows') claim for damages for personal injury arising from an accident at the Thomas A. Robinson Stadium (the Stadium) on 29 June 2016. Burrows was then serving with the Royal Bahamas Defence Force ("RBDF") and was stationed at the Stadium. While carrying out an instruction to secure the premises, a sliding gate at the northern section came off its track and fell upon her.

[1.] Burrows' claim was commenced by Writ of Summons on 28 June 2017. The Amended Statement of Claim seeks relief for negligence and breach of the Health and Safety Act as against the Defendants. Paragraphs 1- 10 of the Statement of Claim sets out as follows:

1. At all material times the First Defendant was the occupier responsible for the management and upkeep of the Thomas A. Robinson Stadium.
2. The First Defendant is being sued for the negligence of it's officers and servants or agents who were at all material times acting under the Second Defendant's control in the purported performance of their functions within the meaning of the Sports Authority Act, 2011.
3. At all material times the Second Defendant was tasked with the security, defence and maintenance of order at the Thomas A Robinson Stadium, and the Plaintiff was an employee of the Second Defendant holding the rank of Able Woman Marine.
4. The Third Defendant is also being sued pursuant to section 12 of the Crown Proceedings aileAct, Chapter 68 on behalf of the Commodore of the Royal Bahamas Defence Force ("RBDF") and/or the officers and servants of the RBDF who were at all material times acting under the Commodore's direction and control in the purported performance of their functions within the meaning of the Defence Force Act CH.205.
5. On or about 29th June 2016, the Plaintiff was engaged in the course of her employment at the Thomas A. Robinson Stadium when at or around 6:25 p.m. she along with Woman Marine Kendra Knowles were instructed by Leading Seaman Warren Davis to conduct a complete compound check which included closing and securing all exit and entry points to the Thomas A. Robinson Stadium. While the Plaintiff was securing all exit and entry points to the Thomas A. Robinson Stadium, the gate became dislodged from its track or grove and fell on the Plaintiff. The Plaintiff fell to the ground hitting her head and shoulders and remained pinned down by the gate and unable to move until help arrived.
6. At the time of the incident, there was a swim meet being held at the Betty Kelly Swim Complex and a doctor was stationed there at the time. The Plaintiff's coworkers asked the doctor to render assistance which he did.
7. The Ambulance arrived at the scene approximately 30 minutes after the incident and the Plaintiff was transported to Doctors Hospital where she was treated.
8. The Plaintiff had immediate onset neck pain with associated numbness in both of her hands.

9. On 16th November, 2016, Dr. McDowell performed a C4-05 and C5-06 Anterior Cervical Discectomy and fusion surgery on 16th November, 2017. After surgical decompression she underwent rehabilitation.
10. Due to ongoing pain, the Plaintiff visited the office of Dr. Susheel Wadhwa and was advised that she would need C4-5 and C5-6 facet block injections, C4-C6 lateral mass fusion with titanium lateral mass screws and rods, 6 to 8 sessions of physiotherapy, analgesics and post-surgery antibiotics and physical rehabilitation.

[2.] The particulars of Burrows' claim for negligence, as alleged against the First Defendant (NSA) are as follows:

(1) Failed to ensure proper maintenance of the gate;
(2) Failed to ensure that the gate remained on its groove;
(3) Failed to repair the gate;
(4) Causing or permitting the Plaintiff to open and close and/or secure the gate while it was not properly on its groove;
(5) Causing or permitting the Plaintiff to open and close and/or secure the gate when they knew or ought to have known the gate was defective;
(6) Causing or permitting the Plaintiff to open and close the gate and/or secure the gate when they knew or ought to have known that the gate was not properly on its groove;
(7) Causing or permitting the Plaintiff to open, close and/or secure the gate when they knew or ought to have known that it was not safe to do so;
(8) Failing to ensure that the gate was adequately stable on its grooves/track to be able to open and close in a safe manner;
(9) Knowingly allowed the Plaintiff to open, close and/or secure the gate when it was unsafe to do so;
(10) Failed to give the Plaintiff any, or any adequate warning that the gate was unsafe.

[3.] The particulars of Burrows' claim for negligence and breach of the Health & Safety Act, as alleged against the RBDF are as follows:

(1) Failed to inspect the gate to ensure it was safe to be opened, closed, secured or operated by the Plaintiff;
(2) Allowed the Plaintiff to open, close, secure and/or operate the gate when it was unsafe to do so;
(3) Failed to ensure that the First Defendant repair the gate;
(4) Causing or permitting the Plaintiff to open and close the gate while it was not properly on its groove;
(5) Causing or permitting the Plaintiff to open and close or secure the gate when they knew or ought to have known that the gate was defective;
(6) Causing or permitting the Plaintiff to open and close or secure the gate when they knew or ought to have known that the gate was not properly on it's groove;
(7) Causing or permitting the Plaintiff to open and close or secure the gate when they knew or ought to have known that it was not safe to do so;

(8) Failing to ensure that the gate was adequately stable on its groove/track to be able to open and close in a safe manner;
(9) Knowingly allowed the Plaintiff to open, close and/or secure the gate when it wad unsafe to do so;
(10) Failed to provide a safe place of work;
(11) Failed to provide a safe system of work;
(12) Failed to provide safe plant and equipment;
(13) Failed to give the Plaintiff any, or adequate warning that the gate was unsafe.

[4.] Burrows claims damages for negligence, as against the Defendants, as follows:

(1) Pain, suffering and loss of amenity injury to C4-5 and C-6 vertibrae.
(2) Pain and suffering due to revision surgery to repair C4-5 and C5-6 vertibrae.
(3) Loss of opportunity as a result of the accident and her injuries, She has not advanced in rank in spite of having successfully completed the required advancement courses.
(4) Future Surgery
    (a) Revision of C4-5 and C5-6 Anterior Cervical Discectomy and Fusion $84,892.00
    (b) Physio Therapy $ 6,000.00
(5) Continuing medical expenses and losses:
    (a) Doctor Visits (out of pocket)
    (b) Medication (Out of pocket)
(6) Interest pursuant to the Civil Procedure (award of Interest) Act
(7) Costs
(8) Such further and other relief as the Court deems fit.

[5.] The Defendants denied the claim in a Defence filed in the action. The Defence may be summarized as follows:

[6.] Save and except that it was reported that Burrows sustained soft tissue injuries when a gate at the Thomas A. Robinson Stadium fell upon her, the Defendants deny the allegations contained in paragraph 5 of the Amended Statement of Claim and put Burrows to strict proof thereof.

[7.] The Defendants say that Burrows, being an Able Woman Marine assigned to the Stadium, on numerous occasions throughout her tours of duty walked the premises, carried out her assigned tasks, and became intimately familiar with all entry and exit points and the operation of the associated gates.

[8.] The Defendants further say that Burrows, as a Royal Bahamas Defence Force Officer, was trained inter alia to be observant of her surroundings and to avoid foreseeable hazardous or life-threatening situations. They contend that Burrows knew or ought to have known whether any of the gates at the Stadium were defective, difficult to operate, or unsecured, as she regularly touched, handled, and operated them in the course of her duties.

[9.] The Defendants say that Burrows admitted that she and her colleague, Able Woman Kendra Knowles, were tasked with securing all entry and exit points at the Stadium. They contend that any attempt by Burrows to secure the gate without the assistance of her colleague, contrary to their joint assignment, was negligent and careless, and materially contributed to the incident.

[10.] The Defendants further say that as part of her regular duties, Burrows was required to identify and report any defects in the gates. Her failure to report such a defect exacerbated her negligence and directly contributed to any injuries sustained. Burrows was negligent in failing to report that she knew or ought to have known a defect existed, and that the gate could become dislodged, thereby posing foreseeable harm to herself or others.

[11.] Finally, the Defendants say that any injuries sustained by Burrows were caused or materially contributed to by her own negligence and carelessness, and she was in fact contributorily negligent.

The Evidence

[12.] At trial, Burrows gave evidence and called Leading Seaman Warren Davis (Davis) and Dr. Susheel Wadhwa (Wadhwa) as witnesses. The Defendants did not call any witnesses.

Burrows' evidence

[13.] Burrows filed a witness statement on 5 July 2018 which stood as her examination in chief. She was subject to cross examination and re-examination. A summary of the witness statement is as follows:

[14.] On 29 June 2016, while on duty at the First Defendant's stadium, she was instructed to conduct routine rounds and secure the stadium's exit and entry points. While closing a gate on the northern side of the stadium, the gate allegedly came off its tracks without warning and fell on her, pinning her underneath it. Woman Marine Kendra Knowles, security officer O. Bowleg, and an unidentified man assisted in lifting the gate from her. She was in considerable pain, received initial assistance from colleagues and a doctor who was nearby, and was thereafter taken by emergency personnel to hospital.

[15.] At hospital, she underwent investigations, including tests and X-rays. She was discharged with her hand in a sling and wearing a full neck brace, with instructions to return for further assessment. Her symptoms persisted, and she was referred to neurosurgeon Dr Ian McDowell.

[16.] Dr McDowell performed cervical surgery on 16 November 2016. Following the surgery, she underwent physiotherapy and massage treatment. Although these treatments provided some relief, she says it later became apparent that the surgery had not been successful.

[17.] She was subsequently treated by Dr Robert Gibson of the Bahamas Orthopedic Sports Medicine Clinic and eventually referred to Dr Jeffery Cantor of the Spine Institute in Florida. Dr Cantor examined her and reported on 18 January 2019 concluding that the cervical vertebrae operated on by Dr McDowell had not fully fused and advised her not to undertake strenuous activity at work.

[18.] Burrows' condition continued through the period of the COVID-19 pandemic in 2020 and 2021. Dr Gibson later referred her to Dr Susheel Whadwa, who diagnosed chronic pain syndrome caused by pseudoarthrosis following ACDF surgery and recommended further surgery. While Dr Whadwa was outside the jurisdiction, Burrows says that she experienced excruciating pain and consulted Dr Mitesha Nottage for prescribed pain management. Dr Nottage treated her briefly and, by letter dated 23 May 2023, referred her to Dr Gregory Brusovanik abroad.

[19.] On or about 23 November 2023, Dr Brusovanik performed a further cervical procedure. The procedure was intended to stabilise Burrows' vertebrae at C4/C5 and C5/C6, including a total disc replacement at C6/C7, and to alleviate her chronic pain.

[20.] Burrows says that the second surgery did not result in full fusion of her cervical vertebrae and that she continues to suffer from chronic neck pain. Dr Brusovanik recommended her retirement from the Defence Force in a letter dated 14 November 2023 and a report dated 31 January 2024.

[21.] Burrows says that the injury has significantly affected her professional career. At the time of the accident, she had approximately 15 years' service and had been promoted from Woman Marine to Able Woman Marine in 2004. In 2020, she was promoted to Leading Woman Marine, with the promotion backdated to 2017.

[22.] Since the accident, Burrows say that she has been largely unable to perform the field duties that she undertook before her injury. Her duties have instead been principally clerical in nature. She says that even clerical duties have been difficult because she cannot sit or stand for prolonged periods. She says that debilitating neck and back pain has caused her to miss extended periods of work.

[23.] She says that her physical limitations have affected her performance in physical assessments, reduced the hours she can work, impaired her ability to complete work assignments on time, and required her to depend on co-workers for updates. She says that frequent sick leave has also affected her attendance and concentration. She contends that physical fitness is a central

requirement for advancement within the Defence Force and that her injury has therefore limited her opportunities for further promotion.

[24.] In 2023, she was notified that she owed the Government $22,000, with further sums accruing, in respect of sick leave taken because of her inability to work following the 2016 accident. She says that her injuries have also had a serious adverse effect on her personal and social life. She describes chronic pain, reduced mobility, fatigue, disturbed sleep, depression, and feelings of being overwhelmed.

[25.] She says that ordinary activities, including driving, exercising, undertaking household chores, and intimacy with her husband, now require considerable effort and may be impossible when her pain is severe. She relies substantially on family members, friends, and her children for assistance with basic tasks.

[26.] Burrows says that she is frequently tired because chronic pain prevents her from obtaining restful sleep without pain medication. She also reports having been diagnosed with high blood pressure since the accident and says that medication, therapy, and surgery have become a continuing feature of her life.

[27.] When cross-examined Burrows stated as follows:

[28.] She identified herself as a Leading Woman Marine in the Royal Bahamas Defence Force. She enlisted on 9 April 2001, remained employed at the time of the hearing, and had been stationed at the Sports Centre from about 2014. Before then, she had served at the Hospital Authority and the Cabinet Office.

[29.] She said that, on the relevant occasion, Leading Seaman Davis instructed her to conduct rounds and secure the stadium's entry and exit points, which was a normal daily duty. Operational rounds were conducted in two-person teams; Woman Marine Kendra Knowles was with her. However, Ms Burrows said it was the established practice for one person to close and secure an individual gate.

[30.] The gate was manual and ran on wheels. Ms Burrows described it as about nine feet high and 15–20 feet wide; she was 5 feet 4 inches tall. She said she had been trained or shown how to open and close gates, and that she used the usual manual method: standing at the gate and sliding it across. She observed nothing abnormal or unusual about it beforehand.

[31.] Her account was that, while she was sliding the gate closed, it came off its track and fell on her, leaving her pinned. Although she was accompanied by Ms Knowles, Ms Knowles did not assist in operating the gate. Ms Burrows rejected the suggestion that it was unwise to close it alone: she said the gate was wheeled, routinely operated in that way, and she had been trained to do so.

[32.] She said that she fell backwards as the gate pushed toward her and raised her hands to brace herself. The gate covered her whole body; she said it hit her head and hands. She did not recall facial injury. She was conscious, although "in and out in a daze," and said she could not remove the gate herself because she was pinned beneath it. Her evidence was that Ms Knowles, Security Officer Bowleg, and an unidentified man lifted it off her.

[33.] As to treatment, she said that after discharge from hospital she wore a sling and full neck brace, and returned to a specialist clinic about two weeks later. She said the incident occurred in June 2016 and that Dr Ian McDowell performed cervical surgery in November 2016, just under five months later. She accepted that her witness statement mistakenly recorded the surgery year as 2017.

[34.] Burrows accepted that Dr McDowell's report recorded that she had been considered fully recovered in March 2017, was pain free with normal range of motion and power in July 2017, and had been recommended to return to work with a home-exercise programme. Her evidence, however, was that she performed the home exercises four or five days per week, for 30 minutes to an hour, for about one month but obtained no relief. She said her persistent pain led her and Dr McDowell to agree that she should seek a second opinion, although she accepted that the report did not record that agreement and challenged its accuracy on that point.

[35.] She said that she consulted Dr McDowell, Dr Robert Gibson, and Dr Jeffrey Cantor between November 2016 and October 2018. She accepted that Dr McDowell did not tell her that the first surgery had failed; her evidence was that Dr Cantor's report later indicated that the surgery had not been successful. She rejected the proposition that her continuing complications were caused by her failure to complete the prescribed home exercises.

[36.] Burrows's case was that the injury materially altered both her daily life and career because physical fitness comprised about 90% of her duties. She accepted that some clerical or sedentary work was performed, but said most of her own work had been in the field, involving standing and movement. She also said she had lost career-advancement opportunities; however, she accepted that she had produced no document from the Defence Force stating that her injuries had prevented promotion.

[37.] Finally, she accepted that there was no evidence before the court connecting her post-accident high blood pressure to the neck injury.

[38.] In re-examination, Burrows maintained that the applicable training was for one person to close a gate, whether an automatic gate using a remote or a manual gate. She clarified that the gate in question was manual, on wheels, and that this was the first occasion on which she knew of it coming off the rail.

Davis' evidence

[39.] Davis filed a witness statement on 5 July 2018 which stood as his examination in chief. He was subject to cross examination and re-examination. A summary of the witness statement is as follows:

[40.] Davis states that he was an officer of the Royal Bahamas Defence Force and, on 29 June 2016, was stationed at the Thomas A. Robinson Stadium for a 24-hour shift running from 8:00 am to 8:00 am.

[41.] He was the Guard Commander for that shift and worked with Burrows and Woman Marine Kendra Knowles.

[42.] He explains that, at about 6:00 pm, the ordinary duties of the watch included turning on the exterior and parking-lot lights and securing the compound by closing the entrance and exit points. At approximately 6:25 pm, he instructed Burrows and Woman Marine Knowles to conduct the hourly compound check and close the entry and exit points. As the senior officer, he remained in the guard room to monitor the security-camera screens.

[43.] Shortly after they left, he observed on a monitor that the Northern Gate was on top of Able Woman Marine Burrows and that she appeared not to be moving. He secured the guard room and went immediately to assist her. By the time he arrived at the gate, a number of people were present and the gate had already been lifted from Burrows. She remained lying on the ground, unable to move and in considerable pain.

[44.] Emergency Medical Services was contacted, and Burrows was taken to Doctors Hospital. Davis then reported the incident to his superiors.

[45.] Davis further states that the Northern Gate had come off its track on more than one earlier occasion and had been put back into place. He recalls one such occasion during a concert, when Defence Force officers had to replace it on the track. He says that the gate was not properly secured and required repair. He had previously raised this concern with his superiors and, on occasions, with Petty Officer Desmond Coleby, requesting that the gate be properly repaired to prevent an incident of this kind.

[46.] When cross-examined Davis stated as follows:

[47.] He could not recall when he was first posted to the stadium, but said that it had been for less than three years. On the date of the incident, he was the guard commander. He described his duties as ensuring compliance with rules and regulations, reporting incidents and accidents, and

supervising the marines on his watch. He said he had acted as guard commander for approximately two years.

[48.] At about 6:25 pm, he sent Burrows and Woman Marine Kendra Knowles to conduct hourly compound checks and close entry checkpoints. He said that he instructed them to perform their regular duty of checking and closing exits that had been open for business that day.

[49.] He remained in the guardroom monitoring the security screens. He did not see the gate fall; his evidence was that he saw, on the monitor, that the gate was upon Ms Burrows. He saw it on one person only, not both Ms Burrows and Ms Knowles.

[50.] Davis said there had previously been complaints and problems with the gate. In his signed statement, he recorded that it had come off its track on more than one occasion and had had to be put back. He said that reports of such incidents were made by the people involved across different watches, and that the fact of the recurring defect was known at the stadium.

[51.] He gave an example of a concert at which the gate came off the track and Defence Force officers put it back. He said that the gate was not properly secured, required repair, and that he had asked supervisors and Petty Officer Desmond Colby to have it properly repaired to avoid accidents. He did not know that the repair had ever been completed.

[52.] Davis said incidents were entered into a daily log sheet or logbook, with a formal report also forwarded to superiors. He said all marines on duty could make entries; marines were required to record rounds, visitors, and anything out of the ordinary. The records were held by the Defence Force, then its Military Police/administration, after the stadium post was discontinued.

[53.] Although regular marines were not required to read earlier logbook entries, Davis accepted that it would be prudent for an officer to do so. He said that, as guard commander, he would peruse the logbook in order to learn of matters not communicated by the preceding guard commander.

[54.] He said that shift-turnover briefings occurred once per 24-hour shift and involved the guard commander and subordinate marines. Their purpose was to review what had happened and bring personnel up to date about relevant circumstances, memoranda, and expectations. He said that Burrows had attended some briefings, but he could not recall whether she had ever been excused from one.

[55.] When specifically asked whether he had told officers sent on patrols about this particular gate's condition, Mr Davis answered "No." Thus, while he said the gate's earlier failures were documented and repairs had been sought, he did not recall verbally communicating the specific risk to officers being sent to close the gates.

Dr. Wadhwa's evidence

[56.] Wadhwa filed a witness statement on 15 December 2025, which incorporated his medical report and stood as his examination in chief. He was subject to cross examination and re-examination.

[57.] Wadhwa was deemed an expert in neurosurgery. His report, which was received in evidence, provided in part as follows:

> Ms. Timica Burrows was evaluated at the Neurosurgery Specialist clinic in Doctors Hospital on 8th July 2020. Ms. Burrows was referred to a second opinion on her complaints of chronic neck pain, allegedly since an injury on 29th June 2016.
> History and Examination
> Ms. Timica Burrows allegedly sustained an injury to the neck; by all of a gate on the head, on 29th June 2016. She reportedly had neck pain with right upper limb pain and weakness following the injury. She was diagnosed with C4-5 and C5-6 disc bulge. As she failed conservative management, she underwent a C4-5 and C5-6 Anterior Cervical Discectomy and Fusion on 16 November 2016 by Dr. Ian McDowell. She reports to have had relief post-surgery, especially with right upper limb symptoms. Few months later she started to have progressive neck pain. Since then, she has had severe intermittent neck pain, triggered by bending neck forwards, lifting weights, working with arms above the level of the shoulder. She rated her pain, a score of 8/10 (adult pain scale). The pain was in the nape of the neck and radiated to the shoulder. Occasionally has right arm pain but no shooting pain down the upper limb. No limb weakness or loss of sensations. There was no history suggestive of urinary or bowel disturbances. She denied a history of any falls or injury post surgery. She was evaluated for these complaints in 2018 and early 2019. A diagnosis of non-fusion and pseudo arthrosis was made. She was advised posterior cervical fusion and was scheduled to have the surgery early in 2020 but was unable to travel to the United States for surgery in view of the COVID-2019 pandemic.
> On examination she had normal motor power with grade 5/5 power in bilateral upper and lower limbs with no gross sensory deficits. Her deep tendon reflex examination revealed diminished biceps and supinator jerks while other reflexes were normal and symmetrical. She had no clinical evidence of myelopathy. On examination of the spine she had no obvious deformity on inspection. The surgical scars on the anterior aspect of the neck were found to be well healed. She had midline posterior tenderness from C4-C7 vertebral levels. All her neck movements were restricted due to pain. Root tension signs were negative but she had neck pain on axial loading.
> Her neck pain was evaluated on the Neck Disability Index scale and she had a score of 26/50 suggestive of severe disability.
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> Interpretation of Scores
> 0-4 points (0-80%) no disability
> 4-14 points (10-28%) mid disability
> 15-24 points (30-48%) moderate disability
> 25-34 points (50-64%) severe disability
> 35-50 points (70-100%) complete disability

Mild Disability – The patient can cope with most living activities. Usually no treatment is indicated apart from advice on lifting and exercise.
Moderate Disability – The patient experiences more pain and difficulty with exertional activities. Travel and social life are more difficult and they may be disabled form work. Personal care, sexual activity and sleeping are not grossly affected and the patient can usually be managed by conservative means.
Severe disability – Pain remains the main problem in this group but activities of daily living are affected. These patients require a detailed investigation and positive interventions.
Complete Disability – Neck pain impinges on all aspects of the patient's life. These patient's are either bed-bound or exaggerating their symptoms.
Course:
At the conclusion of her consult on 8th July 2020, Ms. Burrows was explained about the nature of clinical and radiological findings in detail. The possible treatment options-cervical facet block + physiotherapy v/s posterior cervical fusion v/s revision of anterior cervical discectomy and fusion was discussed with the relative risks and benefits of each. She was advised a dynamic X-ray of the cervical spine which she subsequently did on 13th July 2020 and which confirmed the diagnosis. She returned for discussion of the results on 15th July 2020 during which it was planned that she have a C4-5 and a C5-6 facet block followed by the physiotherapy to strengthen the neck muscles and failing which she would require a posterior cervical fusion from C4 to C6 with lateral mass screws.

[58.] When cross-examined Wadhwa stated as follows:

[59.] He is a neurosurgeon and spine surgeon at Doctors Hospital, Nassau. He had practised as a neurosurgeon since 2012 and had performed about 3,500 brain and spinal surgeries. The Court recognised him as an expert in neurosurgery without objection.

[60.] He confirmed that Ms Burrows was his patient and he first saw her in 2020, about four years after her 2016 cervical surgery. Accordingly, he said that, regarding her earlier condition and treatment, he had to rely on the notes of previous physicians and on the history provided by Burrows. He nevertheless examined her at his first consultation and saw her three times in July: on 8, 13 and 15 July.

[61.] He described Burrows as presenting with chronic neck pain which she attributed to her injury and which had persisted despite surgery. He expressly said he could not fully determine whether her condition had been caused by the original injury, because he assessed her four years later.

[62.] His diagnosis included pseudoarthrosis—incomplete bony fusion after the earlier cervical fusion surgery. He said CT imaging showed no complete bone growth between the relevant vertebrae and dynamic X-rays showed movement consistent with incomplete fusion. In his opinion, these findings established non-union.

[63.] Wadhwa said the pseudoarthrosis could be one cause of Burrows's pain, but did not say it was necessarily the sole or primary cause. He explained that some patients with pseudoarthrosis do not experience pain. He considered that soft-tissue injury might also contribute, but there was no definitive test to prove or disprove soft-tissue injury.

[64.] He said that Burrows's disability was primarily pain-related, rather than neurological. She had not shown muscle weakness or loss of limb sensation; absent pain, she should have been capable of physical tasks. He could not, however, recall whether he had personally prescribed pain medication, without checking his medical records.

[65.] His recommendation in 2020 was posterior cervical fusion to address the non-union. Whether Ms Burrows should retire, in his view, depended on the outcome of that recommended treatment. If she improved completely, she could return to work; if she did not improve, retirement might be appropriate. He further said that patients who had not recovered well from prior surgery should avoid work involving high injury risk or regular lifting of more than 30–50 pounds. He did not recall whether Burrows had told him that her job required that level of lifting.

[66.] Dr Wadhwa had subsequently received reports indicating that Burrows underwent a C6–7 total-disc replacement after 2020. He said this was different from the posterior cervical fusion he had recommended. However, he could not say whether that later procedure had addressed the non-union, whether she still needed a fusion, or whether she was still in pain, because he had not assessed her after 2020 and did not know the rationale for the later surgery.

[67.] In response to the Court, Dr Wadhwa said that, after a spinal fusion, an adjacent disc above or below the fused segment may deteriorate and may require a procedure such as disc replacement. He did not state that this was the cause of Ms Burrows's need for the C6–7 disc replacement; he expressed the point as a general possibility.

The Issues

[68.] The issues for determination in this dispute are:

(1) whether NSA breached the duty owed as occupier of the Stadium;
(2) whether the RBDF breached its common-law and statutory duties as Burrows' employer;
(3) whether the Defendants proved contributory negligence by Burrows;
(4) whether the breaches caused Burrows' injury and continuing loss; and
(5) the proper assessment of damages, interest and costs.

Law analysis and discussion

[69.] The nature of the claim against the NSA is that of occupier's liability as the occupier and the party responsible for the Stadium premises. The claim against the RBDF, as Burrows' employer, is in the nature of employers' liability in the allegation of a failure to provide a safe system/place of work and breach of the provisions of the Health and Safety at Work Act (the Act).

[70.] The relevant applicable law is conveniently set out in paragraphs 7-9 of the Supreme Court decision in the case of **Mullings v Public Health Authority** BS 2017 SC 55:

> 7. Occupier's liability is not a strict or absolute duty to prevent any and all damage to an invitee or licensee. The state of the law was ably put by Sawyer J. (as she then was) in the case of *Cox v. Chan* [1991] BHS. J. No. 110. At paragraph 21, of the decision, Sawyer J states:
>
> > "[I]t is clear from the decided cases, including *Indermaur v. Dames*, that the duty of care which a person like the defendant owes to a person like the plaintiff is not an absolute duty to prevent any damage to the plaintiff but is a lesser one of using reasonable care to prevent damage to the plaintiff from an unusual danger of which the defendant knew or ought to have known and, I may add, of which the plaintiff did not know or of which he could not have been aware. If it were otherwise then the slightest alleged breach of such a duty would lead to litigation and could, perhaps, hamper the progress of quite lawful and needful businesses."
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> 8. Section 4(1) of the Health and Safety at Work Act, imposes a general duty on every employer to ensure, so far as reasonably practicable, the health, safety and welfare at work of all his employees. Specifically, section 4(2)(e) of the same provides:
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> > "Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular — (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work."
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> 9. In *Wayne Anthony John v. February Point Resort Estates Ltd.*, Allen, J. (as she then was) stated that "Where are three components of negligence, namely, the existence of a duty of care owed by the defendant to the plaintiff; the failure to attain that standard of care, prescribed by the law, resulting in a breach of such duty; and damage which is causally connected to such breach and recognized by the law, has been occasioned to the plaintiff". In the context of the duty of care owed by employers to provide a safe system of work for employees, Allen J accepted the dicta of Goddard LJ in *Naismith v. London Film Productions Ltd.* as the correct statement of the law relative to The Bahamas. That dicta provided:
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> > "The duty of employers to provide a safe system of work includes "not only the duty to warn employees against unusual dangers known to them but also to make the place of employment as safe as the exercise of reasonable skill and care would permit,"

[71.] Section 4 of the Act provides:

4. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1) the matters to which that duty extends include in particular —

...

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

[72.] Having considered the oral and documentary evidence advance by the parties, in particular the evidence of the Burrows, Davis, and Wadhwa. I accept that evidence as truthful.

[73.] I accept Burrows' account that, without warning, the gate came off its tracks and fell upon her, pinning her. Her direct testimony was also that this was the first occasion on which she was aware of the gate coming off its rail.

[74.] I also accept the evidence of Davis that the gate had come off its track on more than one previous occasion; that it was known at the Stadium to be capable of doing so; and that he had requested that it be properly repaired to prevent an accident. Davis' evidence was that he was unaware of any completed repair. According to some of that exchange of evidence:

Davis:	*This gate fell off the track on more than one occasion and had to be replaced on its track. In fact there was a concert on one occasion and the gate came off the track and Defence Force officers had to put the gate back on the track.*
D's Counsel:	*So is it your evidence that it was a known fact, at the stadium, that this particular gate was able to come off it's tracks? Is that your evidence, sir?*
Davie:	*Yes, sir.*
D's Counsel	*... was that repair ever completed?*
Davis	*Not to my knowledge, sir.*

[75.] I did not accept the submission that Burrows had actual knowledge of the particular danger sufficient to relieve either Defendant of its duty. The evidence does not establish that she had witnessed the gate derail, that she received a specific warning not to operate it, or that an effective instruction was given to that effect. Additionally, the Defendants' assertion that Burrows acted alone contrary to an instruction that the rounds be completed jointly does not establish a causal contribution to the gate's derailment. The operative danger was the gate's known propensity to leave its track. There is no evidence that Burrows' manner of closing it was careless or caused the defect to operate. I am therefore not prepared to make any reduction for contributory negligence.

[76.] The NSA owed lawful users of the Stadium a duty to take reasonable care to make them reasonably safe in their use of the premises. A heavy sliding gate, approximately nine feet in height and fifteen to twenty feet in width, which was known repeatedly to come off its track, presented a foreseeable risk of serious injury. The defect with the gate was an unusual danger which the NSA knew, or ought to a have known through the reports and requests for repair made by RBDF personnel to Stadium management. I am not satisfied that an effective repair, physical safeguard, or adequate warning of the danger posed by the gate was provided. The failure to repair or secure the gate was a breach of duty and a factual and legal cause of the accident.

[77.] The RPDF owed Burrows duty to provide, so far as reasonably practicable, a safe system and place of work, adequate supervision, and necessary information and instruction. Section 4 of the Health and Safety at Work Act expressly extends the employer's duty to provide safe plant and systems of work and to such instruction and supervision as are necessary for employees' health and safety. The RBDF knew of the gate's recurrent defect through its guard-command structure but continued to require Burrows and other marines to secure the Stadium using that gate without proving an effective repair, a prohibition on its use, or a specific and communicated warning. I am satisfied that this was a breach of both the common-law duty and the statutory duty which materially contributed to Burrows' injury.

[78.] I am satisfied that the Defendants are liable to Burrows. I find on the balance of probabilities that the accident caused the cervical injury for which Burrows has received treatment and that it materially contributed to the continuing pain, functional restriction, treatment requirements, and loss.

Damages

[79.] Burrows' injury has been described as an injury to the neck resulting in neck pain with right upper limb pain and weakness following the injury. She was diagnosed with C4-5 and C5-6 disc bulge. The medical history relied upon records continuing pain, a failed fusion/non-union, further specialist treatment, and a C6–C7 disc replacement in November 2023. Burrows initially received specialty treatment from Dr. Ian McDowell who diagnosed her with HNP C-Spine C4-C5-C5-C6 and performed corrective surgery on 16 November 2017. On 14 November 2023 she underwent the surgery recommended by Dr. Cantor, Dr. Wadhwa and Dr. Brusovanik (full disc replacement).

[80.] Dr. Wadhwa's evidence supports a finding that Burrows has severe pain-related disability affecting routine daily activities. Imaging confirmed incomplete fusion, although the evidence recognised that pain may have more than one contributing factor.

[81.] Burrows pursues the following heads of damages:

(a) General Damages PSLA.
(b) Past loss and damages

(c) Future loss and damages
(d) Special damages
(e) Interest pursuant to the Civil Procedure (award of Interest) Act
(f) Costs

[82.] Burrows argues for a sum of $216,847.51 for general damages and loss of amenities whereas the Defendants argue that the general damages claim ought to be in the region of $63,140.45, relying on the decision in **Maria Wells v Oneika Stubbs** SCCiv App 59 of 2006.

[83.] I did not find that the case of **Wells** appropriately captures Burrows' injury and was therefore unhelpful. The **Judicial College Guidelines for the Assessment of Damages in Personal Injury Cases**, provides more useful guidance, as follows:

(A) Neck Injuries

There is a very wide range of neck injuries. Many are found in conjunction with back and shoulder problems. At the very bottom end of neck and back injuries, further guidance may be obtained from Chapter 14: Minor Injuries.

(a) Severe

(i) Neck injury associated with incomplete paraplegia or resulting in permanent spastic quadriparesis or where the injured person, despite wearing a collar 24 hours a day for a period of years, still has little or no movement in the neck and suffers severe headaches which have proved intractable.

In the region of £181,020.00

(ii) Injuries, usually involving serious fractures or damage to discs in the cervical spine, which give rise to disabilities which fall short of those in (a) (i) above but which are of considerable severity, e.g. permanent damage to the brachial plexus or substantial loss of movement in the neck and loss of function in one or more limbs.

£80,240.00.00 to £159,770.00

(iii) Injuries causing fractures or dislocations or severe damage to soft tissues and/or ruptured tendons that lead to chronic conditions and significant disability of a permanent nature. The precise award depends on the length of time during which the most serious symptoms are ameliorated, the extent of the treatment required, and on the prognosis.

£55,500 to £68,330

[84.] I am satisfied that Burrows' injury falls in the bottom of the range identified in (a)(ii) of the guidance above, at approximately *£80,240* or $108,361.47.

[85.] I was not satisfied that Burrows has demonstrated any loss of promotion prospects. She had not been promoted in the 12-year period prior to the incident and was promoted in the year following the incident.

[86.] I award past losses to Burrows as follows:

(a) 1/8 sick leave pay being recovered by the RBDF in the amount of $22,526.29, by virtue of the letter dated 31 January 2023. RBDF shall cease the deductions of $150 and repay the sums already deducted ($4,800 at the date of trial).

(b) Travel Expenses $1,243.54

[87.] I also award Burrows the costs of the future revision Anterior Cervical Discectomy and Fusion Surgery, which she pleads in her Amended Statement of Claim, in the amount of $84,892.00 as well as reasonable physiotherapy expenses in the amount of $6,000.00.

[88.] Having awarded Burrows the costs of the corrective surgeries, I am not inclined to award her a diminished loss of future earning award. In any event, I accept the submission of the Defendants that she "led no evidence to support the claim that she is unable to work or continue her duties a Defence Force Officer and in fact confirmed that she remains in active duty."

Conclusion

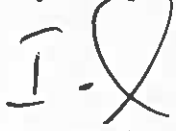
[89.] The sums awarded to Burrows may be summarized as follows:

(1)	General damages, PSLA	$108,361.47
(2)	Sums deducted for sick leave	$ 4,800 (plus any further deductions)
(3)	Travel Expenses	$ 1,243.54
(4)	Future medical expenses	$ 90,862

The said sums shall attract interest at 3% per annum from the date of the Amended Statement of Claim until judgment and shall bear interest at the statutory rate thereafter.

[90.] Burrows shall be entitled to her reasonable costs. I propose to fix those costs and therefore invite Counsel for Burrows to provide a summary of her costs, within 21 days, to assist in the determination of the appropriate quantum of costs.

Dated this 15th day of September 2026



Sir Ian. Winder
Chief Justice